



SOUTH EASTERN WATER CONSERVATION AND DRAINAGE ACT 1992

No. 16 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 16 of 1992

An Act to provide for the conservation and management of water and the prevention of flooding of rural land in the South East of the State; to repeal the South-Eastern Drainage Act 1931 and the Tatiara Drainage Trust Act 1949; and for other related purposes.

[Assented to 23 April 1992]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *South Eastern Water Conservation and Drainage Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

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

“authorized officer” means a person appointed by the Board or the Council as an authorized officer under this Act:

“the Board” means the *South Eastern Water Conservation and Drainage Board* (see Part II):

“the Board’s area” means that part of the South East that does not fall within the Council’s area:

“the Central Electoral Zone” means that part of the South East defined as the Central Electoral Zone in the third schedule, as modified by regulation consequent upon any alteration of the area comprising the South East by regulation:

“the Council” means the District Council of Millicent:

“the Council’s area” means the area of the Council under the *Local Government Act 1934*, but excluding the land described in the second schedule:

“drain” does not include a drain within a township:

“drainage hole” means an artificial or natural hole capable of allowing surface water to drain into the underground water system:

“drainage reserve” means any Crown lands that are dedicated, reserved or set aside for drainage purposes:

“the Eight Mile Creek area” means the Hundreds of Caroline and MacDonnell:

“eligible landholder”, in relation to an electoral zone or the area served by an advisory committee, means a person who is a landholder of more than 30 hectares of land within that electoral zone or that area, as the case may require:

“lake” means a natural lake and includes a natural lagoon, swamp, marsh or spring:

“landholder” means—

(a) an owner or occupier of land in the South East;

and

(b) in relation to eligibility for membership of the Board, includes a director of a company that is an owner or occupier of land in the South East:

“the Northern Electoral Zone” means that part of the South East defined as the Northern Electoral Zone in the fourth schedule, as modified by regulation consequent upon any alteration of the area comprising the South East by regulation:

“owner” of land means—

(a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;

(b) in relation to land held under Crown lease or licence—the lessee or licensee;

(c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement:

“the relevant authority” in relation to the South East means the Board or the Council, as the case may require:

“the repealed Act” means the *South-Eastern Drainage Act 1931*:

“the South East” means that part of the State described in the first schedule including any land added to the South East by the regulations but excluding any land excluded from the South East by the regulations:

“the Southern Electoral Zone” means that part of the South East defined as the Southern Electoral Zone in the fifth schedule, as modified by regulation consequent upon any alteration of the area comprising the South East by regulation:

“surface water” means water that collects on or flows onto or from the surface of land, and includes the water in any water management works, lake or watercourse:

“the Upper South East” means that part of the South East that comprises the Northern Electoral Zone:

“watercourse” means a river, creek or other natural watercourse:

“water management works” means—

(a) any drain, artificial drainage hole, dam, bank or other device or works constructed or used for the purposes of conserving, draining or altering the flow of surface water from or onto land or utilizing any such water,

including any ancillary access road, bridge or culvert or other ancillary works;

and

(b) any works constructed for the purpose of lowering water table levels.

Note: For definition of divisional penalties see Appendix.

Minister may direct vesting of works

4. (1) The Minister may, by notice in the *Gazette*—

(a) direct that any specified private water management works vest in the relevant authority for the area in which the works are situated;

or

(b) direct that any specified Board or Council water management works vest in some other specified person or authority.

(2) The Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

(3) The Minister cannot issue a notice under this section except at the request of, or with the approval of, all persons and authorities (other than the Board) in whom the works the subject of the notice are vested or are to be vested.

(4) Where the water management works are vested or are to be vested in the Board, the Minister must consult with the Board before issuing a notice under subsection (1).

Interaction of this Act with other Acts

5. Subject to this Act, this Act is in addition to and does not derogate from the operation of any other Act and the Board and the Council must, in exercising powers under this Act, comply with the provisions of relevant Acts.

Power of Minister to delegate

6. (1) The Minister may delegate any of his or her powers under this Act (except for this Part and Part II) to the Board.

(2) A delegation under this section—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) is revocable by the Minister at will;

and

(d) does not derogate from the power of the Minister to act in any matter.

Objects of this Act

7. (1) The objects of this Act are—

(a) the prevention or minimization of damage to agricultural production and the natural environment caused by flooding within the South East;

(b) the improvement of the soil quality and the productiveness generally of rural lands in the South East;

and

(c) the enhancement or development of natural wetlands and the natural environment generally in the South East.

(2) The Minister, the Board, the Council and all other bodies or persons involved in the administration of this Act must, in carrying out that administration, act consistently with and seek to further the objects of this Act.

PART II

ADMINISTRATION

DIVISION I—THE SOUTH EASTERN WATER CONSERVATION AND DRAINAGE BOARD

Establishment of the Board

8. (1) The Board under the repealed Act continues in existence under the name *South Eastern Water Conservation and Drainage Board*.

(2) The Board—

(a) is a body corporate with full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate;

and

(b) holds its property on behalf of the Crown.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

Membership of the Board

9. The Board will consist of eight members as follows:

(a) four members will be persons appointed by the Governor on the nomination of the Minister, being persons who have, in the opinion of the Minister, knowledge or experience appropriate to the administration of this Act and at least one of whom has knowledge or experience in the field of environmental management;

(b) one member will be a person appointed by the Governor on the nomination of the Local Government Association of South Australia;

and

(c) three members will be persons elected to office as follows:

(i) one, being an eligible landholder in the Northern Electoral Zone, will be elected to office by the voters for that zone;

(ii) one, being an eligible landholder in the Central Electoral Zone, will be elected to office by the voters for that zone;

and

(iii) one, being an eligible landholder in the Southern Electoral Zone, will be elected to office by the voters for that zone.

