

South Australia

Irrigation Act 2009

An Act to provide a framework for the management and operation of shared infrastructure for irrigation or drainage purposes associated with primary production in the State; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Irrigation Act 2009*.

3—Interpretation

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

authorised officer means a person for the time being appointed to be an authorised officer under this Act;

board of management or **board** means the board of management of a trust;

channel includes a watercourse;

charging period means the period in relation to which an irrigation trust has declared a water supply charge;

Commonwealth water rules means any rules under Part 4 of the *Water Act 2007* of the Commonwealth;

conveyance water means the water necessary to support the delivery of water through an irrigation system;

drain includes to pump water from low lying land;

drainage system means a system of channels, pipes, structures, fittings and equipment used in the drainage of irrigation water from land and includes a tank, pond, dam or other facility for holding water that is connected to such a system;

drainage system provided by a landowner means those parts of a drainage system—

- (a) that have been provided by a landowner, or a predecessor of a landowner; or
- (b) in relation to which a landowner, or a predecessor of a landowner, has assumed responsibility for maintenance; or
- (c) that a landowner is liable to maintain pursuant to an agreement or arrangement with an irrigation trust or with a predecessor of an irrigation trust;

drainage system provided by the trust means those parts of a drainage system that are not parts of the drainage system provided by a landowner;

irrigation right means an entitlement fixed by an irrigation trust under Part 4 Division 3;

irrigation system means a system of channels, pipes, structures, fittings and equipment used in the collection and delivery of water for irrigating land and includes a tank, pond, dam or other facility for holding water that is connected to such a system;

irrigation system provided by a landowner means those parts of an irrigation system—

- (a) that have been provided by a landowner, or a predecessor of a landowner; or
- (b) in relation to which a landowner, or a predecessor of a landowner, has assumed responsibility for maintenance; or
- (c) that a landowner is liable to maintain pursuant to an agreement or arrangement with an irrigation trust or with a predecessor of an irrigation trust;

irrigation system provided by the trust means those parts of an irrigation system that are not parts of the irrigation system provided by a landowner;

irrigation trust or **trust** means an irrigation trust established under this Act;

irrigation water means water supplied or delivered through the use of an irrigation system provided by an irrigation trust under this Act for irrigating land;

land includes an interest in land;

landowner means an owner or occupier of land;

local newspaper, in relation to a notice that relates to an irrigation trust, means a newspaper circulating in the locality in which an irrigation or drainage system provided by the trust is situated;

owner of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;
- (b) in relation to land held under a Crown lease or licence—the lessee or licensee;
- (c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;

presiding member—see section 8;

public notice means a notice published in a local newspaper;

serviced property means land—

- (a) that is used to carry on the business of primary production and is managed as a single undertaking for the purpose of carrying on that business; and
- (b) that is connected to an irrigation or drainage system provided by an irrigation trust under this Act;

voting member means a member of a trust who is entitled to vote at meetings of the trust;

watercourse means a river, creek or other natural watercourse (whether modified or not);

water licence means a water licence under the *Landscape South Australia Act 2019* entitling the holder to take water from a watercourse, lake or well.

- (2) If an irrigation or drainage system extends to a point on land or on, or near the boundary of, land and incorporates a valve, slide gate, sluice, entry sump or other similar fitting at that point through which irrigation water can be supplied to the land or water can be drained from the land, the land will be taken to be connected to the irrigation or drainage system.
- (3) If an irrigation trust reads a meter within 14 days before or after the end of a charging period, the quantity of water supplied to the land during that period and the next succeeding charging period will be determined on the assumption that the reading had been taken on the last day of the first mentioned charging period.
- (4) For the purposes of this Act, 21 days notice of an intention to propose a resolution of a trust will be taken to have been given if 21 days or more before the resolution is passed written notice is given to every member of the trust—
 - (a) setting out the text of the proposed resolution; and

- (b) specifying the time and place of the meeting at which it is proposed to move the resolution.

Part 2—Establishment, amalgamation and dissolution of trusts

Division 1—Establishment of trust

4—Application to establish a trust

- (1) An application for the establishment of an irrigation trust must be made to the Minister in a manner and form determined by the Minister by a person duly authorised by 2 or more persons—
 - (a) who carry on the business of primary production; and
 - (b) who are seeking to establish an entity to provide, manage and operate shared infrastructure—
 - (i) for the collection and delivery of water (irrigation systems); or
 - (ii) for the drainage of land (drainage systems),(or both).
- (2) The application must be accompanied by—
 - (a) the prescribed fee; and
 - (b) such other information required by the regulations.
- (3) The Minister may grant the application if satisfied—
 - (a) that the trust is to be established to provide an irrigation system or a drainage system (or both) in connection with the business of primary production conducted by persons who will become members of the trust; and
 - (b) that the trust complies with any other requirements prescribed by the regulations.
- (4) Subsection (3)(a) does not prevent a trust delivering or draining water under an agreement with a person who is not a member of the trust.

5—Establishment of trust

- (1) If the Minister decides to grant an application for the establishment of an irrigation trust, the Minister will establish the trust by notice in the Gazette.
- (2) The notice must specify—
 - (a) the date on which the trust is established; and
 - (b) the name of the trust (which must be a distinctive name approved by the Minister as part of the application process under this Act).
- (3) An irrigation trust established under this section—
 - (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) has the functions and powers assigned or conferred by or under this Act or any other Act.
- (4) If—
 - (a) an application for the establishment of an irrigation trust—
 - (i) identifies real or personal property that is to vest in the trust on its incorporation under this Act; and
 - (ii) verifies in the prescribed manner and form that any person who has a prescribed interest in that property consents to the vesting; and
 - (b) the Minister identifies that property as being property to which this subsection applies in the notice establishing the trust,
that property will, on incorporation, be vested in and held by the irrigation trust (subject to any trusts that may affect that property).
- (5) The Registrar-General must—
 - (a) on the application of an irrigation trust in which any estate or interest in land has vested under subsection (4); and
 - (b) on production of such documents as the Registrar-General may require, register the vesting of that estate or interest in land in the trust.

6—Rules

- (1) An irrigation trust may have a set of rules relating to the membership, management or operations of the trust.
- (2) A set of rules of a trust—
 - (a) must comply with any prescribed requirements; and
 - (b) must not contain any provision that is contrary to or inconsistent with this Act; and
 - (c) may provide for the imposition and payment of application and other fees by members of the trust (including a fee to be paid by a person if or when the person ceases to be a member of the trust); and
 - (d) may provide for or regulate the times at which irrigation water may be used; and
 - (e) may provide for other matters to facilitate—
 - (i) the effective management of an irrigation or drainage system provided by the trust; or
 - (ii) the efficient supply, delivery or use of water provided by an irrigation system provided by the trust; or
 - (iii) the efficient drainage, management or disposal of water through a drainage system provided by the trust; and
 - (f) may provide for such other matters as may be prescribed by the regulations or expedient for the purposes of the trust.
- (3) An alteration to the rules of a trust may be made by ordinary resolution of the trust unless provision is otherwise made in the rules of the trust.

- (4) Subject to any provision in the rules of the trust or a resolution to the contrary, an alteration to the rules of a trust comes into force at the time that the alteration is passed.
- (5) The rules of a trust bind the trust and the members of the trust.
- (6) It will not be presumed that a person dealing with a trust, or an agent of a trust, has notice of the rules of the trust.
- (7) A trust must, at the request of the Minister, furnish the Minister with an up-to-date copy of the rules of the trust within a period specified by the Minister at the time that the request is made.

Maximum penalty: \$500.

7—Manner in which contracts may be made

- (1) Contracts may be made by or on behalf of an irrigation trust as follows:
 - (a) a contract which, if made between private persons, would be required to be in writing under seal may be made by the trust under its common seal;
 - (b) a contract which, if made between private persons, would be required to be in writing signed by the parties to be charged may be made on behalf of the trust in writing by any person acting under its authority, express or implied;
 - (c) a contract which, if made between private persons, would be valid although made by parol only may be made by parol on behalf of the trust by any person acting under its authority, express or implied.
- (2) A contract may be varied or rescinded by or on behalf of an irrigation trust in the same manner as it is authorised to be made.

