

Farm Water Supplies Act 1946

As at 1 July 2018

Does not include amendments by:

Water Management Amendment Act 2010 No 133 (not commenced)

Reprint history (since 1972):

Reprint No 1

16 January 1979

Reprint No 2

29 July 1991

Long Title

An Act to enable farmers to obtain advances for the purposes of carrying out works of water supply; to empower certain government instrumentalities to carry out such works on behalf of farmers; and for purposes connected therewith.

1 Name of Act and commencement

(1) This Act may be cited as the *Farm Water Supplies Act 1946*.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Definitions

In this Act, unless the context or subject matter otherwise indicates or requires:

"Bore" means any bore or well or any excavation or other work connected or proposed to be connected with sources of sub-surface water and used or proposed to be used or capable of being used to obtain supplies of sub-surface water, whether the water flows naturally at all times or has to be raised either wholly or at times by pumping or other artificial means.

"Farming lands" means:

(a) lands used for farming, agricultural, horticultural, viticultural, vegetable-growing, market gardening, pastoral, grazing, poultry farming, silvicultural, floricultural or piscicultural purposes, and

(b) any other lands declared by the regulations made under this Act to be farming lands for the purposes of this Act.

"Owner" in relation to land, includes every person who, jointly or severally, whether at law or in equity:

(a) is entitled to the land for any estate of freehold in possession, or

(b) is a person to whom the Crown has lawfully contracted to sell the land under the Crown Land Acts within the meaning of the *Crown Land Management Act 2016* or any other Act relating to the alienation of lands of the Crown, or

(c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, or

(d) is the holder of a lease from the Crown or any statutory body representing the Crown.
"Rural Assistance Authority" means the New South Wales Rural Assistance Authority constituted under the *Rural Assistance Act 1989*.

"Works" means:

- (a) works necessary for the provision or improvement of the water supply to farming lands for irrigation purposes, or for the preparation of farming lands for irrigation, whether or not involving the construction or improvement of a bore, or
- (b) the construction or improvement of a bore for the provision or improvement of the water supply to farming lands for domestic or stock purposes.

2A Appropriate Authority for works

In this Act, a reference to the appropriate Authority, in relation to any works, is a reference:

- (a) to the Director-General of the Department of Industry and Investment to the extent to which the works do not involve the construction or improvement of a bore, or
- (b) to the Water Administration Ministerial Corporation to the extent to which the works involve the construction or improvement of a bore.

3 Application for an advance

- (1) Any owner of farming lands who desires an advance for the purpose of the carrying out of works may make an application to the Rural Assistance Authority for an advance.
- (2) Such application shall be in a form approved by the Rural Assistance Authority and shall be accompanied by such deposit as the Rural Assistance Authority may require as security for the cost of the investigation in connection with such application, and such deposit may be applied by the Rural Assistance Authority in payment or part payment of the cost of such investigation.

4 Rural Assistance Authority may grant or refuse application

- (1) Upon receipt of an application the Rural Assistance Authority shall decide whether or not an advance shall be made.
- (2) Where the Rural Assistance Authority decides to make an advance it shall furnish to the applicant a statement setting out a description of the works which the Rural Assistance Authority has approved be carried out and specifying:
 - (a) where the works are to be carried out by any person other than the appropriate Authority--the amount proposed to be advanced, not exceeding 90 per cent of the cost of the works as estimated by the Rural Assistance Authority, or
 - (b) where the works are to be carried out by the appropriate Authority:
 - (i) the terms and conditions on which the appropriate Authority is prepared to carry out the works,
 - (ii) the charge which the appropriate Authority requires to be paid for the carrying out of the works by it or in the manner in which that charge is to be assessed, and
 - (iii) the amount, not less than 10 per cent of that charge, to be paid to the appropriate Authority under subsection (3).
- (3) If, on receipt of the statement referred to in subsection (2), the applicant is desirous of obtaining the advance, the applicant shall notify the Rural Assistance Authority in a form approved by the Rural Assistance Authority, and where the applicant desires the works to be carried out by the appropriate Authority, the notification shall be accompanied by the amount set out in the statement referred to in subsection (2) to be paid to the appropriate Authority.