Board elections

10. (1) Elections of Board members will be conducted by the Electoral Commissioner in accordance with rules prepared by the Commissioner and approved by the Minister.

(2) Where it is proposed to hold an election under this section—

(a) if there is only one candidate for election, the Electoral Commissioner may declare that candidate duly elected without a vote being taken;

(b) if there are no candidates for election, the Governor may appoint an eligible landholder from the relevant electoral zone to the vacant office,

and, in either case, the person will be taken to have been duly elected to the Board in accordance with this Act.

(3) Where elections for more than one electoral zone are to be held at the same time, a person cannot be a candidate for more than one zone.

Entitlement to vote at Board elections

11. (1) The voters roll for the purposes of an election to fill a vacancy on the Board will be prepared by the Board with the assistance of the Valuer-General.

(2) The following persons are entitled to be enrolled on the voters roll for an electoral zone:

(a) a natural person who is the sole owner or occupier of more than 30 hectares of land in the zone;

(b) a body corporate that is the sole owner or occupier of more than 30 hectares of land in the zone;

(c) a group of persons (consisting of natural persons, bodies corporate or partly natural persons and partly bodies corporate)—

(i) who are joint owners, owners in common or joint occupiers of more than 30 hectares of land in the zone;

and

(ii) at least one of whom is not enrolled on the roll for the zone under paragraph (a) or (b).

(3) A body corporate or a group that is entitled to be enrolled on a voters roll in pursuance of subsection (2) may, by notice in writing (in the prescribed form and containing the prescribed declarations) lodged with the Board—

(a) nominate a natural person to act as an elector on its behalf;

or

(b) cancel any such nomination previously made and make a fresh nomination in its place.

(4) A person may not be nominated as the nominated agent of a body corporate or a group under subsection (3) unless that person—

(a) in the case of a nomination made by a body corporate—is a director, manager or other employee of the body corporate;

(b) in the case of a nomination by a group—is a member of the group or a director, manager or other employee of a body corporate that is a member of the group.

(5) A nomination in force under this section must be recorded by the Board in the voters roll alongside the name of the body corporate or group by which the nomination was made.

(6) A person whose name is recorded in the voters roll as a nominated agent will be regarded as having been enrolled as an elector.

(7) The validity of a voters roll is not affected by a misdescription or any other error in the roll.

(8) A natural person whose name appears on the voters roll as an elector for an electoral zone, being the roll as in force on the day falling 30 days before the day on which an election for that zone is to be held, is entitled to vote at that election.

(9) Where an elector's name appears in the voters roll used for an election both as an elector in his or her own right and as a nominated agent, the elector is entitled to vote at the election both in his or her own right and as a nominated agent.

(10) Where an elector's name appears in the voters roll used for an election as a nominated agent under a number of separate nominations, the elector is entitled to vote at the election in respect of each of those nominations.

(11) The voters roll to be used for an election must be made available for inspection by members of the public at the Board's principal office.

(12) A voters roll is conclusive evidence of the entitlement of any person whose name appears in the roll to vote at an election at which the roll is used.

(13) A person whose name has been omitted in error from a voters roll used for an election is entitled to vote at the election as if the error had not occurred.

Presiding member and deputies

12. (1) The Governor will appoint one of the members of the Board to be the presiding member of the Board and one other member to be the deputy presiding member of the Board.

(2) An appointment cannot be made under subsection (1) unless the Minister has first consulted with and considered any recommendations of the Board in the matter.

(3) The Governor may appoint a suitable person to be the deputy of any member of the Board (other than the presiding member).

(4) A person appointed under subsection (3) as the deputy of a member may, in the absence of the member, act as a member of the Board.

Term of office of Board members

13. (1) A member of the Board will be appointed or elected to office for a term of four years and is, on the expiration of his or her term of office, eligible for reappointment or re-election unless he or she no longer satisfies the eligibility requirements for appointment or election.

(2) The Governor may remove a member of the Board from office—

(a) for misconduct;

(b) for neglect of duty;

(c) for incompetence;

or

(d) for mental or physical incapacity to carry out satisfactorily the duties of office.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies;

(b) completes a term of office;

(c) resigns by notice in writing addressed to the Minister;

or

(d) is removed from office by the Governor under subsection (2).

(4) On the office of an appointed member becoming vacant otherwise than on expiration of a term of office, the Governor will appoint a person in accordance with this Act to the vacant office for the balance of the unexpired term.

(5) Subject to subsection (6), on the office of an elected member becoming vacant otherwise than on expiration of a term of office, a person must be elected in accordance with this Act to the vacant office for the balance of the unexpired term.

(6) On the office of an elected member becoming vacant not more than 12 months prior to the expiry of the term of office, the Governor may appoint a suitable person to the vacant office for the balance of the unexpired term.

(7) A person is not eligible to be appointed under subsection (6) to the vacant office of an elected member unless he or she is an eligible landholder within the same electoral zone as that of the former member.

