

Queensland



NEW SOUTH WALES—QUEENSLAND BORDER RIVERS ACT 1946

**Reprinted as in force on 2 June 1995
(includes amendments up to Act No. 31 of 1993)**

Replacement Reprint No. 1

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 2 June 1995. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use standard punctuation consistent with current drafting practice (s 27)
- use expressions consistent with current drafting practice (s 29)
- reorder definitions consistent with current drafting practice (s 30)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber provisions and references (s 43)
- make all necessary consequential amendments (s 7(1)(k))

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of obsolete and redundant provisions**
 - **table of renumbered provisions.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

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Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Queensland



**NEW SOUTH WALES–QUEENSLAND
BORDER RIVERS ACT 1946**

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NEW SOUTH WALES–QUEENSLAND BORDER RIVERS ACT 1946

[as amended by all amendments that commenced on or before 2 June 1995]

An Act to ratify certain agreements made between the States of New South Wales and Queensland relating to the Severn, Dumaresq, Macintyre and Barwon Rivers, and for other purposes

PRELIMINARY

1 Short title

This Act may be cited as the *New South Wales–Queensland Border Rivers Act 1946*.

3 Act to bind the Crown

This Act shall bind the Crown.

4 Interpretation

In this Act—

“**agreement**” means the original agreement, as amended by—

- (a) the first amending agreement; and
- (b) the second amending agreement.

“**constructing authority**” means the contracting government by which any works under this Act are constructed or to be constructed, or any authority constituted or appointed for the purpose of such construction.

“**contracting government**” means a government which is a party to the agreement.

“controlling authority”, where used in reference to a State, means any government department or authority of that State which under the laws of that State is authorised or required to exercise the powers and fulfil the obligations by this agreement conferred or imposed upon a controlling authority.

“diversion” includes abstraction, impounding, and appropriation of water that diminishes or retards the volume of flow of a river.

“first amending agreement” means the agreement a copy of which is set out in schedule 2.

“government gazette” means the government gazette of the State of New South Wales or Queensland (as the case may require).

“land” includes Crown lands and buildings, messuages, tenements, and hereditaments of any tenure, and any easement, right, or privilege in, over, or affecting any land.

“maintenance” includes repairs and improvements.

“original agreement” means the agreement a copy of which is set out in schedule 1.

“proclamation” means proclamation by the Governor in Council of the State of New South Wales or Queensland published in the government gazette of that State.

“purposes of this Act” includes purposes of the agreement.

“river” and **“tributary”**, respectively, include any affluent, effluent, creek, anabranch, or extension of, and any lake or lagoon connected with, the river or tributary.

“second amending agreement” means the agreement a copy of which is set out in schedule 3.

“the commission” means the Dumaresq–Barwon Border Rivers Commission appointed for the purposes of this Act.

“this Act” means this Act, the agreement, and any regulations made under this Act.

“under this Act” includes under the agreement.

AGREEMENTS

5 Ratification of agreements

Each of the following agreements is ratified—

- (a) the original agreement;
- (b) the first amending agreement;
- (c) the second amending agreement.

5A Binding effect of agreement

While the agreement continues to be binding on the State of New South Wales, it is binding on the State of Queensland.

POWERS AND DUTIES OF THE COMMISSION

6 Regulations made by the commission

(1) The commission may make regulations—

- (a) for or relating to—
 - (i) the times and places of its meetings;
 - (ii) the conduct of its proceedings;
 - (iii) the duties and the control, supervision, and guidance of its officers and servants, and the time and mode in which they shall account to the commission for all moneys received by them on its behalf or account;
 - (iv) the mode of making and the management and carrying out of contracts of the commission;
- (b) prescribing what business shall be deemed formal for the purposes of the agreement;
- (c) prescribing a penalty not exceeding \$100 for a breach of any such regulations.

(2) Every regulation under this section, on being published in the government gazette of each of the States of New South Wales and Queensland, shall take effect from the date of the last of such publications, or from a later date specified in the regulation.

(3) In addition, regulations under subsection (1)(a) and (b) shall be laid before both Houses of Parliament of the State of New South Wales and before the Legislative Assembly of the State of Queensland within 14 sitting days after the date of the last publication thereof as aforesaid if Parliament is then in session, and, if not, then within 14 sitting days after the commencement of the next sitting of Parliament.

(4) If either House of Parliament of New South Wales or the Legislative Assembly of Queensland passes a resolution (of which notice has been given at any time within 15 sitting days after such regulations have been laid before such House) disallowing such regulation such regulation shall thereupon cease to have effect.

(5) For the purpose of this section—

“**sitting days**” means days on which the House actually sits for the despatch of business.

7 To have force of law

The regulations of the commission made and to take effect pursuant to this Act shall have the force of law.

8 Evidence of regulation

The production of a document purporting to be a copy of any such regulation, and to be signed by a commissioner or the secretary of the commission, or of a government gazette in which such regulation was published shall be prima facie evidence that such regulation was made and is in force.

9 Entry on land by commission

For the purposes of this Act the commission and any person authorised by the commission may enter any lands and shall have free access to all works.

10 Writ to enforce performance of duty of commission

The commission or a commissioner may be compelled, by mandamus or other writ issuing from the Supreme Court of either of the said States or (so far as the High Court has or may be invested with jurisdiction in the matter) from the High Court, to perform any of the duties of the commission or the commissioner (as the case may be) under this Act.

11 Orders of the commission to bind

Subject to this Act and the agreement the orders, determinations, decisions, and declarations of the commission made in the exercise of its powers and discharge of its duties shall bind the Government and all persons and corporations, and may be made a rule or order of the Supreme Court and shall be enforceable accordingly.

12 Evidence of records of commission

Every minute or record of the proceedings of the commission, if signed by the commissioners, or a copy thereof certified as correct under the hand of a commissioner or the secretary of the commission, shall be presumed to be correct until the contrary is proved.

13 Saving of rights of State officers

The existing and accruing rights of a person in the public service or in the employment of any authority constituted by or under any Act shall not be affected by reason of the person being appointed a commissioner or being appointed or employed as an officer or servant by the commission; and service as a commissioner or as such officer or servant shall count as service in the public service of Queensland or in the employment of any such authority.

CONSTRUCTION AND MAINTENANCE OF WORKS AND ACQUISITION OF LAND

14 Construction of works authorised

Subject to this Act and the agreement, the construction in Queensland of the works to be constructed under the agreement by Queensland is hereby authorised.

15 Primary Industries Corporation to construct works

The works to be constructed under the agreement by Queensland shall be constructed, maintained, operated, and controlled under, subject to and in accordance with this Act and the agreement by the Primary Industries Corporation.

16 Construction of works in Queensland by New South Wales

(1) Subject to this Act the construction in Queensland of so much of the works to be constructed under the agreement by New South Wales as will be situated in this State is hereby authorised.

(2) So much of the works to be constructed under the agreement by New South Wales as will be situated in Queensland may be constructed, maintained, operated, and controlled under, subject to, and in accordance with this Act and the agreement by the Crown in the right of the State of New South Wales, or by any corporation, instrumentality or person authorised in that behalf by the Governor of that State, and the Crown in the right of the State of New South Wales or such authorised corporation, instrumentality, or person may do in this State all such acts, matters, and things as are necessary in or for the purposes of the construction, maintenance, operation, and control of such works or any of them.

(3) Subject to the approval of the Governor any land in Queensland required for such works or any of them may be taken by the Primary Industries Corporation in the same manner as if such land were required by the said commissioner for works referred to in section 15.

(4) Notwithstanding anything contained in any Act relating to industrial arbitration or any award or agreement made thereunder or pursuant thereto it shall be lawful for the Crown in the right of New South Wales or any authority, instrumentality, or person thereto authorised by it in

constructing, undertaking, carrying out, establishing, carrying on, maintaining, managing or controlling in the State of Queensland any work required to be constructed, undertaken, carried out, established, carried on, maintained, managed or controlled by it under this Act and the agreement to observe the same conditions and pay the same wages as would prevail if such work were being undertaken or performed in the State of New South Wales.

COMPENSATION FOR DAMAGE BY WORKS

18 Notice to be given in action for compensation

No action, claim, or other proceeding for compensation for damage occasioned by the construction or maintenance of works under this Act shall be maintainable unless—

- (a) notice in writing stating the nature and extent of the damage complained of has been furnished to the constructing authority within 6 months after the damage in respect of which the notice is given has been occasioned; and
- (b) after giving the notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation.

19 Rules to be applied in determining compensation

In determining whether any and what compensation for such damage is to be made, the court shall in each case have regard to and is hereby empowered and directed to apply the following principles—

- (a) no compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature and extent of the injury complained of furnished to the constructing authority as hereinbefore provided;
- (b) no compensation shall be awarded for any diminution or deterioration of the supply of water to which any person may be entitled, unless such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him or her, and unless such diminution or

deterioration is the direct and will be the permanent result of the completed works;

- (c) no compensation shall be made for the taking or diverting of any water which the constructing authority is empowered by or under this Act to take or divert either permanently or temporarily from any river, creek, stream or watercourse, lake, lagoon, swamp or marsh;
- (d) there shall be considered in reduction of all claims for compensation for injury, whether by reason of the execution of any works under this Act, any, and if so what, enhancement in value of any property of the claimant, wherever situate, has been directly or indirectly caused, and whether any, and if so what, immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works; and a deduction shall be made accordingly from the amount which, but for this paragraph, would have been paid or payable as compensation;
- (e) the measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages;
- (f) where the injury complained of appears to be of a permanent or continuing character, or likely to be repeated, a sum may be awarded which the court may declare to be a compensation for all injury, loss, or damage sustained in respect of the matter complained of to the date of the bringing of the action, and also for all future injury, loss, or damage, in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury, loss, or damage.

20 Stay of proceedings until completion of works

If compensation is sought to be recovered for any such injury alleged to be the result of the execution of works which at the time of the alleged injury and of the claim to compensation in respect thereof are incomplete, it shall be lawful for any judge of the Supreme Court, upon an application by the constructing authority, made without action, and either by summons or by motion upon notice to the claimant for compensation, to make an order directing that the proceedings upon the claim for compensation shall be stayed until the completion of such works or for such period to be stated

in the order as the judge may consider sufficient for the completion of such works, and the proceedings to recover such compensation shall be stayed accordingly; but at the expiration of the stay limited in such order the claimant shall be at liberty to resume his or her proceedings for the recovery of such compensation without commencing any fresh proceedings.

21 Compensation for injury to interests in reversion

(1) Where such compensation is sought to be recovered in respect of any acts causing or likely to cause the same kind of injury to the same property, and such acts may injure interests in reversion as well as in possession of such property, the person claiming compensation shall, before any sum is awarded as compensation, satisfy the court as to the nature and extent of the respective estates or interests in such property of such claimant and all other persons (if any) said to be injured, and that the claimant has given sufficient notice to all such other persons of the claimant's proceedings to obtain compensation under this Act.

(2) All such other persons, whether they have received such notice or not, who may appear before the court shall be entitled to be heard on behalf of their respective interests in the compensation to be awarded.

(3) In awarding any sum by way of compensation for such injury the court shall award and apportion as between such claimant and such other persons in such manner in all respects as to such court may seem fit the amounts to be received by any or some or all of them respectively out of such sum as compensation for all injury of the same kind caused or likely to result to the respective interests of such claimant or other persons in such property.

(4) Such amounts shall be received by such claimant or other persons, and shall be in full discharge and satisfaction of the claims of such persons to compensation in respect of the matter complained of, and of all future injury, loss, or damage in respect of the same matter.

(5) Any person to whom any such sum has been awarded or apportioned as aforesaid shall have all such remedies and means of recovering the said sum from the constructing authority against which the claim has been made as though such person had originally been a plaintiff in the action in which such award or apportionment has been so made.

REGULATIONS MADE BY GOVERNOR

22 Regulations

The Governor may, for carrying out any of the purposes of this Act for which the commission is not empowered to make regulations, make regulations and provide a penalty not exceeding \$100 for any breach thereof.

