

South Australia

IRRIGATION ACT 1994

An Act to provide for the irrigation of land in government and private irrigation districts; to repeal the Irrigation on Private Property Act 1939, the Lower River Broughton Irrigation Trust Act 1938, the Kingsland Irrigation Company Act 1922, the Pyap Irrigation Trust Act 1923 and The Ramco Heights Irrigation Act 1963; and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

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.

IRRIGATION ACT 1994

being

Irrigation Act 1994 No. 39 of 1994
[Assented to 2 June 1994]¹

as amended by

Irrigation (Conversion to Private Irrigation District) Amendment Act 1996 No. 87 of 1996 [Assented to 12 December 1996]²

Irrigation (Transfer of Surplus Water) Amendment Act 1997 No. 64 of 1997 [Assented to 7 August 1997]³

Irrigation (Dissolution of Trusts) Amendment Act 1998 No. 33 of 1998 [Assented to 8 July 1998]⁴

Ground Water (Qualco-Sunlands) Control Act 2000 No. 63 of 2000 [Assented to 3 August 2000]⁵

Development (System Improvement Program) Amendment Act 2000 No. 88 of 2000 [Assented to 21 December 2000]⁶

Statutes Amendment (Corporations) Act 2001 No. 23 of 2001 [Assented to 14 June 2001]⁷

River Murray Act 2003 No. 35 of 2003 [Assented to 31 July 2003]⁸

¹ Came into operation 1 July 1994: *Gaz.* 30 June 1994, p. 1842.

² Came into operation 15 December 1996: *Gaz.* 12 December 1996, p. 1850.

³ Came into operation 1 September 1997: *Gaz.* 21 August 1997, p. 408.

⁴ Came into operation 30 July 1998: *Gaz.* 30 July 1998, p. 274.

⁵ Came into operation 5 October 2000: *Gaz.* 5 October 2000, p. 2328.

⁶ Sched. 1 (cl. 3) came into operation 2 April 2001: *Gaz.* 29 March 2001, p. 1436.

⁷ Part 19 (s. 80) came into operation 15 July 2001 (being the day on which the *Corporations Act 2001* of the Commonwealth came into operation: *Commonwealth of Australia Gazette* No. S 285, 13 July 2001): *Gaz.* 21 June 2001, p. 2270.

⁸ **Schedule (cl. 11) came into operation 24 November 2003: *Gaz.* 20 November 2003, p. 4203.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Short title

1. This Act may be cited as the *Irrigation Act 1994*.

* * * * *

Repeal

3. The Acts listed in Schedule 1 are repealed.

Interpretation

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

"**authority**"—*see* "**irrigation authority**";

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

"**channel**" includes a watercourse;

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

"**to 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;

"**the drainage system provided by the authority**" means those parts of a drainage system that are not parts of the drainage system provided by a landowner;

"**the drainage system provided by the landowner**" means those parts of a drainage system—

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

"**government irrigation district**"—*see* Part 2;

"**irrigated property**" means land—

- (a) that is used to carry on the business of primary production and is managed as a single unit for the purpose of carrying on that business; and

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(b) to which a water allocation applies under this Act;

"**irrigation authority**" or "**authority**" means—

(a) in relation to a government irrigation district—the Minister; and

(b) in relation to a private irrigation district—the trust constituted by this Act in relation to the district;

"**irrigation district**" means a government irrigation district or a private irrigation district;

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

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

"**the irrigation system provided by the landowner**" means those parts of an irrigation system—

(a) that have been provided by the landowner, or a predecessor of the landowner; or

(b) in relation to which the landowner, or a predecessor of the landowner, has assumed responsibility for maintenance; or

(c) that the landowner is liable to maintain pursuant to an agreement or arrangement with the authority or with a predecessor of the authority;

"**irrigation water**" means water supplied by an irrigation authority 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 means a newspaper circulating in the locality in which the irrigation district to which the notice relates is situated;

"**long term occupier**" of land means a person who is entitled to occupy the land pursuant to a lease registered under the *Real Property Act 1886* (not being a Crown lease) where the term of the lease (including the period of any renewal or extension of the term to which the lessee is entitled) has at least five years to run;

"**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;

"**private irrigation district**" means—

- (a) irrigated properties connected to an irrigation system that was, immediately before the commencement of this Act, in operation under one of the repealed Acts;
- (b) irrigated properties connected to an irrigation system established under Part 3 Division 1 or 2;
- (c) irrigated properties connected to the irrigation system of a district that was formerly a government irrigation district but that has been converted to a private irrigation district under Part 4,

and includes—

- (d) land in respect of which the Minister and a trust have granted an application for inclusion of the land in the trust's irrigation district but which is not yet connected to the irrigation system for the district;
- (e) land that is no longer used to carry on the business of primary production but that has not been excluded from the district under this Act,

but does not include land excluded from an irrigation district under this Act;

"**public notice**" means a notice published in a local newspaper;

"**a registered interest**" in land means an estate or interest in the land that a person appears from the Register Book maintained under the *Real Property Act 1886* to have or to claim;

"**the repealed Acts**" means the Acts repealed by Schedule 1 and includes Division 5 of Part 8 of the *Crown Lands Act 1929* struck out by Schedule 3;

"**trust**" means an irrigation trust constituted by this Act in respect of a private irrigation district and includes a trust constituted under Part 4 in the transitional period before conversion of a government irrigation district to a private irrigation district;

"**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 recovery licence**" means a licence granted under the *Water Resources Act 1997* or a corresponding previous enactment entitling the holder to take water from a watercourse, lake or well.

(2) Where 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.

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(3) Land that has been excluded from an irrigation district under this Act and has not subsequently been re-included in the district will not be taken under subsection (2) to be connected to the irrigation or drainage system of the land.

(4) Where an irrigation authority 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 firstmentioned charging period.

(5) For the purposes of this Act 21 days notice of 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.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Part 2—Government irrigation districts

Existing government irrigation districts

5. (1) Land that is used to carry on the business of primary production and that was, immediately before the commencement of this Act, connected to an irrigation system in operation under the *Irrigation Act 1930* constitutes a government irrigation district under this Act.

(2) Where two or more irrigation systems served one irrigation area under the *Irrigation Act 1930*, only one irrigation district is constituted under subsection (1) in respect of the land connected to those systems.

(3) The water allocations applying to the land immediately before the commencement of this Act will continue under this Act until varied by the Minister.

Establishment or extension of irrigation districts

6. (1) The Minister may establish or extend a government irrigation district.

(2) In order to establish or extend an irrigation district the Minister may—

(a) establish an irrigation system or extend an existing system; and

(b) connect land being used, or that will be used, to carry on the business of primary production to the system established or extended under paragraph (a).

(3) Upon the connection of land to an irrigation system under subsection (2)(b) a water recovery licence under which water was taken for irrigating the land is cancelled.

(4) The Minister must, by notice in the *Gazette*, name each irrigation district established under this section.

Inclusion in or exclusion from a district

7. (1) The owner and the long term occupier (if any) of land may apply to the Minister for inclusion of the land in, or exclusion of the land from, a government irrigation district.

(2) Before granting an application for the inclusion of land in a district the Minister must be satisfied that the land will be used to carry on the business of primary production.

(3) The Minister may grant an application for inclusion or exclusion subject to such conditions as the Minister thinks fit.

(4) Without limiting the generality of subsection (3) the Minister may grant an application for inclusion or exclusion subject to one or more of the following conditions:

(a) a condition that the applicant pay, or contribute to, the Minister's costs (including the cost of financial accommodation) of connecting the land to the Minister's irrigation or drainage system or of maintaining, repairing or replacing that part of either of those systems used to supply water to, or drain water from, the land;

(b) a condition relating to the regeneration of the land or its protection from degradation in the future.

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(5) Land in respect of which an application for inclusion has been granted under subsection (1) will be taken to form part of the government irrigation district even though the land has not been connected to the irrigation system for the district.

(6) The Minister may exclude land from an irrigation district pursuant to Part 5 Division 5.

(7) Land does not cease to be part of a government irrigation district until it has been excluded from the district even though it has ceased to be an irrigated property within the meaning of this Act.

(8) Where an application for the inclusion of land in a district is granted subject to conditions, the supply of water to, and the drainage of water from, the land under this Act is subject to a condition requiring the owner and occupier for the time being of the land to comply with those conditions.