Division 2—Members

8—Members (including presiding member and deputy presiding member)

- (1) On the establishment of an irrigation trust, the persons who authorised the application under this Division become members of the trust.
- (2) Other persons who carry on the business of primary production may be admitted as members of the trust by resolution of the trust or as provided by the rules of the trust.
- (3) A person ceases to be a member of a trust in any of the following circumstances or as otherwise provided by this Act:
 - (a) if the trust resolves that the membership should be discontinued—
 - (i) on the ground that the member has ceased on a permanent basis to carry on the business of primary production that gives rise to his or her entitlement to membership; or
 - (ii) on any other reasonable ground determined by the trust;
 - (b) if the member resigns;
 - (c) on death (subject to any provision made by the trust or by law for a legal personal representative of the estate of a deceased member to continue to exercise the rights or to manage the business of the deceased member);
 - (d) in the case of a member that is a body corporate—if the body is dissolved.

- (4) A trust—
 - (a) must have a presiding member of the trust; and
 - (b) may have a deputy presiding member of the trust, appointed from its membership at a meeting of the trust.
- (5) A trust may, by further resolution of the trust at a meeting of the trust, remove a person from office under subsection (4).
- (6) A person also ceases to hold office under subsection (4) if the person ceases to be a member of the trust.
- (7) The deputy presiding member of a trust (if any) may act as the presiding member in the absence of the presiding member or during a vacancy in the office of presiding member.
- (8) If there is no deputy presiding member, a person selected by the trust may act as the presiding member in the absence of the presiding member or during a vacancy in the office of presiding member.

9—Rights and liabilities of membership

- (1) Membership of an irrigation trust does not confer on a member, except as may be provided by this Act, any right, title or interest in any real or personal property of the trust.
- (2) Except as provided by this Act, a member of an irrigation trust is not liable to contribute towards the payment of the debts and liabilities of the trust or the costs, charges and expenses of a winding up of the trust.
- (3) Subsection (2) does not apply in respect of debts or liabilities incurred by or on behalf of the trust prior to incorporation.

10—Calling of meetings

- (1) A meeting of an irrigation trust may be called at any time by the presiding member, by a board of management of the trust, or by at least 10% of the voting members of the trust.
- (2) The presiding member must call a meeting of the trust (the annual general meeting) at least once in each year.
- (3) At least 7 days written notice specifying the time and place of each meeting must be given to every member of the trust (subject to any other requirements under another provision of this Act).

11—Procedures at meetings

- (1) The presiding member will preside at meetings of the trust or, in his or her absence, a member chosen by the members present will preside.
- (2) A quorum for a meeting of the trust is—
 - (a) one-third of the voting members of the trust or 10 voting members whichever is the smaller number; or
 - (b) such other number (being not less than 2) as the trust may from time to time determine.

- (3) When determining whether a quorum is present at a meeting, both voting members who are present at the meeting and those who are represented at the meeting for the purposes of voting will be counted.
- (4) Subject to this Act, a resolution will be carried if the value of the votes supporting it exceeds the value of the votes against it but if the values are equal the resolution will be carried if it is supported by the person presiding at the meeting.
- (5) 21 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.
- (6) Subject to this Act, a trust may determine its own procedures.
- (7) A trust must keep minutes of its proceedings.

12—Voting at meetings

- (1) Subject to this section, a member of an irrigation trust is entitled to vote at meetings of the trust.
- (2) A member may nominate another person to attend and vote at meetings on his or her behalf.
- (3) If 2 or more persons are members of the trust with respect to the same undertaking concerned with carrying on the business of primary production, a person must be nominated by them all to vote.
- (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, by subsequent written notice to the trust.
- (5) If 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 respective water allocations to which the members of the trust are entitled at any particular time on account of either or both of the following:
 - (a) irrigation rights held by members of the trust;
 - (b) water licences held by members of the trust.
- (7) Despite a preceding subsection, if the trust resolves to apply this subsection, then the value of votes at a meeting of the trust will be set in some other manner determined by the trust.
- (8) A determination under subsection (7) may be based on or include criteria that exclude a member from holding an entitlement to vote if the member—
 - (a) does not own or occupy land to which irrigation water is supplied or delivered that has an area that is at least equal to a minimum area determined by the trust for the purposes of this subsection;
 - (b) does not have an entitlement to the supply or delivery of water that is at least equal in volume to a minimum volume determined by the trust for the purposes of this subsection.
- (9) The basis for determining the values of votes can be changed but only by resolution of the trust of which 21 days notice must be given.

- (10) A resolution under subsection (7) must be supported by 80% or more of the number of votes cast at a meeting of the trust.

Division 3—Amalgamation of trusts

13—Amalgamation of trusts

- (1) Any 2 or more irrigation trusts—
- (a) may, by resolution of each trust, resolve to amalgamate; and
 - (b) may apply to the Minister for amalgamation as a single irrigation trust.
- (2) A resolution under subsection (1) must be supported by at least two-thirds of the number of votes cast at a meeting of the trust.
- (3) An application under subsection (1)—
- (a) must be made to the Minister in a manner and form determined by the Minister; and
 - (b) must be accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other information required by the regulations.
- (4) The Minister may approve the application if satisfied—
- (a) that the requirements for amalgamation have been satisfied; and
 - (b) that the trust complies with any other requirements prescribed by the regulations.
- (5) The Minister will establish a new irrigation trust in place of the trusts that are amalgamating by notice in the Gazette.
- (6) The notice must specify—
- (a) the date on which the new trust is established; and
 - (b) the name of the trust (which must be a distinctive name approved by the Minister as part of the application process under this Act).
- (7) An irrigation trust established under this section—
- (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) has the functions and powers assigned or conferred by this Act.
- (8) On the date on which a trust is established under this section—
- (a) any irrigation trust that was a party to the application for amalgamation is dissolved; and
 - (b) the property of the trusts that were parties to the application for amalgamation becomes the property of the irrigation trust formed by the amalgamation (subject to any trusts that may affect that property); and

- (c) the rights and liabilities (whether certain or contingent) of the trusts that were parties to the application for amalgamation become rights and liabilities of the irrigation trust formed by the amalgamation.
- (9) The Registrar-General must—
 - (a) on the application of an irrigation trust in which any estate or interest in land has vested by virtue of this section; and
 - (b) on production of such documents as the Registrar-General may require, register the vesting of that estate or interest in land in the trust.
- (10) A reference in an instrument to a trust that is a party to an amalgamation under this section is, after the amalgamation, to be construed (subject to any provision in the instrument to the contrary) as a reference to the irrigation trust formed by the amalgamation.
- (11) If property vests by virtue of this section in an irrigation trust, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Division 4—Dissolution of trusts

14—Dissolution on application

- (1) The members of an irrigation trust may apply to the Minister for the dissolution of the trust.
- (2) The application—
 - (a) must be made in a manner and form determined by the Minister; and
 - (b) be accompanied by the prescribed fee.
- (3) The decision by a trust to dissolve must be made pursuant to a resolution of the trust.
- (4) A resolution under subsection (3) must be supported by 80% or more of the number of votes cast at a meeting of the trust.
- (5) If the Minister is satisfied that due application has been made, the Minister may dissolve the trust by notice in the Gazette.
- (6) The notice will operate from the date of publication or from a later date specified in the notice.
- (7) When the notice comes into operation—
 - (a) the trust is dissolved; and
 - (b) any water licence held by the trust—
 - (i) will vest in 1 or more persons determined or approved by the Minister; or
 - (ii) will be dealt with in some other manner determined or approved by the Minister,subject to the operation of the *Landscape South Australia Act 2019*; and
 - (c) the property, rights and liabilities of the trust—

- (i) will vest in or attach to 1 or more persons specified by the Minister in the notice; or
 - (ii) will, if, in the opinion of the Minister, it is not practicable or appropriate for the property, rights and liabilities to vest in or attach to a person under subparagraph (i), vest in or attach to—
 - (A) the Crown; or
 - (B) an agency or instrumentality of the Crown (including a Minister),as specified by the Minister in the notice.
- (8) The Minister must consult with the Minister responsible for the administration of the *Landscape South Australia Act 2019* before acting under subsection (7)(b).
- (9) The notice may impose such terms and conditions as the Minister thinks fit—
- (a) on the members of the trust; and
 - (b) on other persons who own or occupy land that, immediately before the dissolution of the trust, constitutes serviced property under this Act.