APPOINTMENT OF COMMISSIONER AND DEPUTY COMMISSIONER

23 Appointment of commissioner and deputy commissioner

The Governor may, under this Act, appoint a commissioner and, when and so often as may be necessary, a deputy commissioner, who shall respectively be paid, such salaries as the Governor shall determine.

MISCELLANEOUS

25 Penalty for injuring works

Every person who unlawfully and maliciously destroys or damages, or attempts to destroy or damage, any works or portion of works under this Act shall in addition to any penalty provided by regulations under this Act be guilty of a crime and liable on conviction on indictment to imprisonment for any term not exceeding 10 years.

26 Evidence of arbitrator's decision

A document signed by and purporting to contain the decision of an arbitrator appointed under the provisions of the agreement shall be evidence of such decision.

27 Exemption from rates and taxes

No rates, taxes, or charges whatsoever (whether local government or not) shall be imposed, made, or levied, in respect of any works under this Act, or in respect of any land or other property held by any contracting government or constructing authority for the purposes of such works.

28 Recovery of penalties

All proceedings and penalties for offences against or breaches of any regulations made under this Act not being indictable offences shall be heard and determined and be recovered in a summary way by complaint under the *Justices Act 1886*.

29 Reports to be laid before Parliament

All reports, statements, and estimates received under this Act by the Governor shall be laid before Parliament without delay.

SCHEDULE 1**NEW SOUTH WALES–QUEENSLAND BORDER
RIVERS AGREEMENT 1946**

section 4

AGREEMENT made the day of One thousand nine hundred and forty-six BETWEEN THE STATE OF NEW SOUTH WALES (hereinafter called “New South Wales”) of the one part AND THE STATE OF QUEENSLAND (hereinafter called “Queensland”) of the other part WHEREAS it is desirable that certain works be constructed on parts of those portions of the Severn Dumaresq Macintyre and Barwon Rivers which constitute part of the boundary between the States of New South Wales and Queensland for the furtherance of water conservation water supply and irrigation in the said States and for other purposes NOW IT IS HEREBY AGREED as follows:—

PART I—RATIFICATION AND ENFORCEMENT**1 Ratification**

This Agreement is subject to ratification by the Parliaments of the States of New South Wales and Queensland and shall come into effect when so ratified.

2 Submission to Parliaments

Each of the parties hereto shall take every practicable step to have this Agreement ratified by its Parliament as soon as possible.

SCHEDULE 1 (continued)

3 Contracting parties to provide for enforcement of Agreement and Act

Each of the parties hereto so far as its jurisdiction extends and so far as may be necessary shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying the same.

PART II—THE COMMISSION**4 Appointment**

As soon as practicable after this Agreement comes into effect a Commission to be called “The Dumaresq-Barwon Border Rivers Commission” (hereinafter called “the Commission”) shall be appointed for the purposes of this Agreement and of the Acts ratifying the same and shall be charged with the duty of giving effect to this Agreement and the said Acts.

5 Constitution

The Commission shall consist of three Commissioners of whom one shall be appointed by the Governor of New South Wales one by the Governor of Queensland and one not being a person in the service of the Government of either of the parties hereto (who shall be the Chairman of the Commission) shall be appointed by the Premiers of New South Wales and Queensland and in the event of such Premiers being unable at any time to agree upon the appointment of a Chairman then such appointment shall be made by the Chief Justice of New South Wales or the Chief Justice of Queensland (such two Chief Justices to act on alternate occasions) from a panel of names submitted by the two Premiers each of whom shall submit an equal number of names not exceeding two the selection on the first occasion to be made by the Chief Justice of New South Wales. Each Commissioner shall be appointed for a term not exceeding five years and shall be eligible for reappointment.

SCHEDULE 1 (continued)

6 Meetings and business

(1) Each meeting of the Commission shall be convened by the Chairman or Deputy Chairman and be held at a time and place fixed by the Chairman or Deputy Chairman.

(2) For the transaction of business other than business which the Commission may have prescribed as formal the three Commissioners shall be a quorum and the concurrence of all of them shall be necessary.

(3) When any matter (not being business which the Commission may have prescribed as formal) requires a decision by the Commission and it is for whatever reason impossible to secure at two consecutive meetings of the Commission the quorum required by the preceding subclause (2) or if a difference of opinion arise among the Commissioners on any question not being a question prescribed as formal business such matter (if so required by the Premier of New South Wales or the Premier of Queensland) or such question (unless the Commissioners concur within two months after submission by a Commissioner of a resolution thereon) shall as hereinafter provided be referred for decision to an arbitrator who shall be appointed by the Premiers of New South Wales and Queensland.

Either of such Premiers may give to the other written notice to concur in the appointment of an arbitrator and to refer such matter or question to such arbitrator for decision.

If the appointment be not made within two months after the giving of such notice the Chief Justice of the Supreme Court of Tasmania or other the person for the time being discharging the duties of that office may at the request of the Premier by whom such notice shall have been given appoint an arbitrator who shall have the like powers to act in the reference and to decide the matter or question as if he had been appointed by the Premiers of New South Wales and Queensland.

The decision of an arbitrator appointed to decide such matter or question shall be binding on the Commission and the parties hereto and shall have effect as if the same were a determination of the Commission.

(4) The Commission shall not prescribe as formal any business in which the interests of the parties hereto are dissimilar. For the transaction of business which the Commission may have prescribed as formal two Commissioners shall be a quorum and if at any meeting of the Commission at which two Commissioners only are present such Commissioners differ in opinion upon any matter (being business which the Commission may

SCHEDULE 1 (continued)

have prescribed as formal) the determination of such matter shall be postponed until all the Commissioners are present and if necessary the provisions of subclause (3) of this Clause which are applicable in the event of its being for whatever reason impossible to secure at two consecutive meetings of the Commission the quorum required by subclause (2) of this Clause shall apply.

7 Powers and salaries

Subject to the provisions of this Agreement the Commissioners shall have equal powers and each Commissioner appointed by a Governor shall be paid such salary fees or allowance and such expenses as that Governor shall determine and the Chairman shall be paid such salary fees or allowance and such expenses as may be agreed upon by the Premiers of New South Wales and Queensland.

8 Vacation Office

(1) A Commissioner shall be deemed to have vacated his office—

- (a) if he becomes bankrupt compounds with his creditors or makes an assignment of his salary fees allowance or estate for their benefit;
- (b) if he is absent from two consecutive ordinary meetings of the Commission without leave obtained from the Commission in that behalf;
- (c) if he resigns his office by writing under his hand addressed in the case of a Commissioner other than the Chairman to the Governor of the State whose Governor appointed him and addressed in the case of a Chairman to the Premiers of New South Wales and Queensland;
- (d) if he is removed from office as hereinafter provided.

(2) The Governor of a State may for any cause which appears to him sufficient remove from office a Commissioner appointed by the Governor of that State.

SCHEDULE 1 (continued)

(3) The Premiers of New South Wales and Queensland may for any cause which appears to them sufficient remove a Chairman from office.

(4) On any vacancy occurring in the office of Chairman during the term of such Chairman a person shall be appointed to the vacant office in the manner provided by Clause 5 for the appointment of a Chairman and on any vacancy occurring in the office of a Commissioner (other than the Chairman) during the term of such Commissioner the Governor of the State whose Governor appointed the Commissioner whose office is vacant shall appoint a person to the vacant office and in any of such cases the person appointed to fill the vacant office shall subject to this Agreement hold office for the unexpired portion of the term of the vacant office.

9 Deputy Commissioners

(1) In case of the illness or absence of a Chairman a person may in the manner provided in Clause 5 for the appointment of a Chairman be appointed to act as Deputy Chairman during such illness or absence and in case of the illness or absence of a Commissioner other than the Chairman the Governor of the State by whose Governor he was appointed may appoint a person to act as Deputy Commissioner during such illness or absence.

(2) Every such Deputy shall while so acting have all the powers and perform all the duties and be entitled to the indemnities of the Chairman or Commissioner in whose stead he so acts.

(3) Any Deputy appointed by a Governor shall be paid such salary fees or allowance and such expenses as that Governor shall determine and any Deputy Chairman shall be paid such salary fees or allowance and such expenses as may be agreed upon by the Premiers of New South Wales and Queensland.

10 Indemnities

Each of the parties hereto shall indemnify the Commissioner appointed as Chairman and the Commissioner appointed by its own Governor in respect of any act done by him and of any losses costs or damages incurred by him in the *bona fide* execution of the powers vested in the Commission by or under this Agreement or any Act ratifying the same.

SCHEDULE 1 (continued)

11 Appointment of Secretary and Officers

The Commission may from time to time appoint and employ a Secretary and such other officers and servants as it thinks fit and may remove or dismiss them. PROVIDED HOWEVER that the Commission may in lieu of so appointing and employing a Secretary arrange for a person employed by either of the parties hereto or by any Authority constituted by either of the parties hereto to act as Secretary to the Commission in which case such salary fees or allowance and such expenses as may be approved by the Commission and agreed upon by the State or Authority concerned may be paid to such person.

12 Employment of Officers in Public Service

The services of persons employed by either of the parties hereto or by any Authority constituted by either of the parties hereto may and as far as practicable shall be utilised by the Commission for the purposes of carrying out any work or services to be carried out or performed by the Commission pursuant to this Agreement and the Commission may arrange with the State or Authority concerned as the case may be for the utilisation of the services of any of such persons for such purposes and for payment for the work or services carried out or performed by any of such persons for the Commission and the services of any of such persons may be utilised in part by the Commission and in part by a party hereto or Authority constituted by a party hereto.

13 Records of proceedings

The Commission shall cause proper minutes or records of all its proceedings to be kept.

14 Gaugings

It shall be the duty of the Commission to arrange for and carry on an effective and uniform system of making and recording continuous gaugings of—

- (a) the flow of water in the Dumaresq River at a place down-stream of and as close as practicable to the Dumaresq Dam referred to in Clause 16 and at such other places (being not less than three in

SCHEDULE 1 (continued)

number) as the Commission may deem necessary along the Carrier Rivers;

- (b) such of the rivers which are tributary to or effluent from the Carrier Rivers as the Commission deems necessary to determine the volume of inflow from such tributary rivers into the Carrier Rivers and the volume of outflow by such effluent rivers from the Carrier Rivers;
- (c) all diversions whether natural or artificial or partly natural and partly artificial from the Carrier Rivers;

and to arrange for the construction maintenance operation and control of such gauging stations as may be necessary for the making and recording of the gaugings mentioned in this Clause. Each of the parties hereto shall through its Controlling Authority but at the cost and expense of the Commission make and record such of the said gaugings as it may be directed by the Commission to make and record and shall supply to the Commission from time to time all such particulars as the Commission may require of the gaugings made and recorded by such party including (if the Commission so requires) particulars daily of the rate of inflow from such tributary rivers into the Carrier Rivers.

15 Certain powers and duties of Commission

Subject to the provisions of this Agreement the Commission—

- (a) may from time to time so far as may be necessary for giving effect to this Agreement declare the quantities of and times for and means of verification of—
 - (i) all deliveries of water from the Dumaresq storage referred to in Clause 16; and
 - (ii) the discharge of water past each of the works referred to in that Clause;

and in so declaring such quantities and times shall have regard to the quantities and times most suitable and convenient for the purposes of this Agreement and to the requirements of each of the parties hereto at different points along the Carrier Rivers and all such declarations shall be observed by the parties hereto respectively;

SCHEDULE 1 (continued)

- (b) shall before the First day of October in each year prepare and forward to each of the parties hereto a report as to—
 - (i) its proceedings during the twelve months ended on the Thirtieth day of June then last past;
 - (ii) the operations carried on by it or under its directions or orders and particularly the deliveries and discharges of water during such period;
 - (iii) the names salaries or wages fees allowances expenses positions and duties of officers or persons employed by it during such period; and
 - (iv) its administration generally during the said period.