Change of name and abolition of district

8. The Minister may by notice in the *Gazette*—

- (a) change the name of a government irrigation district;
- (b) abolish a government irrigation district.

Part 3—Private irrigation districts and irrigation trusts

Division 1—Private irrigation districts

Existing private irrigation areas

9. (1) Land that is used to carry on the business of primary production and that was, immediately before the commencement of this Act, connected to an irrigation system in operation under one of the repealed Acts constitutes a private irrigation district under this Act.

(2) Where two or more irrigation systems served one irrigation area or irrigation district under one of the repealed Acts, only one irrigation district is constituted under subsection (1) in respect of the land connected to those systems.

(3) The water allocations applying to the land immediately before the commencement of this Act will continue under this Act until varied by the trust constituted by this Act in respect of the district.

Establishment of private irrigation district

10. (1) The owners of land may apply to the Minister to declare the land to be a private irrigation district.

(2) If the Minister is satisfied—

(a) that the land will be used to carry on the business of primary production; and

(b) that—

(i) all the long term occupiers (if any) of the land, or any part of the land, have been served with one month's notice (in a form approved by the Minister) of the application and of their right to object to it; and

(ii) none of those long term occupiers has served written notice on the Minister objecting to the application,

the Minister may, by public notice, declare the land to be a private irrigation district.

(3) The notice must assign a name to the district.

(4) All water recovery licences in force in relation to the land are cancelled on the date specified for that purpose in the notice.

(5) The first water allocations in respect of irrigated properties comprising the new irrigation district will be the water allocations specified for that purpose in the notice.

Conversion from government to private irrigation district

11. A government irrigation district or part of a government irrigation district may be converted to a private irrigation district pursuant to Part 4.

Inclusion in or exclusion from a district

12. (1) The owner of land may apply to the Minister and the relevant trust for the inclusion of the land in, or the exclusion of the land from, a private irrigation district.

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(2) Before granting an application the Minister and the trust must be satisfied that the notice referred to in section 10(2)(b)(i) has been served on the long term occupier (if any) of the land to which the application relates and that the long term occupier has not served written notice on either of them objecting to the application.

(3) Before granting an application for the inclusion of land in a district the Minister and the trust must be satisfied that the land will be used to carry on the business of primary production.

(4) The Minister and the trust may grant an application for inclusion or exclusion subject to such conditions as they think fit.

(5) Without limiting the generality of subsection (4) an application for inclusion or exclusion may be granted subject to one or more of the following conditions:

- (a) a condition that the applicant pay, or contribute to, the trust's costs (including the cost of financial accommodation) of connecting the land to the trust's irrigation or drainage system or of maintaining, repairing or replacing that part of either of those systems used to supply water to, or drain water from, the land;
- (b) a condition relating to the regeneration of the land or its protection from degradation in the future.

(6) Land in respect of which an application for inclusion has been granted under subsection (1) will be taken to form part of the private irrigation district even though the land has not been connected to the irrigation system for the district.

(7) A trust may exclude land from its irrigation district pursuant to Part 5 Division 5.

(8) Land does not cease to be part of a private irrigation district until it has been excluded from the district even though it has ceased to be an irrigated property within the meaning of this Act.

(9) Where an application for the inclusion of land in a district is granted subject to conditions, the supply of water to, and the drainage of water from, the land under this Act is subject to a condition requiring the owner and occupier for the time being of the land to comply with those conditions.

Abolition of private irrigation district on landowners' application

13. (1) The owners of all of the irrigated properties within a private irrigation district may apply to the Minister for abolition of the district.

(2) The application must—

- (a) be in a form approved by the Minister; and
- (b) be accompanied by the prescribed fee.

(3) If the Minister is satisfied that—

- (a) all the long term occupiers (if any) of the irrigated properties within the irrigation district have been served with one month's notice (in a form approved by the Minister) of the application and of their right to object to it; and

- (b) none of those long term occupiers has served written notice on the Minister objecting to the application,

the Minister may grant the application by public notice.

(4) The notice will operate from the date of publication or from such later date as is specified in the notice.

(5) When the notice comes into operation—

- (a) the irrigation district is abolished and the trust for the district is dissolved; and
- (b) the trust's water licence is cancelled.

(6) The notice may impose such terms and conditions as the Minister thinks fit on the owners of the land (including land that had ceased to be an irrigated property) that comprised the district immediately before its abolition.

(7) The Minister must not publish a notice abolishing the irrigation district unless he or she has received consent in writing to the terms of the notice signed by all of the applicants.

Abolition of district on Minister's initiative

14. (1) The Minister may abolish a private irrigation district in accordance with this section if—

- (a) in the Minister's opinion the trust of the district—
 - (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 the irrigation and drainage systems provided by it; 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) in the case of a district formed by merger under Part 3 Division 2 or on conversion from a government irrigation district under Part 4, the trust has failed to comply with or has contravened a term or condition on which the application for the merger or conversion was granted.

(2) The Minister must serve notice on a trust of his or her intention to abolish its district under this section setting out the grounds for the proposed abolition and inviting the trust to make written submissions to the Minister in relation to the proposal.

(3) The Minister must take into account submissions made under subsection (2).

(4) The Minister may serve notice of abolition of the district on the trust if—

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- (a) three months have passed since the notice referred to in subsection (2) was served on the trust; and
 - (b) one (or more) of the grounds for abolition of the district referred to in the notice is 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 three months after service of the notice under subsection (4)—
- (a) the irrigation district is abolished and the trust for the district is dissolved; and
 - (b) the trust's water licence is cancelled.

Disposal of property etc on dissolution

14A. (1) On the dissolution of a trust under section 13 or 14 the property, rights and liabilities of the trust vest in or attach to an irrigation trust specified for that purpose by the Minister in the notice of abolition.

(2) If in the opinion of the Minister it is not practicable or appropriate to vest the property and rights, or attach the liabilities, of a dissolved trust in or to another trust, the property, rights and liabilities of the trust will, subject to subsection (3) vest in or attach to the Crown.

(3) On the dissolution of a trust in relation to which this subsection applies—

- (a) the owners of the land (including land that has ceased to be an irrigated property) that comprised the trust's district immediately before its abolition 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 13, the owners of the land are entitled to the property and rights of the trust and must contribute to its liabilities in the proportions specified in the notice of abolition; and
- (d) 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 proportion to the respective water allocations of the irrigated properties comprising the district immediately before its abolition.

(4) Subsection (3) applies in relation to—

- (a) a trust that—
 - (i) was in existence at the commencement of the *Irrigation (Dissolution of Trusts) Amendment Act 1998*; and
 - (ii) within six months after the commencement of that Act, serves on the Minister notice in writing declaring that subsection (3) is to apply in relation to it;

(b) a trust that comes into existence after the commencement of the *Irrigation (Dissolution of Trusts) Amendment Act 1998* and that, within 6 months after it comes into existence, serves on the Minister notice in writing declaring that subsection (3) is to apply in relation to it.

(5) A declaration by a trust under subsection (4)(a) or (b) cannot be withdrawn or revoked.

(6) The Minister must maintain a list of all trusts in relation to which subsection (3) applies and must make the list available for public inspection.

(7) In this section—

"notice of abolition" means—

(a) in relation to a trust dissolved under section 13—the public notice granting the application for abolition of the trust's district under that section;

(b) in relation to a trust dissolved under section 14—notice of abolition of the trust's district under that section.

Division 2—Merger of private irrigation districts

Interpretation

15. (1) An application or consent referred to in this Division will be taken to have been signed by two-thirds or more of the owners of the irrigated properties comprising a district to which the application or consent relates if—

(a) it has been signed by or on behalf of two-thirds or more of the owners of those properties; and

(b) the aggregate of the water allocations applying to the properties owned by the signatories is two-thirds or more of the aggregate of the water allocations applying to all of the irrigated properties comprising the district.

(2) For the purposes of subsection (1)(a), where an irrigated property is owned by two or more persons—

(a) an application or consent will be taken to have been signed by the owners of that property if it has been signed by or on behalf of all of them; and

(b) the signatures of the owners of that property will be counted as one signature.

Application for merger

16. (1) The owners of irrigated properties in two or more private irrigation districts may apply to the Minister to merge the districts, or parts of the districts, into one private irrigation district.