15—Dissolution on Minister's initiative

- (1) The Minister may dissolve an irrigation trust in accordance with this section if—
- (a) in the Minister's opinion the trust—
 - (i) is unable to carry out its functions properly because of disagreements between its members; or
 - (ii) is not carrying out its functions properly for any other reason; or
 - (iii) without limiting the generality of subparagraphs (i) and (ii), is not properly maintaining any irrigation and drainage systems provided by the trust; or
 - (b) the trust is unable to pay its debts as they fall due; or
 - (c) the trust has failed to comply with a provision of this Act; or
 - (d) the Minister is of the opinion that it is just and equitable that the trust be wound up in the circumstances of the particular case.
- (2) The Minister must serve notice on the trust of his or her intention to dissolve the trust under this section—
- (a) setting out the grounds for his or her proposed course of action; and
 - (b) inviting the trust to make submissions to the Minister in relation to the matter.
- (3) The Minister must take into account submissions made under subsection (2).
- (4) The Minister may serve a notice of dissolution on the trust if—
- (a) 3 months have passed since the notice referred to in subsection (2) was served on the trust; and
 - (b) 1 or more of the grounds for dissolution referred to in the notice are still applicable.

- (5) The Minister must publish the notice referred to in subsection (4) in the Gazette and in a local newspaper.
- (6) At the expiration of 3 months after service of the notice under subsection (4)—
- (a) the trust is dissolved; and
 - (b) any water licence held by the trust—
 - (i) will vest in 1 or more persons determined by the Minister; or
 - (ii) will be dealt with in some other manner determined or approved by the Minister,subject to the operation of the *Landscape South Australia Act 2019*; and
 - (c) the property, rights and liabilities of the trust—
 - (i) will vest in or attach to 1 or more persons specified by the Minister; or
 - (ii) will, if, in the opinion of the Minister, it is not practicable or appropriate for the property, rights and liabilities to vest in or attach to a person under subparagraph (i), vest in or attach to—
 - (A) the Crown; or
 - (B) an agency or instrumentality of the Crown (including a Minister),as specified by the Minister.
- (7) The Minister must consult with the Minister responsible for the administration of the *Landscape South Australia Act 2019* before acting under subsection (6)(b).

Part 3—Management of trusts

Division 1—Board of management

17—Board of management

- (1) Subject to this Act, an irrigation trust may appoint a board of management of the trust to carry out the day to day operations of the trust and to manage its general affairs.
- (2) The members of a board of management of a trust must be members of the trust.
- (3) The presiding member of the trust will also be the presiding member of a board of management of the trust.

18—Delegation

- (1) A board of management may delegate a function or power of the board—
- (a) to a member of the board; or
 - (b) to another person (including the person for the time being holding or occupying a particular position) or body.
- (2) A delegation under this section—
- (a) must be made by instrument in writing; and

- (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the board to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—Accounts and audit

19—Accounts to be kept

An irrigation trust must cause proper accounts to be kept of its financial affairs.

20—Preparation of financial statements

- (1) An irrigation trust must, as soon as practicable after the end of each financial year, cause financial statements in respect of that financial 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; or
 - (e) a member of the National Institute of Accountants.
- (3) A member of a trust must not be appointed as auditor of the accounts of the trust.
- (4) An auditor of a trust has a right of access at all reasonable times to the accounts and accounting 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 a 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 accounts or accounting 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.

21—Accounts etc to be laid before annual general meeting

- (1) At each annual general meeting of an irrigation trust, the trust must lay before the meeting—
 - (a) a copy of the audited financial statements of the trust for the previous financial year and a copy of the auditors report; and
 - (b) a report prepared by the trust on the operations of the trust in the previous financial 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 auditors report and the report prepared by the trust in respect of the financial year to which the request relates.

Division 3—Committees

22—Committees

- (1) An irrigation trust may establish committees (which may, but need not, consist of or include members of the trust) to advise the trust on any aspects of its functions, or to assist it in the performance of its functions.
- (2) A board of management of an irrigation trust may establish committees (which may, but need not, consist of or include members of the board of management) to advise the board on any aspects of its functions, or to assist it in the performance of its functions.

Part 4—Functions and powers of irrigation trusts

Division 1—Functions of trusts

23—Functions of trusts

- (1) An irrigation trust has the following functions:
 - (a) to provide, maintain, operate and manage an irrigation system or irrigation systems;
 - (b) to provide, maintain, operate and manage a drainage system or drainage systems;
 - (c) such other functions as are specified or prescribed by or under this or any other Act.
- (2) An irrigation trust may operate—
 - (a) on the basis that some or all of the water supplied through an irrigation system managed by the trust will be supplied under a water licence held by the trust; or
 - (b) on the basis that the trust will deliver water to members of the trust for the purposes of water licences held by the members (rather than under a water licence held by the trust).
- (3) An irrigation trust established after the commencement of this Act must operate on the basis set out in subsection (2)(b).

- (4) Subsections (2) and (3)—
- (a) do not prevent the trust from delivering water to any person who holds a water licence independently of the trust; and
 - (b) do not prevent an irrigation trust from holding 1 or more water licences in order—
 - (i) to provide or manage any conveyance water; or
 - (ii) to provide or manage any water for the purposes of other services provided by the trust.
- (5) An irrigation trust may, in connection with the operation of subsections (1), (2) and (4), set terms and conditions associated with—
- (a) the use of any irrigation system or drainage system provided by the trust;
 - (b) the supply or delivery of water by the trust.
- (6) An irrigation trust must—
- (a) in determining terms or conditions on which water is supplied or delivered to, or drained from, land; or
 - (b) in holding or dealing with any water licence,
- ensure—
- (c) that it complies with the other provisions of this Act; and
 - (d) that it is able to meet any requirements imposed under the *Landscape South Australia Act 2019*; and
 - (e) that it is not acting in breach, or imposing any requirement that would result in a person acting in breach, of any duty or other requirement prescribed by or under the *River Murray Act 2003*; and
 - (f) that it complies with any requirements imposed by or under the *Water Act 2007* of the Commonwealth.
- (7) An irrigation trust must, in the performance of its functions, take all reasonable steps to ensure that it operates in a financially responsible manner.
- (8) Without limiting subsection (7), a trust must seek to raise and maintain adequate capital to provide for infrastructure maintenance, replacement and improvements and, depending on the scope of its operations and plans, extensions and expansions.

Division 2—Powers of trusts

24—Powers of trusts

- (1) In order to carry out its functions an irrigation trust may—
- (a) construct or erect channels, embankments, roads, buildings or structures, tanks, ponds, dams or other facilities for holding water or any other works; and
 - (b) lay pipes; and
 - (c) install and operate pumps and other equipment; and

- (d) control the flow of water in an irrigation or drainage channel or pipe; and
 - (e) acquire any land; and
 - (f) inspect, maintain, repair, renew or replace any channel, pipe, building, structure, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation or drainage system provided by the trust; and
 - (g) clear any channel, pipe, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation or drainage system provided by the trust; and
 - (h) inspect any channel, pipe, building, structure, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation or drainage system provided by a landowner; and
 - (i) extract and remove soil or minerals from any land after first consulting the owner of the land and having regard to his or her views; and
 - (j) inspect, examine or survey land in connection with the planning, design or construction of an irrigation or drainage system, or extensions to or alterations of, an irrigation or drainage system and for that purpose the trust may—
 - (i) fix posts, stakes or other markers on the land; and
 - (ii) dig trenches or sink test holes on the land to determine the nature of the top soil and underlying strata; and
 - (iii) remove samples of any material from the land for analysis; and
 - (k) enter or occupy any land for the purpose of exercising any powers of the trust under this Act; and
 - (l) exercise any other powers that are incidental to the trust's powers or that are reasonably necessary for carrying out the trust's functions.
- (2) Subsection (1) does not limit or derogate from the provisions of any other Act (including so as to require a permission, consent or authority in order to take any step or to engage in any activity).
- (3) A trust may acquire land pursuant to a contract with the owner of the land or pursuant to the *Land Acquisition Act 1969*.
- (4) A trust must not acquire land pursuant to the *Land Acquisition Act 1969* without the written approval of the Minister.
- (5) A trust may grant a lease or licence over any land in its ownership or possession.
- (6) When entering or occupying land under this section the trust must cause as little inconvenience to other users of the land as is reasonably practicable.