5 Rural Assistance Authority to make advances

- (1) In any case where the applicant notifies the Rural Assistance Authority under section 4 (3) that the applicant desires the advance such advance shall, subject to the provisions

of this Act, be made by the Rural Assistance Authority by way of loan bearing interest at such rate as may be fixed by the Rural Assistance Authority from time to time.

(2), (3) (Repealed)

6 Conditions precedent to advances

No advance shall be made under this Act unless the Rural Assistance Authority is satisfied:

(a) that farming operations will be carried on on the farming lands efficiently and with a reasonable prospect of success, and

(b) that the carrying out of the works in respect of such farming lands is necessary to ensure a more efficient carrying on of those operations on such lands.

7 Amount of advance where works not carried out by appropriate Authority

(1) The amount of an advance to be made to an owner where the works are to be carried out by any person other than the appropriate Authority shall be finally determined by the Rural Assistance Authority upon the completion of the works and shall not exceed 90 per cent of the actual cost incurred by the owner in respect of the carrying out of the works.

(2) A certificate issued by the appropriate Authority certifying:

(a) that works have been completed, and

(b) that a specified amount is the actual cost incurred by an owner in respect of the carrying out of works,

is evidence in favour of the Rural Assistance Authority of the matters certified.

8 Payment of advance where works not carried out by appropriate Authority

(1) Where any works in respect of which an advance is to be made under this Act are carried out by any person, other than the appropriate Authority, such advance shall be made in such manner as the Rural Assistance Authority directs and upon the appropriate Authority notifying the Rural Assistance Authority that the works have been completed, or are partly completed, as the case may be.

(2) The appropriate Authority or the Rural Assistance Authority may, by its officers and servants, enter any land for the purpose of inspecting works referred to in subsection (1).

9 Appropriate Authority may carry out work where advance is made

(1) In any case where the owner desires the appropriate Authority so to do the appropriate Authority may for or on behalf of and at the cost of the owner carry out works in respect of which an advance is to be made under this Act.

(2) Any works carried out by the appropriate Authority under this section shall be carried out on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner and the appropriate Authority.

(3) Where the charge to be paid by the owner for any works carried out by the appropriate Authority under this section is the actual cost incurred by the appropriate Authority in carrying out the works, the amount of the actual cost shall include all proper supervision costs and overhead expenses and the notification referred to in subsection (5) shall be accepted as final and conclusive evidence of such actual cost.

(4) Where any works are carried out by the appropriate Authority under this section, the amount of the advance to be made by the Rural Assistance Authority shall be the charge agreed to be paid by the owner to the appropriate Authority for the carrying out of the works less the amount paid to the appropriate Authority by the owner under the provisions of section 4 (3).

(5) On completion of any such works carried out by the appropriate Authority notification in writing issued by the appropriate Authority setting out the amount of the charge to be paid to the appropriate Authority for the carrying out of the works shall be forwarded to the Rural Assistance Authority whereupon the amount of the advance shall be paid to the appropriate Authority by the Rural Assistance Authority and thereupon the advance shall, for the purposes of this Act, be deemed to have been made to the owner.

10 Appropriate Authority may let machinery etc on hire

- (1) The appropriate Authority may let on hire any machinery, plant or equipment for the purpose of the carrying out of works by an owner of farming lands.
- (2) Where the appropriate Authority has let out on hire any machinery, plant or equipment for the purpose of carrying out any works in respect of which an advance is to be made under this Act, the Rural Assistance Authority shall, out of the moneys to be advanced to the owner, pay to the appropriate Authority the amount of any such hire and any such amount shall, for the purposes of this Act, be deemed to have been advanced to the owner.