**PART III—WORKS TO BE CONSTRUCTED AND
WORKS TO BE TAKEN OVER****16 Works to be constructed**

(1) The works to be constructed under this Agreement comprise:—

- (a) a Dam (hereinafter referred to as “the Dumaresq Dam”) on the Dumaresq River at a site to be selected by the Commission such Dam to give a storage basin (hereinafter referred to as “the Dumaresq Storage”) with a capacity as large as is reasonably practicable;
- (b) such weirs (additional to those referred to in paragraphs (a) and (b) of subclause (2) of this Clause) on the Carrier Rivers (such additional weirs being hereinafter referred to as “the New Weirs”) as may be found necessary to meet the requirements of irrigation along those Rivers (including diversions of water by gravitation for irrigation) such New Weirs to be not less than six and not more than twelve in number (inclusive of the weirs referred to in paragraph (b) of subclause (2) of this Clause but exclusive of the Goondiwindi Weir and the Mungindi Weir referred to in paragraph (a) of subclause (2) of this Clause) the location of the New Weirs to be determined by the Commission

SCHEDULE 1 (continued)

within a period of seven years from the ratification of this Agreement by the Parliaments of New South Wales and Queensland;

- (c) regulators in effluents from the Carrier Rivers (hereinafter called “the Regulators”) up to four in number to provide for the control of the flow in the Carrier Rivers during periods of regulated flow;

(2) The works to be taken over as hereinafter in this Agreement provided comprise:

- (a) the existing Weir in the Macintyre River near the town of Goondiwindi (herein referred to as “the Goondiwindi Weir”) and the existing Weir in the Barwon River near the town of Mungindi (herein referred to as “the Mungindi Weir”);
- (b) any other weirs on the Carrier Rivers the construction of which has been commenced or completed by either party hereto with the consent of the other party hereto before this Agreement comes into effect (hereinafter referred to as “any weirs under construction”).

17 Dumaresq Storage

(1) Subject to the provisions of this Agreement the Dumaresq Dam shall be constructed maintained and operated by and the Dumaresq Dam and the Dumaresq Storage shall be controlled by New South Wales.

Weirs and Regulators

(2) Subject to the provisions of this Agreement the New Weirs and the Regulators shall be constructed maintained operated and controlled by Queensland which shall also take over maintain operate and control the Goondiwindi Weir the Mungindi Weir and any Weirs under construction.

18 Employment of Labour

The labour required by each of the parties hereto for the construction maintenance operation and control of any work to be constructed maintained operated or controlled by it under this Agreement shall so far as may be practicable be drawn in equal numbers from the States of New South Wales and Queensland provided that in case of emergency labour may be obtained by either party from any available source.

SCHEDULE 1 (continued)

19 Commencement and completion of works

Subject to the provisions of this Agreement each of the parties hereto shall as soon as practicable after this Agreement comes into effect commence the construction of the works which are to be constructed by it as provided in Clause 17 and shall proceed with such construction without cessation (other than such as may be due to unavoidable causes) until such works are completed.

20 Preparation and submission of General Scheme, Designs, etc.

Each of the parties hereto shall—

- (a) as soon as practicable carry out and complete investigation and surveys in respect of the works to be constructed by it under this Agreement;
- (b) as soon as practicable cause to be prepared and submitted to the Commission for its approval a general scheme in respect of the works to be constructed by it under this Agreement; and
- (c) before commencing the construction of any work cause to be prepared and submitted to the Commission for its approval designs and estimates of cost of such work.

21 Approval of General Scheme designs and estimates

The Commission may approve of any such general scheme and of any such designs or estimates with or without alterations or additions or may from time to time refer the same for amendment to the party submitting the same and in considering the sites at which weirs are to be constructed the Commission shall as far as practicable have regard to the suitability of the sites for the purpose of affording convenient off-takes for irrigation requirements.

22 Approvals necessary prior to commencement of works

(1) No work to be constructed under this Agreement shall be commenced until the Commission has approved of—

SCHEDULE 1 (continued)

- (a) the general scheme embracing such work;
- (b) the designs and estimates in respect of such work; and
- (c) such work being commenced.

Works to be constructed in accord with approvals

(2) Every work to be constructed under this Agreement shall be constructed in accordance with the general scheme embracing such work and the designs in respect of such work approved by the Commission.

23 Directions by Commission as to works

The Commission shall have full power to give directions to secure the suitability durability and proper maintenance of works and the due observance of the provisions of this Agreement and in particular and without limiting the generality of the foregoing power to direct—

- (a) the commencement and order in point of time of the construction of works to be constructed under this Agreement;
- (b) the rate of progress of works whether of construction or of maintenance;
- (c) the method and extent of maintenance of works;
- (d) if necessary what works shall be regarded as works of construction and what works shall be regarded as works of maintenance;

and all such direction shall be carried out by the parties hereto respectively.

24 Directions by Commission as to operation and control of works and discharges of water

The Commission shall have full power to give directions with respect to the operation and control of the whole of the works referred to in Clause 16 and with respect to the conditions under which such works shall be operated and with respect to the control of the Dumaresq Storage and in particular and without limiting the generality of the foregoing power to give directions with respect to:—

- (a) the storage or impounding of water by the works referred to in Clause 16 or any of them or by the Dumaresq Storage;

SCHEDULE 1 (continued)

- (b) the times for and rates of discharge or release of water from the Dumaresq Storage; and
- (c) the times for and rates of discharge of water past each of the Weirs and Regulators referred to in Clause 16;

and all such directions shall be carried out by the parties hereto respectively.

25 Parties hereto to facilitate construction

A party hereto within whose State any of the works or any parts of the works referred to in Clause 16 are to be or are being or have been constructed or taken over or maintained or operated or controlled by the other party hereto or within whose State the Dumaresq Storage or any part thereof is to be controlled by the other party hereto shall grant to such other party or to such authority of such other party as may be authorised by such other party in that behalf all such powers licenses and permissions over or with respect to the territory of the party first mentioned in this Clause as may be necessary for the construction maintenance operation or control of such works or for the control of the Dumaresq Storage or for the exercise or performance of the powers or duties conferred or imposed upon such other party by this Agreement and each of the parties hereto shall take such steps either by acquiring lands or interests in lands or otherwise as may be necessary to enable it to carry out the provisions of this Clause.

PART IV—FINANCE**26 Estimated cost of works**

The estimated cost of the several works mentioned in subclause (1) of Clause 16 and the Dumaresq Storage is as follows:—

SCHEDULE 1 (continued)

(a) The Dumaresq Dam and the Dumaresq Storage	£1,000,000
(b) The New Weirs—12 at £10,000 each (Average)	120,000
(c) The Regulators—4 at £5,000 each (Average)	20,000
	£1,140,000

27 Allocation of Costs

(1) The salary fees or allowance and expenses of each Commissioner or Deputy Commissioner (other than the Chairman of the Commission or his Deputy) shall be paid by the party by whose Governor he was appointed.

(2) The following costs and expenses shall be borne by the parties hereto in equal shares:—

- (a) all costs and expenses of the Commission;
- (b) the salary fees or allowance and the expenses of each Chairman and Deputy Chairman;
- (c) all amounts which either of the parties hereto may become liable to pay under the indemnities agreed to be given by Clause 10;
- (d) all costs and expenses incurred in carrying out the provisions of Clause 14;
- (e) the costs and expenses incurred by each of the parties hereto in carrying out the provisions of Clauses 17, 20, 21 and 25;
- (f) the cost of any examination and audit made pursuant to Clause 31;

Payment of compensation for Damage

- (g) all amounts of compensation paid by either of the parties hereto or by any authority constituted by either of the parties hereto for any damage occasioned by or arising out of anything done by it under this Agreement but only if the amount of such compensation has been fixed by a Court of competent jurisdiction or has been approved by the Commission;
- (h) all amounts paid by either of the parties hereto or by any authority constituted by either of the parties hereto in respect of or incidental to the acquisition of lands or interests in lands

SCHEDULE 1 (continued)

which it may become necessary to acquire for the purposes of this Agreement whether for compensation money interest damages costs charges or expanses or otherwise howsoever.

28 Estimates of Expenditure

(1) The Commission shall within six months after the date upon which this Agreement comes into effect prepare and submit to each of the parties hereto a detailed estimate of the amount of money required during the period commencing on the date of the submission of such estimate and ending on the Thirtieth day of June then next ensuing (hereinafter called “the first period”) to meet all expenditure during such period in respect of the matters mentioned or referred to in paragraphs (a) to (h) inclusive of subclause (2) of Clause 27.

(2) The Commission shall in the month of March in each year commencing with the month of March immediately preceding the expiration of the first period prepare and submit to each of the parties hereto a detailed estimate of the amount of money required during the year commencing on the First day of July then next ensuing to meet all expenditure during that year in respect of the matters mentioned or referred to in paragraphs (a) to (h) inclusive of subclause (2) of Clause 27 PROVIDED ALWAYS that if this Agreement should not come into effect in sufficient time to permit of the preparation and submission by the Commission to each of the parties hereto in the month of March immediately preceding the expiration of the first period of a detailed estimate in accordance with the provisions of this subclause in respect of the period of one year next ensuing after the expiration of the first period then in such case such estimate in respect of such period of one year shall be prepared and submitted by the Commission to each of the parties hereto as soon as reasonably practicable after this Agreement comes into effect.

(3) Each of the parties hereto shall after the submission to it of any such estimate as is mentioned in subclause (1) or subclause (2) of this Clause pay to the Commission one half of the amount of such estimate. The Commission at its option may in writing require such payment to be made either in one sum payable when directed by the Commission or by instalments of such amounts and payable at such times as the Commission shall from time to time direct PROVIDED ALWAYS that each of the parties hereto shall be allowed one calendar month at least from the submission to it of any request for a payment under this subclause within

SCHEDULE 1 (continued)

which to make such payment. PROVIDED FURTHER that the Commission shall not differentiate between the parties in respect of the times or the manner of the payment of their respective shares.

(4) If in the opinion of the Commission it is necessary in the first period or in any year commencing on the First day of July to meet in respect of any of the matters mentioned or referred to in paragraphs (a) to (h) inclusive of subclause (2) of Clause 27 any expenditure in excess of the amount set out in the estimate for that period or year the Commission shall prepare and submit to each of the parties hereto a detailed estimate of the amount of such excess expenditure and each of the parties hereto shall thereupon pay to the Commission one half of the amount of such excess.

(5) Every such estimate shall show the manner in which it is proposed to expend the amount of such estimate.

29 Payment by Commission to States

In accordance with the estimates provided for in the next preceding Clause of this Agreement the Commission shall

- (a) in the first period pay to each of the parties hereto or to such authority or authorities constituted by such party as may be nominated by it to receive the same an amount sufficient to defray the expenditure of such party and its authorities during the first period in respect of the matters mentioned or referred to in paragraphs (c) to (h) inclusive of subclause (2) of Clause 27.
- (b) in each year commencing on the First day of July thereafter pay to each of the parties hereto or to such authority or authorities constituted by such party as may be nominated by it to receive the same an amount sufficient to defray the expenditure of such party and its authorities during that year in respect of the matters mentioned or referred to in paragraphs (c) to (h) inclusive of subclause (2) of Clause 27;

and the amount to be paid by the Commission under this Clause to each of the parties hereto and/or its authorities in the first period or in any year commencing on the First day of July may be paid in one sum or by instalments from time to time and in making such payments the Commission shall have regard as far as practicable to the moneys required from time to time to defray the expenditure of such party and/or its authorities during the first period or during such year commencing on the

SCHEDULE 1 (continued)

First day of July as the case may be in respect of the matters mentioned or referred to in paragraphs (c) to (h) inclusive of subclause (2) of Clause 27.

30 Unexpended balances

Of the moneys paid to the Commission by the parties hereto pursuant to this Agreement such balances as remain unexpended on the Thirtieth day of June in any year shall be available for expenditure during the year commencing on the First day of July then next following.

31 Audit and inspection of books

The books accounts and vouchers of the Commission shall be examined and audited at least once in every year by the Auditors-General of New South Wales and Queensland or such one of them as may be agreed upon from time to time by the Premiers of New South Wales and Queensland and a report of the result of any examination and audit under this Clause shall be furnished to each of the parties hereto by the person making the same. A certificate by the Auditor-General making any such examination and audit as to the cost thereof shall be final and conclusive and binding upon the parties hereto and the Commission.