25—Further powers of trusts

- (1) An irrigation trust may, pursuant to an agreement with the owner or occupier of any serviced property, construct or extend an irrigation system or a drainage system on the property for the distribution or drainage of water.
- (2) A trust may, in order to assist its members, purchase irrigation equipment, components and tools for resale to its members.

26—Delivery of water or supply of drainage to other persons

An irrigation trust may enter into an agreement with a person who is not a member of the trust—

- (a) to deliver water for the purpose of irrigating land; or
- (b) to drain water from land,

by means of an irrigation system or drainage system provided and managed by the trust.

27—Supply or delivery of water for other purposes

- (1) In addition to supplying or delivering water for other purposes, an irrigation trust may supply or deliver water for domestic or other purposes under an agreement with any other person.
- (2) A trust must not supply or deliver water for domestic purposes if a supply of water under the *Waterworks Act 1932* is available for those purposes.

28—Drainage of other water

In addition to draining irrigation water, an irrigation trust may drain any other water from land.

Division 3—Irrigation rights, water entitlements and trading

29—Fixing of irrigation rights

- (1) This section applies in relation to an irrigation trust that holds 1 or more water licences for the purposes of supplying water to its members (being members who rely on the trust to supply water under a water licence held by the trust rather than by the member).
- (2) An irrigation trust to which this section applies must fix an entitlement (an irrigation right) in respect of each member of the trust who is to receive water on account of a water licence held by the trust.
- (3) An irrigation right will be fixed by resolution of the trust.
- (4) An irrigation right must be fixed on a fair and equitable basis after having regard to—
 - (a) the nature or type of crops growing on relevant land; and
 - (b) such other matters considered relevant by the trust.
- (5) An irrigation right—
 - (a) may be expressed as a volume or units (subject to the operation of the *Landscape South Australia Act 2019* and any reduction in the amount of water that may be available to the trust under that Act); or
 - (b) may be constituted in some other manner authorised by the regulations.

30—Surrender or transfer of water available under irrigation rights

- (1) The whole or any proportion of water available under an irrigation right held by a member of a trust (the *relevant member*) is capable of being—
 - (a) surrendered by the relevant member to the trust for such sum of money or other consideration as may be agreed between the trust and relevant member;
 - (b) transferred by the relevant member to another member of the trust for such sum of money or other consideration as may be agreed between the members;
 - (c) transferred by the trust acting at the request of the relevant member to a person who is not a member of the trust.
- (2) The following provisions apply in connection with the operation of subsection (1):
 - (a) if a relevant member notifies the trust that the member wishes to surrender water under subsection (1)(a), the trust must take reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid under that subsection;
 - (b) a relevant member must not transfer water under subsection (1)(b) without first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust;
 - (c) a trust must comply with a request under subsection (1)(c) within a reasonable time (but is not to comply with such a request if the transfer cannot take effect on account of the operation of the *Landscape South Australia Act 2019*).

31—Surrender or transfer of irrigation rights

- (1) An irrigation right held by a member of an irrigation trust (the *relevant member*) is capable of being—
 - (a) surrendered by the relevant member to the trust for such sum of money or other consideration as may be agreed between the trust and the relevant member;
 - (b) transferred by the relevant member to another member of the trust for such sum of money or other consideration as may be agreed between the members.
- (2) The following provisions apply in connection with the operation of subsection (1):
 - (a) if a relevant member notifies the trust that the member wishes to surrender an irrigation right under subsection (1)(a), the trust must take reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid under that subsection;
 - (b) a relevant member must not transfer an irrigation right under subsection (1)(b) without first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust.

32—Transformation of irrigation rights

- (1) The whole or a part of an irrigation right held by a member of an irrigation trust (the *relevant member*) may be permanently transformed into a water licence held by the relevant member if—
 - (a) the member applies to the trust for the transformation in accordance with any requirements specified by the trust (including as to the payment of a specified application fee); and
 - (b) the member provides any security required by the trust; and
 - (c) the transformation so as to create a water licence held by the member is able to take effect under the *Landscape South Australia Act 2019* and the member, in seeking the water licence, complies with any relevant requirement under that Act.
- (2) Any requirement specified under subsection (1)(a) or security required under subsection (1)(b) must be consistent with the operation of any Commonwealth water rules.
- (3) Any security required under subsection (1)(b) must be reasonable in the circumstances after taking into account the interests of the trust and any other person who has an interest in the water licence held by the trust (but must not unreasonably restrict or prevent trading in water entitlements).
- (4) If a water licence is to be issued on account of an application under this section—
 - (a) an entitlement to an allocation of water that corresponds to the irrigation right held by the relevant member will arise in connection with the licence; and
 - (b) a variation must be made to the water licence held by the trust, and to any other related entitlement,subject to and in accordance with the *Landscape South Australia Act 2019* (and subject to taking into account the water available under the provisions of that Act).
- (5) Any process or outcome envisaged by this section will take effect subject to any Commonwealth water rules.

33—Trust may determine to devolve water licence

- (1) An irrigation trust may, by resolution, determine to operate on the basis that all irrigation rights held by members of the trust will be permanently transformed into water licences held by the respective members (so that the trust will deliver water to members for the purposes of water licences held by the members (rather than under a water licence held by the trust after taking into account any requirements of the trust in relation to conveyance water)).
- (2) If a water licence held by the trust is subject to an interest of another person registered or recorded in relation to the licence under the *Landscape South Australia Act 2019*, the trust must not pass a resolution under subsection (1) without the consent of that person.
- (3) The processes and outcome envisaged by subsection (1), and the requirement to obtain any consent under subsection (2), will take effect subject to—
 - (a) any Commonwealth water rules; and

- (b) the requirements of the *Landscape South Australia Act 2019* relating to the issue of water licences, water allocations and other forms of entitlements; and
 - (c) any provision made by the regulations (which may include the specification of circumstances where a consent is not required under subsection (2)).
- (4) Subject to the operation of the preceding subsections, if a resolution is made under subsection (1)—
- (a) each irrigation right held by a member will be permanently transformed into a water licence held by the member; and
 - (b) the trust will no longer be capable of operating on the basis that some or all of the water supplied to its members will be supplied under a water licence held by the trust (subject to taking into account the operation of section 23(4)).
- (5) Without limiting subsection (3), an irrigation right held by a member of the trust will not be capable of being transformed into a water licence if the Minister responsible for the administration of the *Landscape South Australia Act 2019* determines that a water licence should not be granted on a ground that applies under Part 8 Division 3 Subdivision 1 of that Act.

34—Promotion of water trades

Without limiting the operation of any other provision of this Act, an irrigation trust must not unreasonably restrict or prevent any activity contemplated by this or any other Act (including the *Water Act 2007* of the Commonwealth) that will support the efficiency and scope of water trades.

