THE
IRRIGATION ACTS, 1922 to 1965

Irrigation Act of 1922, 13 Geo. 5 No. 29
Amended by
Water Act of 1926, 17 Geo. 5 No. 12
Irrigation and Water Supply Acts Amendment Act of 1931, 22 Geo. 5 No. 44
Irrigation Acts Amendment Act of 1933, 24 Geo. 5 No. 21
Irrigation and Water Supply Commission Act and Other Acts Amendment Act of 1949, 13 Geo. 6 No. 48, Part III
Irrigation Acts and Other Acts Amendment Act of 1954, 3 Eliz. 2 No. 27
Irrigation Acts and Another Act Amendment Act of 1957, 6 Eliz. 2 No. 42
Irrigation Acts Amendment Act of 1959, 8 Eliz. 2 No. 28
Irrigation Acts Amendment Act of 1961, 10 Eliz. 2 No. 6
Irrigation Acts Amendment Act of 1965, No. 6
Acquisition of Land Act of 1967, No. 48, s. 3 (2) First Schedule

An Act to make Provision for the Construction, Maintenance, and Management of Works for the Storage and Supply of Water for the purposes of Irrigation, and for other purposes

[Assented to 18 October 1922]

1. Short title. This Act may be cited as “The Irrigation Act of 1922.”

2. Interpretation. In this Act, unless the context otherwise indicates, the following terms have the meanings respectively assigned to them, that is to say:

“Authorised,” when used with respect to persons—An employee of the Commissioner authorised by it either generally or for any particular purpose under this Act; when used with respect to machinery fittings and other matters—Authorised by this Act or by the Commissioner;

“Channel”—Any ditch, channel, race, aqueduct, trench, conduit, tunnel, sluice, fluming, or line of pipes;

“Commissioner”—The Commissioner of Irrigation and Water Supply under and within the meaning of “The Irrigation and Water Supply Commission Acts, 1946 to 1949”;

“Construct” includes provide, set up, dig, excavate, erect, lay down or place: the power or duty to construct includes the power or duty to maintain when constructed; and correlatives have the like meaning;
“Crown land”—All land in Queensland, except land which is, for the time being—
(a) Lawfully granted or contracted to be granted in fee-simple by the Crown, or
(b) Reserved for or dedicated to public purposes, or
(c) Subject to any lease or license lawfully granted by the Crown;
Provided that land held under an occupation license shall be deemed to be Crown land;

“Daily penalty”—A penalty for each day on which an offence is continued or repeated—
(a) After notice has been given to the offender of the commission of the offence; or
(b) After a conviction or order by any court;

“Domestic purposes” includes all the purposes for which water is ordinarily used in or in connection with a dwelling-house or the land attached thereto, or in watering gardens appurtenant to dwelling-houses (and not used for the purposes of business), or in cleansing private vehicles: the term does not include the use of water for any manufacturing purpose, or for irrigation, or for water power;

“Drainage”—Includes the draining, by means of any work, of any low-lying or swampy ground, or of flood or other waters of any stream or lake, or of any surplus surface or subsurface irrigation waters; and “drainage work” includes a work constructed or used for any purpose of drainage;

“Drainage Area”—A Drainage Area constituted under this Act;

“Employee”—Any State officer or other person whosoever employed under or pursuant to this Act;

“Fitting”—A pipe, valve, meter, wire, lamp, lamp iron, conductor, or other fitting apparatus or appliance for or in connection with water supply or the supply of power;

“Improvements” includes all works, structures, machinery, plantations, and other improvements constructed on a holding under the authority of this Act;

“Irrigable” as applied to land—Land of such situation and quality as to be capable of being irrigated from the works or proposed works of an undertaking;

“Irrigation Acts”—This Act and “The Irrigation Areas (Land Settlement) Acts, 1933 to 1954”;

“Irrigation Area” or “Area”—An Irrigation Area constituted under this Act;

“Irrigation undertaking” or “Undertaking” includes all works and operations necessary and incidental to the carrying into effect the objects and purposes of this Act within and in relation to an Area: the term includes so much of the Commissioner’s business as relates to the undertaking concerned;
“Land”—All messuages, structures, premises, lands, tenements, and hereditaments of every tenure, also streams, reservoirs, and water of every description, also easements of every description: the term, when necessary, includes any part of a structure, curtilage, or premises;

“Local Authorities Act”—“The Local Authorities Act of 1902” and any Act amending or in substitution for that Act;

“Local Authority”—Any Local Authority or Joint Local Authority constituted under or pursuant to the Local Authorities Act;

“Machinery”—Any machine, machinery, instrument, or fitting for carrying into effect any of the objects authorised by this Act;

“Meter”—Any instrument, apparatus, or appliance for measuring and ascertaining the quantity of water or the quantity of power, as the case may require;

“Minister”—The Secretary for Public Lands or other Minister of the Crown for the time being charged with the administration of this Act;

“Noxious animal”—Any animal which the Commissioner may from time to time, by notification in the Gazette, declare to be noxious;

“Noxious plant”—Any weed, plant, grass, or growth which the Commissioner may from time to time, by notification in the Gazette, declare to be noxious: the term includes any part and seeds of any such weed, plant, grass, or growth;

“Occupier”—The person in actual occupation of land, or, if there is no person in actual occupation, the person entitled to possession of the land;

“Order in Council” or “Order”—An Order in Council made or purporting to be made under or for the purposes of this Act;

“Owner”—The person for the time being entitled to receive the rents and profits of the land in connection with which the word is used, whether on his own account or as the agent of or trustee for any other person, or who would be entitled to receive the same if the land were let at a rent: the term includes the registered proprietor under the Acts relating to real property and any person seised of the legal estate in land;

“Person” includes corporation, company, association, syndicate, firm, partnership, and local authority;

“Pipe”—A main, main-pipe, pipe, stop-cock, water-cock, syphon, hydrant, branch, or other similar apparatus;

“Post”—Any post, pole, pillar, pilaster, tower, or other above-ground structure or contrivance for carrying, supporting, or suspending any conductor or channel;

“Power”—Electric current, electric light, electrical power, and water power, or any of them;

“Prescribed”—Prescribed by this Act;
“Public Works Land Resumption Act”—“The Public Works Land Resumption Act of 1906” and any Act amending or in substitution for that Act;

“Regulations”—Regulations made under the authority of this Act;

“Reservoir”—A reservoir, bore, dam, tank, cistern, or well;

“Road”—Any highway, bridge, road, street, public place, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and any public wharf or jetty and—
(a) Any bridge, culvert or other structure and the approaches thereto constructed by the Commissioner or permitted by him to be constructed on, over, under, through or across any channel or land set aside or reserved for channel purposes for providing a means of access to any road from land wherefrom that road is separated by that channel or land so reserved; and

(b) The roadway or pavement of any road within the meaning of this definition.

“Secretary”—The secretary to the Commissioner: the term, when necessary, includes the employee for the time being authorised to discharge the duties of the secretary;

“Stock”—Horses, cattle, sheep, and pigs, and such other animals as the Commissioner from time to time, by notification in the Gazette, declares to be stock for the purposes of this Act;

“Stream”—A river, creek, spring, waterway, watercourse, or other water: the term includes the bed of a river, creek, watercourse, or channel in which water flows either ordinarily, intermittently, or occasionally;

“Structure”—Any building, wall, fence, wharf, pier, jetty, or other structure, or anything affixed to or projecting from any structure;

“This Act”—This Act and all regulations and Orders made thereunder;

“Water right”—A right in respect of irrigable land to a quantity of water annually out of the water available for irrigation in an irrigation area;

“Works”—Any waterworks, reservoir, stream, culvert, channel, weir, water, land, generating works, line, station, post, conductor, pipe, machinery, structure, or plant of any description whatsoever necessary or proper for the purposes of the undertaking, and all other works which the Commissioner under this Act is authorised to construct, and all matters and things connected with any works or appurtenant thereto: the term includes any tramway, quarry, gravel pit, or coal-mine vested in or under the control of the Commissioner.

As amended by Water Act of 1926, ss. 16A, 17 (1); Irrigation and Water Supply Acts Amendment Act of 1931, s. 5; Act of 1933, 24 Geo. 5 No. 21, s. 21; Act of 1949, 13 Geo. 6 No. 48, s. 13; Act of 1954, 3 Eliz. 2 No. 27, s. 10.

Acts referred to:

IRRIGATION ACTS, 1922 TO 1965  

Irrigation Areas (Land Settlement) Acts, 1933 to 1954; see now Irrigation Areas (Land Settlement) Act of 1962, title LAND, Vol. 9, p. 79.


Public Works Land Resumption Acts, 1906 to 1955, repealed; see now Acquisition of Land Act 1967–1969, title WORKS.

“Channel”—As to the power of the Commission to authorize a consumer to construct a channel, see Schedule, Part I, r. 25.

“Commissioner”—For status and constitution of the Commissioner, see s. 4. As to appointment of Deputy Commissioner and of Secretary and other employees, see s. 5. For Commissioner’s powers and duties, see ss. 6, 10, 12, 22. As to loans to Commissioner, see s. 14; as to vesting of Crown land, s. 15.

Provisions relating to the Commissioner’s business, property, works and undertakings are set out in the Schedule, Part I.

“Construct”—For preliminaries to construction, see Schedule, Part I, r. 13, post; for Commissioner’s powers of construction, ibid., r. 14.

“Crown land”—For the vesting of Crown lands in the Commissioner, see s. 15 (1); for the placing of Crown lands under the Commissioner’s control, s. 15 (2).

“Drainage Area”—As to constitution of Drainage Areas, see s. 9a.

“Employee”—As to appointment of employees, see s. 5. For other provisions relating to employees, see Schedule, Part I, r. 3 (to give security and bound to secrecy), r. 41 (to deliver up property on dismissal, etc., and to account on demand).

“Fitting”—Provisions as to fittings are contained in the Schedule, Part I, r. 26, post.

“Irrigation Area”—As to Commissioner’s report on proposed irrigation area, see s. 7 (2); as to creation of irrigation area, s. 9; as to erection of irrigation area into a shire, s. 10.

“Irrigation undertaking”—As to administration by Commissioner, see s. 8, post; as to approval of undertaking by Parliament, s. 7 (1); as to Commissioner’s report, s. 7 (2), (3).

“Land”—As to approval by Governor in Council of exchange or sale of land by Commissioner, see s. 4 (2); as to vesting of Crown land in Commissioner, s. 15 (1); as to control of Crown lands by Commissioner, s. 15 (2).

“Local Authority”—As to the effect of erecting an irrigation area into a shire, see s. 10.

“Noxious animal”—For scope of regulations, see Schedule, Part II, r. 17, post.

“Noxious plant”—For scope of regulations, see Schedule, Part II, r. 16, post.

“Occupier”—The occupier has a statutory right to a supply of water subject to the Act. See Schedule, Part I, rule 20.

“Order in Council”—Orders in Council have the same force as the Act itself. See s. 18. They may, however, be annulled by Parliament within a limited period. See s. 19.

“Owner”—As to sufficiency of designation of owner without naming or describing him, see the Schedule, Part I, r. 12 (9), post.

“Power”—Provisions authorising the generation and conservation of power are contained in the Schedule, Part I, r. 19, post.

“Regulations”—Power to make regulations is given to the Governor in Council by s. 17. As to force of regulations, see s. 17 (4). For subject matter of regulations, see the Schedule, Part II, post.

“Road”—Provisions governing the breaking-up of roads are set out in the Schedule, Part I, r. 17, post.

“Secretary”—For power of Governor in Council to appoint secretary, see s. 5 (1), post; as to exercise of functions of secretary by deputy commissioner, ibid., proviso. As to right of secretary to institute and carry on proceedings, see Schedule, Part I, r. 1 (2); as to his custody of books, ibid., r. 5.

“This Act”—See definitions of “Regulations” and “Order in Council” and notes thereon.
"Works"—As to construction of works, see the Schedule, Part I, rr. 13, 14, post; as to penalty for refusal of officer in charge of works to give up possession, see r. 42, ibid.

3. [Repealed by Act of 1931, 22 Geo. 5 No. 44, s. 7.]

4. (1) **Commissioner to be a corporation sole—powers and liabilities.** The Commissioner, representing the Crown, shall be a corporation sole by the name of "The Commissioner of Irrigation and Water Supply," and by that name shall have perpetual succession and an official seal, and shall be capable in law of suing and being sued, and shall have power to take, purchase, sell, exchange, lease, and hold land, goods, chattels, and other property.

(2) But save as by this Act is expressly provided, no exchange or sale of any land vested in the Commissioner shall have any effect unless or until the same has been approved by the Governor in Council.

(3) [Repealed.]

As amended by Act of 1926, 17 Geo. 5 No. 12, s. 16A (c); Act of 1951, 22 Geo. 5 No. 44, s. 7; Act of 1954, 3 Eliz. 2 No. 27, s. 11.

For definitions of "Commissioner" and "land", see s. 2.

5. **Employees.** (1) The Governor in Council shall appoint a secretary who, subject to the direction of the Commissioner, shall have power to execute documents on his behalf and affix the seal of the Commissioner thereto. He shall also have such other powers and perform such other duties as are from time to time appointed by the Commissioner.

Provided that the Governor in Council may appoint a Deputy Commissioner who may also be and act as and exercise all the powers of and perform all the duties and functions of secretary under this Act and under "The Water Acts, 1926 to 1931," and may hold his office as secretary in conjunction with his office as Deputy Commissioner.

(2) The Governor in Council shall appoint and employ such engineers, officers, clerks, and other employees to assist in the execution of this Act as he thinks necessary.

