

CANBERRA WATER SUPPLY (GOOGONG DAM) ACT 1974

No. 34 of 1974

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CANBERRA WATER SUPPLY (GOOGONG DAM) ACT 1974

No. 34 of 1974

An Act relating to the Construction of a Dam on the Queanbeyan River in New South Wales and the Supply of Water from that Dam for use in the Australian Capital Territory, and for purposes connected therewith.

Preamble. WHEREAS the Agreement dated 18 October 1909 made between Australia and the State of New South Wales and set out in the First Schedule to the *Seat of Government Acceptance Act 1909-1973* provides for the surrender by that State and the acceptance by Australia of certain territory described in clause 1 of that Agreement, being the territory now known as the Australian Capital Territory:

AND WHEREAS that Agreement also provides, amongst other things, that the right of the State of New South Wales or of the residents therein to the use and control of waters of the Queanbeyan and Molonglo Rivers and their tributaries which lie to the east of the Goulburn to Cooma Railway shall be subject and secondary to the use and requirements of Australia (which are thereby declared to be paramount) for all the purposes of the Australian Capital Territory and that that State shall consent to the construction by Australia in that State of such works as are necessary for those purposes:

AND WHEREAS it is desirable, for the purpose of ensuring an adequate supply of water to the Australian Capital Territory, to construct a dam and other works for the storage and conveyance of the said waters of the Queanbeyan River:

AND WHEREAS Australia has acquired, for the purposes of the construction of such a dam and other works, certain land in the State of New South Wales referred to in this Act as the "Googong Dam Area":

BE IT THEREFORE ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title. 1. This Act may be cited as the *Canberra Water Supply (Googong Dam) Act 1974*.¹

Commence-
ment. 2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹

(2) Sections 3, 4 and 5 shall be deemed to have had effect from and including 17 October 1973.

3. In this Act, unless the contrary intention appears—

Definitions.

“authorized person” means a person appointed under section 7;

“Commission” means the National Capital Development Commission;

“Googong Dam Area” means the land described in the Schedule to the notice under sub-section 10 (3) of the *Lands Acquisition Act* 1955-1966 dated 17 October 1973 and published in the *Gazette* on that date, being land acquired by Australia for the purpose of the provision of facilities for the storage of water and its supply for use in the Territory;

“Territory” means the Australian Capital Territory.

4. In addition to performing its functions under the *National Capital Development Commission Act* 1957-1973, the Commission may, for and on behalf of Australia, undertake and carry out, either alone or in association with other persons, the planning and provision of a dam, pipelines and other works and facilities for—

Functions of the Commission.

- (a) the collection, diversion and storage of water in the Googong Dam Area;
- (b) the conveyance and supply of water from that Area for use in the Territory or in a place that is the subject of an agreement under sub-section 12 (2) for the conveyance and supply of water;
- (c) the treatment and purification of water supplied or to be supplied from that Area; and
- (d) the prevention of the pollution of water supplied or to be supplied from that Area,

and of works and facilities for the accommodation in that Area of persons employed by Australia in connexion with the protection or regulation of that Area or with the operation and maintenance of any such dam, pipelines, works or facilities in that Area.

5. (1) Subject to sub-section (3), the Commission has power to do, in the Territory or elsewhere, all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions under this Act.

Powers of the Commission.

(2) Without limiting the generality of sub-section (1), the Commission has power, for or in connexion with the performance of its functions under this Act—

- (a) to construct, or make arrangements for the construction of, dams, pipelines, roads, bridges and other works, including works that are, in the opinion of the Commission, necessary or desirable for the purpose of preventing or mitigating injurious effects of other works constructed in accordance with this Act;
- (b) to purchase or take on hire, and to dispose of, plant, machinery, equipment or other goods;

- (c) to provide transport, accommodation, provisions and amenities for officers and employees of the Commission and their families; and
- (d) to enter into an agreement, on such terms and conditions as the Commission thinks fit, with any person or body, for or in relation to the performance of work, the provision of services or the doing of any other thing by that person or body for or on behalf of the Commission.

(3) The Commission shall not, for the purposes of this Act, enter or do any work upon land other than land owned by Australia except in accordance with the succeeding provisions of this Act or by virtue of rights in respect of that land acquired by Australia or the Commission by agreement or otherwise in accordance with law.

Duties of the Commission.

6. (1) It is the duty of the Commission to ensure that the effect on the environment of anything done or proposed to be done in the performance of its functions or the exercise of its powers under this Act is fully considered and that all reasonably practicable measures are taken for the protection of the environment, including measures by way of the making of appropriate provisions in agreements entered into by the Commission.

(2) In constructing a pipeline, the Commission shall ensure that, as far as practicable, the pipes are laid below the surface of the ground.

Authorized persons.

