

SOUTH AUSTRALIA

SOUTH-EASTERN DRAINAGE ACT, 1931

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **15 January 1992**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SOUTH-EASTERN DRAINAGE ACT, 1931

being

South-Eastern Drainage Act, 1931, No. 2062 of 1931
[Assented to 9 December 1931]¹

as amended by

South-Eastern Drainage Act Amendment Act, 1933, No. 2126 of 1933 [Assented to 9 November 1933]
South-Eastern Drainage Act Amendment Act, 1935, No. 2219 of 1935 [Assented to 21 November 1935]
South-Eastern Drainage Act Amendment Act, 1947, No. 25 of 1947 [Assented to 20 November 1947]
South-Eastern Drainage Act Amendment Act, 1948, No. 34 of 1948 [Assented to 16 December 1948]
South-Eastern Drainage Act Amendment Act, 1959, No. 25 of 1959 [Assented to 26 November 1959]
South-Eastern Drainage Act Amendment Act, 1969, No. 91 of 1969 [Assented to 11 December 1969]²
South-Eastern Drainage Act Amendment Act, 1971, No. 112 of 1971 [Assented to 9 December 1971]³
South-Eastern Drainage Act Amendment Act, 1972, No. 152 of 1972 [Assented to 7 December 1972]⁴
South-Eastern Drainage Act Amendment Act, 1974, No. 11 of 1974 [Assented to 28 March 1974]⁵
Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11 April 1974]
Eight Mile Creek Settlement (Drainage Maintenance) Act Amendment Act, 1977, No. 42 of 1977 [Assented to 15 December 1977]⁶
South-Eastern Drainage Act Amendment Act, 1980, No. 42 of 1980 [Assented to 19 June 1980]⁷
South-Eastern Drainage Act Amendment Act (No. 2), 1980, No. 112 of 1980 [Assented to 18 December 1980]⁷
South-Eastern Drainage Act Amendment Act, 1983, No. 8 of 1983 [Assented to 28 April 1983]⁸
South-Eastern Drainage Act Amendment Act, 1985, No. 38 of 1985 [Assented to 18 April 1985]

¹ Came into operation 1 January 1932: *Gaz.* 17 December 1931, p. 1115.

² Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1841.

³ Came into operation 1 February 1972: *Gaz.* 27 January 1972, p. 243.

⁴ Came into operation 1 June 1972: s. 2.

⁵ Came into operation 1 April 1972: s. 2.

⁶ Came into operation 1 May 1978: *Gaz.* 20 April 1978, p. 1256.

⁷ Came into operation 1 February 1981: *Gaz.* 29 January 1981, p. 259.

⁸ Came into operation (except s. 4) 28 April 1983: s. 2(1); s. 4 came into operation 20 July 1984: s. 2(2).

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to repeal the South-Eastern Drainage Acts, 1926 to 1931, and to enact other provisions for the control and management of the rural drainage system of the South-East, the District Council of Millicent area and the Eight Mile Creek Settlement area, and for purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the *South-Eastern Drainage Act, 1931*, and shall come into operation on a day to be fixed by proclamation.

Transitional provisions

2. Any consent or licence in respect of the diversion of water or the construction of private drains or drainage works granted by the Minister under the *Eight Mile Creek Settlement (Drainage Maintenance) Act, 1959-1979*, and in force immediately prior to the commencement of the *South-Eastern Drainage Act Amendment Act, 1980*, shall, subject to this Act, remain in force and shall be deemed to be a consent or licence granted by the Minister under this Act.

Division of Act

3. This Act is divided into Parts, as follows:—

PART I—Preliminary.

PART II—Administration.

DIVISION I—ESTABLISHMENT OF THE BOARD:

DIVISION II—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE SOUTH-EAST BY THE BOARD:

DIVISION III—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE EIGHT MILE CREEK AREA BY THE MINISTER:

DIVISION IV—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE MILLICENT AREA BY THE COUNCIL.

PART III—Construction and maintenance of drains and drainage works.

DIVISION I—Construction of drains or drainage works on petition of landholders:

DIVISION II—Maintenance of drains and drainage works:

DIVISION IV—General provisions relating to the construction and maintenance of drains and drainage works.

* * * * *

PART V—Miscellaneous provisions.

Repeal

4. The *South-Eastern Drainage Acts, 1926 to 1931*, are repealed.

* * * * *

Interpretation

6. (1) In this Act, unless the context otherwise requires, or some other meaning is clearly intended—

"appointed member" means a member of the board appointed by the Governor pursuant to the provisions of this Act:

"area"—

- (a) in relation to the board, means the South-East;
- (b) in relation to the Minister, means the Eight Mile Creek area;
- (c) in relation to the Council, means the district of the Council, within the meaning of the *Local Government Act, 1934-1979*, but does not include any part of the district that falls within the area of the board:

"authority"—

- (a) in relation to the South-East, means the board;
- (b) in relation to the Eight Mile Creek area, means the Minister;
- (c) in relation to the area of the Council, means the Council:

"board" means the South-Eastern Drainage Board continued in office by this Act:

"Commission" means the Irrigation Commission constituted by the *Irrigation Act, 1922*, and re-named by the *South-Eastern Drainage Act, 1926*, the Irrigation and Drainage Commission:

"the Council" means the District Council of Millicent:

"current rate of interest" means the rate of interest in force for the time being pursuant to section 105 of this Act:

"drain" means any artificial channel, or any other device, designed for draining water from land, but does not include a town drain:

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

"drainage works" means any works that are connected with or incidental to a drain, and, in relation to the board and the Minister, includes water conservation works:

"the Eight Mile Creek area" means the area of land comprising the sections—

- (a) numbered 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 882, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 951 and 952 in the Hundred of McDonnell;

and

(b) numbered 634, 635, 636, 637, 638, 641, 642, 645, 646, 649, 650, 651, 652, 656, 657, 658, 661, 662, 663, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 860 and 861 in the Hundred of Caroline:

"elected member" means a member of the board elected by landholders pursuant to the provisions of this Act:

"land" does not include land within the boundaries of a municipality, town or township:

"landholder" means the owner of any freehold estate in land, the holder of land under agreement with the Crown for the sale of such land upon credit, the lessee of land held under perpetual lease from the Crown, and as to Crown lands unleased or leased on other than perpetual lease, the Minister of Lands:

* * * * *

"private drain" means any drain, whether constructed before or after the commencement of this Act, not being a drain constructed by or on behalf of the Crown or an authority:

"private drainage works" means works, whether constructed before or after the commencement of this Act, that are connected with or incidental to any drain, not being works constructed by or on behalf of the Crown or an authority:

* * * * *

* * * * *

"South-East" means the whole of the hundreds of Santo, Messent, Neville, Wells, Petherick, Duffield, Landseer, Peacock, Marcollat, Lacepede, Murrabinna, Minecrow, Woolumbool, Glen Roy, Lochaber, Mount Benson, Bowaka, Townsend, Ross, Conmurra, Joyce, Spence, Naracoorte, Robertson, Waterhouse, Bray, Smith, Fox, Coles, Killanoola, Comaum, Lake George, Symon, Kennion, Short, Monbulla, Penola, Riddoch, Grey, Nangwarry, Young, and Mingbool, and portions of the hundreds of McNamara, Hynam, Joanna, Rivoli Bay and Mount Muirhead, bounded as set forth in the first schedule:

* * * * *

"town drain" means any drain that is within a municipality, town or township and that is used solely for the purpose of removing water from land within that municipality, town or township:

"water conservation works" means works designed for the purpose of conserving or utilizing waters drained from any lands pursuant to this Act:

(2) The Governor may by proclamation from time to time include any additional lands in the South-East or the Eight Mile Creek area or may exclude any lands therefrom.

* * * * *

Proclamation of drains and drainage works, and closure of drains

7. (1) The Governor may, by proclamation—

- (a) declare any natural watercourse, or any private drain, in any area to be a drain for the purposes of this Act and vested in the authority for the area;
- (b) declare any natural body of water, or any private drainage works, in any area to be drainage works for the purposes of this Act and vested in the authority for the area;
- (c) declare that any drain in any area is closed and is no longer a drain vested in the authority for the area;

or

- (d) declare that any drainage works in any area are no longer vested in the authority for the area.

(2) The Governor may, by further proclamation, vary or revoke any proclamation under this section.