11 Works of joint water supply

- (1) The owners of two or more separate parcels of land who are desirous of having water supplied to their lands by means of a joint water supply scheme may, whether or not the whole of the works are to be constructed on the land of one owner, make an application for an advance for the carrying out of works for that purpose. The provisions of sections 3 (2) and 4 shall apply, mutatis mutandis, to and in respect of an application under this section.
- (2) The amount of every advance made in pursuance of an application lodged under this section shall be repaid by the whole of the owners in such proportions as may be agreed upon between them. Notification of such proportions shall be given to the Rural Assistance Authority when giving notification in accordance with section 4 (3).

12 Repayment of advance secured by deed of charge

- (1) The repayment of every advance made under this Act together with interest as hereinbefore provided shall be secured by a deed of charge over the farming lands of the owner in such form as may be required by the Rural Assistance Authority. Where the advance is made to two or more owners under section 11, each owner shall execute a deed of charge to secure the repayment of the owner's respective proportion of the amount of the advance.
- (2) Such deed of charge shall, where the works are to be carried out by any person, other than the appropriate Authority, be expressed to be made between the owner of the farming lands and the Rural Assistance Authority, and where the works are to be carried out by the appropriate Authority, be expressed to be made between the owner of the farming lands, the appropriate Authority and the Rural Assistance Authority, and shall provide for the repayment of the amount advanced to such owner by consecutive half-yearly instalments within a period, not exceeding fifteen years, determined by the Rural Assistance Authority, together with interest as aforesaid on the amount owing from time to time, and shall contain:
 - (a) a condition to the effect that in the event of the owner failing to maintain the works in respect of which the advance is made to the satisfaction of the Rural Assistance Authority the whole of the principal and interest secured by the charge shall at the option of the Rural Assistance Authority become immediately due and payable, and
 - (b) such other powers, covenants, provisions, conditions and clauses as the Rural Assistance Authority determines.
- (3) Where any works are to be carried out by the appropriate Authority such deed of charge shall be executed by the owner before the commencement of the construction of the works by the appropriate Authority and where any works are to be carried out by any person, other than the appropriate Authority, such deed of charge shall be executed by the owner before any advance is made to the owner.
- (4) Any sum payable under a deed of charge under this section shall be paid to the Rural Assistance Authority and shall, until so paid, be and remain a charge in its favour on the land mentioned in the deed, and shall be recoverable by the Rural Assistance Authority in any court of competent jurisdiction from the owner of the land for the time being.

(5) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

13 Appropriate Authority may carry out work where advance is made

(1) Where the owner or occupier of any farming lands desires the appropriate Authority to carry out works and is prepared to pay in cash for the carrying out of such works, the appropriate Authority may carry out the works on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner or occupier and the appropriate Authority.

(2) Notification in writing by the appropriate Authority certifying that a specified amount is the amount payable by the owner or occupier for any such works shall be forwarded to the owner or occupier and shall, where the charge to be paid for the works is the actual cost incurred by the appropriate Authority in carrying out the works, be accepted as final and conclusive evidence of the charge payable by the owner or occupier. Such amount until paid shall be and remain a debt due to the appropriate Authority and if not paid in accordance with the terms and conditions agreed upon shall be recoverable by the appropriate Authority in any court of competent jurisdiction.

14 Appropriate Authority may carry out investigations, prepare estimates etc

(1) The appropriate Authority may:

- (a) supervise, on behalf of any owner, the carrying out of any works on any farming lands, and
- (b) carry out surveys and investigations and prepare designs for and estimates of cost of any works proposed to be carried out on any farming lands.

(2) The charge to be paid to the appropriate Authority for any supervision or technical work carried out by it pursuant to the provisions of subsection (1) may:

- (a) where so agreed between the owner and the appropriate Authority be paid for in cash by the owner,
- (b) be the subject of an advance under and in accordance with the provisions of this Act, or
- (c) be included in the amount of any advance which is made under and in accordance with the provisions of this Act for the carrying out of any works.