The Commissioner may from time to time appoint a bailiff or bailiffs for the purpose of levying moneys due to the Commissioner by distress and sale.

A bailiff so appointed shall have power and authority to sell by public auction any goods and chattels seized under warrant of distress without taking out a license as an auctioneer.

(3)—(7). [Repealed.]

Substituted by Act of 1926, 17 Geo. 5 No. 12, s. 16A (d); as amended by Act of 1931, 22 Geo. 5 No. 44, s. 7.

Act referred to:


For definitions of "secretary" and "employee", see s. 2.

For constitution of Commissioner, see definition, ibid.

For procedure on landlord's distress for rent, see Distress Replevin and Ejectment Act of 1867, ss. 45 et seq., title LANDLORD AND TENANT, Vol. 9, p. 601.

6. **Commissioner to manage undertakings.** Subject to this Act, every irrigation undertaking shall be administered by the Minister, and under the Minister the Commissioner as representing the Crown is hereby authorised and empowered to carry on the same.

For constitution of Commissioner, see definition in s. 2.
7. (1) **Undertaking to be approved by Parliament.** No irrigation undertaking shall be established until the proposed scheme of the undertaking has been submitted to the Legislative Assembly for approval, and has been approved by a resolution of the Legislative Assembly.

(2) **Report of Commissioner.** When it is proposed to establish an irrigation undertaking and to constitute an Irrigation Area in relation thereto, the Commissioner shall forward to the Minister a report with respect to the proposed scheme.

(3) **Particulars of scheme.** Every such report shall contain or be accompanied by the following particulars, that is to say:—

(a) **Boundaries of Area.** A map or plan showing the boundaries and the extent of the lands proposed to be comprised in the Area;

(b) **Scheme of works.** A description setting forth the scheme and purpose of the proposed works;

(c) **Plan of works.** A general plan, prepared on a scale approved by the Minister, showing the nature and extent of the proposed works;

(d) **Cost of works.** An estimate of the total cost of the works and of the annual charges necessary for the maintenance and management of the undertaking;

(e) **Proposed method of defraying cost.** The method by which it is proposed that moneys should be provided for defraying the cost of the works;

(f) **Revenue of Area.** An estimate of the annual revenue expected to be derived from the proposed works; such estimate of annual revenue to allow of the suspension, for the first three years after settling on the Area, of any payments by the settler other than such rates as the Commissioner in its capacity of a Local Authority may require;

(g) **Water available. Quantity of water required.** An estimate of the quantity of water that is proposed to be made available for use for irrigation purposes in the Area, after making allowance for present and probable future requirements for all or any other purposes; and a statement of the sources from which it is proposed to obtain it, specifying, where deemed necessary, the quantity of water proposed to be taken from each of such sources and the seasons at which it is to be taken;

(h) **Streams, etc., in Area.** A statement of the existing streams, lakes, lagoons, marshes, or swamps, within or outside of the Area, over or from which it is intended that the Commissioner should exercise any control or draw any part of its supply, and the nature or extent of such control, and for what purpose such control is necessary;

(i) **Existing waterworks.** An estimate of the approximate value of the existing waterworks, if any, within the Area which it is proposed that the Commissioner should take over from any existing authority or person;
(j) **Land capable of irrigation.** A statement of the quantity of irrigable land that may be beneficially irrigated, and of the character and description and value of such land in its then state, including all existing improvements;

(k) **Works for joint benefit of Area and other land, etc.** A statement, if the fact is so, that the proposed works could be made available to supply other lands besides those comprised in the proposed Area, or for purposes of supplying power, and an estimate of the proportion of the water made available by the works which would be required for the proposed Area and the proportion which would be available for other lands or for purposes of power;

(l) Any other special advantages which are likely to accrue generally from the establishment of the undertaking.

(4) **Report, etc., to be laid before Parliament.** Copies of such report, with all accompanying plans, sections, books of reference, and other documents relating to the proposed scheme, shall be prepared by the Commissioner and laid before the Legislative Assembly. Every such report shall contain a plan showing the boundaries and extent of other lands which may be acquired for the purposes of this Act and an estimate of the cost of acquiring same.

No resolution approving of the establishment of any irrigation undertaking shall be adopted unless or until such report and documents have been so laid before the Legislative Assembly.

(5) **Dawson Valley irrigation.** Notwithstanding anything in this section contained, it shall be lawful for the Governor in Council without compliance with the provisions of this section or obtaining further or other approval of the Legislative Assembly than is hereby granted, to proceed with the Castle Creek section of the Dawson Valley irrigation proposal and to expend such moneys thereon, as in his opinion are necessary, to an amount not exceeding one hundred and twenty thousand dollars; and for all the purposes of this Act the said Castle Creek section and all works constructed under the authority of this subsection shall be deemed to be a part of an irrigation undertaking approved by the Legislative Assembly and established by the Governor in Council, and the Minister shall have all the powers granted by this Act accordingly.

All moneys so expended shall be deemed to be a loan to the Commissioner under this Act and shall be charged against the Dawson Valley Irrigation Fund, as and when the same is established.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 12.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

For constitution of Commissioner, see definition in s. 2.

"Minister" is defined, ibid.

8. **Authority to construct works.** After the establishment of an irrigation undertaking has been approved by resolution of the Legislative Assembly, the Governor in Council may establish the undertaking, and the Minister may cause all proper works connected therewith to be constructed, and may give such orders and directions for the due carrying out and execution of the works and for the effective control and direction of the Commissioner and other employees in carrying out and executing the same. as
appear expedient; and the Commissioner, under the Minister, shall have and may exercise all the powers of this Act with respect to the undertaking so established.

For constitution of Commissioner, see definition in s. 2.

As to approval of proposed scheme by Parliament, see s. 7 (1).

9. (1) Creation of Irrigation Area, etc. The Governor in Council may from time to time by Order in Council—

(i) Constitute an area defined in the Order in Council to be, in relation to the established irrigation undertaking specified therein, an Irrigation Area and assign a name to that Irrigation Area;

(ii) Unite two or more Areas into one Area;

(iii) Divide an Area into two or more Areas;

(iv) Alter an Area by amending the boundaries thereof so as to exclude therefrom any part thereof or so as to include therein any additional area, or so as to both so exclude and include;

(v) Include in an Area an outlying district;

(vi) Abolish an Area;

(vii) Adjust any financial or other matters in his opinion requiring adjustment by reason of any Order;

(viii) Change the name of an Area.

(2) Where several Areas with common headworks. Where two or more Areas are constituted and it is proposed that a supply of water for each Area shall be obtained from the same source, the Order shall, in the case of each Area, contain a statement of the whole proposed scheme of which the works of each Area form part and, if deemed necessary, of the respective quantities or proportions of water which may be taken within a given time from the source for the purposes of each Area.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 13.

“Irrigation area” is defined in s. 2.

As to erection of irrigation area into a shire, see s. 10.

9A. Drainage Area. (1) The Governor in Council may from time to time by Order in Council—

(i) Constitute an area defined in the Order in Council to be a Drainage Area, and assign a name to that Area;

(ii) Alter a Drainage Area by amending the boundaries thereof so as to exclude therefrom any part thereof, or so as to include therein any additional area;

(iii) Change the name of a Drainage Area; or

(iv) Abolish a Drainage Area.

(2) An area either wholly within or partly within and partly without an Irrigation Area may be constituted to be a Drainage Area.

An additional area either within or without, or partly within and partly without an Irrigation Area may be included in a subsisting Drainage Area.

Inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 14.
10. Irrigation Area to be a Shire. (1) At any time after the constitution of an Irrigation Area, that Area may be constituted a Shire within the meaning of the Local Authorities Act by the Governor in Council by an Order.

Whereupon the land comprised in such Shire shall be excluded from the Area or Areas of the Local Authority or Local Authorities in which it was formerly included; and every Local Authority formerly having any jurisdiction over any such land comprised within such Shire shall cease to have or exercise any such jurisdiction.

Notwithstanding anything contained in the Local Authorities Act, the Commissioner shall constitute and for all purposes be deemed to be the Council of such Shire and a Local Authority within the meaning of the Local Authorities Act, and, subject to the Minister, shall have and be entitled to, and may exercise such and so many of the powers, authorities, jurisdiction, and immunities of a Local Authority under the Local Authorities Act, including the power to make, levy, and recover rates on land as are declared by the Governor in Council by an Order or Orders:

(2) Subject to this section, the Governor in Council may by Order in Council—

(a) Constitute for any Shire to which subsection one of this section applies, a Council under and within the meaning of the Local Authorities Act; or

(b) Include any such Shire in the Area of a Local Authority or include parts of any such Shire in the Areas of Local Authorities.

(3) The Minister shall publish in the Gazette and in a newspaper which, in his opinion, circulates in the Shire comprised of the Irrigation Area in question, a notice of the intention of the Governor in Council to make an Order in Council under subsection two of this section.

That notice shall state the nature of the Order in Council intended to be made and that any persons who pursuant to "The Elections Acts, 1915 to 1952," are enrolled as electors of the part, or parts respectively, of any electoral district, or electoral districts, within that Shire, may petition the Minister for a poll upon the question of whether or not the action proposed by the intended Order in Council should be taken and shall state a date before which persons may so petition, which date shall be not earlier than thirty days after the date of the publication of the notice in the Gazette.

(4) The Governor in Council shall not make an Order in Council under subsection two of this section in respect of a Shire comprised of an Irrigation Area—

(i) Earlier than the date before which the published notice of intention to make the Order in Council specifies that persons may petition the Minister;

(ii) (If more than ten per centum of the persons who, in relation to that Shire, are electors as specified in subsection three of this section have, before the date specified in that behalf in the published notice of intention to make the Order in
Council, petitioned the Minister for a poll upon the question of whether the action proposed by the intended Order in Council should be taken) before the taking of that poll; or

(iii) If upon the taking of that poll, more than fifty per centum of the voters thereat have voted against the taking of the action proposed by the intended Order in Council,

but, subject to this subsection, such an Order in Council may be made at any time.

(5) Any poll hereinbefore in this section referred to shall be taken in accordance with the provisions for taking polls thereunder of the Local Authorities Act, and for that purpose the terms “Minister”, “Local Authority”, and “returning officer” wherever appearing in those provisions shall be read as referring respectively to the Minister administering this Act, the Commissioner, and the person appointed by the Commissioner by notice published in the Gazette to be the returning officer.

(6) The Governor in Council may by the Order in Council whereby he constitutes a Council for a Shire to which subsection one of this section applies, or by a separate Order in Council or Orders in Council—

(i) Assign a name to the Shire;

(ii) Fix the number of the members who are to compose that Council, which number, exclusive of the chairman, shall be not more than twelve and not less than five;

(iii) Fix a date for the first election under the Local Authorities Act of the chairman and members of that Council;

(iv) Appoint a returning officer for that first election;

(v) Give directions as he deems necessary respecting the compilation of the voters’ roll for that first election.

Subject to this section and to any Order in Council hereunder, the first election of a Council constituted by Order in Council under this section shall be held in accordance with the provisions for holding elections thereunder of the Local Authorities Act.

The chairman and each member of the Council elected at the first election shall hold office under and subject to the Local Authorities Act as if that first election were a triennial election under that Act.

(7) The Governor in Council may by Order in Council fix a date, not earlier than the completion of the first election of the chairman and members thereof, on and from which a Council constituted by Order in Council under this section shall be the Local Authority for the Shire concerned.

On and from the date so fixed—

(a) The Council shall be the Local Authority under and within the meaning of the Local Authorities Act for the Shire concerned and shall govern that Shire under, subject to and in accordance with the Local Authorities Act and accordingly shall have vested in and imposed upon it, and shall exercise and perform, with respect to the Shire, the functions, authorities, powers and duties conferred and imposed upon a Local Authority by the Local Authorities Act; and

(b) The Commissioner shall cease to constitute the Council for the Shire concerned.
(8) When a Council constituted by Order in Council under this section becomes the Local Authority for a Shire to which subsection one of this section applies and the Commissioner ceases to constitute that Local Authority, or when, by Order in Council, a Shire to which subsection one of this section applies is included in the Area of a Local Authority or parts of such a Shire are included in the Areas of Local Authorities,—

(a) The assets and liabilities of the Commissioner as the Local Authority for the Shire in question shall devolve upon the Council constituted under this section for the Shire or, as the case may be, the Local Authority or Local Authorities in the Area or Areas whereof the Shire or parts thereof are included, and to the extent to which he deems it necessary to do so the Governor in Council may by Order in Council determine those assets and liabilities and, where more Local Authorities than one are concerned, apportion the same between them;

(b) The valuation for the purposes of the Local Authorities Act of all rateable lands in the Shire in question shall (and notwithstanding that a Council is constituted the Local Authority for such Shire, or that such Shire is included in the Area of a Local Authority, or that parts thereof are included in the Areas of Local Authorities) continue in force until the making according to law of a fresh valuation thereof;

(c) Subject to any determination or apportionment made by the Governor in Council pursuant to paragraph (a) of this subsection, any unpaid amount of any rate or charge made or levied by the Commissioner as the Local Authority for the Shire in question shall (and notwithstanding that a Council is constituted the Local Authority for such Shire, or that the Shire is included in the Area of a Local Authority, or that parts thereof are included in the Areas of Local Authorities) be and remain due and payable to, and may be levied and received or recovered by the Council constituted the Local Authority for the Shire, or by the Local Authority in the Area whereof the Shire, or in the case of a part of the Shire, the part containing the land to which the rate or charge is related, is included;

(d) In the case of the constitution under this section of a Council for a Shire, all by-laws under and within the meaning of the Local Authorities Act in force on the date when that Council becomes the Local Authority for the Shire shall continue in force until duly revoked or amended by the Council;

(e) In the case of the inclusion of a Shire in the Area of a Local Authority or of parts of a Shire in the Areas of Local Authorities, all by-laws under and within the meaning of the Local Authorities Act then in force in the Shire shall forthwith cease to have operation and effect, and the by-laws under and within the meaning of the Local Authorities Act of the Local Authority in the Area whereof that Shire or any part thereof is included, shall on and from the date of that inclusion, operate and have force and effect in that Shire or
part until the same are duly revoked or amended by the Local Authority.