(2) The application must—

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

(b) be accompanied by the prescribed fee; and

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- (c) be signed by two-thirds or more of the owners of the irrigated properties comprising each district to which the application relates (whether or not the whole or a part only of the district concerned is to be merged).

(3) The proportion of two-thirds required by subsection (2)(c) must be obtained in each of the districts involved in the merger.

(4) Upon receiving the application the Minister must—

- (a) serve notice on the owners of irrigated properties in the irrigation districts who have not signed the application; and

- (b) publish the notice in a local newspaper.

(5) The notice must invite interested persons to make written submissions to the Minister in relation to the proposal within a period of not less than one month specified in the notice.

(6) The Minister must have regard to all submissions made pursuant to the notice when deciding whether to grant or refuse an application.

Grant of application

17. (1) The Minister may grant an application by public notice.

(2) The notice will operate from the date of publication or from such later date as is specified in the notice.

(3) When the notice comes into operation—

- (a) the irrigated properties comprising the districts or parts of districts specified in the notice are merged to form a new private irrigation district; and

- (b) a trust comes into existence in relation to the new district—see Division 3; and

- (c) the water allocations that applied to the irrigated properties comprising the new district immediately before the notice came into operation will continue until varied by the trust; and

- (d) if the whole of a private irrigation district is merged into the new district, the trust of the original district is dissolved and its property, rights and liabilities become property, rights and liabilities of the new trust.

(4) The notice may—

- (a) if part only of a private irrigation district is merged into the new district—

- (i) transfer to the new trust any property or rights vested in, or any liabilities attached to, the trust for the remaining part of the original district (the old trust);

- (ii) impose liability on the new trust for payment to the old trust of an amount in respect of property or rights transferred under subparagraph (i) or in respect of capital works or in respect of any other matter and may specify the terms and conditions for satisfaction of that liability;
 - (b) impose such other terms and conditions in relation to the merger as the Minister thinks fit.
- (5) The notice must assign a name to the new district.
- (6) The Minister must not publish a notice granting an application unless he or she has received consent in writing to the terms and conditions of the notice signed by two-thirds or more of the owners of the irrigated properties in each district to which the application relates (whether or not the whole or a part only of the district concerned is to be merged).
- (7) The proportion of two-thirds required by subsection (6) must be obtained in each of the districts involved in the merger.

Division 3—Irrigation trusts

Constitution of trust

18. (1) The owners for the time being of the irrigated properties comprising a private irrigation district constitute a trust having as its name the name of the irrigation district followed by "Trust Incorporated".

(2) A trust referred to in subsection (1) is a body corporate and has all the powers of a natural person and the powers specifically conferred on it by this Act.

(3) Where a document appears to bear the common seal of a trust, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the trust.

(4) 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.

Presiding officers of trust

19. (1) The first presiding officer of a trust of an irrigation district that had been a private irrigation area or district under a repealed Act will be the person who immediately before the commencement of this Act was chairman of the board of management of the area or where there was no such chairman, the person who held an equivalent position.

(2) The first presiding officer and deputy presiding officer of a trust of an irrigation district established, formed by merger or converted from a government irrigation district by public notice under this Act will be the persons appointed to those offices by the notice.

(3) A resolution passed at a general meeting of a trust—

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- (a) may remove a person from the office of presiding officer or deputy presiding officer of the trust; or
- (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.

Calling of meeting

20. (1) A meeting of a trust may be called at any time by the presiding officer or by at least 10 per cent of the voting members 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 seven 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 a trust must, as far as practicable, be convenient to the members of the trust.

Procedure at meeting of trust

21. (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) 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 (not being less than two) as the trust determines.

(2a) 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.

(3) 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 where the values are equal the resolution will be carried if it is supported by the person presiding at the meeting.

(4) 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.

(5) Subject to this Act, the trust may determine its own procedures.

(6) The trust must keep minutes of its proceedings.

Voting

22. (1) Subject to this section the owner of each irrigated property included in a private irrigation district is entitled to vote at meetings of the trust.

- (2) An owner may nominate another person to attend and vote at meetings on his or her behalf.
- (3) Where there are two or more owners of one property, a person must be nominated by 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 owner, or all of the owners, 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 (10), in the case of the trust of an irrigation district established, formed by merger or converted from a government irrigation district under this Act, the values of votes at meetings of the trust will be in proportion to the respective water allocations of the properties comprising the irrigation district.
- (7) Subject to subsection (10), votes at a meeting of a trust of an irrigation district that had been a private irrigation area under the *Irrigation on Private Property Act 1939* or *The Ramco Heights Irrigation Area Act 1963* will have the same values that votes at a meeting of the board of management of the area would have had if such a meeting had been held immediately before the commencement of this Act.
- (8) Subject to subsection (10), votes at meetings of Pyap Irrigation Trust Incorporated constituted by this Act will have the same values that votes at a meeting of Pyap Irrigation Trust would have had if such a meeting had been held immediately before the commencement of this Act.
- (9) Subject to subsection (10), votes at meetings of Lyrup Village Settlement Trust Incorporated constituted by this Act will have the same values that votes at a meeting of the Lyrup Village Association would have had if such a meeting had been held immediately before the commencement of this Act.
- (10) The basis for determining the values of votes can be changed but only by resolution of the trust of which 21 days notice has been given.
- (11) A resolution referred to in subsection (10) must be supported by 80 per cent or more of the number of votes cast at the meeting.

Division 4—Accounts and audit

Accounting records to be kept

23. (1) A 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.

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Preparation of financial statements

24. (1) A 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.

(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 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 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 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.

Accounts etc to be laid before annual general meeting

25. (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 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.

(3) A 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.

Part 4—Conversion from government irrigation district to private irrigation district

Interpretation

26. (1) An application or consent referred to in this Part will be taken to have been signed by a majority of the owners of the irrigated properties to which the application or consent relates if—

- (a) it has been signed by or on behalf of a majority of the owners of those properties; and
- (b) the aggregate of the water allocations applying to the properties owned by the signatories is more than one-half of the aggregate of the water allocations applying to all of the properties to which the application or consent relates.

(2) For the purposes of subsection (1)(a) where an irrigated property is owned by two or more persons—

- (a) an application or consent will be taken to have been signed by the owners of that property if it has been signed by or on behalf of all of them; and
- (b) the signatures of the owners of that property will be counted as one signature.

Application for conversion

27. (1) The owners of irrigated properties in a government irrigation district may apply to the Minister for conversion of the whole or a part of the district specified in the application to a private irrigation district.

(2) The application must—

- (a) relate only to irrigated properties; and
- (b) be in a form approved by the Minister; and
- (c) be accompanied by the prescribed fee; and
- (d) be signed by a majority of the owners of the irrigated properties to which the application relates.

(3) Upon receiving the application the Minister must—

- (a) serve notice on the owners of irrigated properties in the irrigation district who have not signed the application; and
- (b) publish the notice in a local newspaper.

(4) The notice must invite interested persons to make written submissions to the Minister in relation to the proposal within a period of not less than one month specified in the notice.

(5) The Minister must have regard to all submissions made pursuant to the notice when deciding whether to grant or refuse an application.

Proposal for conversion by the Minister

28. (1) The Minister may—

- (a) serve on the owners of irrigated properties in a government irrigation district; and
- (b) publish in a local newspaper,

a notice proposing that the irrigation district, or part of it, be converted to a private irrigation district.

(2) The notice must—

- (a) set out the terms and conditions on which the proposed conversion would take place; and
- (b) invite interested persons to make written submissions to the Minister in relation to the proposal within a period of not less than three months specified in the notice.

(3) The Minister must have regard to all submissions made pursuant to the notice before proceeding with the proposal and may amend the proposal to take account of any submission.

Conversion to private irrigation district

29. (1) Subject to compliance with the procedures required by this Part, the Minister may convert a government irrigation district to a private irrigation district by public notice.

(2) The conversion takes place in two stages as follows:

- (a) a transitional period, in which the irrigation district remains a government irrigation district, will commence on publication of the notice and will conclude on conversion of the district to a private irrigation district; and
- (b) conversion of the district which will occur on the conversion date fixed by the notice or, if the notice so provides, by the Minister by public notice.