(3) Where the charge for any supervision or technical work carried out by the appropriate Authority under the provisions of subsection (1) is the subject of an advance under and in accordance with the provisions of this Act, or where any such charge is included in the amount of any advance being made under and in accordance with the provisions of this Act, the Rural Assistance Authority shall, out of the moneys to be advanced to the owner, pay the appropriate Authority the amount of such charge and any such amount paid by the Rural Assistance Authority to the appropriate Authority shall, for the purposes of this Act, be deemed to have been advanced to the owner.

15 Entry on land and use of materials

Where any works are to be carried out by the appropriate Authority under this Act the owner and the occupier of the farming lands on which the works are to be carried out shall for the purpose of enabling the appropriate Authority to carry out the said works grant to the appropriate Authority, its officers, workmen, servants, contractors or agents at all reasonable times, full and free right of ingress, egress and regress in, over or upon all or any of the farming lands and the right to the use of earth, stone, timber, gravel or sand or other materials or things dug, raised or obtained on such lands.

16 Work to be approved

No work that is a water management work within the meaning of the *Water Management Act 2000*, which is proposed to be constructed or used for the purpose of:

- (a) water conservation, irrigation, water supply, or drainage, or

(b) the prevention of inundation of land and overflow of water thereon, or
(c) changing the course of a river,
shall be carried out under the provisions of this Act, unless and until the requisite approval under that Act has been obtained for the work.

16A Loan to Board

- (1) In this section: "**Board**" means a private irrigation board within the meaning of the *Water Management Act 2000*. "**conveying works**" and "**supply work**" have the meanings respectively ascribed thereto in that Act.
- (2) A Board may apply to the Rural Assistance Authority in a form approved by the Rural Assistance Authority for a loan for the purposes of:
- (a) constructing, supplying or installing structures, meters or appliances forming part of a supply work or conveying works, or
 - (b) enlarging, modifying, repairing, operating, maintaining or renewing the supply work or conveying works.
- (3) Subject to subsection (4), the Rural Assistance Authority may grant or refuse an application for a loan.
- (4) A loan shall not be granted where the sum of the principal amounts owing in respect of loans made to a Board under this section and the principal amount of a proposed loan under this section would exceed \$10,000.
- (5) Loan moneys shall not be paid to a Board unless the Board is, at the time of payment of the loan moneys, the holder of a water supply work approval under the *Water Management Act 2000*.
- (6) A loan:
- (a) shall be made by the Rural Assistance Authority,
 - (b) shall bear interest from the day of payment to the Board of the loan moneys at the rate it would bear if it were an advance referred to in section 5 (1), and
 - (c) with the interest thereon, shall be payable by consecutive half-yearly instalments within such period not exceeding fifteen years as is determined by the Rural Assistance Authority.

16B Security for loan

A loan granted pursuant to section 16A (3) shall be advanced upon such security, and be subject to such covenants, conditions and provisions not inconsistent with section 16A, as the Rural Assistance Authority determines.

17 Offences

Any person:

- (a) who receives any advance or loan from the Rural Assistance Authority under this Act and in any manner directly or indirectly uses the same or permits the same to be used for any purpose other than the purpose for which the advance or loan was made, or
 - (b) who, while any money is owing to the Rural Assistance Authority in respect of any advance or loan under this Act, without the consent of the Rural Assistance Authority removes, sells or otherwise disposes of any machinery, plant or other thing forming part of any works for the carrying out of which such advance or loan was made,
- shall be liable to a penalty not exceeding 10 penalty units.

18 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect, and may by such regulations impose a penalty not exceeding 5 penalty units for any breach thereof.

(2), (3) (Repealed)

19 Recovery of penalties

Any penalty imposed by this Act or the regulations thereunder may be recovered in a summary manner in the Local Court.

20 Repeal of Act does not affect operation of savings and transitional provisions

(1) Despite the repeal of the *Farm Water Supplies (Transfer of Functions) Amendment Act 1986*, clauses 4, 5, 7 and 9 of Schedule 3 to that Act continue to have effect and are taken to have been transferred to this Act.