(9) The power to make under this section any Order in Council shall include power to make such one or more Orders in Council, and either at the same time or from time to time, as the Governor in Council deems necessary or expedient in the circumstances.

As amended by Act of 1933, 24 Geo. 5 No. 21, s. 22; Act of 1957, 6 Eliz. 2 No. 42, s. 4.

For constitution of Commissioner, see definition in s. 2.

"Local Authorities Act" is defined, ibid.

10. Part of Irrigation Area may be included in Shire previously constituted under this Act. At any time after the constitution of an Irrigation Area any part of such Area may, by the Governor in Council or Order in Council, be included in a Shire previously constituted under this Act. For the purposes of this section the provisions of section ten, so far as they apply shall, mutatis mutandis, apply and be observed.

Inserted by Act of 1933, 24 Geo. 5 No. 21, s. 23.

11. What lands exempt from rates. Any land whether within or outside an Irrigation Area—

(a) Occupied by works vested in the Commissioner; or
(b) Covered by water which is used or intended to be used for the purposes of this Act; or
(c) Purchased, resumed, appropriated, or set apart by or on behalf of the Crown and vested in or placed under the control of the Commissioner and not the subject of a lease by the Crown;

shall not be rateable land within the meaning of the Local Authorities Act:

Provided that where any land vested in or under the control of the Commissioner is not within the boundaries of an Irrigation Area and is in the occupation of any person (except the Crown or the Commissioner), and the Commissioner derives a benefit from such occupation, such land shall, whilst such occupation continues, be rateable land within the meaning of the Local Authorities Act.

As amended by Act of 1933, 24 Geo. 5 No. 21, s. 24.

12. Provisions as to business of Commissioner. The provisions set forth in Part I of the Schedule to this Act shall be applicable to the business, property, works, and undertakings of the Commissioner.

Schedule, Part I. Any of the provisions of the said Part I of the said Schedule may from time to time be altered or added to by the Governor in Council by an Order, and the said Part I as so altered or added to shall thereupon become Part I of the Schedule to this Act.

13. Irrigation undertaking fund accounts. In respect of each irrigation undertaking, a separate and distinct account shall be maintained by the Commissioner in his books to be called the '(Name of Area) Irrigation Fund Account'.

All moneys received by the Minister or Commissioner under this Act shall be paid into the Treasury and the Commissioner shall cause every such payment to be credited to the proper fund account.
All payments in respect of each undertaking, together with such contributions to reserve fund or sinking fund, if any, as the Commissioner from time to time directs, shall be charged against the proper fund account.

All payments in respect of the administration of Commissioner's Department and of this Act shall be apportioned between and chargeable to the divers fund accounts created pursuant to this Act in such proportions as the Commissioner from time to time directs.

When joint works are constructed for the supply of water for the benefit of two or more areas, the proportion of the capital cost to be charged to each fund account shall be fixed and declared by the Commissioner.

Substituted by Act of 1954, 3 Eliz. 2 No. 27, s. 15.

14. Loans, etc., by Government to Commissioner. The Governor in Council may from time to time, upon obtaining from the Commissioner such security as in the opinion of the Governor in Council is necessary or desirable by warrant under the hand of the Treasurer, direct and authorise loans to be made to the Commissioner for the purposes of any undertaking. Such loans shall bear such interest and shall be repayable upon such terms as the Governor in Council may determine.

For constitution of Commissioner, see definition in s. 2.

15. (1) Power to vest lands in the Commissioner. Subject to "The Land Acts, 1910 to 1959," the Governor in Council may, in the name of Her Majesty, grant in fee-simple to the Commissioner any Crown land required by the Commissioner for the purposes of the Irrigation Acts.

(2) Setting apart Crown lands. The Secretary for Public Lands may from time to time, by notification published in the Gazette, set apart any Crown land in an Irrigation Area for the purposes of this Act.

Any notification under this subsection may be corrected, amended, modified, or revoked, whether as to the whole or any part thereof, by notification in the Gazette.

(3) Water reserves and catchment areas may be constituted. The Governor in Council may from time to time, by Order, constitute and define the boundaries of any water reserve or catchment area for the purposes of this Act, and may place any such water reserve or catchment area under the control of the Commissioner.

Any such water reserve or catchment area may be situated wholly within or wholly without the Area, or partly within and partly without the Area.

As amended by Act of 1933, 24 Geo. 5 No. 21, s. 25; Act of 1949, 13 Geo. 6 No. 48, s. 14; Act of 1954, 3 Eliz. 2 No. 27, s. 16; Act of 1959, 8 Eliz. 2 No. 28, s. 2; Act of 1961, 10 Eliz. 2 No. 6, s. 2.

Act referred to:
“Crown land” and “owner” are defined in s. 2.
For constitution of Commissioner, see definition, ibid.
For principles applicable in determining compensation for land resumed under this Act, see Dawson River and Cattle Creek Resumptions (1923), 9 C.L.L.R. 262.
15A. Acquisition of land. (1) The Commissioner may acquire either by agreement or by resumption—
   (a) Any land within or without an Irrigation Area which, in the opinion of the Commissioner, is required for a purpose of this Act; or
   (b) Any land within an Irrigation Area which, in the opinion of the Commissioner, is suitable for closer settlement under “The Land Acts, 1962 to 1967,” and “The Irrigation Areas (Land Settlement) Act of 1962.”

   (2) (a) In respect of the acquisition of any land the Commissioner shall be a constructing authority under “The Acquisition of Land Act of 1967,” and, subject to this section, that Act shall apply and extend accordingly.
   (b) As well as land granted in fee-simple the Commissioner as a constructing authority under “The Acquisition of Land Act of 1967,” may take land which is held from the Crown for a lesser estate or interest than fee-simple.

   (3) If the Commissioner proposes to acquire any land and the acquisition of such land will sever it from other land of and used together therewith by the owner (whether or not abutting thereon) the Commissioner, with the approval of the Minister and the consent in writing of the owner, may acquire by agreement or by resumption the whole or part of that other land.

   (4) Section twenty-two of “The Acquisition of Land Act of 1967,” shall apply so that the power thereby conferred upon the Governor in Council to grant land shall include power to demise land for such leasehold estate under “The Land Acts, 1962 to 1967,” and “The Irrigation Areas (Land Settlement) Act of 1962,” as the Governor in Council deems appropriate in the circumstances.

   (5) (a) With respect to a proposed acquisition of land by resumption for closer settlement, the Commissioner may, upon application in writing by the owner and if he is of the opinion that the granting of such an application will not unduly affect adversely the plan or proposed plan for subdivision of the land for closer settlement, permit the owner to retain unresumed so much of the land as is reasonably sufficient, in the opinion of the Commissioner, to enable the owner to carry on agricultural pursuits.
   (b) Where the Commissioner is of the opinion that the plan or proposed plan for subdivision of the land for closer settlement would be unduly affected adversely by the granting of such an application, the Governor in Council may, in the name of Her Majesty, sell to the owner of the land acquired or proposed to be acquired for an estate in fee-simple upon such terms (including the purchasing price to be paid therefor) as may be agreed any Crown land set apart for the purposes of this Act or any land acquired by the Commissioner pursuant to this section including land so acquired from that owner.

   (6) (a) If the purchasing price of the land to be sold to the owner pursuant to subsection (5) of this section cannot be agreed upon, the Commissioner may, and if an agreement for sale of land pursuant to the said subsection (5) has been made subject to the determination by the
Land Court of the purchasing price to be paid therefor, shall refer to the Land Court for hearing and determination the matter of the amount of that purchasing price and the Land Court shall hear and determine that matter.

(b) (i) An appeal shall lie to the Land Appeal Court from a determination of the Land Court upon an application or reference under this subsection.

The determination of the Land Court or, upon appeal, of the Land Appeal Court upon any application or reference under this subsection shall be final and conclusive of the matter.

(ii) For the purposes of this subsection the purchasing price of the land shall be the amount which, in the opinion of the Court hearing the matter, experienced persons would be willing to pay for the fee-simple of the land, together with the developmental work and other improvements thereon or pertaining thereto, whether visible or invisible, and by whomsoever made or acquired, assuming that due regard were had to the availability or likely availability of water pursuant to the provisions of this Act and “The Water Acts, 1926 to 1967,” and it were offered on such reasonable terms and conditions as a bona fide seller would require.

(7) (a) Where the purchasing price of the land has been determined as prescribed by subsection (6) of this section, then if, whether before or after any such determination, an agreement for the sale of the land is concluded pursuant to the provisions of subsection (5) of this section the purchasing price of the land payable under such an agreement shall be the purchasing price as so determined.

(b) Unless otherwise prescribed by the agreement for sale, the purchasing price for the land sold pursuant to the provisions of subsection (5) of this section shall be paid within three months, or such longer term as may be allowed by the Commissioner, after the making of the agreement for sale or the determination of the purchasing price as prescribed by subsection (6) of this section, whichever is the later.

(8) The Governor in Council, if he deems fit, may elect not to proceed with the sale of any land pursuant to the provisions of subsection (5) of this section. Such right of election shall be exercised before the issue of the deed of grant but in any case not later than three months after the making of an agreement for sale pursuant to the provisions of subsection (5) of this section, or the determination of the purchasing price of the land as prescribed by subsection (6) of this section, whichever is the later.

The Crown shall not be liable to pay compensation for any loss or damage alleged to have been occasioned (directly or indirectly) by reason of such election not to proceed.

Inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 17; substituted by Acquisition of Land Act of 1967, No. 48, s. 3 (2) First Schedule.

Acts referred to:
Irrigation Areas (Land Settlement) Act of 1962, title LAND, Vol. 9, p. 79.
Acquisition of Land Act 1967-1969, title WORKS.
15b. Commissioner may use lands. The Commissioner may use for depasturing stock, or may lease for that purpose or for any other purpose, any land vested in him or set apart for the purposes of this Act or acquired by the Minister pursuant to section 15a of this Act which for the time being is not being used for a purpose of this Act.

Inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 18; as amended by Act of 1961, 10 Eliz. 2 No. 6, s. 4.

16. Business of the Commissioner not to be a State enterprise. Nothing in this Act contained shall be construed so as to constitute any business or undertaking carried on by the Commissioner under this Act a State enterprise within the meaning or for any of the purposes of “The State Enterprises Act of 1918.”

Act referred to:

On the application of this section, see Rent of Church Land, Township of Theodore (1942), 19 C.L.L.R. 71.

17. Regulations. Schedule, Part II. (1) The Governor in Council may, from time to time, make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act, and, where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give full effect to this Act, providing for and supplying such omission or insufficiency; and, without prejudice to the foregoing powers, providing for all or any of the matters set forth in the second part of the Schedule to this Act.

(2) Any such regulations may—
(a) Apply to only an Area or specified part of an Area;
(b) Prescribe a date or different dates for the coming into operation of any such regulations or of any portion thereof;
(c) Provide that any such regulations or any portion thereof shall apply to undertakings generally or to undertakings of any prescribed class or classes or any particular undertaking.

(3) Saving of past operation of amended or repealed regulation. Notwithstanding the amendment or repeal of any regulation, every offence committed against the regulation before the amendment or repeal thereof shall be adjudicated upon and punished; and every act or proceeding done or commenced, and every right, privilege, or protection acquired, and every liability incurred, shall continue to be prosecuted and be of the same force and effect as if the regulation had not been amended or repealed.

(4) The regulations shall, upon publication in the Gazette, have the same force as if they were enacted in this Act, and shall be judicially noticed, and shall not be questioned in any proceeding whatsoever.

For Regulations, see Table of Contents, p. 85, ante.

The Governor in Council is empowered to make regulations under this section to give effect to an agreement between the Commonwealth and the State dated 28 March 1927 in so far as irrigation holdings are concerned. See Wire and Wire-Netting Advances Act of 1927, s. 20, title WIRE AND WIRE-NETTING.

For a provision declaring the validity of a specific regulation, see Irrigation Acts Amendment Act of 1965, s. 4, p. 165, post.
18. Orders in Council. (1) The Governor in Council may, from time to time, make all such Orders as he thinks fit for the further or more effectually or particularly carrying out the objects and purposes of this Act, and for extending periods of time, and for curing irregularities.

(2) Such Orders may be of general application, or refer to certain classes of cases, or to any particular cases.

(3) The generality of this section shall not be qualified or affected by any provision of this Act giving power to make Orders with regard to any subject-matter in such provision specified.

(4) All Orders made under this Act, when published in the Gazette, shall have the same force as if they were enacted in this Act, and shall be judicially noticed, and shall not be questioned in any proceeding whatsoever.

(5) The Governor in Council may, by another Order, amend or rescind any Order.

(6) No misnomer or inaccurate description or omission in any Order shall in anywise prevent or abridge the operation of this Act with respect to the subject of such description, provided the same is designated so as to be understood.

(7) No Order shall be deemed invalid on account of any non-compliance with any of the matters required by this Act as preliminary to the same.

As to disallowance of Order in Council by Parliament, see s. 19.

For the effect of a delegation of power to make Orders in Council of equal validity with the Act itself, see Preliminary Note to title ACTS OF PARLIAMENT, Vol. 1, p. 72.