Allowances

14. A member of the Board is entitled to such allowances and expenses as the Governor may determine.

Procedure at meetings

15. (1) A meeting of the Board will be chaired by the presiding member or, in his or her absence, by the deputy presiding member, and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose one of their number to preside at the meeting.

(2) Five members of the Board, of whom at least one is an elected member, constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.

(3) Subject to subsection (2), the Board may act notwithstanding vacancies in its membership.

(4) Each member present at a meeting of the Board is (subject to section 16) entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the members present and voting at a meeting is a decision of the Board.

(6) The Board must cause accurate minutes to be kept of its proceedings at meetings.

(7) The procedure for the calling of meetings of the Board and for the conduct of business at meetings will, subject to this Act, be determined by the Board.

Conflict of interest

16. (1) A member of the Board who has an interest in a matter before the Board must disclose the existence of that interest to the Board.

Penalty: Division 6 fine or division 6 imprisonment.

(2) A member of the Board has an interest in a matter before the Board if—

(a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment;

or

(b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

not being a benefit or detriment that would be enjoyed or suffered by the member, or the person who is closely associated with a member, in common with any other substantial class of persons.

- (3) A person is closely associated with a member of the Board if that person is—
- (a) a body corporate of which the member is a director or a member of the governing body;
 - (b) a proprietary company in which the member is a shareholder;
 - (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
 - (d) a party to a partnership or share-farming agreement to which the member is also a party;
 - (e) an employer or an employee of the member;
- or
- (f) the spouse, parent or child of the member.
- (4) A disclosure under subsection (1) must be recorded in the minutes of the Board.
- (5) A member of the Board who has an interest in a matter before the Board—
- (a) must not, except on the request of the Board, take part in any discussion by the Board relating to that matter;
 - (b) must not vote in relation to that matter;
- and
- (c) must, unless the Board permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 6 fine or division 6 imprisonment.

(6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

(7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Board, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

DIVISION II—FUNCTIONS AND GENERAL POWERS OF BOARD

Functions of Board

17. (1) The functions of the Board are—
- (a) to provide an effective and efficient system for managing the surface water of the non-urban lands in the South East, by conserving, draining, altering the flow of or utilizing that water in any manner;
 - (b) to carry out works for the purpose of lowering the level of the water table of lands in the South East;
 - (c) to undertake, assist or promote research in the fields of water conservation, drainage and management;

- (d) to give advice and assistance to others in the fields of water conservation, drainage and management.
- (2) In performing its functions under this Act the Board must—
- (a) consult with the relevant authorities under all Acts dealing with protection of the environment, soil conservation or management or protection of water resources, and act in conformity with the policies established under those Acts;
 - (b) encourage and promote active community involvement in water conservation and management matters;
 - (c) seek to administer this Act on the basis of negotiation with landholders and all other relevant persons or authorities.

Management plan

18. (1) The Board must, within a year of the commencement of this Act, develop a management plan detailing the action that is to be taken by the Board and the Council in the administration of this Act over the ensuing three years.

(2) The Board must review and update its management plan annually and may make such modifications or additions to the plan as it thinks necessary or desirable.

(3) The Board must consult with the Council in developing or reviewing its management plan insofar as the plan affects the Council's area.

(4) The Board must give the community within the South East a reasonable opportunity to inspect and comment on its management plan as it is developed or reviewed, and must give due consideration to any submissions that may be made.

(5) The Board must submit its initial management plan and any subsequent modifications or additions to the plan to the Minister for approval.

(6) The Minister may, before giving his or her approval, direct the Board to make any alteration to the management plan that the Minister thinks appropriate and the Board must comply with any such direction.

General powers of the Board

19. For the purpose, or in the course, of performing its functions, the Board may—

- (a) enter into a contract, agreement or arrangement of any kind (whether with landholders or any other person or authority);
- (b) acquire (whether by agreement or pursuant to the *Land Acquisition Act 1969*), hold, deal with or dispose of real or personal property or any interest in real or personal property;
- (c) seek expert or technical advice on any matter from any person on such terms and conditions as the Board thinks fit;
- (d) borrow or lend money;
- (e) exercise any other power that is necessary for, or incidental to, the performance of its functions.

Board subject to control of Minister

20. The Board is subject to control and direction by the Minister in the exercise of its powers and functions under this Act.

Power of Board to delegate

21. (1) The Board may delegate any of its powers or functions (other than a power delegated by the Minister) to a member or employee of the Board or a committee established under this Act.

(2) A delegation under this section—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) is revocable by the Board at will;

and

(d) does not derogate from the power of the Board to act in any matter.

Staff

22. (1) The staff of the Board is comprised of—

(a) such Public Service employees as are assigned to assist the Board;

and

(b) such other persons as the Board may employ for the purposes of the administration of this Act.

(2) A person employed under subsection (1) (b) is not a Public Service employee.

(3) The Board may, with the approval of the appropriate Minister, make use of Government facilities or equipment.

Accounts and audit

23. (1) The Board must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Board.

Annual report

24. (1) The Board must, no later than 30 September in each year, submit to the Minister a report on the administration of this Act during the financial year ending on the preceding 30 June.

(2) The report—

(a) must incorporate the audited statement of accounts for the period to which the report relates;

and

(b) must include particulars of the action taken by the Board and the Council in meeting the objectives of the approved management plan under which they operated during that period.