32 Commission to account

The Commission shall account to the parties hereto for all moneys received by the Commission under or for the purposes of this Agreement.

**PART V—DISTRIBUTION AND USE OF SURFACE
WATERS****33 Apportionment of water**

The water discharged from the Dumaresq Storage whether by regulated flow or unregulated flow shall subject to the provisions of this Agreement be available for use by the parties hereto in equal shares PROVIDED THAT:

SCHEDULE 1 (continued)

- (a) if at any time it be found that the amount of water available for use by either of the parties hereto under the foregoing provisions of this Clause is in excess of the requirements of that party the Premier of that party may agree with the Premier of the other party hereto that the excess or any part of the excess shall subject to the provisions of this Agreement be thereafter available for use by such other party hereto and the water so discharged from the Dumaresq Storage shall thereafter but subject always to the provisions of this Agreement be available for use by the parties hereto in altered shares accordingly and the capital cost of the Dumaresq Dam and Dumaresq Storage as theretofore borne by and between the parties hereto (whether pursuant to Clause 27 of this Agreement or pursuant to a previous Agreement between the parties made under this paragraph (a)) shall thereupon be adjusted between the parties hereto so that the proportionate parts of such capital cost which shall be borne by the respective parties hereto shall be in the same proportion as the shares in which the water to be so discharged from the Dumaresq Storage is agreed to be thenceforth available to the said parties. The party hereto for whose use an additional quantity of water is by any such Agreement made available shall forthwith pay to the other party such sum as having regard to any previous adjustment of the said capital cost made under this paragraph (a) shall be requisite to give effect to the above provisions.
- (b) if in respect of any period of a year the amount of water available for use by either of the parties hereto under the foregoing provisions of this Clause or under any Agreement made pursuant to paragraph (a) of this Clause is not by the Controlling Authority of that party considered sufficient to meet the requirements of that party during that period and the Controlling Authority of the other party hereto is willing to relinquish during that period a portion of the share available for use by such other party under the foregoing provisions of this Clause or under any Agreement made pursuant to paragraph (a) of this Clause the Controlling Authority which is willing to relinquish a portion of the share available for use by its State may agree with the Controlling Authority of the party requiring the additional water that such portion shall during such period of a year be available for use by the party requiring the additional water and the water available for use by the parties hereto under this Agreement shall during

SCHEDULE 1 (continued)

such period of a year be available for use by them in altered shares accordingly but no such Agreement shall be made

- (i) unless the Commission is of the opinion that the quantity of water available in the Dumaresq Storage is such as to permit of the altered arrangement; and
- (ii) except with the written consent of the Commission; AND with respect to any and every such Agreement made pursuant to this paragraph (b) the party requiring the additional water shall pay to the other party a sum equal to the difference between five (5) per centum of the proportion of the capital cost of the Dumaresq Dam and the Dumaresq Storage corresponding with the proportion of the water discharged from the Dumaresq Storage as aforesaid to which the party requiring the additional water would have been entitled but for the Agreement made pursuant to this paragraph (b) and five (5) per centum of the proportion of such capital cost corresponding with the increased proportion of water so discharged to which such lastmentioned party becomes entitled under the Agreement made pursuant to this paragraph (b).

For the purposes of this Clause a certificate of the Chairman or Deputy Chairman of the Commission as to the amount of the capital cost of the Dumaresq Dam and the Dumaresq Storage shall be final and conclusive and binding upon the parties hereto.

34 Rights of States to use water

Each of the parties hereto may utilise the water which it is entitled to divert or use under or in pursuance of this Agreement for such purpose or purposes as it may deem fit and (subject to the provisions of this Agreement) may divert or authorise the diversion from the Carrier Rivers of whatever water it is entitled to take or divert from the Carrier Rivers at whatever point or points and by whatever means it may desire.

35 Diversions upstream of Dumaresq Storage

Any water diverted

- (a) by the controlling Authority of a State; or

SCHEDULE 1 (continued)

(b) under or pursuant to any license permit authority or approval; from the Dumaresq River upstream of the Dumaresq Storage or from any of the tributaries of the Dumaresq River upstream of that storage or from the Dumaresq Storage itself shall be regarded as part of the share of the State in which it is used or in which the lands to which it is applied are located and all such diversions shall be dealt with in the same manner as diversions from the Carrier Rivers.

36 Losses of water

The Commission in conjunction with the Controlling Authorities of the two States shall take such action as may be necessary to ascertain or assess the quantities of water lost whilst flowing in or passing down or being in the Carrier Rivers and whilst impounded by the weirs and regulators referred to in Clause 16 and the losses so ascertained or assessed are to be taken into account in respect of the division of the available flows having regard always to the points of diversion from the Carrier Rivers and the impoundings at the said weirs and regulators and such losses shall also be taken into account in respect of any waters passed into the Carrier Rivers from the tributaries to the same.

37 Determination of regulated flow

The Controlling Authority of each State shall from time to time as and when required by the Commission supply to the Commission in respect of each year commencing on the First day of July particulars of the flow or discharge from the Dumaresq Storage estimated by it to be required by its State during each calendar month of that year and the Commission having regard to—

- (a) the particulars from time to time supplied to it by the Controlling Authority of each State pursuant to this Clause;
- (b) what the Commission anticipates the requirements of the two States will be during succeeding months;
- (c) the quantity of water diverted or used by each of the States during the two consecutive calendar months immediately preceding the month in which the determination hereinafter in this Clause referred to is made;

SCHEDULE 1 (continued)

- (d) the quantity of water for the time being stored in the Dumaresq Storage;
- (e) the period of the year;
- (f) prevailing weather conditions; and
- (g) such other considerations as may in the opinion of the Commission affect the matter;

shall from time to time determine and direct at what rate or rates water shall be released or discharged from the Dumaresq Storage.

38 Diversions may be restricted in certain circumstances

(1) If and whenever the quantity of water held in the Dumaresq Storage is in the opinion of the Commission not more than sufficient to meet the requirements for domestic and stock watering purposes town and railway water supplies and other public purposes normally met from the Dumaresq Storage and the Carrier Rivers the Commission may by directions issued to the Controlling Authorities of the two States direct that all or any diversions of water for any other purposes shall until further notice cease or be reduced to such extent as may be specified by the Commission.

(2) If and whenever the quantity of water held in the Dumaresq Storage is in the opinion of the Commission insufficient to meet the requirements for domestic and stock watering purposes town and railway water supplies and other public purposes normally met from the Dumaresq Storage and the Carrier Rivers the Commission may by directions issued to the Controlling Authorities of the two States direct that diversions for all or any of such purposes shall until further notice cease or be reduced to such extent as may be specified by the Commission.

(3) If and whenever the Commission is of the opinion that the diversions of water by the Controlling Authority of a State or under or pursuant to licences permits authorities or approvals to divert water granted in that State have resulted or will result in the share of water to which that State is for the time being entitled under this Agreement or under any Agreement made pursuant to Clause 33 being exceeded the Commission may by a direction issued to the Controlling Authority of that State direct that such diversions shall until further notice be reduced to such extent as may be specified by the Commission.

SCHEDULE 1 (continued)

Enforcing directions to cease or reduce diversions

(4) The Controlling Authority of each State shall take all such steps as may be necessary to give effect to every direction issued to it under this Clause and in particular and without limiting the generality of the foregoing provision of this subclause the Controlling Authority of each State shall issue such directions to the holders of licences permits authorities and approvals to divert water granted in its State or some of such holders as may be necessary to give effect to every directions issued to such Controlling Authority under this Clause.

(5) Each Controlling Authority shall also in the event of the holder of any licence permit authority or approval (granted in its State) to divert water from the Dumaresq Storage and/or from the Carrier Rivers failing to comply with a direction by such Controlling Authority to cease or to reduce or to limit or to restrict diversions from the Dumaresq Storage and/or the Carriers Rivers (whether such direction shall have been issued pursuant to or because of any direction of the Commission to such Controlling Authority or because of the fact that the quantity of water being diverted by or into its State was or was considered by such Controlling Authority likely to be in excess of the share of the water discharged from the Dumaresq Storage available for the use by that State) cancel or suspend such licence permit authority or approval.

(6) Each of the parties hereto shall clothe its Controlling Authority with the powers necessary to enable such Controlling Authority to fulfil its obligations under this Clause but this subclause shall not be construed to limit or affect the right of a State to confer or impose on its Controlling Authority any rights powers and duties (not inconsistent with this Agreement) as that State may think fit.

39 Height of water in and flow of water past Weirs and Regulators

(1) The Commission may from time to time determine the maximum height to which water may be held upstream of each of the Weirs and Regulators referred to in Clause 16—and all such determinations shall be observed by Queensland.

(2) The Commission having regard to

- (a) the requirements along the full length of the Carrier Rivers;

SCHEDULE 1 (continued)

- (b) the diversion from the part of the Carrier Rivers upstream of each Weir and Regulator; and
- (c) losses of water along the Carrier Rivers and whilst impounded by the Weirs and Regulators referred to in Clause 16;

may direct what proportions of the regulated flow shall be allowed to pass each weir and each regulator referred to in Clause 16 and all such directions shall be carried out by Queensland.

40 Delivery of water into New South Wales below Carrier Rivers

Any flow of water which the Controlling Authority for the State of New South Wales may from time to time request the Commission to deliver to the part of the Barwon River downstream of the point on the Barwon River downstream of Mungindi where that River reaches the 29th parallel of south latitude whether it comprise all or any part of its share of the regulated flow from the Dumaresq Storage or water discharged from New South Wales tributaries to the Carrier Rivers (either from natural flows in such tributaries or regulated flows from any conserving works or storages on such tributaries) shall subject to the losses of water in transmission in the Carrier Rivers be permitted to pass the point on the Barwon River downstream of Mungindi where that river reaches the 29th parallel of south latitude.

41 Surplus water

Any water which flows to and passes the point on the Barwon River downstream of Mungindi where the Barwon River reaches the 29th parallel of south latitude shall be then beyond the control of the Commission and the only part of such water which shall be taken into account in arriving at the respective shares of water to be made available for use by the parties hereto under this Agreement shall be that part of New South Wales's share of the regulated flow from the Dumaresq Storage which is permitted to pass the said point at the request of New South Wales under Clause 40.

42 Waters of Tributaries downstream of Dumaresq Storage

Each of the parties hereto shall have full right and liberty as it may deem fit to conserve and to divert and use or authorize the diversion and use of

SCHEDULE 1 (continued)

the waters of all rivers within its territory tributary to the Carrier Rivers downstream of the Dumaresq Dam and may cause the whole or any part of such waters to flow into and along the Carrier Rivers or partly along the same and subject to losses being taken into account as provided by Clause 36 may divert and use or authorise the diversion and use for any purpose and at any place from the Carrier Rivers of a quantity of water equivalent to the quantity of water caused to flow into the Carrier Rivers as aforesaid and the waters so diverted or authorised to be diverted shall in no way be regarded as part of the water to be shared between the parties hereto under the terms of this Agreement.

PART VI—LICENCES AND PERMITS**43 Diversions to be authorised in accordance with State law**

The Controlling Authority of each State may divert and use or permit diversions and use of water from the Carrier Rivers and from the Dumaresq River upstream of the Dumaresq Storage and from the tributaries of the Dumaresq River upstream of that storage and from the Dumaresq Storage itself but only in accordance with the provisions of the Acts and Regulations in that behalf from time to time in force in that State.