19. Regulations and Orders to be laid before Parliament. (1) A copy of all regulations and Orders made under this Act shall be laid before Parliament within fourteen days from the publication thereof if Parliament is then sitting, and, if it is not then sitting, within fourteen days from the commencement of the next session.

(2) If the Legislative Assembly, within forty days next after any regulations or Orders have been so laid before such House, resolves that such regulations or Orders or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such regulations or Orders.

20. Appropriation for expenses. The expense of carrying out the provisions of this Act shall be defrayed from such moneys as may from time to time be appropriated by Parliament for the purpose.

21. Saving of Crown, etc. Nothing in this Act shall restrict or abridge any prerogative, right, power, or privilege of the Crown.

22. Annual Report. (1) The Commissioner shall in each year prepare and forward to the Minister an Annual Report of its department for the year ending on the thirtieth day of June.

(2) The report shall show, separately and in detail, the revenue and expenditure upon each respective irrigation undertaking.

(3) The report shall be laid before Parliament.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.
IRRIGATION ACTS, 1922 TO 1965  s. 18-Sch.  135

SCHEDULE

PART I

For application of Part I of this Schedule and power to add to and alter it, see s. 12.

PROVISIONS RELATING TO THE BUSINESS, PROPERTY, WORKS AND UNDERTAKINGS OF THE COMMISSIONER

1. (1) General powers of Commissioner. For all the purposes of this Act—
   (a) The Commissioner, under the Minister, shall have and may exercise all the powers, privileges, rights, and remedies of the Crown;
   (b) All legal proceedings may be brought by or against the Commissioner in its official name.

   Subject to this Act, for the purpose of carrying on business the Commissioner shall have and may exercise all such powers, authorities, and discretions, and may do all such acts and things, as a private person carrying on business in Queensland has or may exercise or do; and the Commissioner generally may do whatever it deems necessary in connection with or incident to such business.

   The foregoing powers shall be in addition to any other powers conferred upon the Commissioner by this Act.

   (2) Commissioner may appear by secretary or other officer. The Commissioner may appear before any court or in any legal proceeding by the secretary, or by an authorised officer; and the secretary or such officer shall be at liberty to institute and carry on any proceeding which the Commissioner is authorised to institute and carry on under this Act.

   The secretary or such officer shall, out of the proper fund, be reimbursed all damages, costs, charges, and expenses to which he may be put or with which he may become chargeable by reason of anything contained in this provision.

   If any person against whom the Commissioner has any claim or demand under this Act takes the benefit of any Act for the relief of insolvent debtors, the secretary or an authorised officer, in all proceedings against the estate of such insolvent or under any adjudication, sequestration, or act of insolvency against or by such insolvent, may represent the Commissioner and act on its behalf in all respects.

   As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

2. (1) Branches and agencies. For the purposes of this Act, the Commissioner may from time to time establish branches or agencies of its department, and may close any branch agency.

   (2) Agents. The Commissioner may appoint any person to act as its agent.

   At the request of the Commissioner, any State officer shall, with the approval of the Minister of the department of which he is an officer, act as such agent, and with, under, and subject to such powers, conditions, and limitations as are contained in such request.

   (3) The Commissioner may arrange with any Minister of State or any Local Authority, or any authority or instrumentality constituted under
any Act, for the performance by that Minister, Local Authority, authority or instrumentality, of any work on behalf of the Commissioner.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5; Act of 1954, 3 Eliz. 2 No. 27, s. 19.

3. Security. Every employee or agent whose duties involve the receipt or custody of moneys or securities shall give such security for the due and faithful performance of his duties as to the Commissioner seems proper, and shall be deemed to be a public accountant within the meaning of "The Audit Act of 1874."

Secrecy. Every permanent employee and agent shall be bound to secrecy by declaration in the prescribed form.

Act referred to:

4. [Repealed by Act of 1931, 22 Geo. 5 No. 44, s. 7.]

5. (1) Safe custody of books, etc. The secretary shall be responsible for the safe custody of all books of account, agreements, instruments, receipts, vouchers, and other books, papers, and writings belonging to or relating to the business of the Commissioner.

He shall make a record of the same in obedience to the direction of the Commissioner, and shall not destroy or mutilate any of them without its sanction in writing previously obtained.

(2) Loss or destruction of records. Whenever any book of account, agreement, instrument, receipt, voucher, or other paper or writing belonging to or relating to the business of the Commissioner is destroyed or lost, the Governor in Council may, by Order, direct all such acts and things to be done as he thinks best for repairing the loss, and may declare any copy of any such book, agreement, receipt, voucher, or other paper or writing to be valid and effectual for all purposes, and may, if necessary, define the time during which such copy shall remain in force.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

6. Authentication of documents. Every notice, order, process, or document requiring authentication by the Commissioner shall be sufficiently authenticated without the seal of the Commissioner if signed by the Commissioner, or by the secretary, or by an authorised officer.

7. (1) Service of notice, etc. Any notice, order, process, or document under this Act required or authorised to be given or served to or upon any person may be served—

(i) By delivering the same or a true copy thereof to such person;

(ii) By leaving the same or a true copy thereof at his usual or last known place of abode; or

(iii) By forwarding the same or a true copy thereof by post in a prepaid letter addressed to such person at his usual or last known place of abode.

(2) Any such notice, order, process, or document required or authorised to be given to or served on the owner or occupier of any land or premises may, if the name of the owner or occupier is not known to the
Commissioner, be addressed to him by the description of the "owner" or "occupier" of the land or premises in question (naming them) without further name or description.

(3) **Continued operation of notices and orders.** All notices and orders required under this Act to be served on any owner or occupier shall, if due service thereof has been once made on any owner or occupier, be binding on all persons claiming by, from, or under such owner or occupier to the same extent as if such order or notice had been served on such last-mentioned persons respectively.

(4) **Service on Commissioner.** Any document may be served on the Commissioner—

(i) By delivering the same to the secretary; or

(ii) By forwarding the same by post in a prepaid letter addressed to the secretary.

8. **Vesting of property in Commissioner and power thereover.** (1) All works and all water which at any time is in any stream, reservoir, channel, or other parts of the works, and all real and personal property of every kind (including all money and securities for money) constructed, purchased, acquired, received, or held in any manner for the purposes of an irrigation undertaking, shall be held by the Commissioner under this Act, and shall be and be deemed to be vested in the Commissioner according to the nature of the estate and interest therein respectively.

(2) Subject to this Act, the Commissioner shall, with respect to such real and personal property, and any estate or interest therein, have the power—

(i) To sell, lease, enter in perpetuity or for a term of years surrender to the Crown exchange, or make partition;

(ii) To accept or make surrender of leases;

(iii) To assign, reconvey, or discharge mortgages, securities, or other obligations, either wholly or in part;

(iv) To enter into, modify, or alter any contract with any person for all or any of the purposes of this Act;

(v) To erect buildings and repair, equip, furnish, and maintain the same; and let offices or other accommodation in any building or premises for such rent as it thinks proper; and

(vi) Generally to exercise all other rights, powers, functions, and authorities thereover.

As amended by Order in Council, Gazette, 8 March 1924 p. 848; Act of 1931, 22 Geo. 5 No. 44, s. 5; Act of 1954, 3 Eliz. 2 No. 27, s. 20.

9. (1) **All moneys to be property of Crown.** All moneys in any irrigation undertaking fund account, or payable into any such fund account by any person, and also all debts and other moneys for the time being owing to the Commissioner by any person, on any account whatsoever, are hereby declared to be the property of the Crown and recoverable with interest accordingly by the Commissioner as from debtors to the Crown.

(2) **Recovery of moneys.** Any money due to the Crown under this Act may be recovered by summary proceedings before two justices on the complaint of the Commissioner or secretary, or by action in any court of competent jurisdiction.
(3) **From the owner or occupier for the time being.** Subject to this Act, money so due shall be a debt due by the owner or occupier of the land for the time being, notwithstanding that he was not the owner or occupier at the time when the money became due, and shall also be a debt due by the person primarily liable to pay the same under this Act.

(4) **Distress.** Instead of proceeding under the foregoing provisions of this section, the Commissioner may recover any such money by distress in manner prescribed.

(5) **Persons liable may be resorted to in succession.** An unsatisfied judgment or order of any court for the recovery of any moneys due to the Crown or the Commissioner under this Act from any person shall not be a bar to the recovery thereof from any other persons liable under this Act to the payment thereof.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 21.

10. (1) **Contracts, etc.** The Commissioner may enter into contracts, either by itself or through the medium of such employees or agents as it from time to time authorises for that purpose.

(2) Any contract which if made between private persons, or any power which if exercised by private persons—
   - Firstly, must be by deed or in writing under seal;
   - Secondly, must be in writing signed by the parties thereto or the persons executing the power;
   - Thirdly, may be made or exercised orally without writing;

When entered into or exercised by the Commissioner:—
   - In the first case, shall be in writing under its seal, and signed by or on behalf of the Commissioner;
   - In the second case, shall be in writing, signed by or on behalf of the Commissioner;
   - In the third case, may be made or exercised orally, without writing, by or on behalf of the Commissioner.

(3) **Compounding.** The Commissioner may, for such sum of money or other consideration as it thinks fit, compound with any person who has entered into any contract with the Commissioner, or by or against whom any action or other proceeding may be or has been brought against or by the Commissioner, for any cause whatsoever.

(4) Where the Commissioner has entered into a contract for the construction of any works it may, at any time or from time to time, subject to such conditions as are therein prescribed and approved by the Minister, make advances to the contractor from the proper fund maintained in respect of such works. Such advances may be made before the commencement of the work and may be by way of loans of money on the security of items of plant and construction equipment which are the unencumbered property of the contractor and which are intended by the contractor to be used by him in the execution of the works. The conditions prescribed in respect of repayment of such an advance may include provision for repayment thereof by way of deductions from progress payments due from time to time by the Commissioner to the contractor.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5; Act of 1965, No. 6, s. 2.
10A. The Commissioner may acquire by agreement for the purposes of this Act from the owner of any land for an estate in fee-simple within an Irrigation Area an easement over such land or any part thereof.

If such land is subject to "The Real Property Acts, 1861 to 1946," the Registrar of Titles shall register the grant of any such easement by such owner, being the registered proprietor of such land, lodged for registration, on the Deed of Grant or Certificate of Title of such land.

Inserted by Order in Council, Gazette 9 February 1952, p. 506.

Act referred to:

11. (1) Protection of Commissioner and employees from personal liability. No matter or thing done and no contract entered into by the Commissioner or any employee or other person on its behalf or under its direction shall, if the matter or thing was done or the contract was entered into bona fide for the purposes of this Act, subject the Commissioner or any such person to any personal liability in respect thereof.

(2) Notice of action. An action shall not be brought against the Commissioner or any employee or other person for any thing done or intended or omitted to be done under this Act until the expiration of one month after notice in writing has been served on the Commissioner or person to be sued, clearly stating the cause of action and the name and place of abode of the intended plaintiff and of his solicitor or agent.

On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served.

Unless such notice is proved, the Court shall find for the defendant.

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards.

Any person to whom any such notice of action is given may tender amends to the plaintiff, his solicitor, or agent, at any time within one month after service of the notice, and in case the same is not accepted may plead such tender.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

12. (1) Area, etc., need not be proved. In any proceeding under this Act, it shall not be necessary for the complainant or plaintiff to prove the limits of any Irrigation Area or Drainage Area or the limits of any water reserve or catchment area. But this provision shall not prejudice the right of any defendant to prove the facts.

(2) Appointments and authority of officers presumed. In any proceedings under this Act, the due appointment of all employees or agents, and the authority of any employee or agent to do any act or to institute such proceedings, shall be presumed until the contrary is proved.

(3) Seal judicially noticed. The seal of the Commissioner affixed to any document shall be judicially noticed, and, until the contrary is proved, it shall be presumed to have been properly affixed thereto.
The signatures of the Commissioner and the secretary shall be judicially noticed.

(4) **Plans, etc.** In any proceeding under this Act the production of any map or plan purporting to be made by the Commissioner or any employee, and sealed with the seal of the Commissioner, or purporting to be issued or published by any department of the Government or any officer thereof, shall be sufficient evidence of the matters stated or delineated thereon until the contrary is proved.

Copies of any plans, sections, specifications, and books of reference relating to matters arising under this Act, and of any alteration or correction thereof, or extracts therefrom, certified by an authorised officer to be true copies thereof (which certificates such officer shall give to all parties interested when required, on payment of such fees as are prescribed by the Commissioner), shall be conclusive evidence of the contents thereof.

(5) **Documents signed by Commissioner, etc.** All documents whatever purporting to be issued or written by or under the direction of the Commissioner and purporting to be signed by the Commissioner or secretary, shall be received in evidence in all courts, and shall be deemed to be issued or written by or under the direction of the Commissioner until the contrary is proved. The expression “documents” includes all orders, directions, and notices.

(6) **Presumption against registered proprietor.** The production in any court of a certificate of title, memorandum of transfer, or other instrument creating an interest in land, or of a duly certified copy thereof, shall be sufficient evidence that the person named therein as registered proprietor, or as entitled to such interest, is the owner of or person entitled to an interest in such land until the contrary is proved.

(7) **Certificate of officer.** The certificate in writing of an authorised officer that any works, matters, or things have been constructed, done, or supplied by the Commissioner pursuant to the requirement or for or on behalf of any person shall be prima facie evidence of the facts therein stated, and as to the amount of the expense with interest (if any) recoverable in respect thereof.

(8) **Register of meters to be prima facie evidence.** The quantity of water or power shown by the index or register of an authorised meter to have passed through such meter shall be taken prima facie to be the quantity of water or power which has actually passed through the meter and been supplied.