(3) The Minister must, within 12 sitting days of receiving a report under subsection (1), cause a copy of the report to be laid before each House of Parliament.

DIVISION III—FUNCTIONS AND DUTIES OF THE COUNCIL

Functions of the Council

25. (1) The function of the Council under this Act is to implement, within the Council's area, the Board's approved management plan insofar as it affects that area.

(2) In performing that function, the Council must—

(a) encourage and promote active community involvement in water conservation and management matters;

and

(b) seek to administer this Act on the basis of negotiation with landholders and all other relevant persons or authorities.

Council subject to control of Minister

26. The Council is subject to the control and direction of the Minister in the exercise of its powers and functions under this Act.

Council to keep a separate fund

27. (1) The Council must continue to maintain a separate fund into which all money received by the Council under this Act must be paid.

(2) The money in the fund is to be expended by the Council only for the purposes of this Act.

(3) The Council must furnish the Minister with such estimates, reports, accounts and any other information as the Minister may from time to time request.

(4) The Council must—

(a) keep proper accounts of its income and expenditure under this Act;

and

(b) the Auditor-General may, at the request of the Minister, audit the accounts kept by the Council pursuant to this section.

Power of Council to delegate

28. (1) The Council may, with the approval of the Minister, delegate any of its powers or functions under this Act to the Board.

(2) A delegation under this section—

(a) must be by instrument in writing;

(b) may be absolute or conditional;

(c) is revocable by the Council at will;

and

(d) does not derogate from the power of the Council to act in any matter.

DIVISION IV—ADVISORY COMMITTEES

Eight Mile Creek Water Conservation and Drainage Advisory Committee

29. (1) The *Eight Mile Creek Water Conservation and Drainage Advisory Committee* is established.

(2) The Committee will be appointed by the Minister and will consist of such number of members, with such qualifications, as the Minister thinks appropriate.

(3) Without limiting subsection (2), of the members—

- (a) one must be a person nominated by the Board;
- (b) at least three must be eligible landholders within the Eight Mile Creek area nominated by a meeting of the eligible landholders in that area convened and held by the Board for the purpose;

and

- (c) one or more must be employees in such administrative units or instrumentalities of the Crown as the Minister thinks relevant to the administration of this Act in the Eight Mile Creek area.

(4) The person appointed under subsection (3) (a) will chair the Committee.

(5) If a meeting held pursuant to subsection (3) (b) fails to nominate the number of persons required, the Minister may appoint such number of eligible landholders as may be necessary to ensure compliance with that paragraph.

(6) The functions of the Committee are—

- (a) to advise the Board, on the Committee's own motion or at the request of the Board, on the administration of this Act within the Eight Mile Creek area;

and

- (b) to perform such other functions as the Minister may assign to the Committee.

Upper South East Water Conservation and Drainage Advisory Committee

30. (1) The *Upper South East Water Conservation and Drainage Advisory Committee* is established.

(2) The Committee will be appointed by the Minister and will consist of such number of members, with such qualifications, as the Minister thinks appropriate.

(3) Without limiting subsection (2), of the members—

- (a) one must be a person nominated by the Board;
- (b) one must be a person nominated by the Tatiara District Council;
- (c) one must be a person nominated by the Coonalpyn Downs District Council;
- (d) at least three must be eligible landholders in the Upper South East nominated by a meeting of the eligible landholders in that area convened and held by the Board for the purpose;

and

- (e) one or more must be employees in such administrative units or instrumentalities of the Crown as the Minister thinks relevant to the administration of this Act in the Upper South East.

(4) The person appointed under subsection (3) (a) will chair the Committee.

(5) If a meeting held pursuant to subsection (3) (d) fails to nominate the number of persons required, the Minister may appoint such number of eligible landholders as may be necessary to ensure compliance with that paragraph.

(6) The functions of the Committee are—

- (a) to advise the Board, on the Committee's own motion or at the request of the Board, on the administration of this Act within the Upper South East;

and

- (b) to perform such other functions as the Minister may assign to the Committee.

Other advisory committees

31. The Minister may, after consulting the Board, establish such other advisory committees as the Minister thinks necessary or desirable for the proper administration of this Act.

Terms and conditions of office

32. (1) A member of an advisory committee established by or under this Part will be appointed for such term, not exceeding four years, as is determined by the Minister and specified in the instrument of appointment.

(2) The Minister may remove a member of an advisory committee from office—

(a) for misconduct;

(b) for neglect of duty;

(c) for incompetence;

or

(d) for mental or physical incapacity to carry out satisfactorily the duties of office.

(3) The office of a member of an advisory committee becomes vacant if the member—

(a) dies;

(b) completes a term of office;

(c) resigns by notice in writing addressed to the Minister;

or

(d) is removed from office by the Minister under subsection (2).

(4) A member of an advisory committee is entitled to such allowances and expenses as the Governor may determine.

Procedure for advisory committees

33. (1) The person appointed to chair an advisory committee will preside at any meeting of the committee at which he or she is present and, in his or her absence from a meeting, the members present must select one of their number to preside at that meeting.

(2) A quorum of an advisory committee is constituted by a number of members equal to the number gained by dividing the number of members appointed to the committee by two, ignoring any resulting fraction and adding one.

(3) No business may be transacted at a meeting of an advisory committee unless a quorum is present.

(4) Each member present at a meeting of an advisory committee is entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the members present and voting at a meeting of an advisory committee is a decision of the committee.