Division 4—Other matters

35—Power to restrict supply or to reduce water made available by trust

- (1) An irrigation trust may—
- (a) restrict or suspend the supply or delivery of water; or
 - (b) reduce the amount of water available under an irrigation right,
- if—
- (c) the water that is available to the trust cannot meet the demand; or
 - (d) the water that is available to the trust is unsuitable for the purpose for which it is to be supplied; or
 - (e) the trust is acting in response to a reduction in a water allocation under the *Landscape South Australia Act 2019*; or
 - (f) the trust is unable to provide sufficient conveyance water in connection with the operation of an irrigation system; or
 - (g) the owner or occupier of the land in respect of which the action is taken has—
 - (i) failed to pay charges or interest on charges under this Act; or
 - (ii) contravened or failed to comply with a term or condition on which the trust supplies or delivers water to, or drains water from, the land; or

- (iii) contravened or failed to comply with a condition imposed under this Act; or
 - (iv) contravened or failed to comply with a provision of this Act or with a direction of the trust under this Act; or
- (h) the trust is unable to dispose of water draining into its drainage system because of the degraded quality of the water.
- (2) Subject to subsection (3), a trust may, in taking action under subsection (1), reduce the amount of water available by different amounts or proportions according to such factors as the trust thinks fit.
- (3) A restriction or reduction in the amount of water supplied or delivered by a trust in the circumstances envisaged by subsection (1)(e) must, insofar as it applies to the members of the trust, be in proportion to the amount of the reduction under the *Landscape South Australia Act 2019*.
- (4) A trust incurs no civil liability in respect of action taken by it under this section.

36—Power of delegation

- (1) Subject to subsection (2), an irrigation trust may delegate a function or power of the trust under this Act—
 - (a) to a board of management of the trust; or
 - (b) to a particular person or other body.
- (2) A trust may not delegate a power under section 12 or 33.
- (3) A delegation under this section—
 - (a) must be made by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the trust to act in any matter; and
 - (d) is revocable at will.
- (4) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

37—Appointment of authorised officers

- (1) An irrigation trust may appoint a person to be an authorised officer under this Act.
- (2) An authorised officer appointed under this Act must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (3) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
- (4) An authorised officer must produce evidence of his or her appointment by showing a copy of his or her notice of appointment, or by showing his or her identity card for inspection, before exercising the powers of an authorised officer under this Act in relation to any person.

- (5) For the purposes of subsection (4), an authorised officer who produces a copy of his or her notice of appointment is not required to produce an identity card and vice versa.

38—Powers of authorised officers

An authorised officer may, at any reasonable time, exercise any of the following powers in relation to the operations of the irrigation trust by whom he or she has been appointed:

- (a) enter any land for the purpose of exercising his or her powers under this section;
- (b) inspect any material on land that the authorised officer believes to be of a kind that has entered, or may enter, an irrigation or drainage system of the trust and take samples of the material;
- (c) inspect any channels, pipes, buildings, structures, fittings, equipment, tanks, ponds, dams or other facilities for holding water comprising part of an irrigation or drainage system or that are used in or in relation to an irrigation or drainage of land;
- (d) take photographs, films or video recordings;
- (e) ask any person any question relating to the operation of an irrigation or drainage system.

39—Hindering etc persons engaged in the administration of this Act

- (1) A person who—
- (a) without reasonable excuse hinders or obstructs a person referred to in subsection (2); or
 - (b) uses abusive, threatening or insulting language to a person referred to in subsection (2); or
 - (c) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
 - (d) falsely represents by words or conduct, that he or she is an authorised officer,
- is guilty of an offence.

Maximum penalty: \$5 000.

- (2) Subsection (1)(a) and (b) applies for the benefit of—
- (a) a person acting on behalf of an irrigation trust;
 - (b) an authorised officer.
- (3) A person is not obliged to answer a question under this Division if the answer would tend to incriminate him or her of an offence.

Part 5—Protection and facilitation of systems

40—Protection and facilitation of systems

- (1) A person must not—
 - (a) connect a channel or pipe to an irrigation or drainage system of an irrigation trust; or
 - (b) place a structure or install equipment in, over or immediately adjacent to a channel or pipe connected to an irrigation or drainage system of an irrigation trust; or
 - (c) supply water supplied or delivered to him or her by an irrigation trust under this Act to any other person,unless he or she does so at the direction, or with the approval, of the trust.
- (2) A person must not use a method of distributing irrigation water in a manner that is inconsistent with any determination or rule of an irrigation trust.
- (3) A person who is a landowner under this Act—
 - (a) must ensure that irrigation water does not drain or otherwise escape onto or into adjoining land so as to cause a nuisance to the adjoining landowner; and
 - (b) must maintain, and when necessary repair or replace an irrigation or drainage system provided by the landowner; and
 - (c) must not block or impede the flow of water in any part of an irrigation or drainage system except at the direction, or with the approval, of the irrigation trust; and
 - (d) must, when necessary, clear channels and pipes of an irrigation or drainage system provided by the landowner; and
 - (e) must ensure that channels and pipes on his or her land, including those forming part of an irrigation or drainage system provided by an irrigation trust, are protected from damage that is reasonably foreseeable.
- (4) If, in the opinion of an irrigation trust, it is necessary or desirable in the interests of supplying or delivering water efficiently to, or draining water efficiently from, land, or in order to meet any duty or other requirement under the *Landscape South Australia Act 2019* (including a licence under that Act) or the *River Murray Act 2003*, or in order otherwise to provide for the proper management of water, the trust may by notice served on a landowner direct the landowner—
 - (a) to—
 - (i) construct or erect channels, embankments, structures, tanks, ponds, dams or other facilities for holding water; or
 - (ii) lay pipes; or
 - (iii) install fittings or pumps or other equipment,on his or her land; or

- (b) to widen or deepen channels forming part of an irrigation or drainage system provided by the landowner, to install fittings or equipment for or in relation to irrigating the land, or to carry out any other work on the land; or
 - (c) to provide a barrier that is impervious to water on the sides and bed of a channel forming part of an irrigation or drainage system provided by the landowner; or
 - (d) to undertake such other act or activity as is specified in the notice.
- (5) An irrigation trust may by notice served on a landowner direct the landowner—
- (a) to erect fences to keep stock or other animals away from channels or pipes on the land; or
 - (b) to comply with the requirements of 1 or more of the other provisions of this section.
- (6) A notice under subsection (4) or (5) may specify—
- (a) the dimensions and gradients of channels, pipes or other works; and
 - (b) the dimensions, design, constituent materials and other specifications of—
 - (i) the barrier to prevent or reduce seepage of water from a channel;
 - (ii) pipes, structures (including fences) fittings or equipment.
- (7) If a person fails to comply with a notice, the trust may enter the relevant 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 person to the trust.
- (8) A person who contravenes or fails to comply with a provision of this section or of a notice served under subsection (4) or (5) is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

Part 6—Charges for irrigation and drainage

Division 1—Declaration of charges

41—Charges

- (1) An irrigation trust may impose a water supply charge or charges in relation to the supply or delivery of water (or both) under this Act in order—
- (a) to recover its costs for providing that service or to enable it to meet its other liabilities; and
 - (b) to provide for its maintenance and other costs and to provide for future capital costs connected with the provision of irrigation systems under this Act.

- (2) An irrigation trust may impose a drainage charge or charges in relation to the drainage or disposal of water (or both) under this Act in order—
 - (a) to recover its costs for providing that service or to enable it to meet its other liabilities; and
 - (b) to provide for its maintenance and other costs and to provide for future capital costs connected with the provision of drainage systems under this Act.
- (3) An irrigation trust may fix different factors as the basis for water supply or drainage charges in respect of different areas or locations or according to other differentiating factors determined by the trust.
- (4) A water supply charge may include a component for the recovery of costs and other liabilities in relation to drainage and that component may be applied generally or on a limited basis and vary according to other differentiating factors determined by the trust.

42—Declaration of water supply charges

- (1) An irrigation trust may, in respect of a financial year or part of a financial year, by notice published in a local newspaper, declare a water supply charge or water supply charges based on 1, or a combination of 2 or more, of the following:
 - (a) the fact that land is connected to an irrigation system of the trust; or
 - (b) the volume of water supplied or delivered during the charging period to which the declaration applies; or
 - (c) the area of the land to be irrigated; or
 - (d) such other factor or factors as the trust thinks fit.
- (2) An irrigation trust may declare different charges—
 - (a) in respect of different areas;
 - (b) for water supplied for irrigation purposes, domestic purposes or other purposes;
 - (c) depending on the quality of the water supplied or delivered.
- (3) In the case of water supplied for irrigation purposes, the trust may declare a basic charge in respect of a specific amount of water supplied or delivered under an irrigation right or water licence and a further charge, or series of charges, that increase as the volume of water supplied increases over that amount.
- (4) A water supply charge may be declared after the period to which it relates has commenced.
- (5) This section does not limit the operation of section 41.