(3) On commencement of the transitional period the owners for the time being of the irrigated properties comprising the land specified in the notice constitute a trust in accordance with Part 3 Division 3 as if the land were already a private irrigation district.

(3a) On the conversion date—

- (a) the land specified in the notice is constituted as a private irrigation district; and
- (b) the water allocations of the irrigated properties comprising the district in force immediately before the conversion will continue until varied by the trust.

(4) The notice may—

- (a) transfer to the trust real or personal property vested in, or any liabilities attached to, the Minister or the Crown or any instrumentality or agency of the Crown;
- (b) impose liability on the trust for payment to the Minister or the Crown, or any instrumentality or agency of the Crown, of an amount in respect of real or personal property transferred under paragraph (a) or in respect of capital works or in respect of any other matter and may specify the terms and conditions for satisfaction of that liability;

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- (c) impose such other terms and conditions in relation to the conversion as the Minister thinks fit.

(4a) Without limiting subsection (4), the notice may transfer land to the trust subject to a lease or licence (the terms of which are set out in the notice) to the Minister or any other instrumentality or agency of the Crown.

- (4b) The trust and all subsequent owners of the land will hold it subject to the lease or licence.

(4c) The Minister must request the Registrar-General to note the lease or licence against the instrument of title for the land or, in the case of land that is not under the provisions of the *Real Property Act 1886*, against the land.

(4d) The remedy of specific performance is available for the enforcement of a lease or licence referred to in subsection (4a).

(5) The Minister must not publish a notice of conversion under this section unless he or she has received consent in writing to the terms and conditions of the notice signed by a majority of the owners of the irrigated properties to which the notice relates.

(6) The Governor may, by proclamation, transfer from a trust constituted under subsection (3) to the Minister—

- (a) the power to establish a board of management; and
- (b) powers under section 43 relating to delegation of functions or powers of the trust to the board of management.

(7) A power referred to in subsection (6)—

- (a) can be exercised by the Minister during the transitional period but not after the end of that period;
- (b) cannot be exercised by the trust during that period.

(8) After the end of the transitional period the trust—

- (a) may suspend or remove a person appointed by the Minister to the board of management as though the person had been appointed by the trust;
- (b) may vary or revoke the delegation by the Minister of a function or power to the board of management.

Part 5—Functions and powers of irrigation authorities

Division 1—Functions of authorities

Functions

30. (1) An irrigation authority has the following functions:

- (a) to supply water for irrigation to the properties comprising its district upon such terms and conditions as it thinks fit; and
- (b) to drain irrigation water from land within its district upon such terms and conditions as it thinks fit; and
- (c) such other functions as are prescribed by this or any other Act.

(2) The Minister also has the function of establishing or extending government irrigation districts where the Minister thinks fit.

(3) Without limiting the generality of subsection (1) the terms and conditions on which water is supplied to, or drained from land, may include a requirement relating to the regeneration of the land or its protection from degradation in the future.

(4) An irrigation authority must, in determining terms and conditions on which water is supplied to, or drained from land, ensure—

- (a) that it is able to meet any requirements imposed under the *Water Resources Act 1997*; and
- (b) 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*.

Division 2—Powers of authorities

Powers

31. (1) In order to carry out its functions an irrigation authority may—

- (a) construct or erect channels, embankments, roads, buildings or structures, tanks, ponds, dams or other facilities for holding water or any other works;
- (b) lay pipes;
- (c) install and operate pumps and other equipment;
- (d) control the flow of water in an irrigation or drainage channel or pipe;
- (e) acquire any land;
- (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 authority;

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- (g) clear any channel, pipe, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation or drainage system provided by the authority;
- (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 the landowner;
- (i) extract and remove soil or minerals from any land comprising part of the irrigation district after first consulting the owner of the land and having regard to his or her views;
- (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 authority 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) enter or occupy any land for the purpose of exercising any powers of the authority under this Act;
- (l) exercise any other powers that are incidental to the authority's powers or that are reasonably necessary for carrying out the authority's functions.

(2) An authority may acquire land pursuant to a contract with the owner of the land or pursuant to the *Land Acquisition Act 1969*.

(3) A trust must not acquire land pursuant to the *Land Acquisition Act 1969* without the written approval of the Minister.

(4) When entering or occupying land under this section the authority must cause as little inconvenience to other users of the land as is reasonably practicable.

Further powers of authorities

32. (1) An irrigation authority may, pursuant to an agreement with the owner of an irrigated property, construct or extend an irrigation system or a drainage system on the property for the distribution or drainage of irrigation water supplied by the authority.

(2) A trust may, in order to assist its members, purchase irrigation equipment, components and tools for resale to its members.

Water allocation

33. (1) The Minister must fix water allocations in respect of the irrigated properties comprising a government irrigation district established or extended by the Minister under this Act.

(2) An authority must fix a water allocation in respect of each new irrigated property added to its district.

(3) An authority may, from time to time, increase water allocations by giving written notice of the increase to the owners and occupiers of the irrigated properties to which the allocations apply.

(4) A trust's decision to vary water allocations under subsection (3) must be by resolution of which 21 days notice has been given.

(5) An authority must determine water allocations on a fair and equitable basis having regard to the nature of the crops growing, or that will be grown, on the land, the rainfall, the extent to which the soil retains water and all other relevant factors.

(6) A landowner may apply to the irrigation authority for an increase or reduction in the water allocation applying to his or her property.

(7) The authority may grant an application under subsection (6) subject to such conditions as it thinks fit.

(8) A water allocation is attached to the land to which it relates until it is transferred under this Division.

Transfer of water allocation

34. (1) An owner of an irrigated property may agree with the authority for the district in which the property is situated or with the owner of another irrigated property in that district to transfer the whole, or a part, of the water allocation for his or her property to the authority or to the other property for such sum of money or other consideration as is agreed between them.

(2) The transfer of the whole, or part, of a water allocation from one property to another is subject to the approval of the authority.

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

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

(b) must be accompanied by the prescribed fee.

(4) The applicant must provide the authority with such information as it requires to consider and determine the application.

(5) The authority's approval may be conditional or unconditional.

(6) An authority may transfer a water allocation, or part of a water allocation, transferred to it under this section to an irrigated property in its district for such sum of money or other consideration as is agreed between the authority and the owner of the property.

Supply of water for other purposes

35. (1) In addition to supplying water for irrigation, an authority may supply water to land within its district for domestic or other purposes.

(2) A trust must not, without the Minister's written approval, supply water for domestic purposes or for any other purpose (except for irrigation) if a supply of water under the *Waterworks Act 1932* is available for those purposes.

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Power to restrict supply or reduce water allocation

36. (1) An authority may—

- (a) restrict or close off the supply of water to the whole of its district or to any part of its district; or
- (b) reduce the water allocation applying in respect of any land within its district,

if—

- (c) the water that is available and suitable for irrigation cannot meet the demand; or
- (d) 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 upon which the authority supplies water to, or drains water from, the land; or
 - (iii) contravened or failed to comply with a condition imposed on the owner or occupier, or a predecessor of the owner or occupier, under this Division; or
 - (iv) contravened or failed to comply with a provision of this Act or with a direction of the authority under this Act; or
- (e) the authority is unable to dispose of water draining into its drainage system because of the degraded quality of the water; or
- (f) the authority is acting in response to a reduction in the authority's water allocation under the *Water Resources Act 1997*.

(2) When taking action under subsection (1) (except in circumstances referred to in subsection (1)(d)), the authority—

- (a) must make a decision that is fair and equitable having regard to the nature of the crops growing, or that will be grown, on the land, the rainfall, the extent to which the soil retains water and other relevant factors; and
- (b) in a case where subsection (1)(f) applies—may make a decision that takes into account—
 - (i) the authority's assessment of the extent to which a reduction in an allocation can be matched by efficiencies in the use of water by the owners or occupiers of land within the relevant district; and
 - (ii) the authority's assessment of the particular requirements of the crops growing, or that will be grown, within the relevant district.

(2a) An authority may, in taking action under subsection (1), reduce various water allocations by different amounts or proportions according to such factors as the authority thinks fit.

(3) An authority incurs no civil liability in respect of action taken by it under subsection (1).