(6) The procedure for the calling of meetings of an advisory committee and for the conduct of business at meetings will, subject to this Act, be determined by the advisory committee.

PART III

WATER MANAGEMENT WORKS

DIVISION I—BOARD AND COUNCIL WATER MANAGEMENT WORKS

Board water management works

34. (1) Subject to this section, the Board may, within the Board's area, construct such water management works, or alter or remove such of the Board's water management works, as the Board thinks necessary or desirable for the purposes of this Act.

(2) The Board must endeavour to maintain all its water management works in a good state of safety, cleanliness and repair and in efficient working order.

(3) The Board must not, except with the approval of the Minister, undertake any work pursuant to this section that is not contemplated by the Board's approved management plan.

Council water management works

35. (1) Subject to this section, the Council may, within the Council's area, construct such water management works, or remove or alter such of the Council's water management works, as the Council thinks necessary or desirable for the purposes of this Act.

(2) The Council must endeavour to maintain all its water management works in a good state of safety, cleanliness and repair and in efficient working order.

(3) The Council must not, except with the approval of the Minister, undertake any work pursuant to this section that is not contemplated by the Board's approved management plan.

Discharge of stormwater into Council water management works

36. (1) The Council may discharge township stormwater into any of the Council's water management works under this Act.

(2) The cost incurred by the Council in altering or repairing its water management works as a result of the discharge of stormwater into the works will be borne by the Council out of the funds of the Council not consisting of money appropriated or allocated for the purposes of this Act.

Water in water management works is property of Crown

37. (1) The water in the Board's or Council's water management works under this Act is the exclusive property of the Crown.

(2) The Minister may, on such conditions as the Minister thinks fit, grant to any person the right to take or use the water in any such water management works.

Further powers of Board and Council

38. (1) Without limiting any other powers conferred by this Act, the relevant authority may, for the purposes of this Act, do all or any of the following things within its area:

(a) enter upon any land for the purpose of exercising powers under this Act;

(b) inspect, survey, take samples of soil or water from, or carry out tests on, any land;

(c) inspect any private water management works;

(d) widen, deepen, clean out, shore up or raise or lower the banks of any watercourse, drainage hole, dam, lake or well.

(2) The power to enter land is, except in cases where urgent action is required to deal with a flood, potential flood or other emergency, exercisable only at a reasonable time of the day and upon giving reasonable notice, being not less than one day, to the landholder.

Power to require landholders to contribute to cost of works

39. (1) Where one or more landholders have entered into an agreement with the relevant authority for the carrying out by the authority of any work to be wholly funded by landholders or jointly funded by landholders and the authority, the authority—

(a) must determine which landholdings will, in the opinion of the authority, benefit from the proposed works;

and

(b) must endeavour to reach agreement with all the landholders so benefited (whether or not parties to the agreement referred to in subsection (1)) as to the proportion of the cost to be borne by each of them.

(2) The authority may proceed with any proposed work if an agreement is reached in accordance with subsection (1) with at least 55 per cent of the landholders whose land will, in the opinion of the authority, benefit from the work, provided that those landholders with whom agreement has been reached represent between them at least 75 per cent of the total area of land that will be so benefited.

(3) A landholder who refuses or fails to reach agreement as to the contribution to be paid by the landholder towards the cost of work carried out by the relevant authority pursuant to this section is liable to the authority for that proportion of the total cost to be borne by landholders that the area of the landholder's land that will benefit from the work bears to the total area that will so benefit.

(4) The relevant authority may, no later than three months after completion of the work, by notice in writing addressed to a landholder who is liable to pay a contribution pursuant to subsection (3), require payment of the relevant amount and specify the manner in which it is to be paid and the time within which it, or any instalment, is to be paid.

(5) If default is made in payment of an instalment, the whole balance outstanding under the notice falls due and payable.

(6) The amount due and payable under a notice under this section—

(a) is recoverable by the relevant authority as a debt;

and

(b) is a charge over the land in question, being a charge that ranks in priority before all other charges or mortgages (other than a charge or mortgage in favour of the Crown or a Crown instrumentality).

(7) Nothing in this section prevents the relevant authority from carrying out work at its own cost should agreement not be reached with the required number of landholders.

Fencing of water management works and drainage reserves

40. (1) The relevant authority—

(a) may cause any of its water management works or any drainage reserve under its care, control and management to be fenced to such extent and in such manner as is reasonably adequate for the purposes of protecting the works or reserve from damage;

and

(b) may cause any such fence to be repaired, maintained or replaced as is reasonably necessary.

(2) Subject to the terms of any agreement reached with the authority—

(a) the landholder, or landholders, of land adjoining any such fence is, or are jointly, liable to the relevant authority for half the cost of the fencing work in question;

and

(b) where there is more than one adjoining landholder, each is liable to the authority for that proportion of the share to be borne by all adjoining landholders that the length of the landholder's common boundary (with the water management works or drainage reserve) bears to the overall length of the fence.

(3) The relevant authority may, no later than three months after completion of the fencing work, by notice in writing addressed to a landholder who is liable to pay a contribution pursuant to this section, require payment of the relevant amount and specify the manner in which it is to be paid and the time within which it, or any instalment, is to be paid.

(4) If default is made in payment of an instalment, the whole balance outstanding under the notice falls due and payable.