43—Minimum amount

- (1) An irrigation trust may declare a minimum amount that is payable in respect of a water supply charge.
- (2) Payment of the minimum amount must be credited against the water supply charge.

44—Drainage charge

- (1) An irrigation trust may, in respect of a financial year or part of a financial year by notice published in a local newspaper, declare a drainage charge based on the area of land irrigated or drained or on the basis of the volume of water supplied or delivered for irrigating the land.
- (2) The trust may exempt an owner and occupier of land from payment of drainage charges if water does not drain from the land into the drainage system provided by the trust or if the quantity of water that drains into the system is negligible.
- (3) A drainage charge may be declared after the period to which it relates has commenced.
- (4) This section does not limit the operation of section 41.

45—Determination of area for charging purposes

For the purpose of calculating the amount of a water supply charge or a drainage charge based on the area of land, the area of the land will be determined to the nearest one-tenth of a hectare (0.05 of a hectare being increased to the next one-tenth of a hectare).

46—Interest

- (1) An irrigation trust may, in fixing a water supply charge or a drainage charge, declare a rate of interest that will be applied if a charge is not paid within a period specified by the trust.
- (2) A rate of interest must not exceed any rate prescribed by the regulations.
- (3) A period from which interest will be payable must be not less than the period prescribed by the regulations.
- (4) Any interest applied under this section may be simple or compound interest.

47—Notice of resolution for charges

An irrigation trust must fix the factors on which water supply and drainage charges are based and the amount of those charges by resolution of which 21 days notice has been given.

48—Minister's approval required

- (1) If a trust is indebted to the Crown, the Minister or 1 or more other agencies or instrumentalities of the Crown in an amount that exceeds \$50 000 or in 2 or more amounts that together exceed \$50 000, the trust must not—
 - (a) declare a water supply charge or drainage charge; or
 - (b) fix a rate of interest for the late payment of charges,without first obtaining the Minister's approval.
- (2) Non-compliance with subsection (1) does not affect the validity of a charge or rate of interest declared or fixed by a trust.

49—Related matters

- (1) Nothing in this Division prevents an irrigation trust from entering into an agreement with a person for the supply or delivery of water, or the drainage of land, for a cost or at a rate fixed or determined under the agreement (rather than by the imposition of a charge under this Division).
- (2) To avoid doubt, the preceding sections of this Division do not apply in relation to an amount payable under an agreement under subsection (1).
- (3) An irrigation trust must, in acting under this Division, ensure that it complies with any requirements imposed by or under the *Water Act 2007* of the Commonwealth.

Division 2—Recovery of charges

50—Liability for charges

- (1) The following persons are jointly and severally liable for the payment of charges and interest on charges:
 - (a) the owner and occupier of the land in respect of which water is supplied or delivered, or is drained, as the case requires, at the date on which the charges first became payable;
 - (b) a person who becomes an owner or occupier of the land after the charges first became payable but before the liability to pay the charges and interest is satisfied.
- (2) Notice of the amount payable by way of charges, fixing the date on which the amount becomes payable, must be served on the owner or occupier of the land in respect of which the charges are payable.
- (3) This section operates subject to—
 - (a) any Commonwealth water rules; and
 - (b) the provisions of any agreement between the trust and a person for the supply or delivery of water, or the drainage of land.
- (4) In this section—

charges means water supply and drainage charges and includes—

 - (a) charges payable to an irrigation trust under an agreement with a person who is not a member of the trust for the delivery of water to, or the drainage of water from, the land;
 - (b) any other amount in which an owner or occupier of land is indebted to an irrigation trust under this Act or under an agreement made under this Act.

51—Recovery rights

- (1) Any charges and any accrued interest will be a charge on the land in respect of which water is supplied or delivered, or is drained, in accordance with a scheme established by the regulations.
- (2) Subsection (1)—
 - (a) applies subject to any Commonwealth water rules; and

- (b) does not apply to any charges (and associated interest) of a prescribed kind.
- (3) In addition, any charges that are not paid in accordance with a notice under section 50, together with any interest, may be recovered by the irrigation trust as a debt from a person who is liable for the payment of the charges.
- (4) Any action to recover any charges (and interest) as a debt does not prejudice any action to recover any charges (and interest) as a charge on land, and vice versa, but any amount sought to be recovered under 1 right must be adjusted to take into account any amount actually recovered under the other right.

52—Sale of land for non-payment of charges

- (1) If charges, or interest on charges, are a charge on land and have been unpaid for 1 year or more, the irrigation trust may sell the land.
- (2) Before a trust sells land in pursuance of this section, it must serve notice on the owner and occupier of the land—
 - (a) stating the period for which the charges or interest have been in arrears; and
 - (b) stating the amount of the total liability for charges and interest presently outstanding in relation to the land; and
 - (c) stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the trust may allow), the trust intends to sell the land for non-payment of the charges or interest.
- (3) A copy of a notice must be served on—
 - (a) the registered mortgagee or encumbrance of the land (if any); and
 - (b) if the land is held from the Crown under a lease, licence or agreement to purchase—the Minister responsible for the administration of the *Crown Lands Act 1929*.
- (4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the trust 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 trust may set a reserve price for the purposes of the auction).
- (6) An auction under this section must be advertised on at least 2 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 trust in proceeding under this section are paid to the trust, the trust 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 trust may sell the land by private contract for the best price that it can reasonably obtain.

- (9) Any money received by the trust 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 for charges and interest and any other liabilities to the trust in respect of the land;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;
 - (d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (e) fifthly—in discharging any other mortgages, encumbrances and charges of which the trust has notice;
 - (f) sixthly—in payment to the owner of the land.
- (10) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found.
- (11) If land is sold by a trust in pursuance of this section, an instrument of transfer under the common seal of the trust 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—
- (a) all mortgages and charges; and
 - (b) except in the case of land held from the Crown under lease or licence—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 presiding member of the trust stating that the requirements of this section in relation to the sale of the land have been observed.
- (15) A reference in this section to land, or title to land, is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.
- (16) In this section—
- charges** means water supply and drainage charges and includes—
- (a) charges payable to an irrigation trust under an agreement with a person who is not a member of the trust for the delivery of water to, or the drainage of water from, the land;
 - (b) any other amount in which an owner or occupier of land is indebted to an irrigation trust under this Act or under an agreement made under this Act.

53—Trust may remit interest and discount charges

- (1) An irrigation trust may remit the whole, or part, of the amount of any interest payable to the trust.

- (2) An irrigation trust may discount charges to encourage early payment of the charges.

Part 7—Financial provisions

54—Trust's power to borrow etc

- (1) An irrigation trust may borrow money or take advantage of any other form of financial accommodation.
- (2) In order to provide security for any money borrowed, or other financial accommodation received, by it, a trust may—
- (a) charge the whole or any part of its property (including its revenue arising from water supply or drainage charges) by debenture, mortgage or bill of sale or in any other manner; or
 - (b) enter into arrangements for the provision of guarantees or indemnities.
- (3) If a trust defaults in carrying out its obligations under a debenture charged on revenue arising from water supply or drainage charges, the Supreme Court may, on the application of a creditor or a trustee for debenture holders—
- (a) —
 - (i) direct the trust to appropriate a specified portion of its revenue to the satisfaction of its obligations under the debenture; or
 - (ii) direct the trust to raise a specified amount by way of charges and direct that the amount raised be applied towards satisfaction of the trust's obligations under the debenture; and
 - (b) give such incidental or ancillary directions as may be necessary or desirable.
- (4) The rights of a creditor or trustee under subsection (3) are in addition to any other right that exists independently of that subsection.