7. (1) The Minister may, by writing under his hand, appoint a person to be an authorized person for the purposes of this Act.

(2) The Minister shall, upon the appointment of a person under this section, furnish to that person a certificate, signed by the Minister, stating that that person is an authorized person for the purposes of this Act.

(3) Where the appointment of a person under this section expires or is revoked, that person shall forthwith surrender the certificate furnished to him under this section to the Minister or, if the Minister, by writing under his hand directs that person to surrender the certificate to another person specified in the writing, to that other person.

Penalty for a breach of sub-section (3): \$200.

Power to enter land.

8. (1) Where—

- (a) the occupier of land has consented in writing to an authorized person entering upon the land, with such assistance as is necessary, for the purpose of exercising the functions of an authorized person under this section; or
- (b) a warrant granted under sub-section 10 (2) authorizes an authorized person to enter upon land, with such assistance as is necessary, for the purpose of exercising those functions,

the authorized person may, with such assistance as is necessary—

- (c) enter upon the land; and
- (d) exercise on land so entered the functions of an authorized person under this section.

(2) Where an authorized person enters upon land in accordance with sub-section (1), he shall, upon demand by the occupier of the land, produce to the occupier the certificate furnished to him under section 7 and, if the entry is in pursuance of a warrant, that warrant.

(3) A person shall not, without reasonable excuse, obstruct or hinder a person acting in pursuance of sub-section (1).

Penalty: \$200.

(4) The functions of an authorized person under this section are, for the purpose of ascertaining the suitability of land entered under this Act, or other land, for the carrying out of the functions of the Commission under this Act—

- (a) to inspect the land so entered; and
- (b) on land so entered by him to make surveys, take levels, sink bores, dig pits and examine the soil and do any other acts necessary for that purpose.

(5) In this section, a reference to land includes a reference to land owned or occupied by a State.

9. (1) Where—

- (a) the occupier of land has consented in writing to the Commission entering upon the land and doing an act specified in sub-section (2); or
- (b) a warrant granted under sub-section 10 (1) authorizes the Commission to enter upon land and do such an act,

Power to
occupy land.

the Commission, by its servants, agents or contractors, may for the purposes of this Act—

- (c) enter upon and occupy the land; and
- (d) do that act on land so occupied.

(2) The acts referred to in sub-section (1) are—

- (a) to construct, build or place any plant, machinery, equipment or goods;
- (b) to take or deposit sand, clay, stone, earth, gravel, timber, wood or other materials or things;
- (c) to make cuttings or excavations;
- (d) to erect workshops, sheds and other buildings;
- (e) to make roads; and
- (f) to manufacture and work materials of any kind.

(3) The Commission may, by its servants, agents or contractors, demolish, destroy or remove on or from land occupied in pursuance of sub-section (1) any plant, machinery, equipment, goods, workshop, shed, building or road constructed, built, placed or erected on the land in pursuance of that sub-section.

(4) A person shall not, without reasonable excuse, obstruct or hinder the exercise of the powers or rights of the Commission under this section.

Penalty: \$200.

(5) Before occupying land in pursuance of a warrant, the Commission shall, upon demand by the occupier of the land, cause the warrant to be produced to the occupier.

(6) In this section, a reference to land includes a reference to land owned or occupied by a State.

Warrants.

10. (1) Where application is made by the Commission to a Justice of the Peace for a warrant under this sub-section, the Justice of the Peace may, if he is satisfied, by information on oath or affirmation—

- (a) that the occupier of land has refused to consent, or that it is impracticable to obtain the consent of the occupier of land within a reasonable time, to the Commission entering upon, and occupying, the land and doing on the land so occupied an act specified in sub-section 9 (2); and
- (b) that the doing of that act on the land is reasonably necessary for the purposes of this Act,

grant a warrant authorizing the Commission to enter upon, and occupy, the land and do that act on land so occupied.

(2) Where application is made by an authorized person to a Justice of the Peace for a warrant under this sub-section, the Justice of the Peace may, if he is satisfied, by information on oath or affirmation—

- (a) that the occupier of land has refused to consent, or that it is impracticable to obtain the consent of the occupier of land within a reasonable time, to the authorized person entering upon the land with such assistance as is necessary for the purpose of exercising the functions of an authorized person under section 8; and
- (b) that entry upon the land for that purpose is reasonably required for the purposes of this Act,

grant a warrant authorizing that authorized person to enter upon the land with such assistance as is necessary for the purpose of exercising the functions of an authorized person under that section.

Rights to use and control of waters.

11. (1) The rights to use and dispose of all waters in the Googong Dam Area and to control, restrict or interrupt the flow of all waters in and from that Area are vested in Australia.