Supply of water and drainage outside district

37. (1) An authority may enter into an agreement with the owner or occupier of land outside its district—

- (a) to supply water to the land for the purpose of irrigating the land or for domestic or other purposes;
- (b) to drain water from the land.

(2) Land does not become part of the irrigation district by reason of the supply of water to it under an agreement referred to in subsection (1).

(3) A trust must not, without the Minister's written approval, supply water for domestic purposes or for any other purpose (except for irrigation) if a supply of water under the *Waterworks Act 1932* is available for those purposes.

(4) The term of an agreement referred to in subsection (1) is one year unless otherwise specified in the agreement.

(5) The person who enters into an agreement with an authority under this section will be taken to be a landowner for the purposes of section 54.

(6) An authority may restrict or close off the supply of water under an agreement referred to in subsection (1) if—

- (a) the water that is available and suitable for the purposes for which it is to be supplied under the agreement cannot meet the demand; or
- (b) the owner or occupier has failed to pay charges, or interest on charges, due under the agreement or has contravened or failed to comply with any other term of the agreement; or
- (c) the owner or occupier has contravened or failed to comply with a provision of this Act or with a direction of the authority under this Act; or
- (d) the authority is unable to dispose of water draining from the land into its drainage system because of the degraded quality of the water.

(7) An authority incurs no civil liability in respect of action taken by it under subsection (6).

Drainage of other water

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

Division 3—Additional powers of Minister

Establishment of boards

39. (1) The Minister may establish boards to advise the Minister, or to exercise powers delegated by the Minister, in relation to the management of government irrigation districts.

(2) A board may be established under subsection (1)—

- (a) in relation to a particular irrigation district; or

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(b) in relation to a number of irrigation districts in a particular part of the State, and a board may be established under both paragraphs (a) and (b) in relation to the same irrigation district.

(3) The Minister may establish a board or boards to advise the Minister in relation to irrigation in a particular part or parts of the State.

Delegation

40. (1) The Minister may delegate any of his or her functions or powers under this Act (excluding this power of delegation) to a board or to any other person.

(2) A delegation must be in writing and may be conditional or unconditional.

(3) The Minister 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 Minister.

Direction of trust by Minister

41. (1) The Minister may, by notice served on a trust, direct the trust to take such action as is specified in the notice to ensure that water used for irrigation does not drain onto or into land outside the trust's district.

(2) If a trust fails to comply with a notice the Minister for the time being administering the *Water Resources Act 1997* may, at the request of the Minister administering this Act, serve a notice on the trust—

(a) varying the trust's water recovery licence by reducing the water allocation under the licence; or

(b) cancelling the licence.

Division 4—Additional powers of trusts**Boards of management and committees**

42. (1) A trust may establish a board of management to carry out the day to day operations of the trust.

(2) A trust may establish committees for specific purposes.

Delegation

43. (1) Subject to subsection (2), a trust may delegate any of its functions or powers under this Act to a board of management, a committee or to any other person.

(2) A 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) A 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.

Change of name of district

44. A trust may, by public notice, change the name of its district.

Regulations by a trust

45. (1) A trust may, with the Minister's approval, make regulations in relation to—

- (a) the provision and maintenance of the irrigation or drainage system of its district;
- (b) the manner in which, and the times at which, irrigation water may be used;
- (c) maintaining or improving the quality of irrigation water;
- (d) the drainage and disposal of irrigation water.

(2) A trust must publish a regulation made under this section in the *Gazette* and in a local newspaper.

(3) A regulation may prescribe fines, not exceeding a division 9 fine for contravention of, or failure to comply with, a regulation.

(4) Where, after obtaining advice from the Crown Solicitor, the Minister is of the opinion that a regulation made by a trust is in conflict with this Act or another Act or a regulation made by the Governor under this Act or another Act, the Minister may, by notice published in the *Gazette* and in a local newspaper, vary or revoke the regulation.

Notice of resolution

46. (1) Subject to subsection (2), the decision of a trust—

- (a) to establish a board of management;
- (b) to delegate functions or powers to a board of management, a committee or to any other person;
- (ba) to vary the quorum required at meetings of its members;
- (c) to change the name of its district;
- (d) making regulations,

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

(2) During the transitional period preceding the conversion of a government irrigation district to a private irrigation district the period of notice required under subsection (1)(a) and (b) is reduced to seven days.

Transfer of surplus water allocation

46A. (1) The following provisions apply to, and in relation to, the transfer of the whole or a part of a trust's surplus water allocation (whether absolutely or for a limited period) to another person pursuant to the *Water Resources Act 1997*:

- (a) the trust's decision to transfer must be made by resolution of which 21 days notice has been given;

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- (b) if the trust has excess water the transfer will be taken to be in respect of the excess water and will only be in respect of unused water when all the excess water has been transferred;
- (c) the proceeds of the transfer, after deducting the costs relating to the transfer, must be divided between the owners of the irrigated properties in the trust's district—
 - (i) where the proceeds are for the transfer of excess water—in proportion to the water allocations of those properties;
 - (ii) where the proceeds are for the transfer of unused water—in proportion to the unused part (if any) of the water allocations of those properties.

(2) In this section—

"excess water" means water that a trust is entitled to under its water allocation under the *Water Resources Act 1997* that exceeds the aggregate of the water allocations of the irrigated properties comprising its district;

"surplus water" means excess water or unused water;

"surplus water allocation" means the part of a trust's water allocation that represents its surplus water;

"unused water" means the quantity of water by which the water that a trust expects to supply in the future to its irrigated properties falls short of the aggregate of the water allocations of those properties.

Division 5—Exclusion of land from district**Exclusion of land from an irrigation district**

47. (1) An authority may exclude land from its irrigation district in accordance with this section if—

- (a) the land has not been used to carry on the business of primary production during the year ending on the date of service of the notice (or the last of the notices if more than one) under subsection (2); or
- (b) the land is not suitable for the purpose of carrying on the business of primary production; or
- (c) the retention of water by the land is so low that—
 - (i) water supplied for irrigation purposes is not used efficiently; or
 - (ii) too much water carrying salt or other pollutants drains from the land onto or into other land or into a watercourse; or
- (d) the land cannot be drained efficiently; or
- (e) the authority decides pursuant to section 48 that the land should be excluded from the district.

(2) The authority must serve at least three months (but not more than 12 months) notice of its proposal to exclude land from its district under subsection (1) on the owner and the long term occupier of the land (if any) and on a person (if any) who has a registered interest in the land.

(3) The notice must set out the ground or grounds on which the authority proposes to exclude the land.

(4) The authority may, after considering the representations (if any) made by the persons on whom the notice has been served under subsection (2), exclude the land from its district.

(5) The authority must serve notice of the exclusion of the land on the persons on whom notice was served under subsection (2) and must, by public notice, inform members of the public of the exclusion of the land from the district.

(6) Subject to subsection (7), the exclusion of land under this section operates from service of the notice under subsection (5) or from such later date as is specified in the notice.

(7) The exclusion of land on the basis of cost under section 48 cannot operate until it is necessary to disconnect the land from the existing irrigation or drainage system in the course of replacing the system or the relevant part of it.

(8) Where the exclusion of land operates from a date that falls within a charging period the amount of the charges will be adjusted and any excess paid to the authority must be repaid by the authority.

(9) A trust must not exclude land from its district under this section without the consent in writing of the Minister.

Exclusion of land on basis of cost

48. (1) If an authority proposes to replace at least 80 per cent of the channels or pipes comprising the irrigation or drainage system provided by the authority in order to improve the efficiency with which irrigation water is supplied to or drained from land in its district, it may exclude an irrigated property from its district if, in its opinion, expenditure of the amount required to replace the part of the system that supplies water to, or drains water from, that property cannot be justified when the area to be irrigated or drained by that part of the system is taken into account.

(2) The proposal must be to replace the channels or pipes at the one time or to replace them in a series of stages spread over a period of not more than 10 years.

(3) The proposal may have been made, and a stage or stages of the proposal may have been completed or be in progress, when this Act comes into operation.

(4) An authority must not exclude an irrigated property from its district under subsection (1) if the owner or occupier of the property pays to the authority an amount equivalent to the cost of replacing the part of the system that supplies water to, or drains water from, the property less the standard replacement cost in respect of that property.