A certificate under the hand of an authorised officer stating the quantity so shown shall, in any proceeding in which the quantity of water or power is in dispute, be prima facie evidence of the quantity of water or power supplied.

(9) **Reference to “owner” and “occupier”**. Whenever in any proceeding or otherwise for any purpose under this Act it becomes necessary to mention or refer to the owner or occupier of any land or premises, it shall be sufficient to designate him as the “owner” or “occupier” of such land or premises, without name or further description.
(10) Presumption when water, etc., diverted. Whenever it is shown that any water or power is or has been wrongfully taken or used or illegally diverted or taken on to or into land owned or occupied by any person, the taking or using or diversion of such water or power shall be deemed to have been effected by or by the direction of such person, unless such person satisfies the court that such taking or using or diversion of the water or power on to or into such land was effected without his direction or connivance.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 22.

13. Preliminaries to construction. The Commissioner shall, before undertaking the construction of any works—

(i) Surveys and levels. Cause the necessary surveys and levels of lands and roads to be made and taken; and

(ii) Plans, etc., to be furnished. Cause to be prepared plans, sections, specifications, books of reference, and an estimate of the cost of the proposed works, and forward the same or certified copies thereof to the Minister for his approval.

14. (1) Constructional powers of Commissioner. Subject to this Act, for the purposes of the construction, maintenance, management, and control of works, and the doing of anything which the Commissioner is by this Act authorised to do, the Commissioner, by its employees and agents, may from time to time exercise the powers in this section mentioned and do all such ancillary or consequential acts, matters, and things as it deems proper for the execution of this Act.

(2) Construct works. It shall have power, from time to time, to construct, acquire, provide, extend, renew, and improve, and to maintain, alter, and repair works, matters, and things, and to discontinue such of them as in its opinion are obsolete or useless. It may—

(a) Construct and maintain streams, channels, drains, mains, fittings, posts, conductors, apparatus, machinery, and pipes, and put stop-cocks, syphons, plugs, and branches in, under, across, along or against any road, land, or structure, or under any railway or tramway, in such manner as it thinks necessary or proper;

(b) Construct and fix any machinery necessary for ensuring to any structure, premises, or land a proper and sufficient supply of water or power, or for measuring and ascertaining the extent of such supply;

(c) Use water or power in or in connection with any works or lands vested in it or under its control.

(3) It shall have power, from time to time—

(a) Obtain water from source of supply. To obtain from any stream, and also from its reservoirs and works, an adequate supply of water for the purposes of this Act;

(b) To divert, intercept, and store all water in or coming from any stream or other source, or in any water reserve or catchment area under its control, and alter the course of any such stream, and take any water found under or on any land;
(c) To construct and thereafter maintain, repair, enlarge, alter, and renew any weirs across any stream.

It shall, when reasonably practicable, provide other watering places and channels for the use of adjoining lands in place of those taken away or interrupted.

(4) **No action, etc.** Save as by this Act is expressly provided with respect to the payment of compensation, no action, indictment, information, claim for compensation, or other proceedings shall be commenced, presented, made, prosecuted, or maintained against the Crown or the Minister or the Commissioner or any employee or other person for or in respect of—

(a) Any obstruction of the navigation of, or deprivation of access to, or diminution of the quantity of water in any stream by reason of the execution of any work authorised by this Act; or

(b) Any damages, loss, or expenses occasioned or alleged to be occasioned or in anywise whatsoever arising from the exercise of any of the powers under this Act.

(5) **Ancillary works, etc.** Whenever in the opinion of the Commissioner it is expedient for the execution of this Act and facilitating the execution and management of the works and business of the Commissioner or the successful working of the undertaking, it may, with the approval of the Governor in Council, construct, acquire, purchase, contract for the use of, work, maintain, and manage—

(a) Any tramway;
(b) Any coal-mine;
(c) Any quarry;
(d) Any gravel pit;
(e) Any cement mill;
(f) Any mine containing alum or other mineral requisite for the purposes of the operations of the Commissioner;
(g) Any sawmill; and in connection with the working thereof employ or contract with teamsters for drawing timber, purchase and work teams for drawing timber, and make advances to or guarantee the liability of teamsters who purchase teams for drawing timber;
(h) Works for the manufacture of machinery, pipes, fittings, or apparatus for use in the operations of the Commissioner, with all necessary machinery, plant, and equipment;
(i) Any other trade, business, factory, service, or industry.

Any such tramway may be constructed, worked, and managed in, upon, across, over, or under any road, reserve, or navigable stream.

The Commissioner may use and employ upon any such tramway locomotive engines propelled by steam or other power and rolling-stock to be drawn and propelled thereby.

The Commissioner may carry for hire upon any such tramway for the public, passengers, goods, live stock, and material, at such rates as shall be prescribed, and in so doing shall have no further liability than the liability of stage coach proprietors and common carriers under the laws of Queensland.
(6) **Entry on land, etc.** The Commissioner may enter upon any road, land, or premises, and make surveys and take levels, and set out such parts of any work as it thinks fit, and break up the soil, and carry out therein all necessary operations, and erect fences, and remove or use any earth, trees, timber, materials, and other things in, on, or under the land or road, and where necessary carry on blasting operations.

(7) **Temporary use of road.** The Commissioner may temporarily place on any part of any road any pipes, machinery, or things during or in preparation for the construction of any works: Provided that such pipes, machinery, or things shall not be so placed as unnecessarily to obstruct traffic or the drainage of any road, and that no more of the same shall be so placed than are reasonably necessary for the works as the works proceed.

(8) **Dredging, clearing, etc.** The Commissioner may, on any land within the Area or any reserve or catchment area under its control, or on any stream, contract for or itself undertake—

(a) The dredging, deepening, and widening of any stream or other water or source of water supply;

(b) The removal from any stream or other water or source of water supply, or from the bed or banks of the same, of weeds and other growth, driftwood, logs, trees, branches, or other timber, rock, sand, stone, and gravel or other obstructions, and may dispose of the same towards recouping the cost of removal;

(c) The construction and maintenance of any work necessary to prevent floods or damage from floods of streams, and all walls, embankments, and works necessary for rendering such work effective;

(d) The construction and maintenance of works for the preservation of the bed and banks of any stream from erosion or other damage or injury from any cause;

(e) The filling up, levelling, grading, and reclamation of low-lying or flooded lands;

(f) The construction of drainage and other works;

(g) The providing and construction of improvements;

(h) Sanitary, sewerage, and garbage systems, and the disposal of garbage, nightsoil, and other refuse.

(9) **Alteration of other works.** If the Commissioner deems it necessary to alter the situation of any tram rails, water pipes or water works, gas pipes or gas works, hydraulic steam or other pipes, electric or telephone lines, pneumatic pipes or tubes, or other works laid in or under or over any road or land, it may, by notice in writing, require the person to whom the works belong to alter the situation in such manner and within such reasonable time as is specified in such notice.

The expense connected with any such alterations shall be paid by the Commissioner.

If such notice is not complied with, the Commissioner may make the alterations required.

(10) **Minimum of damage.** In the exercise of the powers conferred by this Act, the Commissioner shall do as little damage as may be.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.
14A. The area of 2 roods 4 perches, being lots 4 and 5, section III, town of Theodore, parish of Woolthorpe, county of Dawson, together with the hotel and all other buildings erected thereon, shall be deemed to be and shall be a public place within the meaning and for the purposes of any Act conferring or imposing upon members of the Police Force powers or duties with respect to public places or providing for the punishment of offences committed in public places.

Inserted by Order in Council, Gazette 8 August 1931, p. 508.

14B. Road access across irrigation channels. (1) Where there is no direct access from a piece or parcel of land to any road other than a road from which that piece or parcel of land is separated by land reserved or set aside for channel purposes then the Commissioner shall, upon the construction on the land so reserved or set aside of a channel, provide a means of access from that piece or parcel of land to that road.

That means of access shall be constructed and maintained by the Commissioner, shall be situate where determined by him, and shall comprise such bridge, culvert or other structure and the approaches thereto on, over, under, through or across the channel in question and the land appurtenant to that channel so reserved or set aside as aforesaid as the Commissioner deems sufficient in the circumstances.

(2) Subject to this subclause, the owner of any piece or parcel of land to which subclause one of this clause applies may, with the prior approval in writing of the Commissioner,

(a) Remove to another site any means of access as aforesaid provided by the Commissioner; or

(b) Additionally to the means of access provided by the Commissioner, provide other means of access from that piece or parcel of land to the road wherefrom it is separated by land reserved or set aside for channel purposes.

A means of access as aforesaid shall not be removed or provided by any owner of a piece or parcel of land to which this clause applies—

(a) Except to or at a site approved by the Commissioner; and

(b) Unless that means of access as so removed to or provided at the site approved by the Commissioner is, as respects any bridge, culvert or other structure and the approaches thereto on, over, under, through or across the channel in question and the land reserved or set aside for channel purposes appurtenant to that channel comprised in that means of access constructed in compliance in every respect with plans and specifications stipulated by the Commissioner.

(3) Where, subsequent to the construction of a channel, any piece or parcel of land to which this clause applies is lawfully subdivided, the owner for the time being of every subdivision thereof which abuts upon the land reserved or set aside for channel purposes whereby that piece or parcel of land is separated from a road may provide under, subject to and in compliance with subclause two of this clause but not otherwise, a means of access from the subdivision to that road.

(4) No liability whatsoever shall attach to the Commissioner in respect of the removal or provision of a means of access under subclause two or subclause three of this clause.
(5) For the purposes of any provision of this Act or of any other Act or law with respect to the giving of access to a road from any land, every piece or parcel of land to which this clause applies shall be deemed to have access to the road wherefrom the same is separated by land reserved or set aside for channel purposes notwithstanding that a means of access has not been provided in pursuance of this section.

Inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 23.

14c. (1) Where there is no direct access from a piece or parcel of land which is by a resumption of any land under and for the purposes of this Act severed from any other piece or parcel of land and where the resumed land is reserved or set aside for channel purposes and where immediately prior to the resumption of that resumed land any such severance was not otherwise in any manner however vested or did not exist then the Commissioner shall, upon the construction on the land so resumed and reserved or set aside as aforesaid of a channel, provide a means of access from the first mentioned unresumed piece or parcel to that other unresumed piece or parcel of land.

That means of access shall be constructed and maintained by the Commissioner, shall be situate where determined by him, and shall comprise such bridge, culvert or other structure and the approaches thereto, on, over, under, through or across the channel in question and the land appurtenant to that channel so reserved or set aside as aforesaid as the Commissioner deems sufficient in the circumstances.

(2) For the purposes of any provision of this Act or of any other Act or law with respect to severance and/or the elimination or lessening or minimising of severance damage and/or the giving of access to or as between or amongst any pieces or parcels of land so severed as aforesaid every piece or parcel of land to which this clause applies shall be deemed to have access to that piece or parcel of land wherefrom the same is separated by land reserved or set aside for channel purposes as aforesaid notwithstanding that a means of access has not been provided in pursuance of this section.

Inserted by Order in Council, Gazette 7 March 1959, p. 1494.

15. Entry. (1) An authorised officer, with such attendants as he thinks fit, shall have power, without notice, to enter at all reasonable times and as often as may be deemed necessary upon any road, land, or premises for the purpose of generally enforcing and executing this Act; and in particular for—

(a) Examining whether any of the provisions of this Act or any requisitions of any notice or order thereunder are being complied with or are being contravened; or

(b) Making any plan or survey or taking levels, whether for the purpose of acquiring information prior to the establishment of any undertaking, or the constitution of any Irrigation Area or Drainage Area, or otherwise in or for carrying out any of the purposes or objects of this Act; or

(c) Executing, fixing, removing, replacing, renewing, substituting, altering, repairing, cleansing, or examining any work or machinery; or

(d) Making any inspection or examination; or
(c) Taking account of the amount of water or power consumed or used; or

(f) Comparing the amount so ascertained to be consumed or used with the terms of any contract, and regulating the supply in accordance therewith;

and may there carry out the necessary operations.

If such admission to any land is refused, any justice, on complaint by such officer (made after reasonable notice in writing of the intention to make it has been given to the occupier), may, by order under his hand, require the occupier to admit such officer.

Any such order made by a justice shall continue in force until the necessary purpose has been completed.

Any person who refuses to obey an order of a justice for the admission of such officer shall be liable to a penalty not exceeding ten dollars and to a daily penalty not exceeding two dollars.

Such occupier shall be entitled to compensation for any loss of or damage to any growing crop occasioned by any such entry or act as aforesaid.

(2) The provisions of this section shall be in addition to and not in derogation of any powers of entry or for doing any act for any purpose authorised by this Act.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 24.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

16. Prevention of interference with water. (1) The Commissioner, by its authorised officers, may, in the exercise of its jurisdiction under this Act over the water in any Irrigation Area or Drainage Area or in any water reserve or catchment area under its control, or for the purpose of preventing the improper use or waste of water, enter upon any land and take such measures as may be thought fit for the conservation and regulation of such water, and for the protection of the bed, banks, channels, and works over or within which it flows or is contained, and may interfere summarily to prevent the undue, excessive, or illegal use, diversion, pollution, or waste of such water or interference with such bed, banks, channels, or works; and it shall not be necessary for the Commissioner to obtain an injunction or other order of a court to entitle it to make such entry or to take such measures.

(2) The Commissioner shall be entitled to institute and maintain any proceeding in any court of justice, whether such proceeding is for any civil remedy or for the recovery or enforcement of any penalty, against any person or corporation for illegally diverting, taking, or polluting any water in any Irrigation Area or Drainage Area or in any water reserve or catchment area under its control, or for unlawfully interfering with the bed, banks, or channels of any stream, or any works of the Commissioner.