(3) The Governor shall not exercise his powers under this section in relation to the area of the Council except pursuant to the request of the Council.

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PART II

ADMINISTRATION

DIVISION I—ESTABLISHMENT OF THE BOARD

Constitution of the South-Eastern Drainage Board

8. (1) The South-Eastern Drainage Board is hereby continued and the members in office at the commencement of this Act shall hold office subject to this Act for the term for which they were appointed.

(2) The board shall be a body corporate by the name of the "South-Eastern Drainage Board", and by that name shall have perpetual succession and a common seal and shall be capable of acquiring, holding, dealing with and disposing of real and personal property and of suing and being sued, and submitting to arbitration in all actions, suits, causes, and disputes.

Judicial notice of seal

9. Judicial notice shall be taken of the incorporation and of the common seal of the board, and the production of any deed, instrument, or writing, if sealed with the said seal, shall be sufficient evidence of the making and execution thereof.

Constitution of board

10. (1) The board shall consist of four members of whom—

(a) two shall be persons elected to office pursuant to the provisions of this Part;

and

(b) two shall be persons in the Public Service of the State who are, in the opinion of the Governor, qualified by knowledge and experience to act in the administration of this Act and who have been appointed by the Governor to be members of the board.

(2) An appointed member of the board shall, subject to this Act, hold office for a term of three years.

(3) An elected member shall, subject to this Act, hold office until an election is next held pursuant to this Part of candidates for election to the board.

(4) Notwithstanding subsection (3) but subject to subsection (4a), a member elected to the board pursuant to an election held under this Part after the commencement of the *South-Eastern Drainage Act Amendment Act, 1983*, shall be elected to office for a term of four years.

(4a) One of the members (to be determined by lot) elected to the board at the first election held pursuant to this Part after the commencement of the *South-Eastern Drainage Act Amendment Act, 1983*, shall be elected to office for a term of two years.

(5) Where a member of the board dies, resigns his office, or is dismissed from office pursuant to this Part, the Governor may appoint a suitable person to the vacant office and a person so appointed shall, subject to this Act, hold office for the balance of the term or period for which his predecessor was appointed or elected.

7.

(6) A person appointed pursuant to subsection (5) of this section to fill a casual vacancy in the office of an elected member must be a landholder in respect of land situated in the South-East, the Eight Mile Creek area or the area of the Council, that is, in the opinion of the Minister, benefited by a drain vested in an authority.

(7) A person who has previously held office as a member of the board shall be eligible for re-appointment or re-election as a member of the board.

Elections

10a. (1) The Minister shall cause to be prepared and maintained a list of all landholders of land that is situated in the South-East, the Eight Mile Creek area or the area of the Council and that is, in the opinion of the Minister, benefited by a drain vested in an authority.

(2) The Minister shall, within six months after the commencement of the *South-Eastern Drainage Act Amendment Act, 1971*, and thereafter at intervals of two years, or approximately two years, cause an election to be held of candidates for election to the board.

(3) A candidate for election to the board must be a person whose name is on the list prepared and maintained by the Minister under subsection (1) of this section.

(4) At any such election each person whose name appeared, one month before the date of the election, on the list prepared and maintained by the Minister under subsection (1) of this section shall be entitled to one vote.

(5) The Electoral Commissioner shall conduct the election on a day determined by the Minister.

(6) The Electoral Commissioner shall have power to determine in a summary way any question relating to the qualification of a candidate for election, and the qualification of any person to vote, and his decision shall be final.

(7) An election shall be conducted by postal vote.

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

(9) Where there are no candidates for election, the Governor may appoint a suitable person to the vacant position on the board, and such a person shall be deemed to have been duly elected to the board pursuant to an election held on the date of the appointment under the provisions of this section.

(10) Subject to this Act, and the regulations, an election shall be conducted in such manner as the Electoral Commissioner for the State thinks fit.

(11) The Governor may make regulations prescribing, or providing for, any matter or thing that may be necessary or expedient in connection with an election under this section.

Directors, etc., of bodies corporate are eligible for election

10b. Where a body corporate is a landholder in respect of land situated in any area, a person who is a director of that body corporate, or a member of its board of management, shall, for the purposes of section 10 and section 10a of this Act, be deemed to be a landholder in respect of that land.

Dismissal from office

11. The Governor may at any time dismiss any member from his office—

- (a) for misbehaviour or incompetence; or
- (b) if he is adjudicated bankrupt or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than one hundred cents in the dollar; or
- (c) if he wilfully absents himself from three consecutive meetings of the board except on leave granted by the Minister; or
- (d) if he becomes in any way, except as member, concerned or interested in any contract made by or on behalf of the board or in any way participates or claims to be entitled to participate in the profits thereof, or in any benefit or emolument arising therefrom.

Chairman, deputy chairman and other deputies

12. (1) The Governor may appoint one of the members to be the chairman of the board, and another to be the deputy chairman of the board, and whenever a vacancy occurs in the office of chairman or deputy chairman may appoint one of the members to fill the vacancy.

(1aa) The Governor shall not at any time appoint a member to be chairman of the board unless the Minister has first consulted with the board and considered any recommendation that the board may make in the matter.

(1a) Where a member of the board has been granted leave of absence by the Minister, the Minister may appoint a suitable person to be the deputy of that member during his absence.

(2) At all meetings of the board the chairman, or in his absence, the deputy chairman shall preside.

(3) In the event of an equality of votes on any matter arising at a meeting of the board, the person presiding at the meeting shall have a casting, as well as a deliberative, vote.

Quorum

13. Any two members, of which one is an appointed member and one is an elected member, shall constitute a quorum.

Validity of acts of board

14. No act or proceeding of the board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced there is a vacancy in the office of any member.

Board subject to control of Minister

15. The board shall be subject to the general control and direction of the Minister in the exercise or discharge of its powers, functions, duties and responsibilities under this Act.

Staff of board

16. (1) The Governor may, subject to the provisions of the *Public Service Act, 1967*, as amended, appoint officers and servants to act under the direction of the board in the administration of this Act.

(2) The board may, subject to any direction of the Minister or law as to rates of wages, appoint at daily or weekly wages such persons as it deems proper for the purpose of carrying out its powers, duties, and functions under this Act and may dismiss such persons, but this section shall not affect the rights of any person wrongfully dismissed.

* * * * *

Consequential amendments of documents and instruments

18. In any deed, lease, licence, agreement, permit, transfer, mortgage, or other document or instrument of any kind whatsoever in force or subsisting at the commencement of this Act which concerns or affects any of the property, rights, interests, titles, privileges, obligations, and liabilities transferred by the Act No. 2000 of 1931, to the board, all references to the South-Eastern Drainage Assessment Board or to the Commissioner of Public Works or other Minister of the Crown or to the Commission shall, so far as they affect any property, right, interest, title, privilege, obligation, or liability so transferred, be read and construed as references to the board.

* * * * *

Contracts for works

23. (1) The board may enter into contracts with any person for the execution of any works directed by this Act or any other Act to be executed by the board, or which the board thinks proper to do or to direct to be done under or by virtue of the powers conferred upon the board by this Act, or for the supply of any goods or things whatsoever necessary for enabling the board to carry the purposes of this Act into execution, in such manner and for such sum of money, and under such stipulations, conditions, and restrictions as the board thinks proper: Provided that no contract made by the board, the consideration for which exceeds ten thousand dollars, shall have any force or effect unless sanctioned by the Minister.

(2) Every such contract may, if the board thinks fit, specify the person to whose satisfaction the same is to be completed, and the mode of determining any dispute which may arise concerning or in consequence of such contract.

Mode of entering into contracts

24. (1) The powers hereby granted to the board to make contracts may be exercised as follows:—

- I. Any contract which, if made between private persons, would be by law required to be in writing and under seal, the board may make in writing in its corporate name under its common seal, and in like manner may vary or discharge the same:
- II. Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the board may make in writing in its corporate name signed by any two members, and in like manner may vary or discharge the same:
- III. Any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the board or any two of them, acting by direction and on behalf of the board, may make by parol only without writing, and in like manner may vary or discharge the same.

(2) All contracts so made and duly executed by the parties thereto respectively shall be effectual in law and binding on the board and all other parties thereto, their successors, assigns, heirs, executors, or administrators (as the case may be).