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(5) If the owners or occupiers of two or more properties propose making a payment under subsection (4) in respect of the cost of replacing the same part of the irrigation or drainage system, the amount to be paid under that subsection in respect of each property in respect of that part of the system will be calculated on the basis that the cost of replacing that part of the irrigation or drainage system is shared in proportion to the number of hectares on each property subject to irrigation at the time of service of the notice (or the last of the notices if more than one) under section 47(2) in respect of the property concerned.

(6) An authority cannot exclude an irrigated property or two or more irrigated properties from its district under subsection (1) if the water allocation of that property or the aggregate of the water allocations of those properties exceeds 25 per cent of the aggregate of the water allocations of all the irrigated properties in the district.

(7) When calculating the percentage referred to in subsection (1), the part of the system that supplies water to, or drains water from, an irrigated property that will be excluded under subsection (1) or that would, but for subsection (4), be excluded under that subsection will be ignored.

(8) In this section, unless the contrary intention appears—

"the irrigation or drainage system" provided by an authority means all the irrigation or drainage systems provided by the authority if it provides more than one such system;

"the part of the system that supplies water to, or drains water from", an irrigated property means that part of the system that is only used to supply water to, or drain water from, the property or from the property and other properties that the authority proposes to exclude under subsection (1);

"the standard replacement cost" in respect of an irrigated property means an amount determined in accordance with the following formula:

$$A = \frac{B}{H_1} \times H_2$$

Where—

- | | |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | is the standard replacement cost |
| B | is the estimated cost of replacing the channels or pipes in accordance with the proposal or, where a stage of the proposal has been completed, the actual cost of completing that stage and the estimated cost of completing the remaining stages of the proposal |
| H ₁ | is the number of hectares that will be irrigated or drained by the irrigation or drainage system after the proposed replacement program is completed |
| H ₂ | is the number of hectares of the property concerned that were subject to irrigation at the time of service of the notice (or the last of the notices if more than one) under section 47(2). |

Compensation

49. (1) Where land is excluded from an irrigation district under this Division the authority must pay to the owner and long term occupier (if any) of the land an amount being—

- (a) in the case of an exclusion under section 47(1)(a)—the value of the water allocation in respect of the land immediately before the exclusion;
- (b) in the case of an exclusion under section 47(1)(b), (c), (d) or (e)—
 - (i) the value of the water allocation in respect of the land immediately before the exclusion or the amount by which the value of the land has been diminished by its exclusion from the district, whichever is the greater; and
 - (ii) the value of any crop that is lost because of the exclusion or the value of the damage to any crop caused by the exclusion.

(2) The amount to be paid under subsection (1) and the proportions in which it will be shared by the owner and long term occupier (if any) may be determined by the Environment, Resources and Development Court if the parties cannot reach agreement.

Division 6—General

Appointment of authorised officers

50. (1) The Minister may appoint a person to be an authorised officer in respect of one or more government or private irrigation districts.

(2) A trust may appoint a person to be an authorised officer in respect of its irrigation district.

Powers of authorised officers

51. (1) An authorised officer may, at any reasonable time, exercise any of the following powers in relation to the irrigation district or districts in respect of which 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, the irrigation or drainage system of the irrigation district 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 the irrigation or drainage system or that are used in or in relation to the irrigation or drainage of land;
- (d) take photographs, films or video recordings;
- (e) put to any person any question relating to the operation of the irrigation or drainage system;
- (f) require a person that the officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence.

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Hindering etc persons engaged in the administration of this Act

52. (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) the Minister;
- (b) a person acting on behalf of the Minister or of a trust;
- (c) 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 6—Landowners

Right to water

53. (1) Subject to subsection (2), the owner or occupier of an irrigated property is entitled to use the quantity of water allocated in respect of that property for the purposes for which it was allocated.

(2) Subsection (1) is subject to—

- (a) the other provisions of this Act; and
- (b) the availability of water of suitable quality; and
- (c) the terms and conditions upon which the authority supplies water to the property.

Restrictions on and obligations of landowners

54. (1) A landowner in an irrigation district must not—

- (a) connect a channel or pipe to the irrigation or drainage system of the district; or
- (b) place a structure or install equipment in a channel or pipe connected to the irrigation or drainage system of the district; or
- (c) supply water supplied to him or her under this Act to any other person,

unless he or she does so at the direction, or with the approval, of the irrigation authority under this Act.

(2) A landowner must not use a method of distributing irrigation water to plants on his or her land that has not been approved by the irrigation authority in respect of the land and the plants to be irrigated.

(3) A landowner—

- (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;
- (b) must maintain, and when necessary repair or replace the irrigation and drainage systems provided by the landowner;
- (c) must not block or impede the flow of water in any part of the irrigation or drainage system except at the direction, or with the approval, of the authority;
- (d) must, when necessary, clear channels and pipes of the irrigation or drainage system provided by the landowner;
- (e) must ensure that channels and pipes on his or her land including those forming part of the irrigation and drainage systems provided by the authority are protected from damage that is reasonably foreseeable.

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(4) Where, in the opinion of an irrigation authority, it is necessary or desirable in the interests of supplying water efficiently to, or draining water efficiently from, land, or in order to meet any duty or other requirement under the *Water Resources Act 1997* (including a licence under that Act) or the *River Murray Act 2003*, the authority 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;
 - (ii) lay pipes;
 - (iii) install fittings or pumps or other equipment,on his or her land; or
- (b) to widen or deepen channels forming part of the 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 the 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 authority 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;
- (b) to comply with the requirements of one 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 the landowner fails to comply with a notice the authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the landowner to the authority.

(8) A landowner who contravenes or fails to comply with a provision of this section or of a notice served on the landowner under subsection (4) or (5) is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Part 7—Charges for irrigation and drainage

Charges

55. (1) An irrigation authority may impose a water supply charge or charges in respect of land comprising its district to recover the costs of supplying water under this Act or to enable it to meet its other liabilities.

(2) An authority may impose a drainage charge or charges in respect of land comprising its district to recover the costs of draining water under this Act or to enable it to meet its other liabilities.

(3) An irrigation authority may fix different factors as the basis for water supply or drainage charges in respect of different parts of its district or may fix charges of different amounts in respect of different parts of its district.

(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 apply to land throughout an irrigation district or be confined to land in any part of an irrigation district.

Declaration of water supply charges

56. (1) An authority 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 one, or a combination of two or more, of the following:

- (a) the fact that land is connected, or the owner or occupier of land is entitled to have it connected, to the irrigation system; or
- (b) the volume of water supplied to land 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 authority thinks fit.

(2) The authority may declare different charges—

- (a) in respect of different parts of its district in order to recover water supply or drainage costs and other liabilities in respect of part of the district;
- (b) for water supplied for irrigation purposes, domestic purposes or other purposes;
- (c) depending upon the quality of the water supplied.

(3) In the case of water supplied for irrigation purposes the authority may declare a basic charge in respect of the water allocation and a further charge, or series of charges, that increase as the volume of water supplied to the land increases in excess of the water allocation.

(4) A water supply charge may be declared after the period to which it relates has commenced.

Minimum amount

57. (1) An irrigation authority may declare a minimum amount that is payable in respect of a water supply charge.

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(2) The minimum amount is payable even though the landowner is not entitled to water or the landowner's entitlement to water is restricted or the landowner has not consumed any water.

(3) Payment of the minimum amount must be credited against the water supply charge.

Drainage charge

58. (1) An authority 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 for irrigating the land.

(2) The authority may exempt the 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 authority 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.

Determination of area for charging purposes

59. 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).

Notice of resolution for charges

60. A 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.

Minister's approval required

61. (1) Where a trust is indebted to the Crown, the Minister or one or more other agencies or instrumentalities of the Crown in an amount that exceeds \$10 000 or in two or more amounts that together exceed \$10 000, 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.

Liability for charges and interest on charges

62. (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 the charges are payable at the date on which the charges first became payable; and

(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) Where charges remain unpaid for one month or more after the date on which they became payable, interest is payable on the charges and on the interest (if any) already accrued under this subsection in accordance with the regulations.

(4) The interest referred to in subsection (3) will be at a rate fixed by the authority within the limits prescribed by regulation.

(5) Charges and interest on charges are a charge on the land in relation to which they are payable.