44 Returns to be supplied of existing and future rights to divert and of cancellations of rights

The Controlling Authority of each State

- (a) shall within six months after this Agreement comes into effect supply to the Commission a return containing such particulars as the Commission may require of all licences permits authorities or approvals to divert water from the Border Rivers and from any tributaries of the Dumaresq River and in force in its State at the end of the calendar month immediately preceding the calendar month during which such return is supplied;
- (b) shall during each calendar month following the calendar month during which the return referred to in the preceding paragraph (a) is supplied up to and including the month following the month in

SCHEDULE 1 (continued)

which the site of the Dumaresq Storage shall be approved of by the Commission supply to the Commission a return containing such particulars as the Commission may require of all additional licences permits authorities or approvals to divert water from the Border Rivers and from the tributaries of the Dumaresq River and granted in its State during the preceding calendar month;

- (c) shall during each calendar month following the calendar month during which the last of the returns referred to in the preceding paragraph (b) is required by that paragraph to be supplied supply to the Commission a return containing such particulars as the Commission may require of all additional licences permits authorities or approvals to divert water from the Carrier Rivers and from the Dumaresq River upstream of the site of the Dumaresq Storage and from any tributaries of the Dumaresq River upstream of that site and from the Dumaresq Storage itself and granted in its State during the preceding calendar month;
- (d) shall within fourteen days of the cancellation or lapsing of any such licence permit authority or approval as is mentioned in paragraphs (a) (b) and (c) of this Clause notify the Commission of such cancellation or lapsing.

45 Returns to be supplied of diversions

The Controlling Authority of each State shall from time to time as and when required by the Commission supply to the Commission returns containing such particulars as the Commission may require and covering such periods as may be stipulated by the Commission of the quantities of water diverted from the Carrier Rivers and from the Dumaresq River upstream of the site of the Dumaresq Storage and from any tributaries of the Dumaresq River upstream of that site and from the Dumaresq Storage itself by the Controlling Authority or under or pursuant to each licence permit authority or approval granted in its State.

SCHEDULE 1 (continued)

PART VII—ELECTRICITY UNDERTAKING**46 Generation of Electricity**

Subject to the laws of a State relating to the generation and supply of electricity in that State the Commission may arrange with any Electricity Authority of either of the two States or with any Electricity Authorities of both States acting in conjunction for the utilisation of the water flowing or being discharged from or past any of the works referred to in Clause 16 for the purpose of generating electricity upon such terms and conditions as the Commission shall think proper PROVIDED ALWAYS that it shall be a term of any such arrangement that the flow or discharge of water from or past the work or works concerned shall at all times be under the control of the Commission and that the electricity generated shall be available for use by the parties hereto in equal shares or in such other shares and proportions as may at any time or from time to time be agreed upon between the Premiers of New South Wales and Queensland and no arrangement shall be entered into which provides for or contemplates the flow or discharge of water from or past any work or works at any time in excess of the quantities or at greater rates than would be required for the purposes of and in conformity with this Agreement had no such arrangement been entered into.

PART VIII—MISCELLANEOUS**47 Furnishing information and particulars**

Each of the parties hereto shall from time to time as and when required by the Commission furnish to the Commission all such other information and particulars as the Commission may require for the purposes of this Agreement and as such party is able to furnish.

48 Opinions of Commission

Any opinion to be formed by the Commission under any provision of this Agreement may be formed by it on such materials as it may think

SCHEDULE 1 (continued)

sufficient and in such cases the Commission shall be deemed to be exercising merely administrative functions.

49 Special provisions to be inserted in Ratifying Acts

The Act ratifying this Agreement by the Parliament of each State shall—

- (a) provide that notwithstanding anything contained in any Act of Parliament of the enacting State relating to industrial arbitration or in any award or agreement made thereunder or pursuant thereto it shall be lawful for the other State in constructing maintaining operating or controlling in the enacting State any work required to be constructed maintained operated or controlled by such other State under this Agreement to observe the same conditions and pay the same wages as would prevail if such construction maintenance operation or control were being undertaken in such other State;
- (b) contain provisions in or to the effect of the provisions contained in Sections 19, 20 and 21 of the River Murray Waters Act, 1915 of the State of New South Wales.

50 Marginal notes

The marginal notes placed opposite several Clauses of this Agreement and indicating or purporting to indicate the contents or objects of such Clauses respectively shall not be taken as part of this Agreement or in any manner affect the construction hereof or of any Clause or thing herein contained.

PART IX—INTERPRETATION**51**

In this Agreement save where inconsistent with the context:

“**Auditor-General**” shall include the person acting as such for the time being.

SCHEDULE 1 (continued)

“**Border Rivers**” means the parts of the Severn Dumaresq Macintyre and Barwon Rivers constituting part of the boundary between the States of New South Wales and Queensland.

“**Carrier Rivers**” means the parts of the Severn Dumaresq Macintyre and Barwon Rivers constituting part of the boundary between the States of New South Wales and Queensland and located between the site on the Dumaresq River of the Dam referred to in this Agreement as the “Dumaresq Dam” and the point on the Barwon River downstream of Mungindi where the Barwon River reaches the 29th parallel of south latitude.

“**Chief Justice**” includes the person for the time being acting as such.

“**Controlling Authority**” where used in reference to a State means any Government Department or Authority of that State which under the laws of that State is authorised or required to exercise the powers and fulfil the obligations by this Agreement conferred or imposed upon a Controlling Authority.

“**Diversion**” includes abstraction impounding and appropriation of water that diminishes or retards the volume of flow of a river.

“**Governor**” where used in reference to a State means Governor with the advice of the Executive Council of that State and shall include the person for the time being lawfully administering the Government of that State.

“**Land**” includes Crown Lands and buildings messuages tenements and hereditaments of any tenure and any easement right or privilege in over or affecting any land.

“**Maintenance**” includes repairs and improvements.

“**Person**” includes a corporation.

“**Premier**” includes the Minister of the State for the time being acting as such.

“**River**” and “**Tributary**” respectively include any affluent effluent creek anabranch or extension of and any lake or lagoon connected with the river or tributary.

SCHEDULE 1 (continued)

IN WITNESS WHEREOF the Premiers of the States of New South Wales and Queensland have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED and DELIVERED by)
 THE HONOURABLE)
 the Premier of the State of New South Wales for)
 and on behalf of that State (but so as not to incur)
 any personal liability) in the presence of)

SIGNED SEALED and DELIVERED by)
 THE HONOURABLE EDWARD MICHAEL)
 HANLON the Premier of the State of)
 Queensland for and on behalf of that State (but)
 so as not to incur any personal liability) in the)
 presence of)

SCHEDULE 2**NEW SOUTH WALES–QUEENSLAND BORDER
RIVERS AGREEMENT 1968**

section 4

AGREEMENT made the fourth day of November, one thousand nine hundred and sixty-eight BETWEEN THE STATE OF NEW SOUTH WALES of the one part AND THE STATE OF QUEENSLAND of the other part.

WHEREAS the parties hereto have on the twenty-seventh day of November, one thousand nine hundred and forty-six made an Agreement (herein referred to as the Principal Agreement) authorized by the “*New South Wales–Queensland Border Rivers Act, 1947*” and by “*The New South Wales–Queensland Border Rivers Act of 1946*” the terms of which Agreement are set out in the Schedule to each of those Acts.

AND WHEREAS it is desirable to amend the purposes for which the Principal Agreement was made and the terms thereof.

NOW IT IS HEREBY AGREED as follows:—

PART I

1. This Agreement is subject to ratification by the Parliaments of the parties hereto and shall come into effect when ratified by both such Parliaments.

Each of the parties hereto shall take all practicable steps to have this Agreement ratified.

2. The Principal Agreement shall continue to bind the parties thereto subject to the amendments, omissions and substitutions made therein by this Agreement.

SCHEDULE 2 (continued)

PART II

3. New preamble. The preamble to the Principal Agreement being the words from and including the word “WHEREAS” to and including the words “for other purposes” is omitted and the following preamble is inserted in its stead:—

“WHEREAS it is desirable that certain works be constructed on those portions of the Dumaresq, Macintyre and Barwon Rivers which constitute part of the border between the States of New South Wales and Queensland on certain effluents from those rivers and on certain tributaries of the Dumaresq River in both the said States with a view to water conservation, water supply and irrigation in the said States and that certain investigations be made in respect of streams which intersect the said border west of the town of Mungindi with a view to determining the quantities of water which should be available to the said States from such streams and with a view to the provision of works which could be of benefit to the said States by ensuring better distribution of the water in certain of such streams and that certain investigations be made in respect of groundwater resources associated with the Carrier Rivers with a view to determining the proportions or quantities of groundwater that should be available to the States from those resources and for other purposes.”

4. Amendments to clause 14. Clause 14 of the Principal Agreement is amended by—

(a) in paragraph (a) omitting the words and numerals “a place downstream of and as close as practicable to the Dumaresq Dam referred to in Clause 16” and inserting in their stead the words “the Mingoola Gauging Station”;

(b) inserting after paragraph (b) the following paragraphs:—

“(c) such of the tributaries of the Dumaresq River upstream of the Mingoola Gauging Station as the Commission deems necessary;

(d) such of the intersecting streams as the Commission deems necessary;”;

(c) re-designating the existing paragraph (c) as paragraph (e) and adding to that paragraph as so re-designated the words “and from the tributaries mentioned in paragraph (c) of this clause”;

SCHEDULE 2 (continued)

(d) omitting the words “such tributary rivers into the Carrier Rivers” where lastly occurring and inserting in their stead the words “rivers, tributary to the Carrier Rivers, into the Carrier Rivers and from the tributaries mentioned in paragraph (c) of this clause into the Dumaresq River”.

5. Amendments to clause 15. Clause 15 of the Principal Agreement is amended by—

(a) in paragraph (i), omitting the words and numerals “the Dumaresq storage referred to in Clause 16” and inserting in their stead the words “dams comprising the Dumaresq storage or any of them”;

(b) in paragraph (ii), omitting the words “other works referred to in that Clause” and inserting in their stead the words “works on the Carrier Rivers or on effluents therefrom”.

6. New heading to Part III. The Principal Agreement is amended by omitting the words “PART III—WORKS TO BE CONSTRUCTED AND WORKS TO BE TAKEN OVER” and inserting in their stead the words “PART III—FUNCTIONS OF COMMISSION”.

7. New clause 16. The Principal Agreement is amended by omitting clause 16 and inserting in its stead the following clause:—

“16. Functions of Commission. (1) The Commission shall have control of the construction, operation and maintenance of works taken over by it or constructed under this Agreement.

Such works include the weirs known as the Bonshaw, Cunningham, Glenarbon, Goondiwindi, Boomi and Mungindi Weirs and the regulator on the Boomi effluent immediately downstream of its off-take from the Barwon River.

(2) The Commission shall undertake field, laboratory and engineering investigations into—

(a) the provision of storage dams on the Dumaresq River and on its tributaries upstream of the Mingoala Gauging Station with a view to ensuring a regulated flow in the Carrier Rivers and, if practicable, a measure of flood reduction;

SCHEDULE 2 (continued)

- (b) the provision of such weirs on the Carrier Rivers as may be deemed necessary to meet the requirements of users of water along those rivers including diversion of water by gravitation for the purpose of irrigation or water supply;
 - (c) the provision of regulators on effluents from the Carrier Rivers with a view to providing a control of flow in and diversions from the Carrier Rivers during periods of flow whether regulated or unregulated;
 - (d) the provision of such works in or on the intersecting streams as may be deemed necessary to ensure, for the joint benefit of the parties hereto, a flow of water or an equitable distribution of the flow of water whether regulated or unregulated in those streams;
 - (e) the proportions or quantities of water which should be available to each of the parties hereto from the intersecting streams.
- (3) The Commission shall, from time to time, report and make recommendations to the Governments of New South Wales and Queensland respectively concerning—
- (a) the construction of works which, as a result of the investigations required of it by subclause (2) of this clause, it deems necessary or desirable;
 - (b) the details of the works recommended by it and the estimated cost thereof;
 - (c) the regulated supply of water and any amount of flood reduction estimated to result from the works recommended by it;
 - (d) the urgency of the need for each work recommended by it;
 - (e) in the case of works recommended in or on the intersecting streams where the Commission expects that the supplies of water resulting from such works to the parties hereto will not be substantially equal, the proportions in which the cost of constructing such works should be met by the parties hereto and the manner in which the cost of maintaining and operating the same should be met by the parties hereto;
 - (f) the proportions or quantities of water which should be available to each of the parties hereto from the intersecting streams.