(2) Clauses 4, 5, 7 and 9 of Schedule 3 to the *Farm Water Supplies (Transfer of Functions) Amendment Act 1986* are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Farm Water Supplies Act 1946 No 22*. Assented to 4.4.1946. Date of commencement, 9.8.1946, sec 1 (2) and GG No 88 of 9.8.1946, p 1792. This Act has been amended as follows:

1965	No 33	<i>Decimal Currency Act 1965</i> . Assented to 20.12.1965. Date of commencement of sec 4, 14.2.1966, secs 1 (3), 2 (1) and the <i>Currency Act 1965</i> (Commonwealth), sec 2 (2).
1970	No 5	<i>Water, Crown Lands and Other Acts (Amendment) Act 1970</i> . Assented to 13.3.1970.
1972	No 48	<i>Reprints Act 1972</i> . Assented to 9.10.1972.
1973	No 62	<i>Farm Water Supplies (Amendment) Act 1973</i> . Assented to 15.10.1973.
1976	No 34	<i>Water Resources Commission Act 1976</i> . Assented to 1.4.1976. Date of commencement of sec 19 and Sch 6, 30.4.1976, sec 2 (2) and GG No 57 of 23.4.1976, p 1763.
1980	No 196	<i>Miscellaneous Acts (Crown Land Titles) Amendment Act 1980</i> . Assented to 22.12.1980. Date of commencement of Sch 1 (except as provided in sec 2 (4)-(6)), 1.10.1981, sec 2 (3) and GG No 141 of 25.9.1981, p 5107.
1986	No	<i>Farm Water Supplies (Transfer of Functions) Amendment Act 1986</i> . Assented to 26.11.1986.

	10 4	
	No 20 5	<i>Miscellaneous Acts (Water Administration) Amendment Act 1986</i> . Assented to 18.12.1986. Date of commencement of Sch 2, 1.1.1987, sec 2 (2) and GG No 195 of 19.12.1986, p 6267.
198 7	No 48	<i>Statute Law (Miscellaneous Provisions) Act (No 1) 1987</i> . Assented to 28.5.1987. Date of commencement of Sch 32, except as provided by sec 2 (13), 1.9.1987, sec 2 (12) and GG No 136 of 28.8.1987, p 4809.
	No 20 9	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1987</i> . Assented to 9.12.1987. Date of commencement of Sch 14, assent, sec 2 (1).
198 9	No 98	<i>Miscellaneous Acts (Rural Assistance) Repeal and Amendment Act 1989</i> . Assented to 13.6.1989. Date of commencement, 1.7.1989, sec 2 and GG No 81 of 30.6.1989, p 3810.
199 0	No 46	<i>Statute Law (Miscellaneous Provisions) Act 1990</i> . Assented to 22.6.1990. Date of commencement of the provision of Sch 2 relating to the <i>Farm Water Supplies Act 1946</i> , assent, sec 2.
199 3	No 47	<i>Statute Law (Penalties) Act 1993</i> . Assented to 15.6.1993. Date of commencement, assent, sec 2.
199 5	No 99	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1995</i> . Assented to 21.12.1995. Date of commencement of Sch 3, 3 months after assent, sec 2 (3).
200 0	No 92	<i>Water Management Act 2000</i> . Assented to 8.12.2000. Date of commencement of Sch 8.11 [1] [2] and [4], 1.7.2004, sec 2 and GG No 110 of 1.7.2004, p 5002; date of commencement of Sch 8.11 [3], 1.1.2001, sec 2 and GG No 168 of 22.12.2000, p 13471.
200 1	No 12 1	<i>Justices Legislation Repeal and Amendment Act 2001</i> . Assented to 19.12.2001. Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.
200 7	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2007</i> . Assented to 7.12.2007. Date of commencement of Sch 4, assent, sec 2 (1).
	No 94	<i>Miscellaneous Acts (Local Court) Amendment Act 2007</i> . Assented to 13.12.2007. Date of commencement of Sch 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
200 9	No 17	<i>Real Property and Conveyancing Legislation Amendment Act 2009</i> . Assented to 13.5.2009. Date of commencement of Sch 3, assent, sec 2 (1).
201 0	No 59	<i>Statute Law (Miscellaneous Provisions) Act 2010</i> . Assented to 28.6.2010. Date of commencement of Sch 2.30, 9.7.2010, sec 2 (2).
201 7	No 17	<i>Crown Land Legislation Amendment Act 2017</i> . Assented to 17.5.2017. Date of commencement of Sch 4, 1.7.2018, sec 2 (1) and 2018 (225) LW 1.6.2018.