(3) In case of default in the execution of any such contract either by the board or by any other party thereto, such actions or suits may be instituted, either by or against the board in its corporate name or by or against the other parties failing in the execution thereof, and such damages and costs recovered, as might be instituted and recovered had the like contract been made between private persons.

Books and accounting

25. (1) The board shall keep such proper books of account showing all amounts paid to or received by the board and the purposes for which the amounts were received or paid, and all moneys payable to the board under or pursuant to this Act shall be collected and received for and on account of the general revenue.

(2) The accounts of the board shall, once at least in every year, and also whenever so directed by the Governor, be audited by the Auditor-General.

(3) The provisions of any Acts for the time being in force for the collection and payment of the public moneys and the audit of the public accounts shall apply to and in respect of the moneys and books of account of the board.

Annual report and financial statement

26. As soon as may be after the thirtieth day of June in each year the board shall prepare—

- I. a report of its proceedings during the financial year then next preceding, including the contracts entered into, the works carried on or completed, and the transactions generally of the board during the year; and
- II. a financial statement showing the moneys received and disbursed by the board during the year, setting forth the matters in respect of which they have been received and the purposes for which they have been disbursed, and showing in regard to each of such matters and purposes the balance of receipts and disbursements brought forward from the previous year and the balances at the end of the financial year dealt with in the statement.

The report and statement shall be laid before both Houses of Parliament in the month of October in each year, if Parliament is then sitting, and if not, then within fourteen days after the commencement of the next session thereafter.

DIVISION II—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE SOUTH-EAST BY THE BOARD

Control of drains and drainage works by board

27. (1) Subject to subsection (4) of this section, all drains and drainage works—

- (a) that are delineated on the plan lodged with the Minister under subsection (2) of this section;

or

- (b) that are constructed by or on behalf of the board in the South-East after the commencement of the *South-Eastern Drainage Act Amendment Act, 1980*,

are vested in, and are under the care, control and management of, the board.

(2) The board shall, upon the commencement of the *South-Eastern Drainage Act Amendment Act, 1980*, lodge with the Minister a plan of the South-East delineating all the drains and drainage works constructed by or on behalf of the Crown or the board, and all drains declared under section 7 of this Act, that were in existence immediately prior to the commencement of that Act.

(3) For the purposes of correcting any error in the plan lodged under subsection (2) of this section, the board may, with the consent of the Minister, alter the plan, whether by the addition, deletion or variation of any drain or drainage works.

(4) The Minister may direct that any water conservation works constructed by or on behalf of the board shall be vested in, and under the care, control and management of, some other body than the board.

DIVISION III—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE EIGHT MILE CREEK AREA BY THE MINISTER

Control of drains and drainage works by the Minister

27a. (1) Subject to subsection (2), all drains and drainage works—

- (a) that are delineated on the plan prepared under subsection (1a);

or

- (b) that are constructed by or on behalf of the Minister in the Eight Mile Creek area after the commencement of the *South-Eastern Drainage Act Amendment Act (No. 2), 1980*,

are vested in, and are under the care, control and management of, the Minister.

(1a) The Minister shall, upon the commencement of the *South-Eastern Drainage Act Amendment Act (No. 2), 1980*, cause a plan of the Eight Mile Creek area to be prepared delineating all the drains and drainage works constructed by or on behalf of the Crown that were in existence immediately prior to the commencement of that Act.

(1b) The Minister may, for the purposes of correcting any error in the plan prepared under subsection (1a), alter the plan, whether by the addition, deletion or variation of any drain or drainage works.

(2) The Minister may direct that any water conservation works in the Eight Mile Creek area are vested in, and are under the care, control and management of, some other body.

DIVISION IV—CONTROL OF DRAINS AND DRAINAGE WORKS IN THE
MILLICENT AREA BY THE COUNCIL

Control of drains and drainage works by the Council

27b. (1) All drains and drainage works—

(a) that are delineated on the plan lodged with the Minister under subsection (2) of this section;

or

(b) that are constructed by or on behalf of the Council in its area after the commencement of the *South-Eastern Drainage Act Amendment Act, 1980*,

are vested in, and are under the care, control and management of, the Council.

(2) The Council shall, upon the commencement of the *South-Eastern Drainage Act Amendment Act, 1980*, lodge with the Minister a plan of its area delineating all the drains and drainage works constructed by or on behalf of the Council and in existence immediately prior to the commencement of that Act.

(3) For the purposes of correcting any error in the plan lodged under subsection (2) of this section, the Council may, with the consent of the Minister, alter the plan, whether by the addition, deletion or variation of any drain or drainage works.

PART III

CONSTRUCTION AND MAINTENANCE OF DRAINS AND DRAINAGE WORKS

DIVISION I—CONSTRUCTION OF DRAINS OR DRAINAGE WORKS ON
PETITION OF LANDHOLDERS

Petitions for drains and drainage works

28. (1) A petition may be presented to the authority for an area by one or more of the landholders of the area, requesting that a drain, or drainage works, specified in the petition be constructed by the authority.

(2) Where the Minister receives a petition for a drain or drainage works in the Eight Mile Creek area, he shall forward the petition to the board, together with any recommendations he may wish to make with respect to the petition.

(3) Where the Council receives a petition for a drain or drainage works in its area, the Council shall forward the petition to the board, together with any recommendations it may wish to make with respect to the petition.

Petition must be made in the approved manner and form

29. A petition must be made in the manner and form approved by the Minister.

Preliminary enquiry

30. The board shall forthwith upon receiving a petition—

- (a) ascertain what lands will, in its opinion, be benefited by the drain or drainage works:
- (b) prepare an estimate of the cost of constructing the drain or drainage works.

Board's approval

31. (1) If the board after due enquiry considers that it is necessary or desirable that the drain or drainage works be constructed, it may by notice in the *Gazette* declare—

- (a) that it approves of the construction of the drain or drainage works;
- (b) what lands in its opinion will be benefited by the drain or drainage works; and
- (c) the estimated cost of constructing the drain or drainage works.

(2) The board's declaration shall be conclusive as to what lands will be benefited by the drain or drainage works.

Board to decide whether petitioners are majority of landholders and hold three-fourths in value of benefited lands

32. (1) Unless within one month of the publication of the board's declaration in the *Gazette*, a substantial number of the petitioners, by notice in writing received by the board, withdraw the petition, the board shall decide whether or not the petitioners are a majority of the landholders of the lands which will be benefited by the drain or drainage works, and whether or not the value of the lands of which they are the landholders is at least three-fourths of the value of all the lands which will be benefited by the drain or drainage works. A "substantial number" means a number considered by the board to be substantial.

(2) In this section, "value", in relation to land, means the value of the land as determined in the prescribed manner.

(3) Upon deciding as in subsection (1) of this section mentioned, the board shall publish its decision by notice in the *Gazette*, and such notice shall be conclusive as to the accuracy of such decision.

Construction of drains and drainage works

33. (1) Where the board is satisfied that the petitioners are a majority of the landholders whose lands will be benefited by the drain or drainage works and that the value of the lands of that majority is at least three-fourths of the value of the lands that will be so benefited, the authority for the area in which the drain or drainage works will be constructed shall, upon publication of the notice referred to in subsection (3) of section 32 of this Act, proceed to have plans and specifications drawn up for the proposed drain or drainage works and to call for tenders.

(2) The authority shall forward to a petitioner, nominated by a majority of the petitioners for the purpose, a copy of the plans, specifications and tenders for the proposed drain or drainage works.

(3) If, within twenty-one days of the nominated petitioner receiving the tenders for the proposed drain or drainage works, a majority of the petitioners notifies the authority in writing that the drain or drainage works is not to be proceeded with, the authority shall not proceed with the construction of the drain or drainage works.

(4) Where, pursuant to subsection (3) of this section, a drain or drainage works is not proceeded with, the costs of or incidental to the preparation of plans and specifications and the calling of tenders, or such proportion of those costs as the Minister may determine, may be recovered by the authority from the petitioners (who shall be jointly and severally liable) as a debt in any court of competent jurisdiction.

(5) If the authority is not notified in accordance with subsection (3) of this section that the drain or drainage works is not to be proceeded with, the authority shall proceed to construct the drain or drainage works out of the moneys provided by Parliament for the construction of drains or drainage works in the area.