(3) In such proceedings it shall not be necessary for the Commissioner to show that the Commissioner or any person has sustained damage by such diversion, taking, pollution, use, wasting or interference, nor that the Commissioner is a riparian owner or otherwise entitled to the use or to the protection of the stream, works, or water in question.
(4) But the Commissioner shall be entitled to judgment in its favour if it is proved that the water has been illegally diverted or taken or polluted or improperly used or wasted, or that the bed, banks, channels, or works have been unlawfully interfered with.

(5) And the Commissioner shall, in the discretion of the court, be entitled to the costs and expenses of the proceedings against the defendant.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5; Act of 1954, 3 Eliz. 2 No. 27, s. 25.

17. Provisions relating to breaking up roads. Whenever the Commissioner or any person under its authority breaks up a road it shall—

(a) Make such temporary and other works for the convenience of passengers and traffic as the circumstances require; and

(b) With all convenient speed complete the work for which it is broken up, and fill in the ground, and reinstate and make good the road and carry away all surplus materials and the rubbish occasioned by the operations. All such surplus materials and rubbish shall be the property of the Commissioner and may be carried away in such manner as in the opinion of the Commissioner will occasion the least expense; and

(c) At all times, whilst any such road continues broken up, cause it to be fenced and guarded, and a sufficient light to be kept there at night.

The Commissioner and such person as aforesaid shall each of them be liable to make compensation in respect of any injury or damage occasioned to any person by reason of the failure of the Commissioner or such person as aforesaid to comply with the foregoing provisions.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

18. Commissioner may go outside Area. The Commissioner, with the approval of the Governor in Council, may exercise all or any of its powers outside the Area for the purpose of the storage, distribution, or supply of water or power.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

19. Power. (1) Subject to any general Act in force for the time being regulating such matters or any of them, the Commissioner, with the approval of the Governor in Council, may—

(i) Enter upon and continue the manufacture and conservation of power, and the manufacture of all materials arising from such manufacture or conservation, by means of any machinery, and by any process, art, or invention now or hereafter to be known or used, and from any substance that now is or may hereafter be used for such purposes;

(ii) Contract with any person for the supply of power to it or to any structure, premises, or land of which it is the owner or occupier, in such manner and under such stipulations as the Commissioner thinks proper.

(2) Any authorised officer may, at all reasonable times and as often as he thinks necessary, inspect and examine at all reasonable times any machinery or works which have been constructed by any person with whom the Commissioner has so contracted.
If such officer considers any such machinery or works to be incomplete or otherwise defective, the person who constructed the same shall not be entitled to call on the Commissioner for the fulfilment of such contract until all such machinery and works have been altered or removed, and other machinery and works have been substituted therefor, to the satisfaction of such officer.

The provisions of this subsection shall be in addition to and not in derogation of any powers conferred on the Commissioner by or under this Act or any other Act.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

20. (1) **Commissioner may supply water.** Subject to this Act, the Commissioner may supply water to be used within the Area to such persons, upon such terms, at such prices, and with such guarantees and securities for payment, and generally upon such conditions, as the Commissioner thinks proper.

(2) **Who entitled to water for irrigation.** Save as by this Act is otherwise provided, the owners or occupiers of lands in the Area shall alone be entitled to the supply of water for irrigation purposes:

Provided that the Commissioner may enter into a contract with persons whose lands are not within the Area for the supply of surplus water for irrigation purposes at a prescribed rate. Such contract shall in no case be entered into for a longer period than one year; but in each case the Commissioner may, if it thinks fit, grant any number of renewals for periods of one year upon each renewal.

(3) **Sale by measure.** Payment for water supplied by the Commissioner shall be made at such times and for such periods as may be prescribed or as the Commissioner may determine, and shall, if the Commissioner thinks proper, be made wholly or partly in advance and subject to periodical adjustment.

(4) Nothing in Part I of this Schedule to this Act shall be read so as to derogate from or otherwise affect the power of the Commissioner to permit the taking or diverting of water by any person under a license, or any renewal thereof, thereunto enabling issued pursuant to "The Water Acts, 1926 to 1957":

Provided that any fees payable in respect of any such license or renewed license shall be credited to the Irrigation Fund Account of the Area concerned.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5; Order in Council, Gazette 11 May 1957, p. 194; Act of 1959, 8 Eliz. 2 No. 28, s. 4.

Act referred to:

21. **Supply to adjoining local Areas.** Upon application by any Local Authority or Statutory Corporation whose Area adjoins the Irrigation Area, or through whose Area any works of the Commissioner pass, the Commissioner may, with the approval of the Governor in Council, supply water or power to such Local Authority or Statutory Corporation on such terms and conditions as may be agreed upon between the Commissioner and such Local Authority or Statutory Corporation.

22. Agreement to supply water for a term. (1) Subject to this Act, the Commissioner may agree with an owner or occupier of land situated within or without the Area, to supply water to be used by him on that land, but not elsewhere, for any purpose.

(2) Any such agreement as aforesaid may be for the supply of water for a term not exceeding fourteen years, and at a price to be specified in the agreement, such price not being less than the price of water supplied by the Commissioner current at the time of making the agreement.

In every such agreement the consumer shall agree to pay the agreed price for the term therein limited, and to take not less water in any year than the minimum quantity therein specified, and to pay a minimum amount for water therein fixed.

Any such agreement, whether under seal or not, shall be deemed to be a covenant running with the land, and shall bind the land and the successive owners and occupiers thereof during the term:

Provided that in the case of land held under "The Real Property Acts, 1861 to 1887," a caveat notifying the terms of the agreement shall be lodged in the office of the Registrar of Titles. No such caveat shall be removed except upon the written consent of the Commissioner and failing such written consent upon the order of the Supreme Court or a judge thereof, which may be made upon petition or summons in a summary way upon proof that the agreement has ceased to have effect.

Nothing in any such agreement shall be construed to create any obligation on the part of the Commissioner to supply any fixed quantity of water in the event of an insufficiency of water requiring, in the opinion of the Commissioner, a discontinuance or lessening of the supply as hereinafter provided.


The proviso should be read as if the word "be" occurred between "shall" and "lodged" in the third line thereof.

Act referred to:

23. Commissioner may lessen supply. When the water upon which the Commissioner relies for the maintenance of the supply has been diminished to such an extent as to render it expedient, in the opinion of the Commissioner, to lessen the quantity of water or power supplied, the Commissioner may discontinue or lessen the supply throughout the whole or any part of the Area, or under any agreement for supply, whether within or outside the Area, as it thinks proper, and may, whenever and as often as it is satisfied of the actual or approaching insufficiency of such supply, from time to time, make orders regulating the order of priority in which and the quantities with which the various consumers shall be entitled to be supplied, and the Commissioner shall not on that account incur any liability:

Provided that, before taking any action under this section, reasonable public notice shall be given by the Commissioner of its intention so to do.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.
24. General protection to Commissioner as to supply. Nothing in this Act shall be deemed to render it obligatory on the Commissioner to supply water or power in any Area or to any person if by reason of drought, accident, or other cause the Commissioner is of opinion that it is impracticable to do so.

25. Consumers may construct channels, etc. The Commissioner may authorise and empower any person entitled to be a consumer of water for the purposes of irrigation or other agricultural purposes to exercise all or any of the powers of the Commissioner for the purpose of constructing and maintaining channels or other works for conveying water from the reservoir or works to the lands of such consumer.

26. Prescribed fittings only to be used. An owner or occupier of land or premises supplied with water or power shall not use in connection with such water or power any fitting other than such as is prescribed or authorised; and it shall not be arranged in a mode different from that prescribed or authorised.

Provisions as to fittings, etc. Every fitting arranged or attached in contravention of this section shall become the property of the Commissioner, and may be seized and removed by an authorised officer.

27. Drainage works. Subject to this Act, the Commissioner may, in any Drainage Area, construct, maintain and operate such works of drainage as he deems necessary or expedient and may, in respect of lands within the Drainage Area, make and levy such rates or charges as may be prescribed according to the nature of the benefits received, directly or indirectly, from those works.

Former clause 27 repealed by Act of 1933, 24 Geo. 5 No. 21, s. 26; present clause inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 26.

28. Power to deal with pests, etc. The Commissioner may, by any of its employees or workmen, after notice given as prescribed, enter upon any land within the Area, and at the cost and expense of the occupier, swab, spray, prune, clean, or otherwise treat, and, if thought necessary by the Commissioner, destroy and dispose of any trees, plants, vines, fruits, fruit cases, packages, weeds, growths, or refuse on such land, which in the opinion of the Commissioner are likely to convey, harbour, or spread disease, or are otherwise noxious.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

29. Power to make advances, etc. The Commissioner may at any time, or from time to time, subject to such conditions as are prescribed, or as are approved by the Minister, make advances to occupiers of land within the Area. Subject to the regulations such conditions shall attach to the land, and the non-performance or breach of any such conditions shall, in the case of a holding, render the holding liable to be forfeited.

30. Power to remit rent, etc. In any case where the Minister, upon a recommendation in writing by the Commissioner, is satisfied that the circumstances so warrant, he may remit or postpone either wholly or in part the payment by an occupier of any rent, rate or charge or interest thereon or any payments in respect of advances, for which such occupier is indebted to the Crown or Commissioner.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 27.
31. Notice of transfer of land or subdivision. Whenever any person sells any land within the Area, he shall give notice in writing of such sale to the Commissioner, specifying the name and address of the purchaser.

Any person liable for any moneys under this Act who fails to give notice as aforesaid shall continue to be liable for all moneys which may accrue due after the sale, in the same manner as if he were still the owner thereof.

As amended by Act of 1954, 3 Eliz. 2 No. 27, s. 28.

31A. Subdivision of freehold land within Irrigation Area. (1) Freehold land within an Irrigation Area shall not be subdivided without the prior approval of the Commissioner.

(2) Application for such approval shall be accompanied by a plan of the proposed subdivision signed by all persons who are parties to the transaction.

(3) The Commissioner may approve, refuse to approve, or approve with modifications of any proposed subdivision.

(4) Any person aggrieved by the refusal of the Commissioner to approve of a proposed subdivision, or by his approval thereof with modifications, may appeal to the Minister in writing not later than one month after he has been notified of the decision of the Commissioner.

(5) Upon appeal as aforesaid the Minister may confirm, reverse, or modify as he deems fit the decision of the Commissioner who shall give to the determination of the Minister upon the appeal the same effect as if that determination were the decision of the Commissioner upon the matter.

(6) The approval of the Commissioner to a plan of subdivision shall be evidenced by a notation of approval endorsed thereon under the seal of the Commissioner.

(7) The provisions of “The Local Government Acts, 1936 to 1953,” relating to the subdivision of land shall be read subject to this clause, and accordingly a Local Authority shall not approve of a plan of subdivision of freehold land in an Irrigation Area unless that plan has been approved by the Commissioner, his approval is evidenced thereon as provided by subclause six of this clause, and the approval by the Local Authority of that plan is duly applied for not later than six months after the date of the notation thereon evidencing approval as aforesaid by the Commissioner.

(8) The Minister may, from time to time, by notification published in the Gazette exempt from this clause freehold land in any part defined in that notification of an Irrigation Area. The Minister may by a like notification revoke such an exemption.

Inserted by Act of 1954, 3 Eliz. 2 No. 27, s. 29.

Act referred to:

32. Free search in office of Registrar of Titles and Supreme Court Registry. (1) Every Registrar of Titles shall permit the secretary or an authorised officer, free of charge, to make searches of, and to make copies of or extracts from, any books, plans, and documents registered in the registry relating to land situated within the Area.

(2) The secretary or an authorised officer shall be entitled at all reasonable times, free of charge, to inspect any record in the office
of the Registrar of the Supreme Court for the purpose of ascertaining the names of corporations and joint stock companies, or trustees in estates or trusts, and of executors and administrators in estates, and make and take all such copies of or extracts from such record as he may deem necessary.

33. Remedies for moneys due. (1) Where water or power is supplied to any land or premises, and the owner of such land or premises is not the person supplied with such water or power, he shall nevertheless be liable to pay to the Commissioner in respect of such supply the minimum amount, if any, fixed by the Commissioner or under any agreement as payable for such supply; and such amount shall be deemed to be a debt due by him.

(2) Money due in respect of water or power supplied to any land or premises or in respect of any fittings or other chattels supplied by the Commissioner to any land, or in respect of works executed by the Commissioner on any land or premises, shall, to the extent to which an owner is liable and without prejudice to any other rights of the Commissioner, be deemed to be a debt by the owner of the land or premises for the time being, notwithstanding that he was not the owner at the time when the money became due; and shall also be a debt due by the person primarily liable to pay the money under this Act.

34. Commissioner may act for person in default. Whenever by this Act the Commissioner is empowered to give to any owner or occupier of land or premises notice requiring him within any specified time to carry out or provide any works, matters, or things on or in connection with the land or premises, and such owner or occupier has not within the limited time complied with such notice (or, if he may request the Commissioner to comply therewith on his behalf, has not duly made such request), then the Commissioner may, subsequently to or in lieu of taking any proceedings against such owner or occupier for such non-compliance, enter upon the land or premises and carry out and provide, on behalf of and at the expense of such owner or occupier, the works, matters, or things in which he has made default.

35. Apportionment of joint liability. When two or more persons are or may be directed by the Commissioner to do or join in doing any act, or to pay or join in paying any sum of money, or when the Commissioner may permit two or more persons to join in doing any act or paying any sum of money, the Commissioner may, if it thinks fit, apportion the matter to be done or the sum of money to be paid between such persons in such manner as the Commissioner considers just.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

36. Compensation in case of damage. Any compensation payable by the Commissioner to any person (except by reason of the taking of land under and subject to the Public Works Land Resumption Act) shall be such sum as may be agreed upon by and between the parties, or as, in the case of dispute, may be fixed by a police magistrate upon summons.