Part 8—Appeals

55—Appeals

- (1) A person may appeal to the Environment, Resources and Development Court against a decision of an irrigation trust—
- (a) in relation to a decision to discontinue a membership of a trust under section 8(3)(a)(ii); or
 - (b) in relation to the fixing of an irrigation right in respect of the person; or
 - (c) directing the appellant to undertake an act or activity under Part 5; or
 - (d) in relation to any other matter of a class prescribed by the regulations for the purposes of this section.
- (2) An appeal must be instituted within 1 month after the appellant receives written notice of the decision appealed against or within such further time as the Court considers to be reasonable in the circumstances.

- (3) On 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;
 - (b) remit the subject matter of the appeal to the trust for further consideration;
 - (c) make such incidental or ancillary order as the Court considers is necessary or desirable.

56—Decision may be suspended pending appeal

- (1) If an irrigation trust or the Court is satisfied that an appeal against a decision of the trust has been instituted under this Part, or is intended, the trust or the Court may suspend the operation of the decision until the determination of the appeal.
- (2) A suspension granted under subsection (1) may be terminated by the person or body that granted it at any time.

57—Appeal against proposal to dissolve trust

- (1) An irrigation trust or a member of an irrigation trust may appeal to the Environment, Resources and Development Court against the Minister's proposal to dissolve the trust under section 15.
- (2) An appeal must be instituted within 1 month after notice of dissolution of the trust is served on the trust or within such further time as the Court considers to be reasonable in the circumstances.
- (3) On an appeal the Court may—
 - (a) do 1 or more of the following:
 - (i) direct the Minister to withdraw the notice of dissolution;
 - (ii) give the Minister such other directions as the Court thinks fit;
 - (iii) give the trust such directions as the Court thinks fit;
 - (iv) make such incidental or ancillary order as the Court considers is necessary or desirable; or
 - (b) refuse to take any action in the matter.

58—Constitution of Environment, Resources and Development Court

The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of a Judge and 1 commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or

- (ii) in any other case—at least 1 commissioner,
is a commissioner who has been specifically designated by the Governor as a person who has expertise in irrigated farming or management of water resources.

Part 9—Miscellaneous

59—Protection from liability

- (1) A person incurs no civil liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by an irrigation trust, board of management or committee of which he or she is a member, of a power, function or duty under this Act.
- (2) Subject to subsections (3) and (4), a liability that would but for subsection (1), lie against the person referred to in that subsection, lies instead against the relevant irrigation trust.
- (3) A trust is not liable for loss or damage caused by, or resulting from—
- (a) rises or falls in the water level in the watercourse, aquifer or other source from which it takes water for irrigation purposes or in the watercourse, lake, lagoon, swamp, marsh or aquifer into which it drains water; or
 - (b) the escape of water from the irrigation or drainage system provided by the trust except where the trust knew, or should have known, that water was escaping or was likely to escape and failed, without reasonable excuse, to prevent the escape; or
 - (c) the trust's failure to supply water in accordance with this Act if the failure was caused by a break down in the irrigation system provided by the trust, except where the trust knew, or should have known, of the break down, or the likelihood of the break down occurring, and failed, without reasonable excuse, to rectify or prevent it.
- (4) An irrigation trust is not liable for loss or damage caused by, or resulting from, any action—
- (a) to meet any duty or other requirement under the *Landscape South Australia Act 2019* (including a licence under that Act) or the *River Murray Act 2003*; or
 - (b) to further the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act.

60—Division of land

- (1) The owner of land where an irrigation or drainage system of an irrigation trust is situated may apply to the trust for its consent to divide the land.
- (2) The trust may give its consent subject to such conditions as it thinks fit.
- (3) Land may be divided without the consent of the trust but in that event the following provisions apply:
- (a) the trust has no obligation to extend any irrigation or drainage system to a new allotment;

- (b) a new allotment cannot be connected to an irrigation or drainage system provided by the trust without the trust's approval;
 - (c) the division will not affect any irrigation right (unless the holder of the irrigation right applies to the trust for a new right to be issued and an appropriate adjustment made to the terms of the irrigation right);
 - (d) the trust may refuse to supply water to an allotment created by the division if the water will pass through another allotment created by the division or the water will be drained through another allotment created by the division.
- (4) This section does not derogate from any other Act or law relating to the division of land.

61—False or misleading information

A person who furnishes information to an irrigation trust under this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$5 000.

62—Protection of irrigation system etc

A person who, without lawful authority, interferes with any part of an irrigation or drainage system or with any property of an irrigation trust used in, or in connection with, the irrigation or drainage of land is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

63—Unauthorised use of water

A person who takes water from the irrigation or drainage system of an irrigation trust without being authorised to do so or uses water taken from an irrigation system for an unauthorised purpose is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.

Expiation fee: \$750.

65—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

66—Proceedings for offences

Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;

- (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed.

67—Evidentiary provisions

- (1) An allegation by the prosecution in proceedings for an offence against this Act that on a particular day, or during a particular period, the defendant (or any other person) was or was not—
 - (a) the owner or occupier of a particular land; or
 - (b) authorised to take water for irrigation or other purposes under this Act; or
 - (c) an authorised officer,must, in the absence of proof to the contrary, be accepted as proved.
- (2) An allegation by an irrigation trust in proceedings for the recovery of charges or other money as to—
 - (a) the amount of those charges or other money; or
 - (b) the ownership or occupation of land,must, in the absence of proof to the contrary, be accepted as proved.
- (3) The production, in legal proceedings under this Act, of a paper that purports to be a particular newspaper published on a particular day must be accepted as evidence that the newspaper was published in that form on that day.

68—Service etc of notices

- (1) Subject to this Act, a notice may be served on, or given to, a person in pursuance of this Act as follows:
 - (a) by giving it to the person or an agent of the person;
 - (b) by leaving it for the person with someone apparently over the age of 16 years at his or her place of residence or at any place at which he or she carries on business;
 - (c) by posting it to the person at his or her last known address;
 - (d) by fixing the notice in the prescribed manner in a prominent position on the land to which the notice relates;
 - (e) where the notice is to be served on, or given to, the occupier of land—by posting it addressed to "The Occupier" at the address for the land.
- (2) If a notice is to be served on, or given to, the owner of land and the owner has died, the notice may be served on, or given to, the executor or administrator of the owner's estate or, where an executor or administrator has not been appointed, by fixing the notice in the prescribed manner in a prominent position on the land to which the notice relates.
- (3) A notice will be taken to have been served on, or given to, all of the owners or occupiers of land if it is served on, or given to, 1 of the owners or occupiers of the land.

69—Excluded matters

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) a trust;
- (b) an act or omission of any person, body or other entity in relation to a trust.

70—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 the generality of subsection (1) the regulations may—
 - (a) relate to—
 - (i) the provision and maintenance of any irrigation or drainage system; or
 - (ii) the manner in which irrigation water may be used; or
 - (iii) maintaining or improving the quality of irrigation water; or
 - (iv) the drainage and disposal of irrigation water;
 - (b) make provisions for, or in relation to, the assessment of the quantity of irrigation or other water;
 - (c) provide for the payment and recovery of fees—
 - (i) for the installation, maintenance and testing of water meters or for any other service provided by an irrigation trust; or
 - (ii) in relation to any other matter connected with the operation or administration of this Act;
 - (d) prescribe fines not exceeding \$5 000 for contravention of or failure to comply with a regulation.
- (3) A regulation under this Act—
 - (a) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (b) may be of general or limited application;
 - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations.

Schedule 1—Transitional provisions

Part 4—Transitional provisions

4—Interpretation

In this Part—

relevant day means the day on which this Part comes into operation;

relevant trust means a trust continued in existence under clause 5(1);

repealed Act means the *Irrigation Act 1994*.

5—Continuation of trusts

- (1) A trust constituted under the repealed Act and in existence immediately before the relevant day continues as an irrigation trust under this Act.
- (2) A person who, immediately before the relevant day, is a member of a relevant trust will continue as a member of the trust under this Act.