(2) The rights referred to in sub-section (1) are exercisable, on behalf of Australia—

- (a) at any time before the Minister has, by writing under his hand, certified that the Australian Government has assumed control of the dam, pipelines and other works and facilities referred to in section 4 constructed under this Act for the storage of water in the Googong Dam Area and its supply for use in the Territory—by the Commission;
- (b) at any later time—by the Minister.

(3) In the exercise of the rights referred to in sub-section (1), the Commission and the Minister shall have regard to the interests of persons who are the owners or occupiers of land through or past which waters from the Googong Dam Area flow, and shall not act in a manner that interferes with the exercise and enjoyment by such persons of rights expressed to be conferred on them by or under a law of the State of New South Wales except to such an extent as is reasonably necessary for the purpose of—

- (a) collecting and maintaining in a dam or other work constructed under this Act a quantity of water reasonably necessary for the purpose for which the dam or work is maintained; or
- (b) testing, protecting or carrying out maintenance of such a dam or other work.

12. (1) Water stored in the Googong Dam Area by means of the works constructed under this Act shall be supplied primarily and principally for use in the Territory.

Use of water from Googong Dam Area.

(2) Subject to sub-section (1), Australia may enter into an agreement in writing with the State of New South Wales for or in relation to the supply, or the conveyance and supply, of water from the Googong Dam Area for use in a place other than the Territory.

13. (1) The Minister, the Commission and authorized persons shall, in the exercise of their powers under this Act, cause as little detriment and inconvenience and do as little damage as practicable.

Compensation for damage.

(2) Where the owner or occupier of land suffers loss or damage by reason of—

- (a) the exercise of a power conferred on the Minister or the Commission by this Act; or
 - (b) the entry upon, or occupation of, land in pursuance of this Act,
- compensation is payable by Australia in respect of the loss or damage.

(3) Compensation payable under sub-section (2) includes compensation in respect of—

- (a) damage resulting from the interruption or restriction of the flow of water, or from flooding;

- (b) damage of a temporary character as well as damage of a permanent character; and
- (c) the taking from land, or the disposal on land, of sand, clay, stone, earth, gravel, timber, wood, materials or things by the Commission,

but does not include compensation in respect of any fixture demolished, destroyed or removed in pursuance of sub-section 9 (3) or compensation based on an interference with rights expressed to be conferred by a law of the State of New South Wales made after the day on which this Act received the Royal Assent or by an instrument issued under a law of that State after that date.

(4) For the purposes of compensation under this section, a restriction or interruption, at any time, of the flow of water from the Googong Dam Area shall be taken into account only to the extent to which, by reason of the restriction or interruption, the flow, if any, that would have occurred at that time if the dam and other works constructed under this Act had not been constructed is not maintained.

(5) Where goods, being sand, clay, stone, earth, gravel, timber, wood, materials or other things, are taken from, or disposed of on, land in pursuance of this Act and are not the property of the owner or occupier of the land, sub-section (2) applies as if the reference in that sub-section to the owner or occupier of the land, or both, included a reference to the owner of the goods.

(6) Section 19 of the *Lands Acquisition Act 1955-1973* applies in relation to the determination of compensation payable by Australia under this section in like manner as it applies in relation to the determination of compensation payable under that section.

Damaging works, &c.

14. A person shall not unlawfully damage, or interfere with the operation of, a work constructed or being constructed under this Act.

Theft, &c., of water.

15. A person shall not maliciously or fraudulently—

- (a) take water from a dam or pipeline constructed or being constructed under this Act; or
- (b) use or consume, or cause to be wasted or diverted, water that is in such a dam or pipeline or has been so taken.

Penalties.

16. (1) A person who contravenes or fails to comply with a provision of section 14 or 15 is guilty of an offence against that section.

(2) An offence referred to in sub-section (1) may be prosecuted summarily or upon indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(3) An offence referred to in sub-section (1) is punishable—

- (a) upon summary conviction—by a fine not exceeding \$200 or imprisonment for a term not exceeding 6 months, or both; or

- (b) upon conviction on indictment—by a fine not exceeding \$2,000 or imprisonment for a term not exceeding 2 years, or both.

(4) Where proceedings for an offence referred to in sub-section (1) are brought in a court of summary jurisdiction, the court may commit the defendant for trial or, with the consent of the defendant, determine the proceedings.

17. (1) The Minister may, by notice in the *Gazette*, declare a specified area, including an area of water, forming part of the Googong Dam Area to be an area to which access by the public is, subject to this Act and the regulations, permitted. Areas to which access permitted.

(2) The Minister may authorize the erection, placing or displaying in an area so declared of a sign for the purpose of—

- (a) regulating, prohibiting or restricting entry upon a part of that area in the vicinity of and referred to in the sign;
- (b) regulating, prohibiting or restricting the stopping or parking of vehicles, or defining the manner in which vehicles may be parked, in a part of that area in the vicinity of and referred to in the sign;
- (c) fixing the limits of speed for vehicles in a part of that area referred to in the sign; or
- (d) conveying information or warning to persons entering that area.