Every police magistrate shall have jurisdiction to hear and determine the matter of such dispute, and to grant such costs as, in his opinion, are just and reasonable.
Any party may appeal to the Supreme Court from the whole or any part of an order of a police magistrate under this section.

Every such appeal shall be by way of rehearing, and shall be heard and determined in the same manner, including the right to a jury, as if the matter of such dispute had been the subject-matter of an action in such Court.

The reference to "Police Magistrate" now read as a reference to "Stipendiary Magistrate"—See Justices Act Amendment Act of 1941, 5 Geo. 6 No. 9 s. 4 (2).

37. (1) Expenses recoverable in any court. In addition to any other remedy provided by this Act, expenses recoverable by the Commissioner from any person shall be recoverable in any court of competent jurisdiction.

(2) Future owners liable. Expenses recoverable by the Commissioner from any owner of land shall be recoverable, together with interest as prescribed, at any future time from any owner of the land.

(3) Expenses include compensation. Expenses recoverable by the Commissioner in respect of the execution of works for or on behalf of any person shall include the amount of any compensation paid by the Commissioner in respect of such works.

38. Powers of trustees and agents. (1) Any trustee being owner of any land may apply any of the funds under his control in defraying any charges, costs, and expenses necessarily or properly incurred by him under this Act as such owner.

(2) Any agent may deduct from any moneys held by him for his principal all charges, costs, and expenses necessarily or properly incurred and paid by him under this Act as owner within the meaning of this Act of any land for which he is the agent of such principal, or he may in any court of competent jurisdiction recover from such principal the amount so incurred and paid.

39. [Repealed by Act of 1954, 3 Eliz. 2 No. 27, s. 30.]

40. (1) Discharge of Commissioner. The receipt given by any person to the Commissioner for any moneys paid under this Act shall be an absolute discharge to the Commissioner; but nothing herein shall prejudice or affect the right of any person claiming to be entitled to receive any such money to recover the same from the person to whom the Commissioner has paid the same.

(2) Disputes by claimants. In the event of any doubt or dispute as to the person legally entitled to receive any moneys payable under this Act, the Commissioner may pay the same into the Supreme Court to abide the orders of that Court.

41. (1) Delivery of matters in possession of employee at removal. If any employee is dismissed or is suspended, or resigns, or dies, absconds, or absents himself, and if he or his wife, widow, or any of his family or representatives refuses or neglects after seven days' notice in writing, to deliver to the Commissioner or its agent any property as herein defined in the possession or custody of such employee at the occurrence of any such event as aforesaid, then any justice of the peace, upon application by the Commissioner or its agent, may order any member of the police
force with proper assistance to enter and take possession of such property, and deliver the same to the Commissioner or its agent, and, if necessary, to remove any person.

(2) **Employees to account on demand.** Every employee shall from time to time, when required by the Commissioner, make and deliver to it or to its agent, a true account in writing under his hand of all moneys received by him on behalf of the Commissioner.

Such account shall state how and to whom and for what purpose such moneys have been disposed of.

Together with such account, he shall deliver the vouchers and receipts for such payments.

He shall pay to the Commissioner or to its agent all moneys which appear to be owing from him upon the balance of such account.

If he fails to render such account, or to deliver all such vouchers and receipts in his possession or power, or to pay the balance thereof when required, or if for three days after being required he fails to deliver to the Commissioner or its agent all property in his possession or power, then, upon a complaint made as for a breach of duty, a court of petty sessions may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such employee, and make such other orders as appear to the court to be just.

If it appears, either upon his confession or upon evidence or upon inspection of the account, that any moneys which should be paid over to the Commissioner are in his hands or owing by him, such court may order him to pay the same.

If he refuses to make such account in writing, or to produce and deliver to such court the vouchers and receipts relating thereto, or to deliver up any property, the court may commit him to prison, there to remain until he has complied with such order.

(3) **Insolvency, etc., of employee.** If any employee or agent having in his possession or power any property as herein defined—

(a) Becomes insolvent; or

(b) Makes an assignment for the benefit of his creditors; or

(c) Has any execution, attachment, or other process issued against his land, goods, chattels, or effects,

the Commissioner may apply to such employee or agent, or his assignee or trustee, or to the sheriff or other person executing such process, or to his executors or administrators, or to any other person having legal right, as the case may be, and may demand that all such property be paid over or delivered up to the Commissioner or such person as it may appoint.

The party so applied to and having the same shall on such demand deliver over to the Commissioner, or to such person as aforesaid, all such property, and shall pay out of the estate, assets, or effects of such employee or agent all moneys due by him to the Commissioner before any other of the debts of the said employee or agent are paid or satisfied, and before the money directed to be levied by such process as aforesaid is paid over to the party issuing the same. All assets, land, goods, chattels, estate, and effects of such employee or agent shall be bound to the payment and discharge thereof accordingly.
(4) **When warrant may issue.** If the Commissioner or its agent makes oath that it has good reason to believe, upon grounds to be stated in its deposition, and does believe, that it is the intention of any employee or agent to abscond or that he has absconded, any justice of the peace may, if he thinks fit, issue a warrant in the first instance for the bringing of such employee or agent before such justice or court as aforesaid.

(5) **Meaning of “property”.** For the purposes of this section, the term “property” includes any building or any part thereof or any appurtenance thereof, or any books, papers, securities, documents, or property whatsoever relating to the execution of this Act or the business of the Commissioner or belonging to the Commissioner.

(6) **Sureties not to be discharged.** No such proceeding against or dealing with any such employee or agent shall deprive the Commissioner of any remedy which it might otherwise have against such employee or agent or any surety.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

“Court of petty sessions” now Magistrates Court; see Justices Acts Amendment Act of 1964, s. 2 (4), title JUSTICES, Vol. 8, p. 250.

42. **Refusing to give up possession of works.** Any person having charge of any works of the Commissioner who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession, shall be liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

43. **Diverting water, or diminishing supply or injuring it.** Any person who, without the authority of the Commissioner, and within any water reserve or catchment area under the control of the Commissioner or within the Area or such lesser area as may be defined by the Governor in Council by Order in Council—

(a) Takes, diverts, or intercepts water from any stream or source of supply; or

(b) Does any act whereby any such water is or is likely to be diverted or diminished in quantity, or injured in quality or purity;

and does not, on being required by notice from the Commissioner, immediately restore everything to the state in which it was before such Act, shall be liable to a daily penalty not exceeding ten dollars for every day during which the water is taken, diverted, intercepted, diminished, or injured after such notice.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

44. **Obstructing flow, etc.** Every owner or occupier of land intersected or bounded by any stream or watercourse, or through or near to which any channel or drain is cut by the Commissioner or any person by its authority, who unlawfully obstructs or in any manner unlawfully interferes with the water or flow of water therein, shall be liable to a penalty not exceeding one hundred dollars, and in addition to a daily penalty not exceeding ten dollars for each day on which the offence is committed after notice by the Commissioner.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.
44a. Meaning of “land under the control of the Commissioner”. For the purposes of Clauses 44b and 44c of this Part of this Schedule, the term “land under the control of the Commissioner” includes—

(a) Any Crown land vested in or granted to or placed under the control of the Commissioner, pursuant to this Act or set apart for the purposes of this Act;

(b) Any land leased to, acquired by, or held in fee-simple by the Commissioner for the purposes of this Act;

(c) Any land reserved pursuant to “The Land Acts, 1962 to 1965,” and placed under the control of the Commissioner as trustee; and

(d) Any land acquired by the Minister pursuant to section 15a of this Act.

Inserted by Order in Council, Gazette 26 June 1965, p. 1132.

Act referred to:

44b. Trespass, etc. (1) Any person, not lawfully claiming under a subsisting lease or license, or otherwise under this Act or any other Act, or under the prior authority of the Commissioner, who occupies any land under the control of the Commissioner, or who resides or erects any structure, or erects, constructs, places, or maintains any other improvement or thing whatsoever, or depastures stock, on any such land, or who clears (which term includes destruction of trees), digs up, encloses, or cultivates, any such land, or any part thereof, or who uses any such land, or any part thereof, for any purpose connected with the use by that person of any other land (whether land adjoining land under the control of the Commissioner or otherwise), shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred dollars and in addition to a daily penalty not exceeding ten dollars for each day on which the offence is continued after conviction therefor.

(2) In respect of any offence under this clause in relation to clearing, digging up, or cultivating, any person found guilty of such an offence shall, in every case, be liable for all loss and all damage caused by that offence in addition to the prescribed penalty for the offence, and evidence proving or tending to prove the amount of such loss or damage shall be admissible in the proceedings, and upon convicting the offender the Court may, in addition to the penalty imposed, order him to pay the amount thereof, proved to the satisfaction of the Court.

For the purposes of this subclause the loss and damage caused by the offender shall include the value of any tree destroyed, which value shall be taken to be the sale price ordinarily obtainable on the sale of the tree then and there standing.

(3) Upon convicting any person for an offence under this clause, whether or not a penalty as aforesaid is imposed, the Court in its discretion may, upon the application of the complainant, order the issue of a warrant in terms of subclause (1) of clause 44c of this Part of this Schedule to remove the person from the land in respect whereof the offence was committed and, as the case requires, an order in terms of subclause (2) of clause 44c of this Part of this Schedule requiring the person to remove from such land any structure or other improvement
or thing whatsoever erected, constructed, placed, or maintained thereon, or any cultivation planted thereon by him without any lease, license, permit, or other authority therefor.

Inserted by Order in Council, Gazette 26 June 1965, p. 1132.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

44c. Removal of trespassers.—(1) Any person authorised in that behalf by the Commissioner who has reason to believe that any person is in unlawful occupation of any land under the control of the Commissioner, or is in possession of any such land under colour of any purchase, lease, or license, that has been terminated by forfeiture, cancellation, or otherwise, may make a complaint in a summary way under “The Justices Acts, 1886 to 1964,” and the Court, on being satisfied of the truth of the complaint, shall order the issue of a warrant, addressed to the person who made the complaint or to any member of the Police Force requiring him forthwith to remove the person from the land and to take possession of the land on behalf of the Commissioner; and the person to whom the warrant is addressed shall forthwith carry the same into execution.

(2) (a) Where any structure or other improvement or thing whatsoever is erected, constructed, placed, or maintained, or any cultivation is planted on any land under the control of the Commissioner, and—

(i) The person claiming ownership of the structure, improvement, or thing, or the cultivation, does not on demand produce any lease, license, permit, or other authority therefor, whether under this Act or any other Act; or

(ii) After reasonable enquiries made by the Commissioner or any person thereunto directed by the Commissioner, the owner thereof cannot be found,

then, upon complaint made in a summary way under “The Justices Acts, 1886 to 1964,” by a person authorised in that behalf by the Commissioner, the Court, on being satisfied of the truth of the complaint, shall order the structure, improvement, or thing, or the cultivation, to be removed from the land within the time fixed in the order and by and at the expense of the person found to be the owner.

(b) Notwithstanding that the person alleged in any complaint under this subclause to be the owner of the structure or other improvement or thing or cultivation, the subject of the complaint has not been served with the complaint and is not present, if the Court is satisfied that the Commissioner made or caused to be made reasonable enquiries for the purpose of finding the owner but has been unable to find him, the Court may proceed in the absence of the owner and as if the complaint had been duly served, or it may make such order as to substituted service by public advertisement or otherwise as the Court deems fit in the circumstances and may for the purpose of enabling such substituted service enter any necessary adjournment.

Substituted service, if ordered, shall be sufficient service of the complaint for all purposes of the hearing and determination thereof and the making of any order thereon.

(c) If, after any enquiry made by the Commissioner or any officer thereunto directed by the Commissioner, the owner of the structure or other improvement or thing or cultivation in question is not known or cannot be found, the order as aforesaid of the Court may be posted
on some conspicuous part of the land on which the structure or other improvement or thing or cultivation is situated and no other service or publication of such order need be given or made.

(d) If any structure or other improvement or thing or cultivation is not removed from the land in compliance with any order made by the Court under this clause, such structure or other improvement or thing or cultivation shall become and be forfeited to the Crown and vested in the Commissioner and may be sold for removal or otherwise disposed of as the Commissioner may determine.

To the extent to which the sale price, if any, of any structure or other improvement or thing or cultivation forfeited to the Crown under this subclause is insufficient to defray the costs incurred by the Commissioner with respect to the removal or disposal otherwise of the same, such costs may be recovered by the Commissioner from the person, if any, who claimed ownership of such structure or other improvement or thing or cultivation, by action as for a debt in any Court of competent jurisdiction.

(e) The powers granted under the foregoing provisions of this clause shall be in addition to and not in diminution of or substitution for the powers of trustees of reserves to take action pursuant to the provisions of section three hundred and thirty-eight of "The Land Acts, 1962 to 1965".

Inserted by Order in Council, Gazette 26 June 1965, p. 1132.

Acts referred to:


44D. Obstruction, etc.—Any person who in any way assaults, threatens, obstructs, hinders, or interferes with the Minister, the Commissioner, or any officer, or any person acting under the authority of the Minister or the Commissioner in the exercise of any of the powers conferred or the discharge of any of the duties imposed on the Minister, the Commissioner, or any officer or person, by this Act or by such authority, or attempts or threatens so to do, shall be guilty of an offence against this Act and shall be liable to a penalty of not less than twenty dollars nor more than two hundred dollars.