6—Presiding member and deputy presiding member

- (1) A person who is the presiding officer of a relevant trust immediately before the relevant day will be taken to be the presiding member of the trust under this Act on the relevant day.
- (2) A person who is the deputy presiding officer of a relevant trust immediately before the relevant day will be taken to be the deputy presiding member of the trust under this Act on the relevant day.

7—Boards of management

A board of management (if any) of a relevant trust, as constituted under the repealed Act immediately before the relevant day, will continue as the board of management of the trust.

8—Resolutions

- (1) Any resolution of a relevant trust in force and effect immediately before the relevant day will continue to have effect for the purposes of this Act on and after the relevant day.
- (2) A resolution under subclause (1) may be varied or revoked on or after the relevant day by—
 - (a) the trust; or
 - (b) a board of management of the trust.

9—Voting at meetings

The value of votes for a relevant trust within the ambit of section 22(7), (8) or (9) of the repealed Act, as in operation immediately before the relevant day, will continue for the purposes of this Act unless or until a resolution is made to change those values under section 12 of this Act.

10—Irrigation rights

- (1) Until otherwise resolved by the trust, an allocation of water (if any) to which a member of a relevant trust is entitled under the repealed Act immediately before the relevant day will constitute the irrigation right of the member under this Act.
- (2) Subclause (1) operates subject to the conditions of the trust's water licence and any reduction in allocations imposed under the *Landscape South Australia Act 2019* or the Commonwealth water rules.

- (3) If, immediately before the relevant day, a relevant trust has not fixed a water allocation in respect of irrigated properties in its district under the repealed Act, the trust must fix an irrigation right in relation to the relevant entitlement to receive water within 6 weeks after the relevant day.

11—Charges and rates

A charge or liability to pay interest, as it exists immediately before the relevant day, and any process to impose or recover the charge or interest, will continue to have effect under this Act.

12—Disposal of property on dissolution—special arrangements

- (1) This clause applies to a trust to which section 14A(3) of the repealed Act applied before the commencement of this Act.
- (2) On the dissolution of a trust to which this clause applies—
 - (a) the owners of the land within the district that applied to the trust under the repealed Act immediately before the relevant day are entitled to the property and rights of the trust; and
 - (b) the liabilities of the trust attach directly to the owners of the land referred to in paragraph (a) jointly and severally; and
 - (c) in the case of a trust dissolved under section 14, the owners of the land are entitled to the property and rights of the trust and must contribute to its liabilities in proportions specified in the notice under section 14(5);
 - (d) in the case of a trust dissolved under section 15, the owners of the land are entitled to the property and rights of the trust and must contribute to its liabilities in a manner determined or approved by the Minister after taking into account such factors as appear appropriate to the Minister in the circumstances.
- (3) Division 4 of Part 2 operates subject to the operation of this clause.

13—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

Legislative history

Notes

- 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.

Legislation repealed by principal Act

The *Irrigation Act 2009* repealed the following:

Irrigation Act 1994

Legislation amended by principal Act

The *Irrigation Act 2009* amended the following:

Natural Resources Management Act 2004

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|---|-------------------|---|
| 2009 | 13 | <i>Irrigation Act 2009</i> | 16.4.2009 | 23.4.2009 (<i>Gazette</i> 23.4.2009 p1477) |
| 2013 | 16 | <i>Statutes Amendment (Directors' Liability) Act 2013</i> | 23.5.2013 | Pt 29 (ss 56—59)—17.6.2013 (<i>Gazette</i> 6.6.2013 p2498) |
| 2016 | 29 | <i>Real Property (Electronic Conveyancing) Amendment Act 2016</i> | 16.6.2016 | Sch 2—4.7.2016 (<i>Gazette</i> 30.6.2016 p2761) |
| 2019 | 25 | <i>Statutes Amendment and Repeal (Simplify) Act 2019</i> | 3.10.2019 | Pt 25 (ss 51 to 53)—3.10.2019: s 2(1) |
| 2019 | 33 | <i>Landscape South Australia Act 2019</i> | 21.11.2019 | Sch 5 (cll 33 to 44)—1.7.2020 (<i>Gazette</i> 25.6.2020 p3502) |
| 2021 | 45 | <i>Unclaimed Money Act 2021</i> | 25.11.2021 | Sch 1 (cl 7)—25.11.2023 (s 27(6) <i>Legislation Interpretation Act 2021</i>) |

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> | 17.6.2013 |

| | | |
|-----------------|--|-------------------|
| s 3(1) | | |
| water licence | amended by 33/2019 Sch 5 cl 33 | 1.7.2020 |
| Pt 1 | | |
| s 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | 17.6.2013 |
| Pt 2 | | |
| s 5 | | |
| s 5(5) | amended by 29/2016 Sch 2 | 4.7.2016 |
| s 13 | | |
| s 13(9) | amended by 29/2016 Sch 2 | 4.7.2016 |
| s 14 | | |
| s 14(7) | amended by 25/2019 s 51 | 3.10.2019 |
| | amended by 33/2019 Sch 5 cl 34(1) | 1.7.2020 |
| s 14(8) | amended by 33/2019 Sch 5 cl 34(2) | 1.7.2020 |
| s 15 | | |
| s 15(6) | amended by 25/2019 s 52 | 3.10.2019 |
| | amended by 33/2019 Sch 5 cl 35(1) | 1.7.2020 |
| s 15(7) | amended by 33/2019 Sch 5 cl 35(2) | 1.7.2020 |
| s 16 | <i>deleted by 25/2019 s 53</i> | 3.10.2019 |
| Pt 4 | | |
| s 23 | | |
| s 23(6) | amended by 33/2019 Sch 5 cl 36 | 1.7.2020 |
| s 29 | | |
| s 29(5) | amended by 33/2019 Sch 5 cl 37 | 1.7.2020 |
| s 30 | | |
| s 30(2) | amended by 33/2019 Sch 5 cl 38 | 1.7.2020 |
| s 32 | | |
| s 32(1) | amended by 33/2019 Sch 5 cl 39(1) | 1.7.2020 |
| s 32(4) | amended by 33/2019 Sch 5 cl 39(2) | 1.7.2020 |
| s 33 | | |
| s 33(2) | amended by 33/2019 Sch 5 cl 40(1) | 1.7.2020 |
| s 33(3) | amended by 33/2019 Sch 5 cl 40(2) | 1.7.2020 |
| s 33(5) | amended by 33/2019 Sch 5 cl 40(3), (4) | 1.7.2020 |
| s 35 | | |
| s 35(1) | amended by 33/2019 Sch 5 cl 41(1) | 1.7.2020 |
| s 35(3) | amended by 33/2019 Sch 5 cl 41(2) | 1.7.2020 |
| Pt 5 | | |
| s 40 | | |
| s 40(4) | amended by 33/2019 Sch 5 cl 42 | 1.7.2020 |
| s 40(8) | amended by 16/2013 s 56 | 17.6.2013 |
| Pt 6 | | |
| s 52 | | |
| s 52(10) | amended by 45/2021 Sch 1 cl 7 | 25.11.2023 |

Irrigation Act 2009—25.11.2023

Legislative history

| | | |
|----------|--|-----------|
| s 52(14) | <i>deleted by 29/2016 Sch 2</i> | 4.7.2016 |
| Pt 9 | | |
| s 59 | | |
| s 59(4) | amended by 33/2019 Sch 5 cl 43 | 1.7.2020 |
| s 62 | amended by 16/2013 s 57 | 17.6.2013 |
| s 63 | amended by 16/2013 s 58 | 17.6.2013 |
| s 64 | <i>deleted by 16/2013 s 59</i> | 17.6.2013 |
| Sch 1 | | |
| Pt 1—3 | <i>omitted under Legislation Revision and Publication Act 2002</i> | 17.6.2013 |
| Pt 4 | | |
| cl 10 | | |
| cl 10(2) | amended by 33/2019 Sch 5 cl 44 | 1.7.2020 |

Historical versions

17.6.2013

4.7.2016

3.10.2019

1.7.2020