(5) An amount due and payable under a notice under this section—

(a) is recoverable by the relevant authority as a debt;

and

(b) is a charge over the land in question ranking in priority before all other charges and mortgages (other than a charge or mortgage in favour of the Crown or a Crown instrumentality).

(6) The *Fences Act 1975* does not apply in relation to fencing work carried out by a relevant authority in respect of water management works or a drainage reserve.

DIVISION II—PRIVATE WATER MANAGEMENT WORKS

Water management works not to be constructed, altered or removed without a licence

41. A person must not, except in pursuance of a licence granted under this Division by the relevant authority—

(a) construct water management works on land in the South East;

(b) remove or alter any water management works (whether constructed before or after the commencement of this Act) on land in the South East;

or

(c) close off or obstruct in any way any drainage hole,

if to do so would, or would be likely to, stop, increase, decrease or otherwise affect the flow of water from or onto land adjacent to that land, or the flow of water into a watercourse or any Board or Council water management works.

Penalty: Division 5 fine.

Certain bridges and culverts not to be constructed without a licence

42. A person must not erect a bridge or construct a culvert over, through or along any Board or Council water management works or a drainage reserve except in pursuance of a licence granted by the relevant authority.

Penalty: Division 5 fine.

Grant of licences

43. (1) The relevant authority may grant a licence authorizing a person to carry out work specified in the licence.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.

(3) A licence may be subject to such conditions as the relevant authority thinks fit and specifies in the licence.

(4) The conditions of a licence may, by notice in writing addressed to the holder of the licence, be varied, revoked or added to at any time by the relevant authority.

(5) A person who contravenes or fails to comply with a condition of a licence under this Division is guilty of an offence.

Penalty: Division 5 fine.

Power of authority to direct certain work be carried out

44. (1) Where—

(a) any work has been carried out or any other thing done by a person in contravention of this Division or the repealed Act;

(b) a person contravenes or fails to comply with a condition of a licence under this Division;

or

(c) the relevant authority is of the opinion that any water management works constructed by a person pursuant to a licence (whether before or after the commencement of this Act) are having a harmful effect on the proper management or conservation of surface or underground water in the South East,

the relevant authority may, by notice in writing addressed to the person, require the person, within the time specified in the notice, to take specified steps (which may include the complete removal of any work) to remedy the contravention or non-compliance or to ensure the proper management or conservation of surface or underground water, as the case may be.

(2) Where a person to whom a notice under subsection (1) has been given fails to comply with the notice, the relevant authority may cause such work to be carried out as full compliance with the notice may require.

(3) The costs incurred by an authority in exercising its powers under subsection (2)—

(a) may be recovered as a debt from the person in default;

and

(b) are a charge over the land on which the works in question are situated, being a charge that ranks in priority before all other charges and mortgages (other than a charge or mortgage in favour of the Crown or a Crown instrumentality).

(4) The powers exercisable by a relevant authority under this section in relation to a person may be exercised in relation to a successor in title to the land on which the works in question are situated.

DIVISION III—OFFENCES**Water not to be taken from Board or Council water management works**

45. A person must not, without the permission of the Minister, take water from any Board or Council water management works.

Penalty: Division 5 fine.

Board and Council water management works and drainage reserves not to be interfered with

46. A person must not, without the permission of the relevant authority, interfere in any way with any Board or Council water management works or the operation of any such works, or with a drainage reserve or a road adjoining a drainage reserve.

Penalty: Division 5 fine.

Permission may be conditional

47. (1) The granting of permission under this Division may be subject to such conditions as the person granting the permission thinks fit.

(2) A person who contravenes or fails to comply with any such condition is guilty of an offence.

Penalty: Division 5 fine.

DIVISION IV—APPEALS

Rights of appeal

48. (1) A right of appeal lies to the Water Resources Appeal Tribunal in the following cases:

- (a) a landholder may appeal against a decision of the relevant authority made under section 39 that a particular landholding would benefit from the proposed carrying out of certain work by the authority;
- (b) an applicant for a licence under section 41 (construction, alteration or removal of water management works) or section 42 (construction of bridge or culvert) may appeal against a decision of the relevant authority to refuse a licence;
- (c) the holder of a licence may appeal against a decision of the relevant authority to vary or add to the conditions to which the licence is subject;
- (d) a person who has been required by the relevant authority by a notice under section 44 to take specified steps may appeal against a requirement of the notice.

(2) An appeal must be instituted in the prescribed manner and form within six weeks of the decision or requirement appealed against or within such further time as the Tribunal considers to be reasonable in the circumstances.

(3) On an appeal the Tribunal may—

- (a) affirm, vary or quash the decision or requirement appealed against or substitute any decision or requirement that should have been made in the first instance;

or

- (b) remit the subject matter of the appeal to the relevant authority for further consideration.

Decision or requirement may be suspended pending appeal

49. (1) Where a decision or requirement has been made by the relevant authority and the relevant authority or the Tribunal is satisfied that an appeal against the decision or requirement has been instituted, or is intended, the relevant authority or the Tribunal may suspend the operation of the decision or requirement until the determination of the appeal.

(2) A suspension under subsection (1) may be terminated at any time by the relevant authority or the Tribunal (as the case may require).

PART V
MISCELLANEOUS

Power to waive or defer payments

50. The relevant authority may, if it thinks good reason exists for doing so, waive or defer payment of any amount due and payable to it by any person pursuant to this Act.