Where any act or omission constituting an offence against this Act arising under this clause is also an offence against this Act arising under any other provision of this Act, the offender may be prosecuted either under this clause or under that other provision, but so that he shall not be punished twice for the same act or omission.

Inserted by Order in Council, Gazette 26 June 1965, p. 1132.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

45. Non-compliance with orders. Any person who does not comply with the order of the Commissioner or an authorised officer to execute any work which under this Act the Commissioner or any such officer is authorised to direct shall be liable to a penalty not exceeding forty dollars, and in addition to a daily penalty not exceeding four dollars for every day on which such non-compliance continues after conviction.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.
46. Violation of Act an offence. Where anything is by this Act, or by any direction, order, or notice made under the authority of this Act, directed to be done or forbidden to be done, or where any authority is given to the Commissioner or any of its officers to direct or to forbid anything to be done, and such act so directed to be done remains undone, or such act so forbidden to be done is done, in every such case the person making default as to such direction and prohibition respectively shall be guilty of an offence against this Act.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

47. (1) General penalty. Any person guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a penalty not exceeding forty dollars and to a daily penalty not exceeding four dollars for each day on which such offence is continued after notice by the Commissioner.

(2) Penalties recovered summarily. All penalties incurred under this Act may be recovered in a summary way on the complaint of the secretary or an authorised officer under the provisions of “The Justices Acts, 1886 to 1909.”

(3) Who are liable for offences. Every penalty imposed by this Act in respect of any offence may be recovered from the person actually committing the offence, or from the person in whose employment he is and on whose behalf or for whose benefit he is acting, or (where under this Act it is the duty of any person to abstain from any act, or where any person has lawfully the authority to prevent any act or default) from the person wilfully permitting any act or default, or from all or some of such persons; and for the purposes of this Act all such persons shall be deemed to have done the act or made the omission complained of or caused the same to be done or made.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

Act referred to:

48. Saving of other proceedings. (1) Any penalty imposed upon or recovered from any person under this Act shall be without prejudice to the right of the Commissioner to recover from such person—

(a) Any sum for damage sustained by it through such person’s act or default;

(b) The expenses incurred by it in remedying any such damage;

(c) The value of any water wasted, misused, or unduly consumed, or unlawfully diverted, intercepted, or taken by such person.

All such sums may, at the option of the Commissioner or its prosecuting officer, be recovered in the same proceeding by which the penalty is sought to be recovered, or in another proceeding by complaint or action.

(2) The payment of any such penalty shall not bar or affect the right of the Commissioner to bring any action or to take any proceeding against such person or any other person liable.

(3) The Commissioner may, if in its opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in the Supreme Court to enforce the abatement or
prohibition of any nuisance or to enforce compliance with any order made under this Act, or for the recovery of any penalties or expenses from or for the punishment of any persons offending against this Act.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

49. Stamp duty, etc. (1) Notwithstanding the provisions of any Act to the contrary, no stamp duty shall be payable in respect of any lease, license, agreement, or contract issued or entered into by or in favour of the Commissioner, or any mortgage or other security executed to secure an advance made by the Commissioner, or any release of such mortgage or security or any document or instrument executed for the purposes of this Act.

(2) The provisions of “The Bills of Sale Act of 1891” or any Act amending or in substitution for that Act shall not apply to any mortgage or other security executed to secure an advance made by the Commissioner under this Act or affect the validity or operation of any such mortgage or security in respect of any chattels comprised therein.

(3) The provisions of “The Mercantile Acts, 1867 to 1896,” requiring the registration of mortgages of live stock or liens on crops or liens on wool shall not apply to any mortgage of live stock or lien on crops or lien on wool executed to secure an advance made by the Commissioner under this Act.


Acts referred to:

PART II

For application of Part II of this Schedule, see s. 17.

SUBJECT MATTER FOR REGULATIONS

1. Employees; inspection. The duties, discipline, conduct, and regulation of employees; inspections of works, machinery, and services by employees and authorised officers; prescribing the payment of reasonable fees for inspections and other services by employees; prohibiting and punishing the obstruction of or interference with persons in the carrying out of their functions under this Act.

2. Forms. Forms of books, documents, notices, instruments, applications, and agreements, writings, and the conditions, stipulations, reservations, and exceptions that shall be inserted or that shall be implied in contracts, agreements, leases, and other instruments; the giving of notices.

3. Evidence. The mode of proof of matters required to be proved under or for the purposes of this Act, and for facilitating such proof.

4. Mode of execution. The manner of doing, constructing, or performing any act, work, or thing under or for the purposes of this Act, and the time when or within which it shall be done, constructed, or performed.

5. Materials of works, etc. Requiring any work, matter, or thing to be executed, constructed, or done of such materials, within such time, or in such manner as may be directed or approved whether generally or for any class of cases or in any particular case, by the Minister or Commissioner or any authorised officer or other person; requiring works to be executed or constructed only by qualified persons.
6. Permits; fees. The issue of permits to or with respect to persons and property; prescribing the payment of reasonable permit fees.

7. Delegation of authority. Leaving any matter or thing to be from time to time determined, applied, dispensed with, prohibited, or regulated by the Commissioner or by any authorised officer either generally or for any classes of cases, or in any particular case.

8. Managing works. The due management and use of the water and other property of the Commissioner, and of any water under its jurisdiction, and the construction, maintenance, extension, cleansing, repair, and management of the works.

As amended by Act of 1931, 22 Geo. 5 No. 44, s. 5.

9. Prescribing materials, fittings, etc. The construction, size, nature, description, strength and materials, and the mode of arrangement, disposition, custody, alteration, removal, connection, disconnection, and repair of channels, machinery, pipes, and fittings; the time of executing and the notice to be given for such works or things and the superintending thereof; making good displaced ground; preventing or restricting distraint or taking in execution of any such machinery, pipes, or fittings; prohibiting and punishing the placing or use of unauthorised channels, machinery, pipes, and fittings.

10. Removal, etc., of unlawful works, etc. Authorising the Commissioner, or any authorised officer, to pull down, remove, destroy, or alter any work, structure, material, or thing erected or being in breach of this Act, and to recover all expenses incurred in so doing; prescribing that the exercise of this authority shall not relieve any person from liability to any penalty incurred by reason of such breach.

11. Protecting the water and works. Protecting the water, the works, surveys, fittings, and other property of the Commissioner, and every part thereof, from trespass, diversion, defilement, obstruction, damage, and injury.

12. Nuisances. Preventing and removing nuisances on lands and works vested in or under the control of the Commissioner.

13. Fences and structures. Regulating fencing; and the erection of structures as to height, design, building materials, building line, and sanitation, and other matters.

14. Flimsy structures. The regulation or prevention of the erection of any structure of calico or canvas or other inflammable material, and the removal and disposal of any structure used as a dwelling-place which, in the opinion of the Commissioner, is unfit for human habitation.

15. Diseases in plants, stock, etc. The prevention, treatment, and eradication of diseases in trees, vines, plants, fruit, seed, stock, poultry, or other animals or things, and the exclusion from the Area of any trees, vines, plants, fruits, fruit cases, packages, seeds, stock, poultry, or other animals or things which, in the opinion of the Commissioner, would be likely to harbour or spread disease.

16. Noxious plants. Prohibiting or regulating the introduction into, the destruction within, and removal from the Area of any plant, grass, seed, or any part thereof, which the Commissioner considers to be injurious or which may be declared to be a noxious plant; prescribing and
regulating the destruction of noxious plants on roads, or reserves, or lands vested in or under the control of the Commissioner, and enforcing such destruction by occupiers of land fronting such roads, reserves, or lands.

17. **Noxious animals.** The suppression and destruction of noxious animals.

18. **Meat; slaughtering.** Notwithstanding the provisions of any other Act, regulating the introduction or consignment into the Area of meat or the flesh of any animal, and the slaughtering within the Area of any animal.

19. **Straying stock.** Preventing stock from straying on roads or reserves or lands vested in or under the control of the Commissioner.

20. **Entire stock.** Prescribing and regulating the registration of entire stock in the Area, and prohibiting the introduction into or retention in the Area of any such stock which, after report by an authorised officer, the Commissioner deems to be inferior; prescribing registration fees.

21. **Returns.** Prescribing and regulating the furnishing by occupiers of returns giving—

   (i) The numbers and description of their stock; and
   
   (ii) The area of their cultivated land, description of the trees, vines, crops, and the cultivation thereon, and the yields per acre from the same.

22. **Catchment areas, etc.** The preservation of the catchment areas and water reserves against injury, trespass, and pollution; prohibiting the doing or continuance of anything likely to cause pollution thereof or of the water supply thereon.

23. **Irrigation holdings.** Empowering the Commissioner, after notice given as prescribed, to perform and observe at the cost and expense of the occupier of any holding, any contracts between the Commissioner and him under which the occupier is in default in respect of the maintenance, care, reparation, or insurance of any improvements, goods, or chattels provided, effected, or supplied, for or in connection with such holding, and to recover such costs and expenses with interest thereon from such occupier; and generally the dealing with and disposal of such lands.

As amended by Act of 1933, 24 Geo. 5 No. 21, s. 27.

24. **Demonstration farms, etc.** Establishing and regulating the working, management, and control of demonstration farms and experiment stations.

25. **Improvements.** The construction of improvements on holdings; fixing prices or charges for the acquirement or use of improvements effected by or under the authority of the Commissioner.

26. **Local services.** Regulating lighting, storm-water or other drainage, sanitary, sewerage, and garbage systems, the suppression of nuisances, the removal and disposal of garbage, nightsoil, filth, and refuse, and the fixing, recovery, and collection by the Commissioner of charges for the rendering of services in relation to all or any of these.

27. **Traffic.** Regulating traffic on roads within the Area and on tramways maintained by the Commissioner; fixing rates for the carriage of passengers, goods, live stock, or material on such tramways.
28. Supply of water or power. The supply, transmission, and distribution of water or power; cutting off such supply in certain specified cases; providing for the cutting off of the supply as a cumulative remedy for moneys due; the method of measuring water rights and quantities of water; the quantity of water or power which consumers are entitled to receive; determining the time, order, and manner of delivery of water or power.

29. Domestic purposes, stock, etc. The conditions on which water may be used by consumers for domestic purposes, watering stock, or other purposes.

30. Water under pressure. The supply of water under pressure and the terms and conditions of such supply.

31. Misuse. Preventing any person from allowing any other person not having agreed to be supplied by the Commissioner to use water or power, and preventing such person from using the same.

32. Insufficiency. To meet the contingency of any insufficiency or threatened insufficiency in the general water supply.

33. Charges. Fixing the scale of charges to be paid for water or power supplied to consumers, including if deemed desirable the fixing of a minimum amount to be paid in every case; prescribing the conditions upon which the water or power shall be supplied; providing if deemed desirable for a reduction in the price of water or power supplied in excess of a specified quantity; fixing different charges for water or power according to the purposes for which it is supplied; fixing water charges to be paid by the occupier of land situated within three hundred feet of the middle of a road in which water mains are laid down by the Commissioner; determining the time at which charges for water or power are to be payable, whether in advance or otherwise; providing for the levy of charges and other moneys whatsoever due to the Commissioner by distress and sale of goods and chattels.

As amended by Act of 1965, No. 6, s. 3.

34. Water rights. With respect to holdings—

Fixing the price for water-rights; altering such price where the consumer subdivides the holding or surrenders or disposes of part thereof or obtains an increase in area of the holding or an increase in the irrigable lands thereof; declaring that water rights are a fixed charge on the land, and providing for the enforcement of such charges; prescribing quantities and times of supply of water in pursuance of water rights; the allotment from time to time of additional water rights; prescribing the procedure in and in connection with the disposal by agreement of additional water rights; the times when payments in respect of such charges shall be made; any other matters relating to the supply of water pursuant to water rights.

35. Riparian owners. Regulating and controlling the exercise of rights for the purpose of securing the transmission of water in part or wholly supplied from any works of the Commissioner to owners or occupiers of land adjoining the banks of any stream who may have purchased or who may hereafter purchase water from such works, and to all other
purchasers of water from such works, without any diversion or interference by any intermediate owner or occupier of lands adjoining such banks: Provided that such regulations shall be so framed as to preserve the rights of such intermediate owners or occupiers to so much water as they would have been entitled to but for the existence of the works of the Commissioner.

36. Waste, etc., of water or power. Preventing and remedying the waste, misuse, undue or unauthorised consumption, pollution, or contamination of water, contained in or supplied from the reservoirs or works or otherwise under the control of the Commissioner, and the waste, misuse, or undue or unauthorised consumption of power.

37. Penalties. Imposing a penalty for any breach of any regulation, and imposing different penalties in case of successive breaches. But no such penalty shall exceed one hundred dollars.

Daily penalties. Imposing a daily penalty for any breach of any regulation. But no such penalty shall exceed ten dollars per day.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

38. Expenses. Providing that in addition to a penalty any expense incurred by the Commissioner in consequence of a breach of any regulation, or in the execution of work directed by this Act to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

39. Interest. Prescribing that moneys payable to the Commissioner under this Act shall carry interest if not duly paid; fixing the rate of such interest.

40. Charge on land for moneys due. Providing as an additional remedy that any moneys due to the Commissioner under this Act for water or power or any other thing supplied to or provided in relation to any land or for any costs and expenses incurred by the Commissioner and repayable by the owner or occupier of any land, together with all interest as prescribed on such moneys, costs, and expenses, shall be a charge on such land, and for the enforcement of such charges by sale, forfeiture, or otherwise of such land.

41. Generally. Generally for carrying into effect the purposes of this Act in respect of any matter not herein provided for or insufficiently provided for, and as to which the Governor in Council, by Order, permits regulations to be made.