Recovery of costs of drain or drainage works from landholders

34. The cost of constructing the drain or drainage works shall, unless the Minister directs otherwise, be deemed to be an advance by the authority to all the landholders of the lands which will be benefited by the drain or drainage works, and such advance, or such proportion thereof as the Minister may determine, shall be repaid to the authority by such landholders, with interest thereon at the current rate per centum per annum, in the proportions to be ascertained as hereinafter mentioned.

Final report

35. When the construction of the drain or drainage works is completed the authority shall, by notice in the *Gazette*, notify the date of completion of the drain or drainage works and the cost of construction thereof, and such notice shall be conclusive as to such matters, notwithstanding that the cost as so notified differs from any previous estimate of the cost.

Preliminary apportionment of the cost

36. (1) Subject to any direction of the Minister, the authority shall, within three years after the date of completion of the drain or drainage works, make a preliminary apportionment of the cost of the drain or drainage works, or the proportion of that cost that the Minister determines must be repaid, between the landholders benefited by the drain or drainage works.

(2) The authority shall, by notice published in the *Gazette*, set forth the preliminary apportionment. Such notice must be in the form approved by the Minister. The *Gazette* containing such notice shall be conclusive as to such apportionment.

(3) Any apportionment made under this section after the expiration of three years from the date of completion of the drain or drainage works shall be as valid for all purposes as if it had been made before the expiration of such term: Provided that the authority may, if in its opinion the delay in making the apportionment has resulted in hardship to any landholder thereby affected, postpone for such period as the authority thinks fit the date from which such landholder is to commence payment of the amount of the proportion of the cost of construction apportioned to him.

Objection to the apportionment

37. (1) Any landholder may, within two months after the publication of the notice of preliminary apportionment, object to the proportion of the cost apportioned to him by such apportionment.

(2) An objection must be made in the form approved by the Minister, and must be served upon the authority.

(3) Any objection received by the Minister or the Council under subsection (2) of this section must be forwarded to the board for determination by the board.

Determination of objection

38. (1) Every objection shall be considered by the board at a time fixed by notice given to the objector, not being less than seven days after the giving of such notice, and at a place fixed by such notice: Provided that the consideration of any objection may be adjourned from time to time and from place to place as the board deems convenient.

(2) The objector may attend any meeting of the board held to consider his objection, and may adduce before the board any relevant evidence.

(3) The board may make any inquiries it deems necessary, and inform itself in such manner as it deems fit for the purpose of determining the objection, and shall not be bound to observe any rules of evidence or procedure.

(4) The board shall consider every objection and determine the same in such manner as it deems fair and equitable, and may confirm or increase or decrease the amount of the cost apportioned to the objector, and may, if the amount is confirmed or increased, order the objector to pay the costs occasioned by the objection.

(5) The determination of the board shall be final, and not subject to any appeal or to be questioned in any way.

Adjustment of apportionment

39. If upon the consideration of any objection to the preliminary apportionment the amount apportioned to any landholder is altered the authority may adjust the amounts apportioned to other landholders as may be found necessary.

Final apportionment

40. The authority shall forthwith, after the time for objecting has expired, if no objection is pending, or if any objection is pending, then forthwith after the determination of all objections, make its final apportionment of the cost of the construction of the drain or drainage works, and fix the yearly instalments to be paid by each landholder to the authority, and the date upon which the first instalment is to be paid.

Notice of final apportionment

41. (1) The authority shall publish in the *Gazette* a notice setting forth the final apportionment, the yearly instalments, and the date upon which the first instalments are to be paid.

(2) Such notice must be in the form approved by the Minister, and shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

Repayment of cost of construction

42. (1) The amount of the proportion of the cost of construction apportioned to any landholder shall be a debt due from such landholder to the authority, and shall be a first charge upon the land of such landholder which is benefited by the drain or drainage works, and shall be paid by such landholder to the authority, with interest on the balance thereof owing for the time being at the current rate in force at the time when the notice of the final apportionment is published in the *Gazette*, in forty-two equal yearly instalments. The amount of the annual instalment for every two hundred dollars payable by a landholder in respect of the proportion of the cost of construction apportioned to him shall be fixed by notice published by the authority in the *Gazette* at the time of publication of the notice of the final apportionment.

(2) The first of such instalments shall become due on the first day after the expiration of five years from the date of the completion of the drain or drainage works, and one of such instalments shall fall due on the same day in each year thereafter until the whole debt has been paid: Provided that any landholder may at any time pay the balance of the amount charged on his land, with any interest then due, whereupon his liability and the charge upon his land shall cease.

(3) Interest shall be paid on the amount of any instalment which remains unpaid for more than six months after the same falls due. The interest shall be chargeable from the day upon which the instalment falls due and shall be at the current rate in force at the time when the instalment falls due.

(4) In computing the amounts of the yearly instalments the interest for the first five years shall be added to the amount of the proportion of the cost of construction, but no interest shall be charged upon the interest for such five years.

(5) The charge upon the land may be enforced by the authority as if it were a mortgagee under *The Real Property Act, 1886*.

Lessees to pay proportion of cost to landholder

43. (1) Where any land charged as in the next preceding section mentioned is subject to a lease to any person other than the landholder of such land, the lessee under that lease shall pay to the landholder during the currency of that lease such proportion of each annual instalment payable by the landholder as may be agreed between them.

(2) In default of agreement, the amount of the proportion to be paid by the lessee shall be settled by the authority on the application of either the landholder or the lessee.

(3) Such application shall be made by notice given to the other party and the authority.

(4) The application shall be heard by the authority at a time fixed by notice given to both parties, not being less than seven days after notice is so given, and at a place fixed by such notice: Provided that the hearing may be adjourned from time to time and from place to place as the authority deems convenient.

(5) The authority may inform itself in such manner as it deems fit for determining the proportion to be paid by the lessee, and shall not be bound to observe any rules of evidence or procedure.

(6) The authority shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding one hundred dollars.

(7) The determination of the authority shall be final, and not subject to any appeal or to be questioned in any way.

Provision for apportionment of cost of drain or drainage works where land charged is subdivided

44. (1) Where after notice of the final apportionment any land included in such notice belonging to one and the same landholder is subdivided (whether as the result of a sale or otherwise), and becomes vested in two or more different landholders, the authority shall further apportion between such landholders the amount by such notice apportioned to such landholder in respect of such land, and fix the yearly instalments to be paid by each of such landholders to the authority and the date upon which the first instalment is to be paid: Provided that in making such apportionment the authority shall take into account the total amount of the instalments (if any) already paid by such landholder.

(2) The authority shall publish in the *Gazette* a notice setting forth such apportionment, the yearly instalments, and the date upon which the first instalments are to be paid, and such notice shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

(3) The provisions of this Division relating to payment by landholders of the amount of cost apportioned to them, to the payment of part of that cost by lessees to landholders, and to the recovery of such cost, shall apply, *mutatis mutandis*, to and in respect of any amount apportioned under the authority of this section in the same manner as to an amount apportioned to a landholder in the first instance under this Division.

(4) This section shall apply in the case of any one or more further subdivisions beyond that referred to in subsection (1) hereof.

Recovery by distress or by action for debt

45. In addition and without prejudice to any other remedy, the authority may recover any instalment due to it from any landholder, which remains unpaid for three months after the same has become due, by distress and sale of any goods and chattels on any land upon which the debt due from the landholder to the authority is charged, or such instalment may be recovered in any court of competent jurisdiction by action in the name of the authority from the landholder of such land for the time being, and no statute of limitations shall affect any such action.

The authority may remit moneys due to it

46. (1) The authority may remit the whole or any part of any moneys due to the authority by any person under this Division.

(2) Neither the board nor the Council shall exercise its powers under subsection (1) of this section without the consent of the Minister.

DIVISION II—MAINTENANCE OF DRAINS AND DRAINAGE WORKS

Duty of authority to maintain drains and drainage works in its area

47. (1) The authority shall maintain the drains and drainage works vested in it in a proper state of efficiency and safety at all times, and shall, when necessary, cleanse, repair, renovate or replace any part of those drains or drainage works for that purpose.

(2) The cost of cleansing, repairing, renovating or replacing the drains and drainage works, and of maintaining them in a proper state of efficiency and safety and all other expenses connected with the care, control, and management of the drains and drainage works shall be defrayed out of moneys provided by Parliament to the authority for the purpose.

(3) The Council may discharge township stormwater into any of the drains vested in it under this Act, and the cost of any alterations or repairs to the drains or drainage works resulting from discharging those stormwaters shall be defrayed by the Council out of the funds of the Council that do not consist of moneys provided to the Council under subsection (2) of this section.