Appointment of authorized officers

51. (1) The Board or the Council may appoint persons to be authorized officers for the purposes of this Act.

(2) Appointments may be made by name or by reference to office.

(3) An authorized officer appointed by the Board cannot exercise the powers of an authorized officer within the Council's area except with the written authority of the Council.

(4) An authorized officer appointed by the Council cannot exercise the powers of an authorized officer within the Board's area except with the written authority of the Board.

(5) A person appointed as an authorized officer must be issued with an identity card in a form approved by the Minister.

(6) The relevant authority may, by notice in writing given personally or by post to an authorized officer, revoke his or her appointment.

Powers of authorized officers

52. (1) An authorized officer may, for the purposes of the enforcement of this Act, exercise any of the following powers:

- (a) enter any land in the South East;
- (b) inspect any such land or the surface water or water management works on any such land;
- (c) measure or chart the flow of surface water on any such land;
- (d) take photographs, films or video recordings on any such land;
- (e) put to any person on any such land any question relating to the administration of this Act;
- (f) require a person who the authorized officer reasonably suspects has committed, or is about to commit, an offence against this Act to state his or her name and usual place of residence;
- (g) require a person holding, or required to hold, a licence or permit under this Act to produce that licence or permit for inspection by the authorized officer.

(2) An authorized officer may, in exercising powers under this section, be accompanied by such assistants as are reasonably necessary for the purpose.

(3) An authorized officer must, at the request of a landholder or the agent of a landholder, produce his or her identity card for inspection.

(4) The power to enter land is, except in cases of emergency, exercisable only at a reasonable time of the day.

(5) An authorized officer may use force in exercising the power to enter land—

(a) on the authority of a warrant issued by a justice;

or

(b) if the officer believes, on reasonable grounds, that the circumstances require urgent action to be taken.

(6) A justice must not issue a warrant under subsection (5) unless satisfied, on information given on oath—

(a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be committed;

and

(b) that the warrant is reasonably required in the circumstances.

(7) An inspector, or a person assisting an inspector, who—

(a) addresses offensive language to any other person;

or

(b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Hindering, etc., persons engaged in the administration of this Act

53. (1) A person who—

(a) without reasonable excuse, hinders or obstructs an authorized officer or other person engaged in the administration of this Act;

(b) fails to answer a question put by an authorized officer to the best of his or her knowledge, information or belief;

(c) uses abusive, threatening or insulting language to an authorized officer, or a person assisting an authorized officer;

or

(d) falsely represents, by word or conduct, that he or she is an authorized officer,

is guilty of an offence.

Penalty: Division 6 fine.

(2) A person is not required to answer a question put to him or her by an authorized officer if the answer would tend to incriminate the person of an offence.

Proceedings for offences

54. (1) Offences against this Act are summary offences.

(2) Proceedings for an offence against this Act may be commenced within three years after the date on which the offence is alleged to have been committed.

Offences by body corporate

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

General defence

56. It is a defence to a charge of an offence against this Act for the defendant to prove that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Evidentiary

57. (1) An allegation by the prosecution in any proceedings for an offence against this Act that on a specified day—

- (a) a specified person was or was not the holder of a licence or permit under this Act;
 - (b) a specified person was or was not the owner or occupier of specified land;
 - (c) specified water management works were Board water management works or Council water management works;
 - (d) a specified piece of land constituted a drainage reserve under the care, control and management of a specified authority;
 - (e) specified land fell within the Board's area or the Council's area under this Act;
- or
- (f) a specified person was an authorized officer or other person engaged in the administration of this Act,

will, in the absence of proof to the contrary, be taken to have been proved.

(2) In any proceedings for an offence against this Act, a document purporting to be certified by the relevant authority or an authorized officer as an accurate copy of a licence or permit under this Act will, in the absence of proof to the contrary, be taken to be an accurate copy of the licence or permit in question.

Protection from personal liability

58. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person, or by a body of which he or she is a member, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Regulations

59. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or desirable for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) provide for the proper maintenance, cleanliness and repair of private water management works;
- (b) fix fees and provide for their payment, recovery or waiver;
- (c) provide for the granting by the Minister of conditional or unconditional exemptions from provisions of this Act;
- (d) fix penalties not exceeding a division 8 fine for breaches of the regulations.

(3) Any regulation under this Act may be of general or limited application according to—

- (a) the classes of person, land or works;
 - (b) the circumstances;
- or
- (c) any other specified factor,

to which the regulation is expressed to apply.

FIRST SCHEDULE

Land Comprising the South East

The Hundreds of Glyde, Field, Colebatch, Richards, Coombe, Archibald, Makin, McCallum, Shaugh, Santo, Messent, McNamara, Laffer, Stirling, Pendleton, Cannawigara, Senior, Neville, Wells, Petherick, Willalooka, Wirrega, Tatiara, Duffield, Landseer, Peacock, Marcollat, Parsons, Beeamma, Geegeela, Lacepede, Murrabinna, Minecrow, Woolumbool, Glen Roy, Lochaber, Hynam, Binnum, Mount Benson, Bowaka, Townsend, Joyce, Spence, Naracoorte, Jessie, Ross, Conmurra, Robertson, Joanna, Waterhouse, Bray, Smith, Fox, Coles, Killanoola, Comaum, Lake George, Symon, Kennion, Short, Monbulla, Penola, Rivoli Bay, Mount Muirhead, Riddoch, Grey, Nangwarry, Mayurra, Hindmarsh, Young, Mingbool, Benara, Blanche, Gambier, Kongorong, MacDonnell and Caroline.