(6) In this section—

"charges" means water supply and drainage charges and includes—

- (a) charges payable to an authority under an agreement with the owner or occupier of land outside the authority's district for the supply of water to, or the drainage of water from, the land;
- (b) rates or charges, and interest on rates or charges, payable immediately before the commencement of this Act under the *Irrigation Act 1930* or one of the repealed Acts;
- (c) any other amount in which an owner or occupier of land is indebted to the authority under this Act or under an agreement made under this Act.

Sale of land for non-payment of charges

63. (1) Where charges, or interest on charges, have been unpaid for one year or more, the authority may sell the land in respect of which the charges are payable.

(2) Before an authority 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 one month of service of the notice (or such longer time as the authority may allow), the authority 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 encumbrancee 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 for Environment and Heritage.

(4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the authority may proceed to sell the land.

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(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 authority 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 authority in proceeding under this section are paid to the authority the authority 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 authority may sell the land by private contract for the best price that it can reasonably obtain.

(9) Any money received by the authority 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 authority 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 authority 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 as unclaimed money under the *Unclaimed Moneys Act 1891*.

(11) Where land is sold by the Minister or a trust in pursuance of this section, an instrument of transfer under the Minister's hand or 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 Minister where the Minister is the authority, or in all other cases, by the presiding officer of the trust concerned 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 will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(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 authority under an agreement with the owner or occupier of land outside the authority's district for the supply of water to, or the drainage of water from, the land;
- (b) rates or charges, and interest on rates or charges, payable immediately before the commencement of this Act under the *Irrigation Act 1930* or one of the repealed Acts;
- (c) any other amount in which an owner or occupier of land is indebted to the authority under this Act or under an agreement made under this Act.

Authority may remit interest and discount charges

64. (1) Where, in an authority's opinion, the payment of interest would cause hardship, the authority may remit the whole, or part, of the interest.

(2) An authority may discount charges to encourage early payment of the charges.

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Part 8—Appeals**Appeals**

65. (1) A person may appeal to the Environment, Resources and Development Court against a decision of the Minister or a trust—

- (a) refusing to grant the appellant's application for the inclusion of land in or the exclusion of land from an irrigation district or to impose conditions in relation to the grant of such an application;
- (b) excluding land owned by the appellant or of which the appellant is a long term occupier or in which the appellant has a registered interest from the Minister's or the trust's irrigation district;
- (c) as to the factors on which irrigation or drainage charges are to be based;
- (d) relating to the water allocation in respect of the appellant's land;
- (e) directing the appellant to undertake an act or activity under Part 6;
- (f) in relation to any other matter affecting the appellant.

(2) An appeal must be instituted within one 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 Minister or trust for further consideration;
- (c) make such incidental or ancillary order as the Court considers is necessary or desirable.

Decision may be suspended pending appeal

66. (1) Where the Minister, a trust or the Court is satisfied that an appeal against a decision of the Minister or the trust has been instituted under this Part, or is intended, the Minister, 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.

Appeal against proposal to abolish district

67. (1) A trust or a member of a trust may appeal to the Environment, Resources and Development Court against the Minister's proposal to abolish the trust's district under section 14.

(2) An appeal must be instituted within one month after notice of abolition of the district 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 one or more of the following—
 - (i) direct the Minister to withdraw the notice of abolition;
 - (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.

Constitution of Environment, Resources and Development Court

68. 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 Presiding Member of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one 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 one 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 one 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.

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Part 9—Financial provisions

Financial assistance to landowners in government irrigation districts

69. (1) The Minister may, upon such terms and conditions as he or she determines, grant financial assistance to the owner or occupier of an irrigated property within a government irrigation district—

- (a) for the purpose of making improvements to the property in connection with its irrigation or drainage; or
- (b) for the purpose of discharging a mortgage over the property.

(2) Assistance under this section may consist of a non-repayable grant or a loan.

(3) Money required for the purposes of this section will be paid out of money provided by Parliament for those purposes.

Trust's power to borrow etc

70. (1) A 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.

Financial assistance to trust

71. (1) The Minister may, on such terms and conditions as he or she determines, grant financial assistance to a trust in carrying out its functions.

(2) Money required for the purposes of this section will be paid out of money provided by Parliament for those purposes.

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Part 10—Miscellaneous

Unauthorised use of water

72. A person who takes water from the irrigation or drainage system of a government or private irrigation district 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: \$5 000.

Expiation fee: \$315.

Division of land

73. (1) The owner of land within an irrigation district may apply to the irrigation authority for its consent to divide the land.

(2) The authority may give its consent subject to such conditions as it thinks fit.

(3) Land may be divided without the consent of the authority but in that event the following provisions apply:

(a) a new allotment created by the division does not cease to be part of the irrigation district by reason only of the fact that it is not connected to the irrigation system;

(b) the authority has no obligation to extend its irrigation or drainage system to a new allotment;

(c) a new allotment cannot be connected to the irrigation or drainage system provided by the authority without the authority's approval;

(d) the authority may do one or both of the following:

(i) reduce the original water allocation for the land;

(ii) divide the water allocation (whether reduced or not) between the allotments created by the division in such proportions as it thinks fit;

(e) the authority 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.

False or misleading information

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

Maximum penalty: \$5 000.

Expiation fee: \$315.

Protection of irrigation system etc

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

Maximum penalty: \$5 000.

Expiation fee: \$315.

Protection from liability

76. (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 a trust, board or committee of which he or she is a member, of a power, function or duty under this Act in relation to an irrigation district.

(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 irrigation authority for the district.

(3) An irrigation authority 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 authority except where the authority 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 authority's failure to supply water in accordance with this Act where the failure was caused by a break down in the irrigation system provided by the authority, except where the authority 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 authority is not liable for loss or damage caused by, or resulting from, any action—

- (a) to meet any duty or other requirement under the *Water Resources Act 1997* (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.

Offences by bodies corporate

77. Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

General defence

78. 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.

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Proceedings for offences

79. (1) 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.

(2) Proceedings for an offence against this Act cannot be commenced (except by a trust) without the written authorisation of the Minister.

(3) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted, in the absence of proof to the contrary, as proof of the authorisation.

Evidentiary provisions

80. (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 irrigated property or other 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 authority 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.

Service etc of notices

81. (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; or
- (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; or
- (c) by posting it to the person at his or her last known address; or

- (d) by fixing the notice in the prescribed manner in a prominent position on the land to which the notice relates; or
- (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) Where 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, one of the owners or occupiers of the land.

Regulations by the Governor

82. (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 the irrigation or drainage system of a government or private irrigation district;
 - (ii) the manner in which irrigation water may be used in a government or private irrigation district;
 - (iii) the times at which irrigation water may be used in a government irrigation district;
 - (iv) maintaining or improving the quality of irrigation water in a government or private irrigation district;
 - (v) the drainage and disposal of irrigation water from a government or private irrigation district;
- (b) make provisions for, or in relation to, the assessment of the quantity of irrigation or other water used by a landowner in a government or private irrigation district;
- (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 authority;
 - (ii) in relation to any other matter connected with the administration of this Act;
- (d) prescribe fines not exceeding \$1 250 for contravention of or failure to comply with a regulation.

Irrigation Act 1994

Schedule 1—Repeal of Acts

The following Acts are repealed:

- The Irrigation on Private Property Act 1939*
- The Lower River Broughton Irrigation Trust Act 1938*
- The Kingsland Irrigation Company Act 1922*
- The Pyap Irrigation Trust Act 1923*
- The Ramco Heights Irrigation Act 1963.*

Schedule 2—Transitional provisions

Vesting of property, rights etc

1. (1) The property, rights and liabilities vested in or attached to each board of management constituted under the *Irrigation on Private Property Act 1939*, the board of management constituted under *The Ramco Heights Irrigation Area Act 1963* and the Pyap Irrigation Trust immediately before the commencement of this Act vest in or attach to the corresponding trust constituted by this Act.

(2) The property, rights and liabilities vested in or attached to Lower River Broughton Irrigation Trust immediately before the commencement of this Act vest in or attach to the District Council of Port Pirie.

(3) The irrigation works (as defined by section 82 of the *Crown Lands Act 1929*) vested in the Lyrup Village Association immediately before the commencement of this Act vest in the trust constituted by this Act in respect of the irrigation district served by those works.