SCHEDULE 2 (continued)

(4) Subject to the approval of the parties hereto as to the time of its commencement, its actual storage capacity and the cost to be incurred in its construction the Commission shall, as expeditiously as practicable, cause to be constructed on Pike Creek at a place 4.5 miles upstream from the junction of such creek with the Dumaresq River an earth and rock-fill dam with a capacity of about 200,000 acre feet at a cost presently estimated to be \$14,000,000.

(5) The Commission shall investigate the practicability of constructing, maintaining and operating a dam on the Mole River with a view to meeting the demand for water along the Carrier Rivers in excess of the water available therefor as a result of the construction of the dam (referred to in subclause (4) of this clause) on Pike Creek.

The Commission shall report on such investigation to the Governments of New South Wales and Queensland respectively and shall recommend whether such dam should be constructed or, if it does not recommend such construction, whether any alternative proposal which to the Commission appears more practicable should be adopted.

If the Commission recommends the construction of such dam it shall, in its report, particularize the type, storage capacity and estimated cost of the same and, if it recommends the adoption of any alternative proposal, shall, in its report, particularize the type, storage capacity and estimated cost of the works required by such proposal.

(6) The work of investigating, surveying, designing and constructing works on behalf of the Commission under this Agreement shall be carried out by the Controlling Authorities of New South Wales or of Queensland as arranged by the Commission and approved by the parties hereto.

Unless the Commission, with the approval of the parties hereto, otherwise arranges, any work to be carried out on behalf of the Commission under this Agreement in a State shall be carried out by the Controlling Authority of that State.

A Controlling Authority which has carried out on behalf of the Commission and, where required by this Agreement, with the approval of the parties hereto first had and obtained, work under this Agreement shall be reimbursed by the Commission out of funds paid to it by the parties hereto in accordance with this Agreement.

(7) The Commission may on its own initiative authorize work of maintenance the estimated total cost of which does not exceed \$40,000 but

SCHEDULE 2 (continued)

shall not authorize any other work except with the approval of the parties hereto first had and obtained.

(8) Neither party hereto shall unreasonably delay the making of a decision required of it in relation to a recommendation of the Commission for the purposes of this Agreement.

(9) Subject to the approval of the parties hereto as to the time of its commencement and the cost to be incurred in its construction the Commission shall cause to be constructed every work recommended by it pursuant to this clause and approved by the parties hereto.

The Commission shall arrange the carrying out of work approved by the parties hereto as expeditiously as practicable.”

8. New clause 17. The Principal Agreement is amended by omitting clause 17 and inserting in its stead the following clause:—

“17. Operation and maintenance of works. The work of operating and maintaining any works constructed on behalf of or taken over by the Commission shall be carried out by the Controlling Authorities of New South Wales or of Queensland or by the Commission’s own servants as arranged by the Commission.

Unless the Commission otherwise arranges, the work of operating and maintaining—

- (a) the Goondiwindi Weir and Mungindi Weir shall be carried out by the Controlling Authority of the State of Queensland;
- (b) the Boomi Regulator shall be carried out by the Controlling Authority of the State of New South Wales;
- (c) works constructed on behalf of the Commission by the Controlling Authority of a State a party hereto shall, subject to subparagraphs (a) and (b) of this paragraph, be carried out by such Controlling Authority.”

9. Amendment to clause 18. Clause 18 of the Principal Agreement is amended by omitting the words “any work” and inserting in their stead the word “works”.

SCHEDULE 2 (continued)

10. Clauses 19, 20 and 21 deleted. The Principal Agreement is amended by omitting clauses 19, 20 and 21.

11. Amendments to clause 22. Clause 22 of the Principal Agreement is amended by—

(a) in subclause (1), omitting paragraph (a) and re-designating paragraphs (b) and (c) as paragraphs (a) and (b) respectively;

(b) in subclause (2) omitting the words “the general scheme embracing such work and”.

12. New clause 23. The Principal Agreement is amended by omitting clause 23 and inserting in its stead the following clause:—

“23. Powers of Commission to direct work. The Commission shall have power to give, from time to time, all directions it deems necessary or expedient to secure the suitability, durability and proper construction of works to be constructed pursuant to this Agreement, the maintenance of works constructed or taken over by or on behalf of the Commission pursuant to this Agreement, and the due observance of the provisions of this Agreement and in particular, the power to direct with respect to—

(a) the order in time in which works shall be constructed and, subject to subclause (7) of clause 16 of this Agreement, the time when the construction of any works shall be commenced;

(b) the rate of progress of the construction or maintenance of works;

(c) the method and extent of maintenance of works.

The Controlling Authority of each of the parties hereto shall comply with every direction given by the Commission to the extent that such Authority is concerned with the direction in question.”

13. New clause 24. The Principal Agreement is amended by omitting clause 24 and inserting in its stead the following clause:—

“24. Powers of Commission to control the operation of works. The Commission shall have power to give, from time to time, all directions it deems necessary or expedient with respect to—

SCHEDULE 2 (continued)

- (a) the operation and control of works constructed or taken over by or on behalf of the Commission pursuant to this Agreement;
- (b) the control of the storage of water provided by any of such works;
- (c) the times for and rates of discharge of water from the Dumaresq Storage and any other storage of water provided by any of such works;
- (d) the times for and rates of discharge of water past any of such works.

All authorities and persons concerned with a direction given by the Commission shall comply therewith.”

14. Amendment to clause 25. Clause 25 of the Principal Agreement is amended by omitting the words and numerals “referred to in Clause 16” and inserting in their stead the words “which, pursuant to this Agreement,”.

15. Clause 26 deleted. The Principal Agreement is amended by omitting clause 26.

16. Amendments to clause 27. Clause 27 of the Principal Agreement is amended by,—

(a) in subclause (2),—

(i) adding to the general words preceding paragraph (a) the words “but, in relation to the items referred to in paragraph (g) or (h) of this subclause, subject to subclause (3) of this clause”;

(ii) omitting paragraph (e) and inserting in its stead the following paragraph:—

“(e) the costs and expenses incurred by each of the parties hereto in carrying out investigations in respect of, and the designing, construction, operation and maintenance of works on behalf of the Commission under this Agreement other than the designing, construction, operation and maintenance of such works in or on the intersecting streams in relation to which the Commission has

SCHEDULE 2 (continued)

made a recommendation under paragraph (e) of subclause (3) of clause 16 of this Agreement;”;

(b) adding the following subclause:—

“(3) The costs and expenses of and in connexion with the designing, construction, operation and maintenance of works constructed or to be constructed on behalf of the Commission in or on the intersecting streams in relation to which the Commission has made a recommendation under paragraph (e) of subclause (3) of clause 16 of this Agreement (including the costs and expenses of the items referred to in paragraph (g) or (h) of subclause (2) of this clause incurred or to be incurred in relation to such works and, in the case of an item referred to in the said paragraph (g), subject to the restriction therein contained) shall be paid by the parties hereto in the proportions approved by them as the proper proportions in which the cost of constructing such works should be met or, as the case may be, in which the cost of maintaining and operating the same should be met.”

17. Amendments to clause 28. Clause 28 of the Principal Agreement is amended by—

(a) inserting after the words “paragraphs (a) to (h) inclusive of subclause (2)”, wherever they appear, the words “or in subclause (3);

(b) in subclause (3), omitting the words “one half of the amount of such estimate” and inserting in their stead the words “the proportion of the amount of such estimate required by this Agreement to be paid by the party in question”;

(c) in subclause (4), omitting the words “one half of the amount of such excess” and inserting in their stead the words “the proportion of the amount of such excess required by this Agreement to be paid by the party in question”.

18. Amendment to clause 29. Clause 29 of the Principal Agreement is amended by inserting after the words and numeral “paragraphs (c) to (h) inclusive of subclause (2)”, wherever they appear, the words and numeral “or in subclause (3)”.

SCHEDULE 2 (continued)

19. New clause 33. The Principal Agreement is amended by omitting clause 33 and inserting in its stead the following clause:—

“33. Apportionment of water. (1) (a) Before the creation of the Dumaresq Storage, the daily flow in the Dumaresq River at the Mingoola Gauging Station together with the water available in the weirs along the Carrier Rivers shall, at all times, subject to this Agreement, be available to the parties hereto in equal shares.

(b) After the creation of the Dumaresq storage the quantity of water available each year commencing on the first day of July from the unregulated flow at the Mingoola Gauging Station, from water discharged from the Dumaresq storage as directed by the Commission in accordance with the provisions of paragraph (iii) of subclause (1) of clause 37 of this Agreement and from water stored in weirs along the Carrier Rivers shall, subject to this Agreement, be available to the parties hereto in equal shares.

(c) If at any time in a year the quantity of the unregulated flow at Mingoola Gauging Station exceeds the quantity of such flow required to meet the aggregate entitlements of the parties hereto as determined pursuant to clause 37 of this Agreement in relation to that time, any part of that excess used by either party hereto shall not be part of the entitlement of that party in relation either to that time or to any time later in that year.

(2) (a) If at any time the share of the anticipated available quantity, determined for the time being by the Commission in accordance with clause 37 of this Agreement, available to a party hereto under this Agreement exceeds the requirements of that party the Premiers of the parties hereto may agree that the excess or any part thereof shall, subject to this Agreement, be available to the other party hereto.

(b) Thereupon and so long as the agreement remains in force, but subject to this Agreement,

- (i) the shares of water respectively available to the parties hereto shall be altered to conform to such agreement; and
- (ii) the parties hereto shall bear all payments becoming due and payable in respect of the capital costs incurred (either before or after the date of such agreement) in providing the Dumaresq Storage in the same proportions as they are entitled to share the available water.

(c) The Premiers of the parties hereto may make agreements under this subclause from time to time.

SCHEDULE 2 (continued)

(3) (a) If the Controlling Authority of a party hereto considers that the amount of the share or altered share of water which is available for the time being to that party, as prescribed by subclause (1) or agreed upon under subclause (2) of this clause, will not be sufficient to meet the requirements of that party, the Controlling Authorities of both parties hereto may arrange that the Controlling Authority of the other party hereto make available to the party hereto requiring the same additional water from its share.

Such an arrangement shall not be entered into—

- (i) without the prior consent in writing of the Commission; or
- (ii) in respect of a period other than one year.

(b) Thereupon and during the period for which the arrangement remains in force, but subject to this Agreement, the shares of water respectively available to the parties hereto shall be altered to conform to such arrangement.

(c) The party hereto which acquires the additional water shall make to the other party hereto a payment equal to five per centum of the difference between the following amounts, namely—

- (i) the amount which, at the date the arrangement is entered into, is the proportion to be borne by such party (being the party firstmentioned in this paragraph (c)) of the capital costs incurred in providing the Dumaresq Storage; and
- (ii) the amount which would be the proportion to be borne by such party of the capital costs specified in subparagraph (i) of this paragraph were the parties hereto required to bear those capital costs in proportion to their shares in the water as altered by the arrangement.

(d) The Controlling Authorities may make arrangements under this subclause from time to time.

(4) For the purposes of this clause a certificate signed by the Chairman or Deputy Chairman of the Commission that the amount or amounts stated in the certificate are costs incurred in respect of the capital costs referred to in this clause shall be conclusive evidence of the facts stated therein, and binding accordingly upon the parties hereto.

(5) The entitlement under this clause for the time being of a party hereto to water is subject to loss of water occasioned by natural causes.”

SCHEDULE 2 (continued)

20. New clause 35. The Principal Agreement is amended by omitting clause 35 and inserting in its stead the following clause:—

“35. Diversions upstream of Mingoola Gauging Station. Water diverted by the Controlling Authority of a party hereto or pursuant to a licence, permit, authority or approval granted on behalf of a party hereto from the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station and from the Dumaresq Storage shall be regarded as part of the share of the State in which it is used or in which the land to which it is applied is situated and all such diversions shall be dealt with in the same manner as diversions from the Carrier Rivers.”

21. Amendment to clause 36. Clause 36 of the Principal Agreement is amended by omitting the words and numerals “referred to in clause 16” and inserting in their stead the words “controlled by the Commission under this Agreement”.

22. New clause 37. The Principal Agreement is amended by omitting clause 37 and inserting in its stead the following clause:—

“37. Determination of anticipated available quantity. (1) The Controlling Authority of each of the parties hereto shall, from time to time as and when required by the Commission, supply to the Commission in respect of each year commencing on the first day of July particulars of the supply of water estimated by it to be required by its State at the Mingoola Gauging Station during each calendar month of that year.

The Commission, having regard to—

- (a) such particulars supplied;
- (b) the Commission’s anticipation of the requirements of the parties hereto during the ensuing months of the year in question;
- (c) the quantity of water diverted from the Carrier Rivers and from the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station for use by each of the parties hereto during the two consecutive calendar months immediately preceding the calendar month in which the determination required by this clause is to be made by the Commission;

SCHEDULE 2 (continued)

- (d) the quantity of water for the time being stored in the Dumaresq Storage;
- (e) the period of the year;
- (f) the prevailing weather conditions;
- (g) subject to subclause (2) of this clause, such other matters as the Commission considers to be pertinent,

shall, at least once in each year commencing on the first day of July and during each such year as, in the Commission's opinion, is required by the prevailing conditions,—

- (i) determine the anticipated quantity of water available for that year or, as the case may be, the remainder of that year from the unregulated flow at the Mingoola Gauging Station, from water available for discharge from the Dumaresq Storage and from water stored in weirs along the Carrier Rivers; and
- (ii) determine and notify the Controlling Authority of each of the parties hereto of the supply of water available from the anticipated available quantity as determined for the time being for diversion for use by that party until further notification by the Commission under this clause; and
- (iii) direct the rate or rates at which water shall be discharged from the Dumaresq Storage.

(2) In determining the supply of water to which a party hereto is, for any complete year, entitled, the Commission shall not allocate to that party any part of the supply of water to which that party was entitled in respect of any previous period of time and which was not expended by that party.”

23. New clause 38. The Principal Agreement is amended by omitting clause 38 and inserting in its stead the following clause:—

“38. (1) Restrictions on diversions of water. Whenever the quantity of water, being the flow (whether regulated or unregulated) in the Dumaresq River at the Mingoola Gauging Station is, in the opinion of the Commission,—

- (a) not more than sufficient; or
- (b) less than sufficient,

SCHEDULE 2 (continued)

to meet the requirements for domestic and stock watering purposes, town and railway water supplies and other public purposes usually met from the Dumaresq Storage or the Carrier Rivers the Commission may, from time to time, direct the Controlling Authorities of the parties hereto that all or any diversions from the Dumaresq Storage and the Carrier Rivers—

- (c) in a case to which provision (a) of this subclause relates, for any purpose other than those referred to in the foregoing provisions of this subclause;
- (d) in a case to which provision (b) of this subclause relates, for any purpose,

shall until further direction, cease or be reduced to the extent specified by the Commission.

(2) Whenever, in the opinion of the Commission, the quantity of water taken or to be taken from the Dumaresq Storage or the Carrier Rivers by way of diversions by the Controlling Authority of a party hereto or pursuant to licences, permits, authorities, or approvals granted in the territory of a party hereto exceeds or will exceed the share of water to which that party is for the time being entitled (as prescribed by this Agreement or under any agreement or arrangement made pursuant to clause 33 of this Agreement) the Commission may from time to time direct the Controlling Authority of that party that all or any of such diversions from the Dumaresq Storage or the Carrier Rivers shall, until further direction, be reduced to the extent specified by the Commission.

(3) **Compliance with directions.** The Controlling Authority of a party hereto shall take all steps necessary to give effect to a subsisting direction issued to it by the Commission under this clause and, in particular, shall take all steps necessary to ensure compliance with the direction issued by the Commission by the holders of licences, permits, authorities and approvals to which the direction relates.

(4) In the event of the failure of a holder of a licence, permit, authority or approval to make diversions from the Dumaresq Storage or the Carrier Rivers to comply with a direction issued (whether issued as a consequence of a direction issued under this clause by the Commission or otherwise) to him by the Controlling Authority of a party hereto requiring him to cease, limit or restrict such diversions the Controlling Authority concerned shall, irrespective of its taking any other action to enforce his compliance, cancel

SCHEDULE 2 (continued)

or suspend (as it sees fit) the licence, permit, authority or approval in question.

(5) Each of the parties hereto shall invest its Controlling Authority with all powers necessary to enable it to fulfil its obligations under subclauses (3) and (4) of this clause.”

24. New clause 39. The Principal Agreement is amended by omitting clause 39 and inserting in its stead the following clause:—

“39. Height of water in and flow of water past weirs and regulators.

(1) The Commission may from time to time determine the maximum height to which water may be held upstream of each of the weirs and regulators controlled by the Commission under this Agreement and all such determinations shall be observed by the Controlling Authority carrying out the work of operating the weir or regulator in question as provided for by or arranged under clause 17.

(2) The Commission having regard to—

- (a) the requirements along the full length of the Carrier Rivers;
- (b) the diversion from the part of the Carrier Rivers upstream of each weir and regulator; and
- (c) losses of water along the Carrier Rivers and whilst impounded by the weirs and regulators controlled by the Commission under this Agreement,

may direct what proportions of the regulated or unregulated flow shall be allowed to pass each weir and regulator controlled by the Commission under this Agreement and all such directions shall be carried out by the Controlling Authority carrying out the work of operating the weir or regulator in question as provided for by or arranged under clause 17.”

25. Amendments to clause 41. Clause 41 of the Principal Agreement is amended by—

(a) omitting the words “regulated flow from the Dumaresq Storage” and inserting in their stead the words “flow in the Dumaresq River at the Mingoola Gauging Station”;

SCHEDULE 2 (continued)

(b) adding the words “plus all adjustments necessary on account of losses of water (referred to in clause 36) which have occurred prior to its reaching the said point”.

26. New clause 42. The Principal Agreement is amended by omitting clause 42 and inserting in its stead the following clause:—

“42. Diversion of water tributary to Carrier Rivers. (1) Each of the parties hereto shall, subject to subclause (2) of this clause, have full right and liberty, as it deems fit, to conserve and to divert and use and to authorize the diversion and use of the waters of all rivers within its territory tributary to the Carrier Rivers downstream of the Mingoala Gauging Station and to cause the whole or any part of such waters to flow into and along the Carrier Rivers or any part thereof and, subject to losses being taken into account as provided by clause 36 of this Agreement, to divert and authorize the diversion from the Carrier Rivers at any point upstream or downstream of the point of entry of such tributary waters into the Carrier Rivers of a quantity of water equal to the quantity of water caused to flow into and along any part of the Carrier Rivers as aforesaid and to use and authorize the use of water so diverted for any purpose and the water so diverted shall not be treated as part of the water to be shared by the parties hereto under this Agreement.

(2) Where, purportedly under the authority of subclause (1) of this clause, it is proposed to divert water from the Carrier Rivers at a point upstream of the point of entry into the Carrier Rivers of the tributary waters to which the diversion is referable such diversion shall not be made by or on behalf of a party hereto or by or on behalf of any person under authority granted by a party hereto unless such diversion and the use of the water so diverted does not in the opinion of the Commission prejudice the rights of the other party hereto to water in the Carrier Rivers at the point of diversion or downstream thereof.

(3) Where the tributary contribution to the Carrier Rivers of a party hereto exceeds that party’s requirements for any period of time of water at points downstream of the point of entry into the Carrier Rivers of such tributary waters the Commission may, with the consent of that party, make the excess available to satisfy the requirements of water of the other party hereto if those requirements would have to be satisfied otherwise by discharge of water from the Dumaresq Storage.”

SCHEDULE 2 (continued)

27. Amendments to clause 43. Clause 43 of the Principal Agreement is amended by—

(a) omitting the words “Dumaresq Storage” where those words firstly appear and inserting in their stead the words “Mingoola Gauging Station”;

(b) omitting the words “that storage” and inserting in their stead the words “that station”.

28. Amendments to clause 44. Clause 44 of the Principal Agreement is amended by—

(a) in paragraph (a), inserting after the words “Dumaresq River” the words “upstream of the Mingoola Gauging Station”;

(b) omitting paragraph (b) and inserting in its stead the following paragraph:—

“(b) shall in each calendar month subsequent to the calendar month in which the return referred to in the preceding paragraph (a) is supplied supply to the Commission a return containing such particulars as the Commission may require of all additional licences, permits, authorities or approvals to divert water from the Border Rivers and from the tributaries of the Dumaresq River upstream of the Mingoola Gauging Station granted in its State during the preceding calendar month;”

(c) omitting paragraphs (c) and (d) and inserting in their stead the following paragraph:—

“(c) shall in each calendar month subsequent to the month in which the return referred to in paragraph (a) of this clause is supplied supply to the Commission a return in relation to all licences, permits, authorities and approvals to divert water theretofore notified to the Commission under paragraph (a) or (b) of this clause containing such particulars as the Commission may require of the cancellation, suspension or lapsing of the same or any of them which has occurred, in the case of the first such return, since the date to which the return supplied under paragraph (a) of this clause was compiled and, in the case of each subsequent such return, since the date to which the return last made under paragraph (b) of this clause was compiled.”

SCHEDULE 2 (continued)

29. Amendment to clause 45. Clause 45 of the Principal Agreement is amended by omitting the words “Dumaresq Storage” where those words firstly appear and inserting in their stead the words “Mingoola Gauging Station”.

30. New clause 50. The Principal Agreement is amended by omitting clause 50 and inserting in its stead the following clause:—

“50. Marginal and other notes. The marginal and other notes placed opposite or in and at the beginning of the several clauses or subclauses of this Agreement purporting to indicate the contents or objects of such clauses or subclauses respectively shall not be taken as part of this Agreement or in any manner affect the construction of this Agreement or of any provision of this Agreement.”

31. New clause 50A. The Principal Agreement is amended by inserting after clause 50 the following clause:—

“50A. Watershed of Dumaresq River, &c. For the purposes of this Agreement the Dumaresq River and its tributaries upstream of the Mingoola Gauging Station include every stream within the watershed of the Dumaresq River upstream of that station.”

32. Amendments to clause 51. Clause 51 of the Principal Agreement is amended by—

(a) in the definition “Border Rivers”,

(i) omitting the word “Severn”;

(ii) adding the words “the actual border for the purposes of this Agreement being the median line of the river in question”;

(b) omitting the definition “Carrier Rivers” and inserting in its stead the following definition:—

“ “Carrier Rivers” means the parts of the Dumaresq, Macintyre and Barwon Rivers constituting part of the boundary between New South Wales and Queensland and located between the Mingoola Gauging Station and the point where the Barwon River reaches the twenty-ninth parallel of south latitude.”;

SCHEDULE 2 (continued)

(c) inserting after the definition “Diversion” the following definition:—

“ “Dumaresq Storage” means the storage and basin or basins which at the relevant time are provided by any dam or dams constructed under this Agreement on Pike Creek or on the Dumaresq River upstream of the Mingoola Gauging Station or on a tributary of that river upstream of that station.”;

(d) inserting after the definition “Governor” the following definition:—

“ “Intersecting Streams” means the Moonie, Bokhara, Narran, Culgoa, Ballandool, Warrego and Paroo rivers and the effluents and tributaries thereof and any stream or watercourse which forms part of the Darling River drainage system and crosses the New South Wales–Queensland border west of the town of Mungindi.”.

IN WITNESS WHEREOF the Premiers of the States of New South Wales and Queensland have hereunto set their hands the day and year first hereinbefore written.

SIGNED SEALED and DELIVERED)	
by The Honourable ROBIN WILLIAM)	
ASKIN the Premier of the State of New)	R.W. ASKIN
South Wales for and on behalf of that)	
State in the presence of—)	L.S.

G.M. GRAY

SIGNED SEALED and DELIVERED)	
by The Honourable JOHANNES BJELKE-)	
PETERSEN the Premier of the State of)	J. BJELKE-PETERSEN
Queensland for and on behalf of that)	
State in the presence of—)	L.S.