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DIVISION IV—GENERAL PROVISIONS RELATING TO THE CONSTRUCTION AND MAINTENANCE OF DRAINS AND DRAINAGE WORKS

Property in water in drains

68. All water flowing into, or being in any drains or drainage works, shall be and continue the absolute property of the Crown.

General power of an authority to construct drains and drainage works

68a. (1) The authority may construct such drains and drainage works in its area as it considers necessary or desirable for the purposes of providing an efficient drainage system for the rural lands in that area.

(2) The Council shall not exercise its powers under subsection (1) of this section without the consent of the Minister.

(3) The board, or the Minister, may in its, or his, area construct such water conservation works that may, in its, or his, opinion, be necessary or desirable for the purposes of reducing the wastage of waters drained from any lands pursuant to this Act.

General powers of the authority

69. (1) In addition to the powers conferred on the authority by any other provision of this Act the authority, its officers, and servants, and any other person authorized by the authority for the purpose, may, for the purpose of constructing any drains or drainage works authorized to be constructed or of carrying out of its duties or functions under this Act with respect to any drains or drainage works—

- (a) enter upon any land in the area of the authority;
- (ab) survey and take levels on any such land;
- (ac) examine and take samples of the soil or subsoil of any such land;
- (ad) do anything necessary for ascertaining whether any such land requires, or is suitable for, drainage and for determining the position of any proposed drains or drainage works;
- (b) extend, lengthen, widen, strengthen, deepen, alter, divert, scour, or cleanse any drains or drainage works;
- (c) alter or remove any drains or drainage works;
- (d) dam, bar, and stop up any weir or dam, any river, pool, stream, or watercourse;

- (e) make any embankment against any lake, river, stream, or watercourse, and place on any land stones, piles, earth, soil, or other materials for the purposes of the drains or drainage works, or for the more effectual protection or defence of any land, or for the better conveying the waters from any land into the sea, or into any lake, stream, or watercourse, or gap, or outlet;
- (f) erect any drainage work on any lake, stream, or watercourse for the purpose of keeping back a sufficiency of water for the use of cattle or sheep, or for the irrigation or warping of lands;
- (g) stop up or divert any road, or remove any bridge, and make any new road or bridge; and
- (h) do all such things and execute all such works as may be necessary or convenient for the purposes of this Act.

(2) The powers conferred on the authority by this section are in addition to and not in substitution for any powers which the authority might exercise under the *Land Acquisition Act, 1969*.

Compensation for damage

70. (1) The authority shall make compensation to all persons for any damage occasioned to them by the exercise of any of the powers aforesaid.

(2) If the amount of the compensation is not agreed between the owner or occupier and the authority, it shall be determined in the same manner as disputed claims for compensation for land acquired are determined under the *Land Acquisition Act, 1969*.

Power to acquire land and sell lands not required

71. (1) The authority may acquire land by agreement or by compulsory process for the purpose of carrying into execution any of its powers, duties, or functions under this Act.

(2) The authority may for such consideration as it may think proper, sell and convey any of the land which it has acquired under the provisions of this Act, and which is no longer required by the authority.

(3) Neither the board nor the Council shall exercise its powers under this section without the consent of the Minister.

Power to make roads

72. The authority may make such roads over any of the lands authorized to be taken as it considers necessary for carrying into effect the purposes of this Act, and for communicating with and maintaining the drains and drainage works, and may repair and fence such roads, and use the same exclusively for the said purposes, or permit any person to make use of the same, upon such terms and conditions as the authority thinks proper.

Power to divert water from drains or drainage works

73. (1) The owner or occupier of land that is adjacent to any drain or drainage work vested in an authority shall not divert onto his land any water from that drain or drainage work unless he holds a licence to do so from the authority.

(2) The holder of a licence under this section shall not contravene, or fail to comply with, any condition of the licence.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars, and a further penalty not exceeding one hundred dollars for every day during which the offence is continued.

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Obstruction, etc., of drains

76. (1) A person shall not, without the approval of the authority—

- (a) place an obstruction in a drain or drainage works;
- (b) plant any seed, runner, cutting or plant in a drain or drainage works;
- (c) place the carcass, or part of the carcass, of an animal in a drain or drainage works;
- (d) place rubbish in a drain or drainage works;
- (e) discharge into a drain or drainage works solid, liquid or gaseous material that is likely—
 - (i) to damage or be detrimental to the drain or drainage works;or
 - (ii) to pollute water in the drain or drainage works;or
- (f) permit another person to contravene this subsection.

Penalty: One thousand dollars.

(2) The authority may, by notice in writing given to a person who has contravened subsection (1), require him to remedy the contravention and if he fails to comply with the notice he shall be guilty of an offence and liable to a penalty of one hundred dollars for every day for which the failure continues.

(3) A person who contravenes subsection (1) is liable to the authority for its costs (if any) in remedying the contravention and those costs may be recovered as a debt or summarily.

(4) The authority may—

- (a) attach such conditions as it thinks fit to its approval of an action or permission referred to in subsection (1);

and

- (b) revoke such an approval at any time.

(5) The board or the Council shall not approve an action or permission referred to in subsection (1) without the consent of the Minister.

(6) In this section—

"the authority" means the authority in which the relevant drain or drainage works are vested:

"drain" means a drain vested in an authority:

"drainage works" means drainage works vested in an authority.

Penalty for interference with regulators, etc.

77. (1) No person shall destroy, damage, or interfere with any channel, apparatus, or other thing appertaining to or forming part of the drains or drainage works vested in an authority.

(2) No person shall open, shut, raise, lower, or tamper with any regulator, sluice, gate or weir appertaining to any of the drains or drainage works unless the written consent of the authority in whom the drain or drainage works is vested is first obtained.

(2a) The authority may grant its consent under subsection (2) of this section subject to such conditions as it thinks fit.

(2b) A person to whom consent is granted under subsection (2) of this section shall not contravene or fail to comply with a condition of that consent.

(3) Any person contravening this section shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.

Penalty for removing timber or materials

78. Any person who cuts down or removes any timber, or excavates or removes gravel, sand, earth, or any other material in, adjacent to, or forming part of any drain, drainage work, or drainage reserve adjoining any drain or drainage work shall, unless the written consent of the authority in whom the drain or drainage work is vested is first obtained, be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.

Penalty for cutting drain through road, etc.

79. Any person who, without the licence in writing of the authority, or contrary to any direction of the authority—

(a) opens or cuts through any bank, roadway, or drainage reserve adjacent to any drain or drainage work vested in the authority, which bank, roadway, or drainage reserve is made out of materials excavated from any such drain; or

(b) makes any drain or opening through any roadway or drainage reserve, or portion of any roadway or drainage reserve, at the side of or adjacent to any drain or drainage work vested in the authority,

shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.

Penalty on building unauthorized bridges, etc.

80. (1) No person shall erect or make any bridge, culvert, or other work over, across, or along any drain or drainage work or any road or drainage reserve adjoining any drain or drainage work—

- (a) without the licence in writing of the authority in whom the drain or drainage work is vested; or
- (b) otherwise than in accordance with the terms and conditions of such a licence.

Any person guilty of any contravention of this subsection shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.

(2) If any person who has obtained a licence from the authority, as mentioned in subsection (1) of this section, does not complete the bridge, culvert, or other work pursuant to and within the time limited by the licence, or fails to keep such bridge, culvert, or other work in good and substantial repair, the authority may complete or repair the same and recover the cost of so doing from such person upon complaint in a summary way: Provided that no complaint shall be made unless the authority has at least fourteen days previously given notice to such person stating the amount of the said cost and demanding payment thereof.

Licences to construct private drains and private drainage works

81. (1) No person shall construct any private drain or any private drainage work—

- (i) from which water discharges or is likely to discharge, whether directly or indirectly, into any drain or drainage work; or
- (ii) which prevents or impedes or is likely to prevent or impede the flow of water into any drain or drainage work;
- (iii) which alters or is likely to alter the course taken by water which flows or, but for the alteration of its course, would flow into any drain or drainage work—
 - (a) unless he has first obtained a licence from the authority; or
 - (b) otherwise than in accordance with the terms and conditions of such a licence.

Any person contravening this subsection shall be guilty of an offence, and shall, in addition to any other liability which he may incur, be liable to a penalty not exceeding one thousand dollars.