18. (1) Subject to section 23, a person shall not enter or remain in a part of the Googong Dam Area unless that part of that Area is or forms part of an area declared in accordance with section 17. Regulation of Googong Dam Area.

(2) Subject to section 23, a person shall not enter or remain, or stop, park or drive a vehicle, in a part of an area so declared in relation to which a sign is erected, placed, or displayed under section 17 in contravention of the sign.

Penalty: \$200.

19. Where, with the authority of the Minister, there is erected, placed or displayed on land in the vicinity of a work constructed or being constructed under this Act outside the Googong Dam Area a sign prohibiting unauthorized entry upon an area of that land in the vicinity of and referred to in the sign, a person shall not, without lawful authority, enter or remain in the area in relation to which the sign is erected, placed or displayed. Access to works.

Penalty: \$200.

20. The Minister may, at any time, cause a sign erected, placed or displayed in accordance with section 17 or 19 to be removed. Removal of signs.

Damaging,
&c., signs.

21. A person shall not remove, move, damage, deface, obscure, cover up or otherwise interfere with a sign erected, placed or displayed under section 17 or 19 unless he is acting under the authority of the Minister.

Penalty: \$200.

Evidence as
to signs.

22. Unless the contrary is proved, evidence that a sign was erected, placed or displayed in an area declared under section 17, or in the vicinity of a work constructed or being constructed under this Act, is evidence that the sign was so erected, placed or displayed by the authority of the Minister under this Act.

Exemption
of certain
persons.

23. Sub-sections 18 (1) and (2) and section 19 do not apply to—

- (a) an authorized person;
- (b) a person, other than an authorized person, engaged or employed in or in connexion with the construction, testing, protection, operation or maintenance of a work authorized by this Act to be constructed;
- (c) a person, other than a person referred to in paragraph (a) or (b), employed in the Australian Public Service; or
- (d) a Commonwealth Police Officer,

acting in the execution of his duty or of the terms of his engagement or employment, or to a person who is in the company of a person referred to in paragraph (a), (b), (c) or (d) so acting.

Application
of National
Capital
Development
Commission
Act.

24. Sections 10, 12, 14 and 15, and sections 17 to 24 (inclusive), of the *National Capital Development Commission Act 1957-1973* apply to and in relation to the Commission in the performance of its functions under this Act and so apply as if—

- (a) a reference in any of those sections to that Act included a reference to this Act; and
- (b) the reference in sub-section 14 (1) of that Act to land in the Territory included a reference to land in the State of New South Wales.

National
Capital
Planning
Committee.

25. (1) In addition to its functions under the *National Capital Development Commission Act 1957-1973* it is the function of the National Capital Planning Committee constituted for the time being under that Act to advise the Commission as to the performance of its functions under this Act.

(2) Section 26 of the *National Capital Development Commission Act 1957-1973* applies to the National Capital Planning Committee in the performance of its functions under this Act and so applies as if the reference in that section to that Act included a reference to this Act.

26. For the purposes of Part X of the *Judiciary Act* 1903-1973 offences against this Act or the regulations shall be taken to be offences against the laws of the Commonwealth. Jurisdiction of State courts.

27. (1) Subject to this section, it is the intention of the Parliament that this Act and the regulations shall not operate to the exclusion of the application in the Googong Dam Area, in accordance with the *Commonwealth Places (Application of Laws) Act* 1970-1973, of the provisions of a law of the State of New South Wales (including provisions that deal with a matter that is also dealt with by this Act or the regulations) to the extent that those provisions are capable of operating concurrently with this Act and the regulations. Operation of State laws.

(2) In relation to the Googong Dam Area, the *Commonwealth Places (Application of Laws) Act* 1970-1973 has effect as if—

- (a) the reference in sub-section 4 (1) of that Act to the provisions of the laws of a State as in force at a time included a reference to a provision that would be in force in that area as a law of the State of New South Wales at that time but for section 52 of the Constitution; and
- (b) paragraph 4 (2) (b) of that Act were omitted.

(3) Without affecting the power of the Governor-General to make regulations under the *Commonwealth Places (Application of Laws) Act* 1970-1973, regulations under this Act may provide for excluding the application in or in relation to the Googong Dam Area, by virtue of that Act as affected by this section, of any provisions of a law of the State of New South Wales.

28. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for— Regulations.

- (a) regulating, controlling or restricting the entry of persons upon the Googong Dam Area and the conduct of persons in that Area;
- (b) the protection of structures, works and materials in that Area;
- (c) the protection of flora and fauna in that Area; and
- (d) the imposition of penalties not exceeding \$100 for offences against the regulations.

NOTE

1. Act No. 34, 1974; assented to 2 August 1974.