KEITH SPANN

SCHEDULE 3**NEW SOUTH WALES–QUEENSLAND BORDER
RIVERS AGREEMENT 1993**

section 4

AN AGREEMENT made on 15 March 1993 between **THE STATE OF NEW SOUTH WALES** and **THE STATE OF QUEENSLAND**.

WHEREAS—

- (a) an agreement was made between the States on 27 November 1946 (the “**original agreement**”) that was approved and ratified under—
 - (i) the New South Wales–Queensland Border Rivers Act, 1947 of the State of New South Wales; and
 - (ii) the *New South Wales–Queensland Border Rivers Act 1946* of the State of Queensland; and
- (b) an agreement amending the original agreement was made between the States on 4 November 1968 (the “**amending agreement**”) that was approved and ratified under—
 - (i) the New South Wales–Queensland Border Rivers (Amendment) Act, 1968 of the State of New South Wales; and
 - (ii) the *New South Wales–Queensland Border Rivers Act Amendment Act 1968* of the State of Queensland; and
- (c) the States desire to make further amendments of the original agreement as amended by the amending agreement.

NOW IT IS AGREED as follows—

SCHEDULE 3 (continued)

PART 1—PRINCIPAL AGREEMENT**1 Definition**

In this agreement—

“**principal agreement**” means the original agreement as amended by the amending agreement.

2 Binding of States

The principal agreement continues to bind the States subject to the amendments of the principal agreement made by this agreement.

PART 2—RATIFICATION OF AGREEMENT**3 Ratification**

(1) This agreement—

- (a) is subject to ratification by the Parliaments of the States; and
- (b) comes into effect when so ratified.

(2) Each State is to take all practicable steps to have this agreement ratified.

PART 3—AMENDMENT OF PRINCIPAL AGREEMENT**4 Amended agreement**

The principal agreement is amended as set out in this agreement.

SCHEDULE 3 (continued)

5 Amendment of preamble

Preamble (after ‘streams’ (last occurring))—

insert ‘and that certain investigations be made in respect of groundwater resources associated with the Carrier Rivers with a view to determining the proportions or quantities of groundwater that should be available to the States from those resources’.

6 Insertion of new cl. 14A

After clause 14—

insert—

‘14A. Monitoring of groundwater. (1) The Commission must arrange for the construction, maintenance, operation and control of an effective system of monitoring groundwater.

‘(2) Each of the States must, through its Controlling Authority—

- (a) record the matters it is directed by the Commission to record; and
- (b) supply to the Commission the particulars the Commission from time to time requires;

relating to monitoring carried out under subclause (1).

‘(3) Any costs or expenses incurred by a party under subclause (2) are to be borne by the Commission.’.

7 Amendment of cl. 15 (Certain powers and duties of Commission)

(1) After clause 15(a)—

insert—

- ‘(b)** may from time to time so far as may be necessary for giving effect to this agreement determine any part of the groundwater area to be a zone;’.

(2) Clause 15(b)—

redesignate as clause 15(c).

SCHEDULE 3 (continued)

8 Amendment of cl. 16 (Functions of Commission)

(1) Clause 16(2)—

omit ‘laboratory and engineering investigations’,

insert ‘laboratory, engineering and hydrogeological investigations’.

(2) Clause 16(2)(e)—

omit ‘streams.’, *insert* ‘streams;’.

(3) After clause 16(2)(e)—

insert—

‘(f) the carrying out of works on the Carrier Rivers for river improvement purposes;

(g) in relation to groundwater—

(i) its occurrence, quantity and quality; and

(ii) its potential for use, contamination or pollution; and

(iii) its interaction with surface water resources.’.

(4) Clause 16(3)(f)—

omit ‘streams.’, *insert* ‘streams;’.

(5) After clause 16(3)(f)—

insert—

‘(g) the proportions or quantities of groundwater in any zone which should be available to each of the parties;

(h) the interaction of surface water and groundwater in any zone.’.

9 Amendment of cl. 28 (Estimates of Expenditure)

Clause 28(2)—

omit ‘in the month of March in each year commencing with the month of March immediately preceding the expiration of the first period’,

insert ‘, at such times in each year as may be agreed upon from time to time between the Commission and the parties.’.

SCHEDULE 3 (continued)

10 Replacement of heading to Part V (DISTRIBUTION AND USE OF WATERS)

Heading to Part V—

omit, insert—

‘PART V—DISTRIBUTION AND USE OF SURFACE WATERS’.

11 Amendment of cl. 33 (Apportionment of water)

Clause 33(1)(b)—

omit ‘each year commencing on the first day of July’,

insert ‘each water year’.

12 Amendment of cl. 37 (Determination of anticipated available quantity)

Clause 37(1) (wherever occurring)—

omit ‘each year commencing on the first day of July’,

insert ‘each water year’.

13 Insertion of new Part VA—

After clause 42—

insert—

‘PART VA—GROUNDWATER

‘42A. Determinations relating to groundwater. (1) The Controlling Authority of a State must take the steps it considers necessary to give effect to any determination made by the Government of the State in respect of any matter relating to the proportions or quantities of groundwater available to the State.

SCHEDULE 3 (continued)

‘(2) A determination of a Government under subclause (1) must be made following receipt by it of recommendations of the Commission concerning a matter mentioned in clause 16(3)(g).

‘(3) Each of the States must confer on its Controlling Authority the powers necessary to enable it to fulfil its obligations under this clause.

‘**42B. Use of groundwater.** Subject to this agreement, each of the States may use the groundwater to which it is entitled under this agreement for such purposes as it may determine.’.

14 Insertion of new cl. 45A

After clause 45 (in Part VI)—

insert—

‘**45A. Statements relating to groundwater.** (1) The Controlling Authority of each State must—

- (a) at least once in each water year; and
- (b) otherwise from time to time as and when required by the Commission;

give to the Commission a written statement under this clause.

‘(2) The statement must—

- (a) contain such particulars relating to groundwater as are required by the Commission; and
- (b) relate to such periods as are specified by the Commission.

‘(3) The particulars relating to groundwater that may be required by the Commission include particulars of the quantities of groundwater taken from any zone.’.

15 Amendment of cl. 51

(1) Clause 51 (after the definition “**Governor**”)—

insert—

‘“**Groundwater**” means water occurring—

- (a) in a geological structure or formation; or

SCHEDULE 3 (continued)

(b) in an artificial landfill;

under the surface of the ground in the groundwater area, excluding water from a formation in the Great Artesian Basin.

“Groundwater Area” means the area comprising—

- (a) part of the State of New South Wales; and
- (b) part of the State of Queensland;

overlying alluvium containing groundwater associated with the Carrier Rivers.’.

(2) Clause 51 (after the definitions **“River”** and **“Tributary”**)—

insert—

‘ **“Water Year”** means—

- (a) the period—
 - (i) beginning on the first 1 July occurring after this definition comes into effect; and
 - (ii) ending on 30 September of the year after the year in which the period begins; or
- (b) the period of 12 months beginning at the end of the period to which paragraph (a) applies and each successive period of 12 months; or
- (c) any other period of 12 months fixed, for the purposes of this paragraph, by the Controlling Authorities of the States and approved by the Commission.

“Zone” means any part of the groundwater area determined by the Commission to be a zone.’.

IN WITNESS OF WHICH the Premiers of the States of New South Wales and Queensland have to this Agreement set their hands and seals on the date first written above

SCHEDULE 3 (continued)

SIGNED SEALED AND DELIVERED

by The Honourable John Joseph Fahey
the Premier of the State of New South Wales for
and on behalf of that State in the presence
of—

JOHN FAHEY

R.B. WILKINS

SIGNED SEALED AND DELIVERED

by The Honourable Wayne Keith Goss
the Premier of the State of Queensland for
and on behalf of that State in the presence
of—

WAYNE GOSS

E. CASEY

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 June 1995. Future amendments of the New South Wales—Queensland Border Rivers Act 1946 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 List of legislation

New South Wales—Queensland Border Rivers Act 1946 11 Geo 6 No. 16

date of assent 24 December 1946

commenced 1 July 1947 (proc pubd gaz 2 August 1947 p 236)

amending legislation—

Acquisition of Land Act 1967 No. 48 s 3(2) sch 1

date of assent 22 December 1967

commenced 23 March 1968 (proc pubd gaz 23 March 1968 p 1206)

New South Wales—Queensland Border Rivers Act Amendment Act 1968 No. 46

date of assent 19 December 1968

commenced on date of assent

Primary Industries Corporation Act 1992 No. 15 ss 1–2, 13 sch

date of assent 13 May 1992

ss 1–2 commenced on date of assent

s 13 sch commenced 30 September 1992 (1992 SL No. 271)

New South Wales—Queensland Border Rivers Amendment Act 1993 No. 31

date of assent 2 June 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 17 September 1993 (1993 SL No. 348)

5 List of legislation for variation of agreement

New South Wales—Queensland Border Rivers Act Amendment Act 1968 No. 46
 date of assent 19 December 1968
 commenced on date of assent

6 List of annotations

Title sub 1993 No. 31 s 5

Preamble om 1993 No. 31 s 6

Commencement

s 2 om R1 (see RA s 37)

Interpretation

s 4 def “**agreement**” ins 1993 No. 31 s 7(2)
 def “**Border Rivers**” om 1968 No. 46 s 5(a)
 def “**Carrier Rivers**” om 1968 No. 46 s 5(b)
 def “**first amending agreement**” ins 1993 No. 31 s 7(2)
 def “**Governor**” om 1993 No. 31 s 7(1)
 def “**Minister**” om 1968 No. 46 s 5(c)
 def “**original agreement**” ins 1993 No. 31 s 7(2)
 def “**Person**” om 1993 No. 31 s 7(1)
 def “**Premier**” om 1993 No. 31 s 7(1)
 def “**Prescribed**” om 1993 No. 31 s 7(1)
 def “**second amending agreement**” ins 1993 No. 31 s 7(2)
 def “**The Agreement**” om 1993 No. 31 s 7(1)
 def “**The Schedule**” om 1993 No. 31 s 7(1)

AGREEMENTS

hdg (prec s 5) ins 1993 No. 31 s 8

Ratification of agreements

s 5 sub 1993 No. 31 s 9

Binding effect of agreement

s 5A ins 1993 No. 31 s 9

Primary Industries Corporation to construct works

prov hdg amd 1992 No. 15 s 13 sch

s 15 amd 1967 No. 48 s 3(2) sch 1; 1992 No. 15 s 13 sch

Construction of works in Queensland by New South Wales

s 16 amd 1992 No. 15 s 13 sch

Disposal of surplus lands

s 17 om 1967 No. 48 s 3(2) sch 1

Regulations

s 22 amd 1993 No. 31 s 10

Water Act to be read subject to the Agreement

s 24 om 1993 No. 31 s 11

SCHEDULE 1—NEW SOUTH WALES—QUEENSLAND BORDER RIVERS AGREEMENT 1946

sch hdg sub 1993 No. 31 s 12

SCHEDULE 2—NEW SOUTH WALES—QUEENSLAND BORDER RIVERS AGREEMENT 1968

ins 1993 No. 31 s 13

SCHEDULE 3—NEW SOUTH WALES—QUEENSLAND BORDER RIVERS AGREEMENT 1993

ins 1993 No. 31 s 13

7 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS

under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A
(imprisonment) with hard labour	Corrective Services Act 1988 s 9(a)
references to High Court	Acts Interpretation Act s 36, def “High Court”

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS

under the Reprints Act 1992 s 43

Previous	Renumbered as
6(3), 2nd sentence	6(4)
6(3), 3rd sentence	6(5)
19, 1st unnum para	19(a)
19, 2nd unnum para	19(b)
19, 3rd unnum para	19(c)
19, 4th unnum para	19(d)
19, 5th unnum para	19(e)
19, 6th unnum para	19(f)
21, 1st unnum sentence	21(1)
21, 2nd unnum sentence	21(2)

*New South Wales—Queensland Border Rivers Act
1946*

Previous	Renumbered as
21, 3rd unnum sentence	21(3)
21, 4th unnum sentence	21(4)
21, 5th unnum sentence	21(5)