If any drain or drainage work is constructed in contravention of this section, the authority may, by notice in writing, require the person who constructed the drain or drainage work or any other person who has succeeded him in title to any land for the benefit of which the drain or drainage work was constructed to take such steps as the authority thinks proper and as are specified in the notice, to render the drain or drainage work ineffective. If any person fails to comply with any requirement of the notice the authority may itself do the work specified in the notice, and by action in any court of competent jurisdiction, recover from the said person the cost of so doing.

(2) Any licence granted under this section may authorize the person so licensed to construct, maintain, and use a private drain or private drainage works through or on any land; and any question of compensation between such person and the owners or occupiers of any land for any damage arising from or in connection with the construction, maintenance, and use of such drain or works shall be determined by the authority, whose decision shall be final and not subject to appeal or to be questioned in any way.

(3) If any person who has obtained a licence from the authority to construct any private drain or drainage works does not complete such drain or works in the manner and within the time (if any) mentioned in the licence, the authority may complete the same and recover the cost of so doing from such person on complaint in a summary way.

(4) The person constructing any private drain or drainage works, whether under this Act or the Acts repealed by this Act, and the successors in title of such person shall keep such drain and drainage works clean and in good repair, and if he or they fail to do so the authority may clean or repair the same and recover the cost of so doing from such person or his successors in title on complaint in a summary way.

(5) Any licence granted to any person under any Act repealed by this Act authorizing such person to construct any drain or drainage works to connect with any main or district drain shall remain in force as if granted under this section.

(6) If any water discharges directly or indirectly into any drain or drainage work vested in an authority under this Act from any private drain or drainage work constructed after the commencement of this Act, and for which a licence has not been obtained under this section, the person who constructed that private drain or drainage work or his successor in title shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars for every day on which water discharges as aforesaid.

Private drains and drainage works constructed without a licence

81a. (1) Where any private drain or private drainage work has, either before or after the enactment of this section, been constructed (whether lawfully or unlawfully) without a licence, and the authority is satisfied that—

- (a) water discharges or is likely to discharge from that private drain or private drainage work, directly or indirectly into any drain or drainage work vested in the authority; or
- (b) the private drain or private drainage work prevents or impedes, or is likely to prevent or impede, the flow of water into any drain or drainage work vested in the authority; or
- (c) the private drain or private drainage work alters or is likely to alter, the course taken by water which flows or, but for the alteration, would flow into any drain or drainage work vested in the authority,

the authority may, by notice in writing to the owner or occupier of the land on which the private drain or private drainage work is situated, require him to take such steps as are specified in the notice either for the purpose of rendering the private drain or drainage work ineffective, or of preventing or reducing damage likely to occur as a result of the construction of the private drain or private drainage work.

(2) If any person fails to comply with any requirement of a notice given to him under this section the authority may do the work specified in the notice and, by action in any court of competent jurisdiction, recover from that person the cost of so doing.

Power to remove or alter any insufficient bridges, etc.

82. If the authority is of opinion that, for the purpose of carrying out any drainage works it is necessary to rebuild or alter any existing bridge, culvert, or archway over any drain subject to its control, it shall be lawful for the authority to take down, remove, or alter such bridge, culvert, or archway: Provided that the authority shall (when in its opinion necessary) construct a temporary bridge, culvert, or archway in the place of that so to be taken down, removed, or altered, and support and maintain the same until the completion of the works necessary for the restoration to the public use of such bridge, culvert, or archway.

Power of authority to construct bridges

83. Where any land is intersected by any drain vested in an authority, or separated from a road by any such drain, the authority may, in its discretion, and out of moneys voted by Parliament for the purpose, construct a bridge over that drain for the accommodation of the occupier of the land.

Animals trespassing on drains, etc.

84. The authority by any of its officers or servants, or by any other person, may impound any horses, bullocks, cows, sheep, goats, pigs, and any other cattle, great or small, trespassing in or upon any drains or drainage works vested in the authority, or on any roadway or drainage reserve adjacent thereto, and such animals, or any of them, shall not be released until full payment of the poundage fees and damages fixed by the impounding law for the time being in existence, and by any scale made pursuant to this Act.

Authority may recover special damages

85. In addition to all fines, penalties, fees, and damages by this Act imposed or authorized upon the breach of any of the provisions thereof, the authority may sue for and recover any special or other damages for the breach of any of such provisions, or for any injury done to any drain or drainage works under its control.

Penalty for hindering work

86. Any person who wilfully hinders or prevents any other person from carrying out or performing any work which he is authorized or directed by an authority to do, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding five hundred dollars.

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Maintenance of private drains and drainage works

88. (1) Where any private drain or private drainage work is connected with or discharges directly or indirectly into any of the drains or drainage works vested in an authority, and the whole or any part of such private drain or private drainage work passes through or forms the boundary or part of the boundary of any land, the occupier of such land shall be liable to maintain such private drain or private drainage work in a state of proper efficiency and repair and shall keep such drain or drainage work clear of all debris and other impediments.

(2) Any person failing to comply with this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) Where any occupier of land incurs expense in complying with this section, he may recover a proportion (not exceeding one-half) of the expense so incurred in connection with such drain or drainage work from the occupier of any other land benefited by the said drain or drainage work. The proportion to be so recovered shall be in direct ratio to the benefit derived from the said drain or drainage work by the said other land as compared with the benefit derived by the first mentioned land from the said drain or drainage work. If the occupiers are unable to agree upon the proportion to be recovered from the occupier of the said other land, the decision of the authority in whose area the private drain or private drainage work is situated as to the value of the benefits derived by the respective lands shall be final and conclusive for all purposes.

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Consents or licences may be conditional

89. (1) Any consent or licence granted or issued by an authority under this Division may be subject to such conditions as the authority thinks fit.

(2) A person to whom any consent or licence is granted or issued under this Division shall not contravene, or fail to comply with, any condition of the consent or licence.

(3) A person who contravenes subsection (2) of this section is guilty of an offence and, where no penalty is provided for such a contravention by any other provision of this Division, is liable to a penalty not exceeding one thousand dollars.

Fixing of fees for consents and licenses under this Division

90. (1) An authority may fix fees for the granting of any consent or issuing of any licence under this Division.

(2) The board and the Council shall, in fixing any fee, comply with any direction the Minister may give in relation to the fixing of fees for the purposes of this Division.

(3) Any amount due to an authority by way of fees under this Division may be recovered by the authority as a debt in any court of competent jurisdiction.

Costs to be defrayed out of moneys provided by Parliament

91. The costs incurred by an authority in exercising or discharging its powers, functions, duties or responsibilities under this Division shall be defrayed out of the moneys provided by Parliament to the authority for the purpose.

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PART V

MISCELLANEOUS PROVISIONS

Summary procedure for offences

104. All offences against this Act shall be disposed of summarily.

Current rate of interest

105. The Treasurer may, by notice in the *Gazette*, certify the rate of interest payable on loans raised by or on behalf of the Government at the time of the notice, and may by subsequent notice alter the rate so certified. When such a notice has been published the rate of interest therein mentioned shall be deemed to be the current rate of interest for the purposes of this Act until altered by a subsequent notice.

Council subject to control of Minister

105a. The Council shall be subject to the general control and direction of the Minister in the exercise or discharge of its powers, functions, duties and responsibilities under this Act.

Council must establish a fund for the purposes of this Act

105b. (1) The Council shall establish and maintain a fund into which all moneys received by the Council under this Act must be paid.

(2) The moneys in the fund may be expended by the Council only for the purposes of exercising or discharging its powers, functions, duties or responsibilities under this Act.

Duty of Council in relation to estimates, reports, accounts, etc.

105c. (1) The Council shall comply with any request made by the Minister to the Council in relation to furnishing him with estimates, reports, accounts and any other information, relating to the exercise or discharge by the Council of its powers, functions, duties and responsibilities under this Act.

(2) The Council shall cause proper accounts to be kept of the income and expenditure of the Council under this Act.

(3) The Council shall cause the accounts kept under this section to be audited at least once in each year.

(4) The Minister may request the Auditor-General to audit at any time the accounts kept by the Council under this section and, for that purpose, the Auditor-General shall have and may exercise, in relation to those accounts and to the officers and employees of the Council, the same powers as are vested in him by virtue of the *Audit Act, 1921-1975*, in relation to public accounts and accounting officers.

Plans of each area must be prepared and maintained

105d. (1) Each authority shall prepare and maintain a plan of its area, delineating all the drains and drainage works vested in the authority, and all the lands that are, in the opinion of the Minister, benefited by those drains and drainage works.

(2) The plans prepared and maintained under this section shall be made available for inspection by members of the public at such places and in such manner as the Minister may direct.

Delegation by the Minister and the Council to the board

105e. (1) The Minister may, by instrument in writing, delegate to the board any of his powers, functions, duties or responsibilities under this Act in relation to the Eight Mile Creek area.

(2) The Council may, by instrument in writing and with the consent of the Minister, delegate to the board any of its powers, functions, duties or responsibilities under this Act.

(3) A delegation under this section is revocable at will and does not affect the power of the Minister, or the Council, to act in any matter.

Authority may cause certain work to be carried out and the cost recovered from the landholder

105f. (1) Where a person refuses or fails to comply with a provision of this Act, or a requirement made of him in accordance with this Act, in relation to an area, the authority for that area may, by notice in writing, require the person to do any act or thing specified in the notice within such period of time, being not less than fourteen days, as is specified in the notice, for the purposes of compliance with that provision or requirement.

(2) If a person to whom a notice under subsection (1) has been given refuses or fails to comply with the notice, the authority may cause the requirements of the notice to be carried out by any person authorized by the authority for the purpose.

(3) The person so authorized may enter upon any land and do all such things on that land as may be reasonably necessary for the purposes of carrying out the requirements of the notice.

(4) The costs incurred by the authority in exercising its powers under subsection (2) may be recovered by the authority from the person to whom the notice was given, as a debt due in a court of competent jurisdiction, or in a summary manner.

Regulations

106. (1) The Governor may make all such regulations as are necessary or convenient for carrying this Act into operation and without limiting the generality of this provision for all or any of the following purposes:—

- (a) to ensure the proper maintenance and protection of the drains and drainage works vested in an authority:
- (b) to ensure the proper maintenance, cleanliness and freedom from obstruction of private drains or drainage works that in any way affect the operation, either directly or indirectly, of the drains or drainage works vested in an authority:
- (ba) to ensure that the lands benefited by the drains or drainage works vested in an authority are adequately fenced, properly maintained and kept clean and free of any matter or thing likely to cause the obstruction of any of those drains or drainage works:
- (c) for regulating the manner, times and quantities in which water may be diverted from any drain or drainage work vested in an authority, and the person by whom and purposes for which water may be so diverted and the fees payable therefor:

- (d) for fixing the poundage fees payable by the owners of animals trespassing on the drains or drainage works vested in an authority or any land owned by or under the control of the authority, and for providing for the recovery of those fees:
- (da) to provide for the granting by the Minister, conditionally or unconditionally, of exemptions from any provision of this Act:
- (db) to establish a board to advise the Minister on the administration of this Act in relation to the Eight Mile Creek area, to provide for the election or appointment of members of the advisory board, and to prescribe the powers, functions, duties and procedure of the advisory board:
- (e) prescribing forms to be used for the purposes of this Act.

(2) Any regulation made under this section may fix penalties not exceeding five hundred dollars for breach of the same or any other regulation.

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Liability of authority and Crown

108. (1) No action or other proceedings shall be brought against an authority, the Minister, the Crown, or any employee of an authority, the Minister, or the Crown for any injury happening by reason of the overflowing of any drain or drainage work vested in an authority—

- (a) unless the injury arises through neglect to keep the drain or drainage work in repair; and
- (b) unless the occupier or owner of the land or property injured had given written notice to the authority warning it of the probability of the injury and the authority neglected within a reasonable time thereafter to make any reasonable repairs to the drain or drainage work.

(2) No action or other proceedings shall be brought against an authority, the Minister, the Crown, or any employee of an authority, the Minister, or the Crown on the ground that the flow of water from, to, or through any land has been increased or diminished or altered in any way whatever by reason of any drain or drainage work vested in an authority.

Service of notices

109. The following provisions shall apply as to every notice required by this Act to be given to any person:—

- (1) Such notice shall be addressed to such person:
- (2) Such notice shall be deemed duly served or given if the same has been—
 - (a) given to such person personally;
 - (b) left at his usual or last known place of abode;
 - (c) sent by post to such place of abode;

or

(d) sent by post to an address nominated by that person:

(3) Any notice required to be given to the authority shall be sent by post or delivered to the authority at its office:

(4) Where there is more than one landholder or occupier of the same land, and this Act requires notice to be given to the landholder or occupier of such land, service upon any one of them in manner aforesaid shall be deemed service upon all.

SCHEDULES

THE FIRST SCHEDULE

South-Eastern Drainage Act, 1931

Portion of the Hundred of McNamara south of the northern boundaries of sections 9, 1, 2 and 34 of the said hundred.

Portion of the Hundred of Hynam west and south-west of the following boundary:—

Commencing at the intersection of the eastern boundary of the Border Town and Port MacDonnell Main Road with the southern boundary of section 200, Hundred of Hynam; thence generally south-south-easterly along the eastern and north-eastern boundary of the said Main Road to the southern boundary of the said Hundred.

Portion of the Hundred of Joanna west and south-west of the following boundary:—

Commencing at the intersection of the north-eastern boundary of the Border Town and Port MacDonnell Main Road and the western boundary of the Hundred of Joanna; thence generally south-south-easterly along the said boundary of said Main Road to the southern boundary of the said Hundred.

Portion of the Hundred of Rivoli Bay 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 Section 17N aforesaid and sections 17S, 18, 19, 20, 21, 41 and portion of Section 117 to a point being its intersection with a line 50 links east of and parallel to the western boundaries of the said section 117 and Sections 112 and 109; generally southerly along the latter line and production to the north-western edge of Hatherleigh Drain; south-westerly along the said edge of drain for 800 links; thence north-westerly at right angles to the south-eastern boundary of section 124; north-easterly along portion of the latter boundary; generally northerly along the eastern boundaries of section 124 aforesaid and sections 123 and 118 to the northern corner of the latter section; south-westerly along the north-western boundaries of the said section 118 and sections 125 and 126 to Mount Pisgah Trigonometrical Station (at the north-western corner of the latter section) and production by a straight line to the northern boundary of the three chain road south of Lake Frome; generally westerly along the latter boundary and its continuation as the north-western boundary of a one chain road to the north-eastern boundary of section 4001; north-westerly along portion of the latter boundary; generally westerly and north-westerly along the southern and south-western boundary of Drainage Land intersecting the said section 4001 and production to the sea-coast; thence generally north-easterly, north-westerly, southerly and north-westerly following the said sea-coast to the point of commencement.

Portion of the Hundred of Mount Muirhead 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 the south-western boundary of section 209; generally north-westerly along the latter production and boundary and the south-western boundaries of sections 211, 212, Stone Reserve, and sections 218 and 292 to the northern boundary of the Hundred; thence easterly along portion of the latter boundary to the point of commencement.

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APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 10 of The Public General Acts of South Australia 1837-1975 at page 323.

Long title:	amended by 42, 1980, s. 3
Section 2:	substituted by 42, 1980, s. 4
Section 3:	amended by 42, 1980, s. 5
Section 5:	repealed by 42, 1980, s. 6
Section 6(1):	definition of "area" inserted by 42, 1980, s. 7(a); amended by 112, 1980, s. 3(a) definition of "authority" inserted by 42, 1980, s. 7(a) definition of "the Council" inserted by 42, 1980, s. 7(b) definition of "drains" repealed and definition of "drain" inserted in its place by 42, 1980, s. 7(c) definition of "drainage reserve" inserted by 42, 1980, s. 7(c) definition of "drainage works" substituted by 42, 1980, s. 7(c) definition of "the Eight Mile Creek area" inserted by 42, 1980, s. 7(c); amended by 112, 1980, s. 3(b), (c) definition of "elected member" amended by 42, 1980, s. 7(d) definition of "petition drains" repealed by 42, 1980, s. 7(e) definition of "private drain" substituted by 42, 1980, s. 7(f) definition of "private drainage work" repealed and definition of "private drainage works" inserted in its place by 42, 1980, s. 7(f) definition of "proportionate rebate" repealed by 42, 1980, s. 7(g) definition of "scheme drains" repealed by 42, 1980, s. 7(g) definition of "town drain" inserted by 42, 1980, s. 7(h) definition of "water conservation works" inserted by 42, 1980, s. 7(h)
Section 6(2):	amended by 42, 1980, s. 7(i)
Section 7:	substituted by 42, 1980, s. 8
Section 7a:	repealed by 42, 1980, s. 9
Heading preceding section 8:	inserted by 42, 1980, s. 10
Section 8(2):	amended by 42, 1980, s. 11
Section 10(1):	amended by 42, 1980, s. 12(a)
Section 10(4):	substituted by 8, 1983, s. 3
Section 10(4a):	inserted by 8, 1983, s. 3
Section 10(5):	amended by 42, 1980, s. 12(b)
Section 10(6):	amended by 42, 1980, s. 12(c)
Section 10a(1):	amended by 42, 1977, s. 11(2)(a); substituted by 42, 1980, s. 13(a)
Section 10a(2):	amended by 8, 1983, s. 4(a)
Section 10a(3):	amended by 42, 1980, s. 13(b)
Section 10a(5):	amended by 42, 1980, s. 13(c)
Section 10a(6):	amended by 42, 1980, s. 13(d)
Section 10a(8):	amended by 42, 1980, s. 13(e); substituted by 8, 1983, s. 4(b)
Section 10(9):	amended by 8, 1983, s. 4(c), (d)
Section 10a(10):	amended by 42, 1980, s. 13(f)
Section 10b:	amended by 42, 1980, s. 14
Section 12(1aa):	inserted by 8, 1983, s. 5
Section 12(1a):	inserted by 42, 1980, s. 15(a)
Section 12(2):	amended by 42, 1980, s. 15(b)
Section 12(3):	inserted by 42, 1980, s. 15(c)
Section 13:	amended by 42, 1980, s. 16
Section 15:	amended by 42, 1980, s. 17
Section 17:	repealed by 42, 1980, s. 18
Sections 19 - 22:	repealed by 42, 1980, s. 19
Section 23(1):	amended by 42, 1980, s. 20
Heading preceding section 27:	inserted by 42, 1980, s. 21

Section 27:	substituted by 42, 1980, s. 21
	Division III of Part II comprising s. 27a and heading inserted by 42, 1980, s. 21
Section 27a(1):	substituted by 112, 1980, s. 4
Section 27a(1a) and (1b):	inserted by 112, 1980, s. 4
	Division IV of Part II comprising s. 27b and heading inserted by 42, 1980, s. 21
Headings preceding section 28:	amended by 42, 1980, ss. 22, 23
Sections 28 and 29:	substituted by 42, 1980, s. 24
Section 30:	amended by 42, 1980, s. 25
Section 31(1):	amended by 42, 1980, s. 26(a), (b)
Section 31(2):	amended by 42, 1980, s. 26(c)
Section 32(1):	amended by 42, 1980, s. 27(a)
Section 32(2):	substituted by 42, 1980, s. 27(b)
Section 33:	substituted by 42, 1980, s. 28
Section 34:	amended by 42, 1980, s. 29
Section 35:	amended by 42, 1980, s. 30
Section 36(1):	substituted by 42, 1980, s. 31(a)
Section 36(2):	amended by 42, 1980, s. 31(b), (c)
Section 36(3):	amended by 42, 1980, s. 31(d), (e)
Section 37:	amended and redesignated as s. 37(1) by 42, 1980, s. 32
Section 37(2) and (3):	inserted by 42, 1980, s. 32(b)
Section 39:	amended by 42, 1980, s. 33
Section 40:	amended by 42, 1980, s. 34
Section 41(1):	amended by 42, 1980, s. 35(a)
Section 41(2):	amended by 42, 1980, s. 35(b)
Section 42(1):	amended by 42, 1980, s. 36(a), (b)
Section 42(2):	amended by 42, 1980, s. 36(c)
Section 42(5):	amended by 42, 1980, s. 36(d)
Section 43(2):	amended by 42, 1980, s. 37(a)
Section 43(3):	amended by 42, 1980, s. 37(b)
Section 43(4):	amended by 42, 1980, s. 37(c)
Section 43(5):	amended by 42, 1980, s. 37(d)
Section 43(6):	amended by 42, 1980, s. 37(e), (f)
Section 43(7):	amended by 42, 1980, s. 37(g)
Section 44(1):	amended by 42, 1980, s. 38(a)
Section 44(2):	amended by 42, 1980, s. 38(b)
Section 45:	amended by 42, 1980, s. 39
Section 46:	substituted by 42, 1980, s. 40
Heading preceding section 47:	amended by 42, 1980, s. 41
Section 47(1):	substituted by 42, 1980, s. 42(a)
Section 47(2):	amended by 42, 1980, s. 42(b)-(d)
Section 47(3):	substituted by 42, 1980, s. 42(e)
Section 48:	repealed by 42, 1980, s. 43
Section 49:	amended by 42, 1977, s. 11(2)(b), (c); repealed by 42, 1980, s. 43
Sections 50 - 59:	repealed by 42, 1980, s. 43
Section 62:	repealed by 42, 1980, s. 43
	Division III of Part III comprising ss. 63 - 67 and heading repealed by 42, 1980, s. 44
Heading preceding section 68:	amended by 42, 1980, s. 45
Section 68a:	inserted by 42, 1980, s. 46
Section 69(1):	amended by 42, 1980, s. 47(a)-(c)
Section 69(2):	amended by 42, 1980, s. 47(d)
Section 70(1):	amended by 42, 1980, s. 48(a)
Section 70(2):	amended by 42, 1980, s. 48(b)
Section 71(1):	amended by 42, 1980, s. 49(a)

Section 71(2):	amended by 42, 1980, s. 49(b), (c)
Section 71(3):	inserted by 42, 1980, s. 49(d)
Section 72:	amended by 42, 1980, s. 50
Section 73:	substituted by 42, 1980, s. 51
Sections 74 and 75:	repealed by 42, 1980, s. 51
Section 76:	amended by 42, 1980, s. 52; substituted by 38, 1985, s. 2
Section 77(1):	amended by 42, 1980, s. 53(a)
Section 77(2):	amended by 42, 1980, s. 53(b), (c)
Section 77(2a) and (2b):	inserted by 42, 1980, s. 53(d)
Section 77(3):	amended by 42, 1980, s. 53(e)
Section 78:	amended by 42, 1980, s. 54
Section 79:	amended by 42, 1980, s. 55
Section 80(1):	amended by 42, 1980, s. 56(a)-(d)
Section 80(2):	amended by 42, 1980, s. 56(e)
Section 81(1):	amended by 42, 1980, s. 57(a)-(c)
Section 81(2):	amended by 42, 1980, s. 57(d)
Section 81(3):	amended by 42, 1980, s. 57(e)
Section 81(4):	amended by 42, 1980, s. 57(f)
Section 81(6):	amended by 42, 1980, s. 57(g), (h)
Section 81a(1):	amended by 42, 1980, s. 58(a), (b)
Section 81a(2):	amended by 42, 1980, s. 58(c), (d)
Section 82:	amended by 42, 1980, s. 59
Section 83:	amended by 42, 1980, s. 60
Section 84:	amended by 42, 1980, s. 61
Section 85:	amended by 42, 1980, s. 62
Section 86:	amended by 42, 1980, s. 63
Section 87:	amended by 42, 1980, s. 64; repealed by 112, 1980, s. 5
Section 88(1):	amended by 42, 1980, s. 65(a)-(c)
Section 88(2):	amended by 42, 1980, s. 65(d)
Section 88(3):	amended by 42, 1980, s. 65(e), (f)
Sections 89 - 91:	inserted by 42, 1980, s. 66
Sections 103a - 103c and heading:	repealed by 42, 1980, s. 67
Sections 105a - 105e:	inserted by 42, 1980, s. 68
Section 105f:	inserted by 112, 1980, s. 6
Section 106(1):	amended by 42, 1980, s. 69(a)-(g)
Section 106(2):	amended by 42, 1980, s. 69(h)
Section 107:	repealed by 42, 1980, s. 70
Section 108(1):	amended by 42, 1980, s. 71(a)-(c)
Section 108(2):	amended by 42, 1980, s. 71(d), (e)
Section 109(3):	amended by 42, 1980, s. 72
Second - Fifth schedules:	repealed by 42, 1980, s. 73
Sixth schedule:	repealed by 112, 1980, s. 7