Water allocations

2. (1) If—

(a) there is no water allocation assigned to land immediately before the commencement of this Act; and

(b) on the commencement of this Act the land comprises part of an irrigation district under this Act,

the authority for the district may fix a water allocation in respect of the land.

(2) The water allocation must not exceed the quantity of water that was required to irrigate the crop grown on the land in the immediately preceding season.

Rating period under repealed Acts

3. (1) Where this Act comes into operation during a rating period under the *Irrigation Act 1930* or under one of the repealed Acts, rates or other charges for that period that would have become payable in respect of land under the relevant Act if it had not been amended or repealed by this Act will be payable to the relevant irrigation authority by the owner and occupier of the land as if the relevant Act had not been amended or repealed.

(2) The relevant irrigation authority may serve any notice or do any other thing that is necessary under the relevant Act in relation to the imposition of rates or charges under that Act.

(3) An amount payable under subclause (1) attracts interest and is recoverable in the same way as charges under Part 7.

(4) A rating period referred to in subclause (1) will be taken to be a charging period for the purposes of this Act.

(5) In this clause—

"**rating period**" means a period in respect of which rates or charges for the supply of water to, or the drainage of water from, land are payable under the *Irrigation Act 1930* or under one of the repealed Acts;

"**relevant irrigation authority**" in respect of land means—

(a) where the land is connected to the irrigation or drainage system of a government irrigation district—the Minister;

(b) where the land is connected to the irrigation or drainage system of a private irrigation district—the trust for that district.

Entitlement to vote

4. (1) A person who is not an owner of an irrigated property but who was, by reason of his or her status in relation to a property that is an irrigated property under this Act, entitled to attend and vote (to the exclusion of the owner of the property) at meetings of the board of management, trust or other body having the administration of an irrigation area or district under one of the repealed Acts may attend and vote at meetings of the relevant trust to the exclusion of the owner of the property while he or she retains that status in relation to that property and retains possession of the property.

(2) A person referred to in subclause (1) will be taken to be a member of the trust while he or she retains the right to attend and vote at meetings of the trust under that subclause.

Irrigation Act 1994

Obligation to supply water etc outside district

5. (1) Where—

- (a) immediately before the commencement of this Act a water allocation applied in respect of land under the *Irrigation Act 1930* or one of the repealed Acts; and
- (b) water was supplied to the land, or drained from the land, under the relevant Act during the rating period occurring immediately before the commencement of this Act; and
- (c) the land is not an irrigated property for the purposes of this Act,

an agreement under section 37 will be taken to subsist between the authority for the irrigation district and the occupier of the land under which—

- (d) the authority agrees to continue to supply water to, or drain water from, the land upon the terms and conditions (if any) that applied immediately before the commencement of this Act; and
- (e) the occupier agrees to pay to the authority charges for the supply of water to, or drainage of water from, the land.

(2) Part 7 applies to the imposition and recovery of charges referred to in subclause (1)(e) as if the land were an irrigated property within the authority's irrigation district.

(3) The water allocation applying in respect of the land immediately before the commencement of this Act applies in respect of the land after that commencement and may be transferred, while the agreement subsists, in whole or in part as though the land were an irrigated property within the authority's district.

(4) The agreement subsists for the benefit of successive occupiers of the land until it is terminated by an occupier or by subclause (5) or under subclause (6).

(5) The agreement is terminated if the owner of the land has transferred the water allocation applying in respect of the land to the authority or to an irrigated property or properties within the district.

(6) The authority may terminate an agreement—

- (a) by serving on the owner and occupier of the land not less than five years notice of termination; or
- (b) in circumstances that would have enabled the authority to exclude the land under section 47(1)(c), (d) or (e) if it had been an irrigated property.

Exclusion of land from Cobdogla irrigation district

6. Section 48 applies to and in relation to the Cobdogla irrigation district with the following variations:

- (a) strike out subsections (1), (2) and (3) and substitute the following subsections:

(1) If the Minister proposes to replace part of the Cobdogla irrigation or drainage system in order to improve the efficiency with which irrigation water is supplied to or drained from land in the district, the Minister may exclude an irrigated property from the district if, in his or her opinion, expenditure of the amount required to replace the part of the system that supplies water to, or drains water from, that property cannot be justified when the area to be irrigated or drained by that part of the system is taken into account.

(2) The estimated cost of the proposal must be one million dollars or more and the proposal must be made after this Act comes into operation or have been made within three years before it came into operation.;

- (b) strike out subsection (7);

- (c) strike out the definition of "**the standard replacement cost**" in subsection (8) and substitute the following definition:

"the standard replacement cost" in respect of an irrigated property means an amount determined in accordance with the following formula:

$$A = \frac{B}{H_1} \times H_2$$

Where—

- A is the standard replacement cost
- B is the estimated capital value of the pipes (or channels and pipes if the system has not been fully converted to pipes) of the irrigation or drainage system provided by the Minister after replacement of the relevant part of the system
- H₁ is the number of hectares that will be irrigated or drained by the irrigation or drainage system after replacement of the relevant part of the system
- H₂ is the number of hectares of the property concerned that were subject to irrigation at the time of service of the notice (or the last of the notices if more than one) under section 47(2).

* * * * *

Irrigation Act 1994

APPENDIX 1

LEGISLATIVE HISTORY

Amendments

The *Irrigation Act 1994* amended the following:

Crown Lands Act 1929
Crown Rates and Taxes Recovery Act 1945
Irrigation Act 1930
Local Government Act 1934
Rates and Land Tax Remission Act 1986

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 24.11.03
Section 2:	repealed by 33, 1998, s. 6 (Sched.)
Section 4(1):	definition of "trust" amended by 87, 1996, s. 3 definition of "water recovery licence" amended by 33, 1998, s. 6 (Sched.)
Section 10(2):	amended by 87, 1996, s. 4
Section 13(2):	amended by 87, 1996, s. 5(a)
Section 13(3):	amended by 87, 1996, s. 5(b)
Section 13(5):	substituted by 33, 1998, s. 3
Section 14(6):	substituted by 33, 1998, s. 4
Section 14A:	inserted by 33, 1998, s. 5
Section 16(2):	amended by 87, 1996, s. 6
Section 18(4):	substituted by 23, 2001, s. 80
Section 21(2):	substituted by 87, 1996, s. 7
Section 21(2a):	inserted by 87, 1996, s. 7
Section 24(5):	amended by 33, 1998, s. 6 (Sched.)
Section 27(2):	amended by 87, 1996, s. 8
Section 29(2) and (3):	substituted by 87, 1996, s. 9(a)
Section 29(3a):	inserted by 87, 1996, s. 9(a)
Section 29(4a) - (4d):	inserted by 87, 1996, s. 9(b)
Section 29(6) - (8):	inserted by 87, 1996, s. 9(c)
Section 30(1):	amended by 63, 2000, Sched. 4 (cl. 3)
Section 30(4):	inserted by 35, 2003, Sched. cl. 11(a)
Section 36(1):	amended by 35, 2003, Sched. cl. 11(b)
Section 36(2):	substituted by 35, 2003, Sched. cl. 11(c)
Section 36(2a):	inserted by 35, 2003, Sched. cl. 11(c)
Section 41(2):	amended by 33, 1998, s. 6 (Sched.)
Section 46:	amended and designated as s. 46(1) by 87, 1996, s. 10
Section 46(2):	inserted by 87, 1996, s. 10(c)
Section 46A:	inserted by 64, 1997, s. 3
Section 52(1):	amended by 33, 1998, s. 6 (Sched.)
Section 54(4):	amended by 35, 2003, Sched. cl. 11(d)
Section 54(8):	amended by 33, 1998, s. 6 (Sched.)
Section 63(3) and (13):	amended by 33, 1998, s. 6 (Sched.)
Section 68:	amended by 88, 2000, Sched. 1 cl. 3
Sections 72, 74 and 75:	amended by 33, 1998, s. 6 (Sched.)
Section 76(2):	amended by 35, 2003, Sched. cl. 11(e)
Section 76(4):	inserted by 35, 2003, Sched. cl. 11(f)
Section 79(1):	substituted by 33, 1998, s. 6 (Sched.)
Section 82(2):	amended by 33, 1998, s. 6 (Sched.)
Schedule 3:	amended by 87, 1996, s. 11; omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.03

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.