This Act has also been amended pursuant to an order under secs 8 (2) and 9 (3) of the *Reprints Act 1972 No 48* (formerly *Acts Reprinting Act 1972*). Order dated 4.1.1979, and published in Gazette No 7 of 12.1.1979, p 150, declaring that the *Farm Water Supplies Act 1946* is an enactment to which sec 8 (2) and sec 9 (3) of the *Acts Reprinting Act 1972* apply.

Table of amendments No reference is made to certain amendments made by the *Decimal Currency Act 1965*, the *Reprints Act 1972*, and Schedule 3 (amendments replacing gender-specific language) to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1995*.

Long title	Am 1976 No 34, Sch 6; 1986 No 104, Sch 2 (1).
Sec 2	Am 1976 No 34, Sch 6; 1980 No 196, Sch 1; 1986 No 104, Schs 1 (1), 2 (2); 1989 No 98, Sch 1; 2017 No 17, Sch 4.29.
Sec 2A	Ins 1986 No 104, Sch 1 (2). Am 1986 No 205, Sch 2; 2010 No 59, Sch 2.30.
Sec 3	Am 1986 No 104, Sch 1 (3).
Sec 4	Am 1986 No 104, Sch 1 (4).
Sec 5	Am 1986 No 104, Schs 1 (5), 2 (3); 1989 No 98, Sch 1.
Sec 6	Am 1986 No 104, Sch 1 (6).
Sec 7	Subst 1986 No 104, Sch 1 (7).
Sec 8	Am 1970 No 5, sec 5; 1986 No 104, Sch 1 (8).
Sec 9	Am 1986 No 104, Schs 1 (9), 2 (4); 1987 No 209, Sch 14 (1); 1990 No 46, Sch 2.
Sec 10	Am 1986 No 104, Sch 1 (10).
Sec 11	Am 1986 No 104, Schs 1 (11), 2 (5).
Sec 12	Am 1986 No 104, Sch 1 (12); 2009 No 17, Sch 3.8.
Sec 13	Am 1986 No 104, Sch 1 (13); 1987 No 209, Sch 14 (2).
Sec 14	Am 1986 No 104, Sch 1 (14).
Sec 15	Am 1986 No 104, Sch 1 (15).
Sec 16	Am 1986 No 104, Sch 1 (16); 2000 No 92, Sch 8.11 [1] [2].
Sec 16A	Ins 1973 No 62, sec 2 (a). Am 1986 No 104, Schs 1 (17), 2 (6); 1989 No 98, Sch 1; 2000 No 92, Sch 8.11 [3] [4].
Sec 16B	Ins 1973 No 62, sec 2 (a). Am 1986 No 104, Schs 1 (18), 2 (7).
Sec 17	Am 1970 No 5, Sch; 1973 No 62, sec 2 (b); 1986 No 104, Sch 1 (19); 1993 No 47, Sch 1.
Sec 18	Am 1970 No 5, Sch; 1973 No 62, sec 2 (c); 1986 No 104, Sch 1 (20); 1987 No 48, Sch 32; 1993 No 47, Sch 1.
Sec 19	Am 1973 No 62, sec 2 (d); 1986 No 104, Sch 2 (8); 2001 No 121, Sch 2.112; 2007 No 94, Sch 2.
Sec 20	Ins 2007 No 82, Sch 4.3.
The whole Act	Am 1989 No 98, Sch 1 ("Bank" wherever occurring omitted and "Rural Assistance Authority" inserted instead).