SECOND SCHEDULE

Land Excluded from the Area of the Council

That portion of the Hundred of Mount Muirhead, County of Grey, bounded as follows:

Commencing at the north-eastern corner of the Hundred of Mount Muirhead; thence southerly along portion of the eastern boundary of the said hundred to its intersection with the production south-easterly of a south-western boundary of section 209; north-westerly along the latter production and boundary, a further south-western boundary of section 209 and the south-western boundaries of sections 211, 218 and 292 to the northern boundary of the Hundred of Mount Muirhead; thence easterly along the latter boundary to the point of commencement and crossing all intervening roads.

That portion of the Hundred of Rivoli Bay, County of Grey, bounded as follows:

Commencing at the north-western corner of the Hundred of Rivoli Bay; thence easterly along the northern boundary of the said hundred to its north-eastern corner; southerly along portion of the eastern boundary of the said hundred to the northern corner of section 17N; south-westerly along the north-western boundaries of sections 17N, 19 and 41 and portion of the north-western boundary of section 117 to a line parallel to and distant 10.06 metres from and situate generally easterly of the south-western boundary of section 117 and the western boundaries of sections 112 and 109; generally southerly along the said parallel line and its production southerly to the north-western boundary of section 434 (Hatherleigh Drain); south-westerly along the latter boundary for 160.9 metres; north-westerly at right angles to a south-eastern boundary of section 124; generally northerly along the south-eastern and eastern boundaries of section 124, the eastern boundaries of section 123 and the north-eastern boundary of section 118; south-westerly along the north-western boundaries of sections 118, 125 and 126 and production through section 429 (Trigonometrical Reserve), allotment 2 (Filed Plan No. 301) and sections 406, 358 and 428 (Lake Frome) to the northern boundary of the road generally southerly of and adjoining section 428; generally westerly along the northern boundary of the road generally southerly of and adjoining sections 428, 383 and 472, and south-east of and adjoining section 395 to the southern corner of section 395; north-westerly along portion of the south-western boundary of section 395 to the southern corner of section 389 (Drainage Reserve); generally north-westerly along the south-western boundaries of section 389 and the south-western and western boundaries of section 390 (Drainage Reserve) and production northerly to the sea coast; thence generally north-westerly along the sea coast to the point of commencement and crossing all intervening roads.

That portion of the Hundred of Young that falls within the local government area of the Council.

THIRD SCHEDULE

Central Electoral Zone

The following land comprises the Central Electoral Zone:

The Hundreds of Neville, Wells, Duffield, Landseer, Peacock, Marcollat, Glen Roy, Lacedepe, Murrabinna, Minecrow, Woolumbool, Lochaber, Hynam, Binnun, Mount Benson, Bowaka, Townsend, Joyce, Spence, Naracoorte, Jessie, Connurra, Robertson, Joanna, Fox and Coles.

FOURTH SCHEDULE

Northern Electoral Zone

The following land comprises the Northern Electoral Zone:

The Hundreds of Glyde, Field, Colebatch, Richards, Coombe, Archibald, Makin, McCallum, Shaugh, Santo, Messent, McNamara, Laffer, Stirling, Pendleton, Cannawigara, Senior, Petherick, Willalooka, Wirrega, Tatiara, Parsons, Becamma and Geegeela.

FIFTH SCHEDULE

Southern Electoral Zone

The following land comprises the Southern Electoral Zone:

The Hundreds of Waterhouse, Ross, Bray, Smith, Killanoola, Comaum, Lake George, Symon, Kennion, Short, Monbulla, Penola, Rivoli Bay, Mount Muirhead, Riddoch, Grey, Nangwarry, Mayurra, Hindmarsh, Young, Mingbool, Benara, Blanche, Kongorong, Gambier, MacDonnell and Caroline.

SIXTH SCHEDULE

Repeal and Transitional Provisions

DIVISION I—REPEALS

1. The *South-Eastern Drainage Act 1931* is repealed.
2. The *Tatiara Drainage Trust Act 1949* is repealed.

DIVISION II—TRANSITIONAL PROVISIONS

3. All members of the South Eastern Drainage Board will, on the commencement of this Act, vacate their offices so as to enable the Board membership to be appointed or elected in accordance with this Act.
4. All assets, rights and liabilities of the Tatiara Drainage Trust in existence immediately before the commencement of this Act vest in the District Council of Tatiara.
5. The drains and drainage works vested in the Board immediately before the commencement of this Act continue to be so vested.
6. (1) The drains and drainage works in the Eight Mile Creek area vested in the Minister immediately before the commencement of this Act vest in, and are under the care, control and management of, the Board.
(2) The exercise of any powers under the repealed Act by the Minister as the authority for the Eight Mile Creek area and not completed before the commencement of this Act may be completed by the Board under and in accordance with the repealed Act as if it had not been repealed.
7. The drains and drainage works vested in the Council immediately before the commencement of this Act continue to be so vested.
8. The plans of drains and drainage works lodged with or prepared by the Minister under Part II of the repealed Act may continue to be altered by the Minister for the purposes of correcting any error found in any of them.

APPENDIX
DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

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

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

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor