

South Australia

# Upper South East Dryland Salinity and Flood Management Act 2002

An Act to provide for a scheme to protect and improve the environment and agricultural production in the Upper South East through the proper conservation and management of water and the initiation or implementation by the Government of the State of works and environmental management programs and other initiatives; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Upper South East Dryland Salinity and Flood Management Act 2002*.

### **3—Interpretation**

(1) In this Act, unless the contrary intention appears—

*associate*—see subsection (2);

*authorised officer*—see section 9;

*construct*, in relation to any works, includes—

- (a) to establish, build or erect the works;
- (b) to repair the works;
- (c) to make alterations to the works;
- (d) to enlarge or extend the works;

*council* means a council under the *Local Government Act 1999*;

*Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

*Crown land* means—

- (a) land that has not been granted in fee simple, but not including land held under a Crown lease under the *Crown Lands Act 1929* or the *Pastoral Land Management and Conservation Act 1989*; or
- (b) land vested in fee simple in—
  - (i) a Minister; or
  - (ii) another agency or instrumentality of the Crown; or
  - (iii) the Crown;

**drainage reserve** means any Crown land that is dedicated, reserved or set aside for drainage purposes;

**environment** means land, air, water, vegetation, organisms and ecosystems;

**infrastructure** includes—

- (a) artificial lakes;
- (b) dams or reservoirs;
- (c) embankments, walls, channels, drains, drainage holes or other forms of works or earthworks;
- (d) any item or thing used in connection with—
  - (i) testing, monitoring, protecting, enhancing or re-establishing any key environmental feature; or
  - (ii) any other environmental program or initiative;
- (e) bridges and culverts;
- (f) buildings and structures;
- (g) other items brought within the ambit of this definition by the regulations;

**key environmental feature** means any of the following aspects of the environment located or occurring within the Upper South East that are identified as key environmental features by the Minister by notice in the Gazette:

- (a) wetlands;
- (b) water resources;
- (c) native vegetation;
- (d) natural habitats;
- (e) environmental biodiversity;
- (f) other aspects of the environment that the Project is intended to protect or enhance;

**lake** means a natural lake, pond, lagoon, wetland or spring (whether modified or not) and includes—

- (a) part of a lake; and
- (b) a body of water declared by regulation to be a lake;

**land** means, according to the context—

- (a) land as a physical entity, including land covered by water;
- (b) any legal estate or interest in land, or right in respect of, land;

**licence** means a licence under Division 5 of Part 3;

**management agreement** means an agreement under Division 3 of Part 3;

**native vegetation** has the same meaning as in the *Native Vegetation Act 1991*;

**owner** of land means—

- (a) if the land is unalienated from the Crown—the Crown; or

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- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
  - (c) if the land is held from the Crown by lease or licence—the lessee or licensee, or a person who has entered into an agreement to acquire the interest of the lessee or licensee; or
  - (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase; or
  - (e) a person who has arrogated to himself or herself (lawfully or unlawfully) the rights of an owner of the land;

**place** includes any land, premises or structure;

**Project** means the scheme established under section 4;

**Project Area** means those areas of land described or delineated under section 4(3);

**Project Undertaking** means—

- (a) any Project works; or
- (b) any drainage reserve that is directly or indirectly related to the implementation of the Project; or
- (c) any other facilities or programs established or undertaken, or proposed to be established or undertaken, for the purposes of the Project; or
- (d) the performance of any work or activity undertaken, or proposed to be undertaken, for the purposes of the Project,

and includes all land within a project works corridor, or otherwise held, used or occupied by the Minister for the purposes of the Project;

**Project works** means—

- (a) any works constructed, maintained or held by the Minister for the purposes of the Project; and
- (b) any other works brought within the ambit of this definition by the regulations;

**project works corridor** means—

- (a) any land described in Part A of Schedule 1; or
- (b) any land on either side of any line described in Part B of Schedule 1 to a distance of 100 metres on each side of the line;

**Project works scheme** means any scheme for the undertaking of Project works by the Minister prescribed under section 4(2)(c);

**spouse** includes putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

**surface water** means—

- (a) water flowing over land—
  - (i) after having fallen as rain or hail or having precipitated in any other manner; or
  - (ii) after rising or being brought to the surface from underground; or

- (b) water of the kind referred to in paragraph (a) that has been collected in a dam or reservoir; or
- (c) water of any other kind brought within the ambit of this definition by the regulations;

**underground water** means—

- (a) water occurring naturally below ground level; or
- (b) water pumped, diverted or released into an underground location;

**Upper South East** means that part of the State identified by the regulations as constituting the Upper South East for the purposes of this Act;

**Upper South East Project** means the scheme described in the Assessment Report, published by the Department of Housing and Urban Development in January 1995, relating to the *Upper South East Dryland Salinity and Flood Management Plan* developed by the Natural Resources Council on behalf of the South Australian Government, as modified from time to time;

**vehicle** includes any—

- (a) boat;
- (b) hovercraft or aircraft;
- (c) plant or equipment that is designed to be moved or operated by a driver;

**watercourse** means a river, creek or other natural watercourse (whether modified or not) and includes—

- (a) a dam or reservoir that collects water flowing in a watercourse; and
- (b) a lake through which water flows; and
- (c) a channel or drain (but not a channel or drain declared by regulations to be excluded from the ambit of this definition) into which the water of a watercourse has been diverted; and
- (d) part of a watercourse;

**water resource** means a watercourse or lake, surface water or underground water;

**wetland** means a swamp or marsh and includes any land that is permanently or seasonally inundated with water;

**works** include any form of infrastructure.

- (2) For the purposes of this Act, a person is an **associate** of another if—
  - (a) they are partners; or
  - (b) one is a spouse, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or

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- (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) a relationship of a prescribed kind exists between them; or
  - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (3) For the purposes of subsection (2), a **beneficiary** of a trust includes an object of a discretionary trust.
  - (4) A reference in another Part of this Act to the **Project Area** is to be taken to include a reference to any part of the Project Area (unless the contrary intention appears).
  - (5) For the purposes of section 13, paragraph (e) of the definition of **owner** is excluded.
  - (6) For the purposes of the determination of the value of land under section 13(2)(b) or (3)(c), the value will be determined taking into account what price would be agreed between a willing but not anxious vendor and a prudent purchaser.

#### 4—Identification of project and project area

- (1) The Governor may, by regulation, establish a scheme to further the objects of this Act.
- (2) The Governor may, in establishing the scheme—
  - (a) adopt the Upper South East Project with such modifications as the Governor thinks fit; and
  - (b) incorporate other elements; and
  - (c) set out a scheme for the undertaking of Project works by the Minister; and
  - (d) make any provision to further the objects of this Act,and may then vary the scheme from time to time as the Governor thinks fit.
- (3) The regulations must, for the purposes of the scheme and the operation of this Act, describe or delineate areas of land that are to constitute the **Project Area**.

#### 5—Interaction with other Acts

This Act is in addition to and does not limit or derogate from the provisions of any other Act.

## Part 2—Administration

### Division 1—The Minister

#### 6—Functions of the Minister

The Minister is to undertake the implementation of the Project and, in doing so, is to adopt the following functions:

- (a) to provide an effective and efficient system for managing the surface water within the Project Area by conserving, draining, altering the flow or utilising the water in any manner;
- (b) to carry out works for the purpose of altering the level of the water table of any land in the Project Area;
- (c) to undertake initiatives to reduce, and to protect against increases to, salinity levels affecting any land in the Project Area;
- (d) to undertake other projects to enhance—
  - (i) water conservation, drainage or management within the Upper South East; and
  - (ii) the productive capacity of land within the Upper South East;
- (e) to institute or supervise environmental testing, monitoring or evaluation programs within the Upper South East;
- (f) to undertake initiatives to protect, enhance or re-establish any key environmental feature in connection with the implementation of the Project;
- (g) to encourage and assist in the development of environmental management practices and improvement programs in connection with the implementation of the Project;
- (h) to undertake the enforcement of this Act, especially in relation to any action that is inconsistent with the effective and efficient implementation of the Project;
- (i) to perform other functions assigned to the Minister under this Act.

#### 7—General powers of the Minister

- (1) The Minister has the power to do anything necessary, expedient or incidental to—
  - (a) implementing the Project or performing the functions of the Minister under this Act; or
  - (b) administering this Act; or
  - (c) furthering the objects of this Act.
- (2) Without limiting the operation of subsection (1), the Minister may—
  - (a) enter into any form of contract, agreement or arrangement;
  - (b) acquire, 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 Minister thinks fit;
  - (d) carry out projects;
  - (e) act in conjunction with any other person or authority.
- (3) In subsection (2)—
- project* includes any form of work, scheme, undertaking or other activity.

## **8—Power of delegation**

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
  - (a) must be made by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Minister to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 2—Authorised officers**

### **9—Appointment of authorised officers**

- (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (2) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment.
- (3) An authorised officer appointed under subsection (1) must be issued with an identity card—
  - (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer for the purposes of this Act; and
  - (c) stating any limitations on the authorised officer's authority.
- (4) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card.

### **10—Powers of authorised officers**

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act, at any reasonable time—
  - (a) enter any land;

- (b) inspect any place, including the stratum lying below the surface of any land, and water on or under any land, and inspect any works, plant or equipment;
  - (c) give directions with respect to the stopping or movement of a vehicle, plant, equipment or other thing;
  - (d) take measurements, including measurements of the flow of any water on or under any land or relating to any change in any aspect of the environment;
  - (e) place any markers, pegs or other items or equipment in order to assist in environmental testing or monitoring;
  - (f) take samples of any substance or thing from any place (including under any land) or vehicle, plant, equipment or other thing;
  - (g) with the authority of a warrant issued by a magistrate, require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
  - (h) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
  - (i) take photographs, films, audio, video or other recordings;
  - (j) examine or test any vehicle, plant, equipment, fitting or other thing (including any water), or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;
  - (k) seize and retain any vehicle, plant, equipment or other thing that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;
  - (l) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
  - (m) require a person to answer questions;
  - (n) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act;
  - (o) exercise other prescribed powers.
- (2) Without limiting subsection (1), an authorised officer may—
- (a) exercise a power under this section for the purposes of furthering or enhancing the Project Undertaking (including on any land that is not vested in the Minister);
  - (b) exercise a power under this section for the purpose of determining whether a management agreement is being, or has been, complied with.
- (3) An authorised officer must not exercise a power conferred by subsection (1)(a) or (2) in respect of residential premises.
- (4) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.

- (5) An authorised officer may only use force to enter any place on the authority of a warrant issued by a magistrate.
- (6) A magistrate must not issue a warrant under subsection (5) unless satisfied that there are reasonable grounds to believe—
  - (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
  - (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
  - (c) that the circumstances require immediate action.
- (7) An application for the issue of a warrant under this section—
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with any procedures prescribed by the regulations.

### **11—Hindering etc persons engaged in the administration of this Act**

- (1) A person who—
  - (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
  - (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
  - (c) produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or
  - (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
  - (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
  - (f) falsely represents, by words or conduct, that he or she is an authorised officer,is guilty of an offence.

Maximum penalty: \$10 000.

- (2) Despite subsection (1), a person is not obliged to answer a question if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
- (3) A person (other than an authorised officer) who, without the permission of the Minister, removes, destroys or interferes with any marker, peg or other item or equipment placed under section 10(1)(e) is guilty of an offence.

Maximum penalty: \$10 000.

## Part 3—Implementation of Project

### Division 1—Vesting of land

#### 12—Vesting of land for drainage purposes

- (1) Subject to this section, all land within a project works corridor is, by force of this section, vested in the Minister in an estate in fee simple freed and discharged of all relevant interests.
- (2) The Minister may, at any time after the commencement of this section, enter into possession of any land within a project works corridor.
- (3) Without limiting the operation of subsection (1), any relevant interest is modified to the extent necessary to take into account the vesting of land in the Minister under subsection (1).
- (4) Any person who has an interest in land that is affected by the vesting of the land in the Minister under this section does not on the commencement of this section have a right to claim compensation from the Minister or the Crown in respect of the vesting but may have an entitlement to compensation under section 13.
- (5) Despite a preceding subsection, the Governor may, by proclamation, transfer any land within a project works corridor vested in the Minister under this section—
  - (a) to the former owner of the land; or
  - (b) to the owner of adjoining land (if not a person within the ambit of paragraph (a)); or
  - (c) to a public authority,if satisfied that the land will not be required for the purposes of the Project.
- (6) The Governor may, by proclamation, make any provision necessary or convenient on account of the transfer of land under subsection (5), including as to—
  - (a) the terms and conditions on which the transfer is made; and
  - (b) the reinstatement of any relevant interest that has been affected by the operation of subsections (1) and (3).
- (7) Any provision of a proclamation under subsection (5) or (6) will have effect according to its terms and despite any other Act or law.
- (8) The Minister—
  - (a) should, pending the performance of work on land within a project works corridor, give consideration to the extent to which the land can be made available to the former owner of the land, or any other person who has been an occupier of the land, without adversely affecting the implementation of the Project or the furtherance of the objects of this Act, and may, as the Minister thinks fit, enter into an agreement with a former owner or other person so as to allow some or all of the land to be used for a purpose approved by the Minister; and

- (b) should, in the implementation of the Project by the performance of work on land within a project works corridor, give consideration to the extent to which any land can be kept for the use of the former owner of the land, or any other person who has been an occupier of the land, without affecting the implementation of the Project or the furtherance of the objects of this Act, and may, as the Minister thinks fit, vary any agreement entered into under paragraph (a), or enter into some other agreement, so as to allow some or all of the land to be used for a purpose approved by the Minister; and
  - (c) should, at the completion of all work on land within a project works corridor as part of the implementation of the Project, give consideration to the extent to which the land can be returned to the former owner of the land without adversely affecting the furtherance of the objects of this Act, including on the basis that the former owner agree to enter into a management agreement, or to grant an easement, (or both) providing for such matters as the Minister thinks fit.
- (9) The Registrar-General—
  - (a) must, on application by the Minister, issue to the Minister, as the proprietor of an estate in fee simple, a certificate of title, or certificates of title, with respect to all or any of the land within any project works corridor (in accordance with the terms of the application, on the basis of the information set out in Schedule 1, and in accordance with the terms of this section); and
  - (b) may take any other action in relation to any instrument, or against any land, that may be considered by the Registrar-General to be appropriate on account of the operation of this section, including by noting that any relevant land is affected by the operation of this section.
- (10) For the avoidance of doubt—
  - (a) the *Land Acquisition Act 1969* does not apply to or in relation to the vesting of land under this section; and
  - (b) the *Crown Lands Act 1929* does not apply in relation to land vested in the Minister under this section; and
  - (c) any land vested in the Minister under this section that had not been brought under the provisions of the *Real Property Act 1886* before the commencement of this section is brought under the provisions of that Act by force of this section; and
  - (d) the rights and interests of the Minister under this section are not dependent on the making of an application under subsection (9)(a) or the taking of any action under subsection (9)(b); and
  - (e) the Minister has a discretion to determine the form of the application that the Minister uses for the purposes of subsection (9)(a).
- (11) No stamp duty is payable with respect to a vesting of land under subsection (1) or (5).

(12) In this section—

**former owner** of land means the person who was the owner of the land immediately before the land was vested in the Minister under this section and, to the extent to which that person remained as the owner of adjoining land immediately after that vesting, includes any successor in title;

**public authority** means—

- (a) an agency or instrumentality of the Crown (whether in right of the State or of the Commonwealth); or
- (b) a council; or
- (c) any other body brought within the ambit of this definition by the regulations;

**relevant interest**, in relation to land, means any estate, interest, trust, restriction, dedication, reservation, obligation, mortgage, easement, encumbrance, caveat, contract, licence, charge or rate of any kind whatsoever that relates to the land, but does not include—

- (a) an easement in favour of a public authority, other than an easement excluded from the ambit of this paragraph by the regulations; or
- (b) any other interest excluded from the ambit of this definition by the regulations.

### 13—Entitlement to compensation

- (1) Subject to this section, a person who, immediately before the commencement of this Act, was the owner of a parcel of land that included land within a project works corridor is entitled to claim compensation from the Minister if the person has suffered loss in the situation covered by subsection (2) or the situation covered by subsection (3).
- (2) This subsection covers the situation where—
  - (a) the person is, at the relevant date, still the owner of land that, on the vesting of land in the Minister under section 12, was the remainder of the land in the relevant parcel (the *adjoining land*); and
  - (b) despite any work undertaken by the Minister within the project works corridor between the commencement of this section and the relevant date, the value of any land within that project works corridor returned to the person, or offered to the person, by the Minister after the commencement of this section, together with the value of the adjoining land, as at the relevant date, is less than the value of the land within the original parcel, as at the time immediately before the commencement of this Act.
- (3) This subsection covers the situation where—
  - (a) the person is, at the relevant date, no longer the owner of land that, on the vesting of land in the Minister under section 12, was the remainder of land in the relevant parcel (the *adjoining land*); and
  - (b) the person divested his or her interest in the adjoining land through a sale to a genuine purchaser at arms length for a value at least equal to fair market value; and

- (c) the value of the land sold by the person, as at the time of sale, was less than the value of the land within the original parcel, as at the time immediately before the commencement of this Act.
- (4) For the purposes of subsections (1), (2) and (3), if the owner of the adjoining land transfers his or her interest in the land to an associate between the commencement of this section and the relevant date, the associate will be taken to have been the owner of the relevant land immediately before the commencement of this Act (and, subject to this section, to be able to make a claim for compensation in substitution for the original owner).
- (5) For the purposes of subsections (1), (2) and (3), the Valuer-General will determine—
- (a) what will be taken to constitute a particular parcel of land; and
  - (b) any value of land, whether as at the time immediately before the commencement of this Act, as at a time of sale, or as at the relevant date in relation to the land.
- (6) For the purposes of this section, there must be excluded from any determination of the value of land any component that is represented by, or attributable to, any value, or any costs, associated with any works constructed on the land before the commencement of this section.
- (7) In determining the value of any adjoining land, the Valuer-General must make an allowance (in favour of the Minister) for any diminution in the value of the land in consequence of any development or activity undertaken on the land after the commencement of this section (and may make an allowance for any other factor considered reasonable by the Valuer-General).
- (8) In determining any entitlement to compensation under this section, an allowance must also be made for any changes in the general market for land in the Upper South East.
- (9) The allowance under subsection (8) will be made in accordance with any method or criteria specified by the Governor by proclamation made on the recommendation of the Valuer-General.
- (10) The Governor may, by subsequent proclamation made on the recommendation of the Valuer-General, vary or revoke a proclamation under subsection (9).
- (11) Subject to this section, the amount of compensation payable under this section to a particular person will be an amount that represents the loss described in subsection (2)(b) or subsection (3)(c) (as the case may be), after making any allowance required by this section, together with interest at the prescribed rate calculated between the commencement of this section and the relevant date.
- (12) Compensation under this section is to be determined by agreement or in default of agreement by the relevant court.
- (13) The relevant court may, in determining a claim under subsection (12), adopt any determination of the Valuer-General in relation to a relevant matter (or may, if it thinks fit, adopt any alternative determination of value).
- (13a) A claim for compensation under this section must be made—
- (a) in the case of a claim that relates to a situation where the relevant date occurs between 18 June 2006 and 17 December 2006 (both dates inclusive)—by 18 June 2007;

- (b) in the case of a claim that relates to a situation where the relevant date occurs on or after 18 December 2006—within the period of 6 months immediately after the relevant date.
- (13b) The Minister must, with respect to any parcel of land under this section, issue a land transfer finalisation declaration within a reasonable period after completing all relevant transfers (or, if relevant, after deciding not to return any land).
- (13c) If a person has a claim for compensation under subsection (3) (as the former owner of land), the Minister must, on issuing a land transfer finalisation declaration in relation to the relevant land, take reasonable steps to give a copy of the notice to that person.
- (14) In this section—

*land transfer finalisation date* means—

- (a) unless a different date is fixed under paragraph (b)—19 December 2010; or
- (b) a date that is not later than 19 December 2011 fixed by the Governor by proclamation made for the purposes of this definition;

*land transfer finalisation declaration* means a statement in writing issued by the Minister in relation to a particular parcel of land in which the Minister declares, in connection with land within a project works corridor that has comprised part of that parcel, that no further land is to be transferred back to the owner in relation to that parcel (or, if relevant, that all relevant land has been returned or that no land at all is to be returned);

*relevant court* means—

- (a) where the amount of the compensation claimed is \$150 000 or less—the Environment, Resources and Development Court;
- (b) in any other case—the Land and Valuation Court;

*relevant date* means—

- (a) in relation to a parcel of land where the Minister has issued a land transfer finalisation declaration—the date on which the land transfer finalisation declaration is issued to the owner of the parcel of land; or
- (b) if paragraph (a) does not apply in relation to a parcel of land before the land transfer finalisation date—the land transfer finalisation date in relation to that parcel of land.

## 14—Compulsory acquisition of land

- (1) The Minister may acquire land under this section where the Minister considers that the acquisition of the land is reasonably necessary—
  - (a) for the implementation of the Project; or
  - (b) to further or enhance the Project Undertaking.
- (2) The *Land Acquisition Act 1969* applies in relation to the acquisition of land under this section.
- (3) Nothing in this section affects—
  - (a) the ability of the Minister to acquire land by agreement; or



- (b) the operation of section 12, or of any other section of this Act.

## **Division 2—Minister may undertake works**

### **15—Minister may undertake works**

- (1) For the purposes of—

- (a) the implementation of the Project; or
- (b) furthering or enhancing the Project Undertaking; or
- (c) furthering the objects of this Act,

the Minister may construct, maintain or remove such works, and undertake any other work, as the Minister thinks fit.

- (2) Without limiting the operation of subsection (1), the works may include—

- (a) infrastructure or other devices constructed, established or used for the purposes of conserving, draining or altering the flow of surface water from or onto land or utilising any such water;
- (b) works constructed for the purpose of altering water table levels;
- (c) works constructed for the purpose of—
  - (i) protecting, enhancing or re-establishing any key environmental feature; or
  - (ii) any other environmental program or initiative;
- (d) works constituting access roads, bridges or culverts;
- (e) works constituting storage or workshop facilities, camps or service facilities.

- (3) Without limiting the operation of subsection (1) or (2), the work undertaken by the Minister may include—

- (a) widening, deepening, cleaning out, shoring up or raising or lowering the banks of any watercourse, lake or other water resource, or raising or lowering the level of any water or water table through any process; and
- (b) activities associated with environmental testing, monitoring or evaluation.

## **Division 3—Management agreements**

### **16—Management agreements**

- (1) The Minister may enter into an agreement (a *management agreement*) relating to—

- (a) the conservation or management of water, or the management of any water table; or
- (b) the preservation, conservation, management or re-establishment of any key environmental feature; or
- (c) any other matter associated with the implementation of the Project or furthering or enhancing the Project Undertaking,

with the owner of land within the Project Area.

- (2) Without limiting the operation of subsection (1), a management agreement may, with respect to the land to which it relates—
- (a) require specified work or work of a specified kind be carried out on the land, or authorise the performance of work on the land;
  - (b) restrict the nature of any work that may be carried out on the land;
  - (c) prohibit or restrict specified activities or activities of a specified kind on the land;
  - (d) provide for the management of any matter in accordance with a particular management plan (which may then be varied from time to time by agreement between the Minister and the owner of the land);
  - (e) provide for the adoption or implementation of environment protection measures or environment improvement programs;
  - (f) provide for the testing or monitoring of any key environmental feature, or of any matter that may affect a key environmental feature;
  - (g) provide for a reduction in, or exemption from, a levy under Part 4;
  - (h) provide for remission of rates or taxes in respect of the land;
  - (i) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the agreement.
- (3) A term of management agreement providing for the remission of rates or taxes has effect despite any law to the contrary.
- (4) The Registrar-General must, on an application of a party to a management agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- (5) A management agreement has no force or effect under this Act until a note is made under subsection (4).
- (6) Where a note has been entered under subsection (4), the agreement is binding on each owner of the land from time to time whether or not the owner was the person with whom the agreement was made and despite the provisions of the *Real Property Act 1886*, and on any occupier of the land.
- (7) The Registrar-General must, if satisfied on the application of the Minister or the owner of the land that an agreement in relation to which a note has been made under this section has been rescinded or amended, enter a note of the rescission or amendment against the instrument of title, or against the land (but must otherwise ensure that the note is not removed once made).
- (8) Except to the extent that the agreement provides for the remission of rates or taxes, a management agreement does not affect the obligations of an owner or occupier of land under any other Act.

## **Division 4—Entry onto land**

### **17—Entry onto land**

- (1) For the purposes of—
  - (a) undertaking any work or other activity in connection with the implementation of the Project or furthering or enhancing the Project Undertaking; or
  - (b) gaining access to a project works corridor; or
  - (c) undertaking any activity in connection with a management agreement; or
  - (d) undertaking any testing or monitoring; or
  - (e) performing any other function of the Minister under this Act,  
a person authorised by the Minister may—
    - (f) enter and pass over any land that is not vested in the Minister;
    - (g) bring onto any land that is not vested in the Minister any vehicles, plant or equipment;
    - (h) temporarily occupy any land that is not vested in the Minister.
- (2) A person must, in exercising a power under subsection (1), insofar as is reasonably practicable—
  - (a) minimise disturbance to any land; and
  - (b) ensure that any land disturbed by the exercise of the power is restored to its previous condition after the completion of any work or activity (unless the Minister and the owner of the relevant land come to some other arrangement).
- (3) No compensation is payable with respect to the exercise of a power under this section.
- (4) A person must not, without reasonable excuse, hinder or obstruct a person exercising a power under this section.  
Maximum penalty: \$20 000.
- (5) This section does not limit or derogate from the powers of the Minister or an authorised officer under another provision of this Act.

## **Division 5—Private works**

### **18—Requirement for a licence**

- (1) A person must not—
  - (a) construct any works within the Project Area; or
  - (b) remove any works within the Project Area; or
  - (c) close-off, obstruct or in any other way interfere with any works or water resource within the Project Area; or
  - (d) undertake any other activity within the Project Area,  
if to do so would, or would be likely to—
    - (e) interfere with—

- (i) any Project works; or
- (ii) any proposal under the Project works scheme; or
- (f) stop, increase, decrease or otherwise affect—
  - (i) the movement of water on, or to or from, any land; or
  - (ii) the flow of water into or from any Project works; or
  - (iii) the flow of water in or into or from a water resource or part of a water resource; or
- (g) alter any water table or salinity level in the Project Area; or
- (h) without limiting paragraph (e), (f) or (g), adversely affect to any significant degree any key environmental feature; or
- (i) without limiting a preceding paragraph, adversely affect to any significant degree any part of the Project Undertaking,

unless the person is acting in pursuance of a licence granted under this Division by the Minister.

Maximum penalty:

If the offender is a body corporate—\$200 000.

If the offender is a natural person—\$100 000 or imprisonment for 2 years, or both.

- (2) Subsection (1) extends to any works in existence before the commencement of this Act, but not so as to give rise to any criminal liability under this Act with respect to an act that occurred before that commencement.
- (3) Subsection (1) does not give rise to any criminal liability under this Act with respect to an act undertaken under a condition of a licence issued under section 43 of the *South Eastern Water Conservation and Drainage Act 1992* (including a licence granted before the commencement of this Act).
- (4) Subsection (1) does not apply—
  - (a) to any person or authority exempted by the regulations; or
  - (b) in any prescribed circumstances.

## 19—Procedure

- (1) An application for a licence must be made to the Minister in a manner and form determined by the Minister.
- (2) The Minister may require an applicant for a licence—
  - (a) to furnish further information specified by the Minister; or
  - (b) to verify, by statutory declaration, information furnished for the purposes of the application.
- (3) The prescribed fee is payable to the Minister in respect of an application for a licence.

## 20—Conditions

- (1) A licence will be subject to such conditions as the Minister thinks fit to impose in relation to the licence.

- (2) Without limiting the operation of subsection (1), a condition may include—
- (a) a requirement that any works meet any standard or specification set by the Minister;
  - (b) a requirement that any works connect to, or operate in conjunction with, any Project works;
  - (c) a requirement that the person to whom the licence is granted, or who otherwise has the benefit of the licence—
    - (i) undertake any steps necessary to off-set or protect against any impact or effect that may result from any activity undertaken in pursuance of the licence;
    - (ii) undertake any testing or monitoring of any key environmental feature, or of any matter that may affect a key environmental feature;
    - (iii) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister, or participate in an environment improvement program specified by the Minister to the satisfaction of the Minister;
    - (iv) participate in any other scheme specified by the Minister to support the implementation of the Project, or to protect, restore or otherwise benefit the environment of the Upper South East, to the satisfaction of the Minister;
    - (v) enter into a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister, to ensure that money is available to cover the cost of a breach of any condition of the licence.
- (3) The Minister may, if the Minister considers it appropriate to do so, by notice in writing to the holder of the licence, vary a condition of a licence.
- (4) The holder of a licence may, on application made to the Minister in writing, request the variation of a condition to which the licence is subject, and the Minister may, as the Minister thinks fit—
- (a) grant the variation; or
  - (b) refuse to grant the variation.
- (5) Conditions of a licence may be varied by the addition, substitution or deletion of one or more conditions.
- (6) A person must not contravene or fail to comply with a condition of a licence.
- Maximum penalty:
- If the offender is a body corporate—\$200 000.
  - If the offender is a natural person—\$100 000 or imprisonment for 2 years, or both

## **Division 6—Related matters**

### **21—Fencing of works and drainage reserves**

- (1) The Minister may—
  - (a) cause any Project works, or any drainage reserve within the Project Area, (whether or not within a project works corridor) 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, or any livestock from injury;
  - (b) 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 Minister, the Minister may require the owner or owners of land adjoining any such fence to pay to the Minister one half of the reasonable costs of any work associated with erecting or maintaining a fence referred to in subsection (1), in accordance with any scheme established by the Minister.
- (3) An amount due and payable to the Minister under this section—
  - (a) is recoverable by the Minister as a debt due to the Crown; 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 an instrumentality of the Crown).
- (4) The *Fences Act 1975* does not apply in relation to fencing work carried out by the Minister in connection with the implementation of the Project within the Project Area.

### **22—Property in water**

- (1) All rights in any water in any Project works are the exclusive property of the Crown.
- (2) The Minister may, on such conditions as the Minister thinks fit, grant to a person the right to take or use the water in any Project works.

## **Part 4—Contribution to funding of Project**

### **23—Contribution to funding of project**

- (1) The Minister may levy contributions from all persons who own or occupy more than 10 hectares of private land in the Project Area.
- (2) However—
  - (a) a contribution will not be levied in respect of land to the extent that a management agreement that relates to the land provides for a reduction in, or exemption from, the levy; and
  - (b) the Minister may, by notice in the Gazette, provide for a reduction in, or exemption from, the levy.
- (3) An exemption under subsection (2)(b) may operate in respect of a period commencing before publication of the notice.

- (4) The money received by the Minister under this section will, after deduction of administrative costs relating to the collection of contributions, be applied towards the cost to the Minister of—
- (a) any work associated with the implementation of the Project; or
  - (b) any activity associated with furthering or enhancing the Project Undertaking.
- (5) The Minister may, by notice in the Gazette, fix a rate, or rates, of contribution for the purposes of this section in respect of any specified financial year or years.
- (6) Rates of contribution may vary according to factors specified by the Minister in the notice.
- (7) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.
- (8) The Minister may establish a scheme for the collection of contributions under this section.
- (9) A scheme may, for example, provide for—
- (a) an accelerated payment option or options under which contributions are discounted;
  - (b) an extended payment option or options under which contributions include an interest component;
  - (c) payment by instalments;
  - (d) recalculation of contributions in the event of a person changing payment options;
  - (e) the payment of refunds in specified circumstances;
  - (f) an arrangement under which contributions are collected by another public authority on behalf of the Minister.
- (10) If an amount payable under this section is not paid on or before the date on which it falls due—
- (a) the amount will be regarded as being in arrears; and
  - (b) a fine of 5 per cent of the amount is payable; and
  - (c) on the expiration of each month from that date, interest at a rate not exceeding the prescribed percentage is payable in respect of the amount in arrears (including the amount of any previous unpaid fine and interest).
- (11) The Minister may remit an amount payable under subsection (10) in whole or in part.
- (12) A contribution or other amount payable under this section—
- (a) if in arrears, is recoverable by the Minister as a debt due to the Crown; and
  - (b) is a charge over the land to which it relates ranking in priority before all other charges and mortgages (other than a charge or mortgage in favour of the Crown or an instrumentality of the Crown).

(13) In this section—

*the prescribed percentage* means a percentage calculated as follows:

$$p = \frac{PBR + 3\%}{12}$$

where—

*p* is the prescribed percentage

*PBR* is the prime bank rate for that financial year;

*prime bank rate*, for a particular financial year, means the published indicator rate for prime corporate lending of the Commonwealth Bank of Australia at the commencement of the financial year;

*private land* means land that is not—

- (a) unalienated land of the Crown; or
- (b) vested in or under the care, control or management of a public authority;

*public authority* means—

- (a) an agency or instrumentality of the Crown; or
- (b) a council.

## Part 5—Protection of Project

### Division 1—Offence

#### 24—Project Undertaking not to be interfered with

- (1) A person must not, without the permission of the Minister, act in a manner that the person knows will interfere with, or is likely to interfere with—
- (a) the Project works scheme; or
  - (b) any Project works, or the operation of any Project works; or
  - (c) any other aspect of the Project Undertaking.

Maximum penalty:

If the offender is a body corporate—\$200 000.

If the offender is a natural person—\$100 000 or imprisonment for 2 years, or both.

- (2) A person must not, without the permission of the Minister, act in a manner that the person ought reasonably to know is likely to interfere with—
- (a) the Project works scheme; or
  - (b) any Project works, or the operation of any Project works; or
  - (c) any other aspect of the Project Undertaking.

Maximum penalty:

If the offender is a body corporate—\$50 000.



If the offender is a natural person—\$25 000.

- (3) The permission of the Minister under this section may be granted—
  - (a) as part of a licence; or
  - (b) in such other manner as the Minister thinks fit.
- (4) The granting of a permission under this section may be subject to such conditions as the Minister thinks fit.
- (5) A person must not contravene or fail to comply with a condition of a permission imposed under subsection (4).  
Maximum penalty: \$50 000.
- (6) Subsection (5) does not limit the operation of section 20(6).

## **Division 2—Orders**

### **25—Project orders**

- (1) The Minister may issue an order (a *project order*) under this section—
  - (a) for the purpose of preventing, regulating or managing the flow of any water within the Project Area; or
  - (b) for the purpose of conserving, protecting, regulating, managing or improving any water resource within the Project Area; or
  - (c) for the purpose of protecting against an alteration to the height of any water table; or
  - (d) for the purpose of protecting or improving the quality of any soil on land within the Project Area; or
  - (e) for the purpose of protecting or enhancing any key environmental feature; or
  - (f) for the purpose of securing compliance with—
    - (i) any management agreement; or
    - (ii) any condition of a licence; or
    - (iii) any condition of a permission of the Minister under Division 1; or
    - (iv) any other requirement imposed by or under this Act; or
  - (g) for the purpose of addressing any activity that, in the opinion of the Minister, is having an adverse effect on—
    - (i) the Project works scheme; or
    - (ii) the operation of any Project works; or
    - (iii) any key environmental feature; or
  - (h) for the purpose of giving effect in any other way to—
    - (i) the implementation of the Project; or
    - (ii) the furthering or enhancement of the Project Undertaking.

- (2) A project order—
- (a) must be in the form of a written notice served on the person to whom the notice is issued; and
  - (b) must specify the person to whom it is issued (whether by name or description sufficient to identify the person); and
  - (c) must specify the purpose for which the order is issued; and
  - (d) may impose any requirement reasonably required for the purpose for which the order is issued including one or more of the following:
    - (i) a requirement that a person discontinue, or not commence, a specified activity indefinitely, or for a specified time or until further notice by the Minister; and
    - (ii) a requirement that a person take specified action within a specified period.
- (3) Without limiting the generality of subsection (2), a project order may require the owner of land—
- (a) to refrain from undertaking or to desist from undertaking any work, or any land or water management practice, or desist from causing or facilitating the movement of any water;
  - (b) to carry out specified works on the land;
  - (c) to remove specified works, or any other specified thing, from the land, or a specified part of the land;
  - (d) to undertake any environment protection measure or environment improvement program;
  - (e) to restore any land or aspect of the environment to its previous state.
- (4) An authorised officer may, if of the opinion that urgent action is required under this section, issue an emergency project order imposing requirements of a kind referred to in subsection (2)(d) or (3).
- (5) An emergency project order may be issued orally.
- (6) If an emergency project order is issued, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written project order issued by the Minister and served on the relevant person.
- (7) The Minister may, by written notice served on a person to whom a project order has been issued, vary or revoke the order.
- (8) A person to whom a project order is issued must comply with the order.
- Maximum penalty:
- If the offender is a body corporate—\$200 000.
  - If the offender is a natural person—\$100 000.
- (9) A person cannot claim compensation from the Minister or the Crown (or from any authorised officer) in respect of a requirement imposed by a project order.

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## 26—Reparation orders

- (1) If the Minister is satisfied—
  - (a) that a person has, by his or her actions, adversely affected—
    - (i) the operation of any Project works; or
    - (ii) any key environmental feature; and
  - (b) that the action is not authorised by a licence or permission under this Act,  
the Minister may issue an order (a *reparation order*) under this section requiring the person to take specified action within a specified period to make good any damage that has been caused to the Project works or to the environment as a result of the person's actions.
- (2) A reparation order—
  - (a) must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and
  - (d) may include requirements for action to be taken—
    - (i) to make good the damage; and
    - (ii) to prevent or mitigate further adverse effects on—
      - (A) the operation of any Project work; or
      - (B) any key environmental feature; and
  - (e) may include requirements for specified tests or monitoring; and
  - (f) may include requirements for furnishing to the Minister specified results or reports; and
  - (g) may include requirements that the person to whom the order is issued appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and
  - (h) may include or address any other prescribed matter.
- (3) The Minister may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.
- (4) A person to whom a reparation order is issued must comply with the order.  
Maximum penalty:  
If the offender is a body corporate—\$200 000.  
If the offender is a natural person—\$100 000.
- (5) A person cannot claim compensation from the Minister or the Crown (or from any authorised officer) in respect of a requirement imposed by a reparation order.

## 27—Registration of order

- (1) The Registrar-General must on—
  - (a) application by the Minister under this section; and
  - (b) lodgement of a copy of an order under this Division,  
note the order against the instrument of title of the land to which the order relates or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- (2) When a note of an order has been entered under subsection (1), the order is binding on each owner and occupier from time to time of the land and this Division will apply as if the order had been issued to each such person.
- (3) The Registrar-General must, on application by the Minister, enter a note of the revocation of an order against the relevant instrument of title, or against the relevant land (but must otherwise ensure that the note is not removed once made).
- (4) The Minister must make application under subsection (3)—
  - (a) on revocation of the order; or
  - (b) on full compliance with any requirements of the order; or
  - (c) if the Minister takes action under this Division to carry out the requirements of the order—on payment to the Minister of the amount recoverable by the Minister under this Division in relation to the action so taken.

## 28—Action on non-compliance with order

- (1) If the requirements of an order under this Division are not complied with, the Minister may take any action required by the order.
- (2) Action taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer, a member of the Minister's department, or another person authorised by the Minister for the purpose.
- (3) A person must not hinder or obstruct the Minister or an authorised officer or another officer or person taking action under subsection (2).  
Maximum penalty: \$100 000.
- (4) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered by the Minister as a debt from the person who failed to comply with the requirements of the relevant order.
- (5) If an amount is recoverable from a person by the Minister under subsection (4)—
  - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
  - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister on any land owned by the person in relation to which the order is noted under this Division.

- (6) A charge imposed on land by this section has priority over—
- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
  - (b) any other charge on the land other than a charge registered prior to noting of the order in relation to the land.
- (7) A person cannot claim compensation from the Minister or the Crown (or from any person acting under subsection (2)) in respect of any action taken under this section.

## **Division 3—Civil remedies**

### **29—Civil remedies**

- (1) Applications may be made to the Court for one or more of the following orders:
- (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act (including by failing to comply with an order under Division 2)—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action, including specified action to make good or address any impact or harm that has occurred as a result of that conduct;
  - (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act (including by failing to comply with an order under Division 2)—an order requiring the person to take that action (including to comply with an order under Division 2);
  - (c) if the Minister has incurred additional costs or expenses in the implementation of the Project as a result of the actions of a person—an order against the person for payment of compensation for those additional costs or expenses;
  - (d) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court.
- (2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of any harm, damage or delay if the first-mentioned person engages in conduct of that kind.

- (3) The power of the Court to make an order requiring a person to take specified action may be exercised—
  - (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
  - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of any harm, damage or delay if the person refuses or fails to take that action.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the Court may have regard to any matter it considers relevant.
- (5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.
- (6) An application may be made without notice to the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the Minister to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (7) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (8) An interim order—
  - (a) may be made on an application made without notice to the respondent; and
  - (b) may be made subject to such conditions as the Court thinks fit; and
  - (c) will not operate after the proceedings in which it is made are finally determined.
- (9) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (10) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

## **Part 6—Miscellaneous**

### **30—Interim restraining orders to prevent environmental harm**

- (1) If it appears—
  - (a) that an activity may cause, or may be causing, harm to a key environmental feature; but
  - (b) that there is insufficient information available to the Minister to enable the Minister to assess the likelihood of harm, or the extent or impact of harm, to the key environmental feature; and

- (c) that an order under this section is necessary to ensure the protection of the key environmental feature pending the acquisition and assessment of information by the Minister,

the Court may, on the application of the Minister, issue an interim restraining order under this section requiring a person to discontinue, or not commence, a specified activity.

- (2) An order under this section takes effect on service of notice of the order on the person to whom it is directed and ceases to have effect after a period, not exceeding 28 days, specified in the order unless extended by the Court on application by the Minister.
- (3) The Court may, by subsequent order, vary or revoke an order made by the Court under this section.
- (4) An application by the Minister for an order under this section may be made without notice to the person in relation to whom the order is sought.
- (5) A person must comply with the terms of an order under this section.  
Maximum penalty: \$50 000.
- (6) A person cannot claim compensation from the Minister or the Crown in respect of the issuing of an order under this section.

### 31—Appeals

- (1) The following appeals may be made to the Court under this Act:
- (a) a person who has applied for a licence may appeal to the Court against a decision of the Minister—
- (i) refusing to grant the licence; or
- (ii) imposing a condition of the licence;
- (b) a person who is the holder of a licence may appeal to the Court against a decision of the Minister to vary a condition of the licence;
- (c) a person to whom an order has been issued under Division 2 of Part 5 may appeal to the Court against the order or any variation of the order.
- (2) The following provisions apply with respect to an appeal under subsection (1):
- (a) the appeal must be made in a manner and form determined by the Court, setting out the grounds of appeal;
- (b) an appeal must be made—
- (i) in the case of an appeal against an order or the variation of an order under subsection (1)(c)—within 14 days after the order is issued or the variation is made;
- (ii) in any other case—within one month after the making of the decision,
- unless the Court allows an extension of time;
- (c) the making of an appeal against a decision or order does not affect the operation of the decision or order or prevent the taking of action to implement the decision or order unless the Minister or the Court determines that the decision or order should be suspended pending the outcome of the appeal;

- (d) the Court may, on hearing the appeal—
  - (i) confirm, vary or reverse the decision or order appealed against;
  - (ii) make any consequential or ancillary order or direction that it considers necessary or expedient.
- (3) Except as provided by subsections (1) and (2), no proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought before a court, tribunal, or other person or body to challenge or question—
  - (a) any decision of the Governor, the Minister or an authorised officer under this Act; or
  - (b) any act or omission of the Governor, the Minister or an authorised officer under this Act; or
  - (c) any order, notice or other requirement issued or imposed by the Minister or an authorised officer under this Act; or
  - (d) any other act or omission of the Minister or any other person who is an agent or employee of the Crown involved in the administration of this Act.
- (4) A reference in subsection (3) to the Minister includes a reference to any person acting under the authority of the Minister.

### **32—Provision of information**

- (1) The Minister may issue a written notice under this section for the purpose of obtaining information reasonably required by the Minister for the administration, implementation, operation or enforcement of this Act.
- (2) A notice may be issued to any person who the Minister reasonably believes has knowledge of matters, or has possession or control of documents dealing with matters, in respect of which information is required by the Minister.
- (3) A notice under this section—
  - (a) must be served on the person to whom the notice is issued; and
  - (b) must specify the person to whom it is issued (whether by name or description sufficient to identify the person); and
  - (c) may require information, as specified in the notice, to be furnished to the Minister, or to a person nominated by the Minister, in such manner and within such period as is specified in the notice.
- (4) The Minister may, by further written notice served on a person to whom a notice has been issued under subsection (1), vary or revoke the notice.
- (5) A person to whom a notice is issued under this section must comply with the notice.  
Maximum penalty: \$10 000.
- (6) Nothing in this section—
  - (a) limits the ability of the Minister to obtain information in any other way available to the Minister; or
  - (b) limits the powers of an authorised officer under this Act.



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### 33—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

### 34—Service

- (1) An order, notice or other document required or authorised by this Act to be given to or served on a person by the Minister or an authorised officer may—
  - (a) be served on the person or an agent of the person personally; or
  - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
  - (c) be posted to the person at his or her last known address; or
  - (d) be transmitted by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the document will be taken to have been given or served at the time of transmission).
- (2) Without limiting the effect of subsection (1), an order, notice or other document required or authorised to be given to or served on a person may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given to or served on the person in accordance with that Act.

### 35—Use of staff

- (1) The Minister may, in connection with the administration, operation or enforcement of this Act, with the approval of the relevant Minister or public authority—
  - (a) make use of the services of the staff of any administrative unit; or
  - (b) make use of the services of the staff of any public authority.
- (2) In this section—

**public authority** means—

  - (a) an agency or instrumentality of the Crown; or
  - (b) a council.

### 36—Annual report

- (1) The Minister must on or before 30 September in each year prepare a report on the operation of this Act for the financial year ending on the preceding 30 June.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within six sitting days after the report is prepared.

### 37—Continuing offences

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
  - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

### **38—Liability of directors**

- (1) If a corporation commits an offence against this Act, each director of the corporation is guilty of an offence and liable to the same penalty as is fixed for the principal offence unless it is proved that the principal offence did not result from failure on the director's part to take reasonable care to prevent the commission of the offence.
- (2) A director of a corporation may be prosecuted and convicted of an offence under this section whether or not the corporation has been prosecuted or convicted of the offence committed by the corporation.

### **39—Evidentiary provision**

In any proceedings, a certificate by the Minister certifying as to a matter relating to—

- (a) a licence or permission under this Act; or
- (b) a delegation or authority under this Act; or
- (c) an order, notice, requirement or direction of the Minister under this Act; or
- (d) the appointment of an authorised officer; or
- (e) a decision of the Minister,

constitutes proof, in the absence of proof to the contrary.

### **40—Power to waive or defer payments**

- (1) The Minister may, if the Minister thinks good reason exists for doing so, waive or defer payment of any amount due and payable to the Minister by any person pursuant to this Act.
- (2) The Minister may waive or defer payment on such conditions as the Minister thinks fit, including a condition requiring payment of interest on an amount deferred.

### **41—Immunity provision**

No act or omission undertaken or made by the Governor or the Minister, or by another person or body acting under the authority of the Minister, with a view to implementing the Project or furthering or enhancing the Project Undertaking (including by changing or preventing the flow of any water or adversely affecting the use or enjoyment of any land) subjects the Minister, person or body, or the Crown, to any liability (unless the contrary intention appears).

### **42—Right of action against person in default**

- (1) If—
  - (a) a person (the *person in default*) has—

- 
- (i) engaged in conduct in contravention of this Act; or
    - (ii) refused or failed to take any action required by an order issued under this Act; and
  - (b) another person has suffered loss on account of the acts or omissions of the person in default,
- then the person who has suffered loss is entitled to compensation for the loss.
- (2) For the purposes of subsection (1), loss may include loss represented by harm or damage to any key environmental feature located on land owned or occupied by the relevant person.
  - (3) Any compensation under this section may include an award with respect to any harm or damage referred to in subsection (2) in such amount as the court before which the action is brought thinks fit.
  - (4) This section does not limit or derogate from any other civil right or remedy that a person may have apart from this section but nothing in this section is intended to allow a person to be compensated more than once for a particular economic loss.
  - (5) Nothing in this section is intended to limit or derogate from the operation of section 41 or in any other way to create a right of recovery against the Minister or the Crown (or any person acting under the authority of the Minister or the Crown).

#### **43—Natural Resources Committee to oversee operation of Act**

- (1) The Natural Resources Committee of the Parliament—
  - (a) is to take an interest in—
    - (i) the Minister's progress in constructing the works required to implement the Project; and
    - (ii) the effectiveness of what is being done to improve the management of water in the Upper South East; and
    - (iii) the extent to which the Minister is achieving various milestones in the protection, enhancement and re-establishment of key environmental features through the implementation of the Project; and
    - (iv) the manner in which the Minister's powers under this Act are being exercised; and
    - (v) the overall operation and administration of this Act; and
  - (b) may, as appropriate, provide recommendations to the Minister in relation to any matter relevant to the administration of this Act; and
  - (c) may consider any matter referred to the Committee by the Minister, or by resolution of both Houses; and
  - (d) must provide, on or before 31 December in each year, a report to the Parliament on the work of the Committee under this Act during the preceding financial year.
- (2) The Minister must, in connection with the operation of subsection (1), provide to the Committee three-monthly reports on the implementation of the Project under this Act.

- (4) The Minister must cause a copy of the report provided to the Committee under subsection (2) to be tabled in both Houses of Parliament.

#### **43A—Upper South East Drainage Network Management Strategy**

- (1) The Minister must, by 19 December 2009, prepare a strategy to be called the *Upper South East Drainage Network Management Strategy*.
- (2) The Strategy must set out—
- (a) the proposals of the Minister in relation to the management of Project works in the Upper South East; and
  - (b) the proposals of the Minister in relation to the management of the key environmental features and significant agricultural issues in the Upper South East; and
  - (c) the priorities that the Minister will pursue in the management of the key environmental features and significant agricultural issues in the Upper South East,
- insofar as they may be relevant to the Project.
- (3) The Strategy must not be inconsistent with the State NRM Plan.
- (4) The Strategy must take into account—
- (a) the provisions of any relevant management agreements under this Act; and
  - (b) the provisions of any relevant regional NRM plan under the *Natural Resources Management Act 2004*; and
  - (c) the provisions of any relevant environment protection policy under the *Environment Protection Act 1993*; and
  - (d) the provisions of any statutory instrument under a related operational Act (insofar as is relevant to the operation of this Act and reasonably practicable); and
  - (e) any other matter prescribed by the regulations.
- (5) The Minister must review the Strategy at least once in every 3 years.
- (6) The Minister may amend the Strategy at any time.
- (7) The Minister must, in relation to any proposal to create or amend the Strategy—
- (a) prepare a draft of the proposal; and
  - (b) seek, and have regard to, the views of all relevant Ministers and prescribed bodies in relation to the proposal.
- (8) The Minister must cause—
- (a) a copy of the Strategy; and
  - (b) a copy of the Strategy as amended from time to time; and
  - (c) a report on any review of the Strategy conducted for the purposes of this section,
- to be furnished to the Natural Resources Committee of the Parliament.

- (9) The Strategy is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (10) In this section—
- related operational Act** means an Act declared by the regulations to be a related operational Act;
- relevant Minister** means a Minister responsible for the administration of a related operational Act;
- Upper South East** includes any other area of the State—
- (a) that is connected to the Project Area by means of a watercourse; or
  - (b) that is connected with the Project Area in a significant way by virtue of the fact that processes (including natural processes) or activities—
    - (i) that occur in the other area have a significant effect on the environment or agricultural production in a part of the Project Area; or
    - (ii) that occur in a part of the Project Area have a significant effect on the environment or agricultural production in the other area; or
  - (c) that is declared by the regulations to be within the ambit of this definition.

#### 44—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) vary Schedule 1;
  - (b) exempt classes of persons or activities from the application of this Act or specified provisions of this Act, either unconditionally or subject to specified conditions;
  - (c) prescribe fines (not exceeding \$10 000) for contravention of a regulation.
- (3) Regulations under this Act—
  - (a) may be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations.

#### 45—Expiry of Act

- (1) Subject to this section, this Act will expire on 19 December 2009.
- (2) The Governor may, by proclamation, fix a day on which this Act will expire that is earlier than the day that applies under subsection (1) (and this Act will then expire on the day fixed by proclamation).

- (4) When this Act expires—
- (a) any management agreement in force immediately before the expiry will be taken to be an agreement between SEWCDB and the owner of the land immediately before the expiry of this Act and thereafter—
    - (i) the agreement is binding on each owner of the land from time to time whether or not the owner was the person with whom the agreement was made and despite the provisions of the *Real Property Act 1886*, and on any occupier of the land; and
    - (ii) the parties to the agreement may agree to amend it from time to time, or to rescind the agreement; and
    - (iii) the note entered under section 16(4) of this Act will remain until the Registrar-General is satisfied, on application by SEWCDB or the owner of the relevant land, that the agreement has been rescinded, and the Registrar-General may remove the note from the relevant instrument of title, or make a note as to the rescission of the agreement (as the Registrar-General thinks fit); and
  - (b) a licence in force immediately before the expiry will be taken to be a licence granted by SEWCDB under Division 2 of Part 3 of the *South Eastern Water Conservation and Drainage Act 1992*; and
  - (c) any requirement imposed by an order under Division 2 of Part 5 of this Act will continue to have effect and will be enforceable by SEWCDB (including by taking any action required by the order or otherwise authorised under this Act) as if this Act had not expired but as if any relevant reference to the Minister were a reference to SEWCDB; and
  - (d) if an order under Division 2 of Part 5 of this Act has been noted against an instrument of title, or against land, in accordance with section 27, then that section will continue to apply in relation to the order until the order is revoked under that section but as if any reference to the Minister in that section were a reference to SEWCDB.
- (5) The Governor may, by proclamation made on or before the expiry of this Act, transfer any asset, right or liability of the Minister that relates to the implementation of the Project or the operation of this Act—
- (a) to SEWCDB; or
  - (b) to another person or body (if the other person or body has agreed to the transfer).
- (6) Subsection (5) does not limit the ability of the Minister to take any other action to deal with outstanding assets, rights or liabilities before the expiry of this Act.
- (6a) The expiry of this Act does not apply in relation to the operation of section 13 and that section will continue to have full force and effect until all steps envisaged by that section have been taken, all dates that apply under that section have occurred, and all claims for compensation under that section (and any related proceedings) have been determined.

- (6b) The expiry of this Act does not affect the Upper South East Drainage Network Management Strategy under section 43A and the Minister must continue to review the Strategy in accordance with the requirements of that section until 2015.
- (7) The Governor may, by proclamation, make any other provision of a saving or transitional nature consequent on the enactment or expiry of this Act.
- (8) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this section, apply to the expiry of this Act.
- (9) In this section—

*SEWCDB* means the South Eastern Water Conservation and Drainage Board established under the *South Eastern Water Conservation and Drainage Act 1992*.

## Schedule 1—Project works corridors

### Part A—Description of land for the purposes of paragraph (a) of the definition of project works corridor

The parcels of land specified in Column 1 of the following table that are identified in the Deposited Plans lodged in the Lands Titles Registration Office specified opposite in Column 2 of the table:

<b>Column 1</b> <b>Parcels of land</b>	<b>Column 2</b> <b>Deposited Plan Number</b>
Allotment 203	59179
Allotment 209	59180
Pieces 205 and 206	59181
Allotment 207	59182
Allotment 204	59183
Allotment 202	59184
Allotment 208	59185
Allotment 201	59186
Allotment 210	59194
Pieces 8 and 9	60360
Pieces 100, 101 and 102	60510
Pieces 103, 104 and 106	60511
Allotment 105	60512
Allotment 107	60513
Pieces 108, 109, 110 and 111	60514
Pieces 112, 113, 114, 115, 116 and 117	60515
Allotment 118	60516
Allotments 119, 120, 121, 122, 123 and 124	60517
Allotments 125, 126 and 127	60518
Allotments 128, 129, 130, 131, 132 and 133	60519

## **Part B—Description of lines for the purposes of paragraph (b) of the definition of project works corridor**

The lines shown on Rack Plan 893 lodged in the Surveyor-General's Office at Adelaide, as varied from time to time.

The line shown on Rack Plan 894 lodged in the Surveyor-General's Office at Adelaide, as varied from time to time.

Without limiting a preceding item, the lines shown on Rack Plan 893 lodged in the Surveyor-General's Office at Adelaide as at 10 May 2007.

## **Schedule 2—Transitional provisions**

### **2—Transitional provisions**

- (1) Subject to subclause (2), all water management works comprising or relating to the Upper South East Project held by SEWCDB, or by any other public authority specified by the Governor by proclamation made for the purposes of this subclause, are vested in the Minister.
- (2) The Governor may, by proclamation, exclude any water management works from the operation of subclause (1).
- (3) Subject to subclause (4), any right or liability of SEWCDB incurred under contracts for or in relation to the construction of water management works for the purposes of the Upper South East Project cease to be rights or liabilities of that body and become rights and liabilities of the Minister.
- (4) The Governor may, by proclamation, exclude any right or liability for the operation of subclause (3).
- (5) The Governor may, by proclamation, vest in the Minister any other asset, right or liability of SEWCDB that should, in the opinion of the Governor, be vested in that Minister for the purposes of this Act.
- (6) The Governor may, by proclamation, direct that a reference in a contract or any instrument or other document to SEWCDB will have effect as if it were a reference to the Minister.
- (7) The Minister may direct that designated staff of SEWCDB assist the Minister in the administration of this Act (and any such direction will have effect according to its terms).
- (8) SEWCDB must, at the direction of the Minister, transfer any money received by SEWCDB under section 34A of the *South Eastern Water Conservation and Drainage Act 1992* (as repealed by this Act) to the Minister, or to another authority, or to an account, specified by the Minister.



- (9) Any contribution levied under section 34A of the *South Eastern Water Conservation and Drainage Act 1992* that has not been paid before the repeal of that section by this Act will, after that repeal, be payable to the Minister instead of to SEWCDB and, in connection with levying that contribution, any scheme established by SEWCDB under that section before its repeal will continue to have effect as if a reference to SEWCDB were a reference to the Minister and on the basis that the Minister may exercise any right of SEWCDB under that scheme after the commencement of this clause, subject to such modifications or qualifications the Minister may direct by notice in the Gazette.
- (10) The vesting of assets, rights and liabilities under this clause operates by force of this clause and despite the provisions of any other law or instrument.
- (11) The Registrar-General or another authority required or authorised under a law of this State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner a vesting under this clause.
- (12) The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.
- (13) In this clause—
- SEWCDB** means the South Eastern Water Conservation and Drainage Board established under the *South Eastern Water Conservation and Drainage Act 1992*.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Expiry of Act

The *Upper South East Dryland Salinity and Flood Management Act 2002* will expire on 19.12.2009: see s 45(1) but note s 45(6a) and (6b).

Expiry may be set at an earlier date by proclamation: s 45(2).

### Legislation amended by principal Act

The *Upper South East Dryland Salinity and Flood Management Act 2002* amended the following:

*South Eastern Water Conservation and Drainage Act 1992*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2002	48	<i>Upper South East Dryland Salinity and Flood Management Act 2002</i>	12.12.2002	19.12.2002 ( <i>Gazette</i> 19.12.2002 p4736)
2005	(137)	<i>Upper South East Dryland Salinity and Flood Management Variation Regulations 2005</i> ( <i>Gazette</i> 16.6.2005 p1831)	—	16.6.2005: r 2
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 78 (ss 253 & 254)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
2006	29	<i>Upper South East Dryland Salinity and Flood Management (Extension of Period of Scheme) Amendment Act 2006</i>	23.11.2006	18.6.2006 except ss 5—7—18.12.2006: s 2
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 90 (s 216)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
<b>2007</b>	<b>(57)</b>	<b><i>Upper South East Dryland Salinity and Flood Management Variation Regulations 2007</i></b> ( <i>Gazette</i> 10.5.2007 p1982)	—	<b>10.5.2007: r 2</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	16.6.2005
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>16.6.2005</i>
s 3		
s 3(1)		
domestic partner	inserted by 43/2006 s 216(1)	1.6.2007—not incorporated
spouse	substituted by 43/2006 s 216(2)	1.6.2007—not incorporated
s 3(2)	amended by 43/2006 s 216(3)	1.6.2007—not incorporated
Pt 3		
s 13		
s 13(1)	amended by 29/2006 s 4(1)	18.6.2006
s 13(2)	amended by 29/2006 s 4(2)—(4)	18.6.2006
s 13(3)	amended by 29/2006 s 4(5)	18.6.2006
s 13(4)	amended by 29/2006 s 4(6)	18.6.2006
s 13(5)	amended by 29/2006 s 4(7)	18.6.2006
s 13(11)	amended by 29/2006 s 4(8)	18.6.2006
s 13(13a)—(13c)	inserted by 29/2006 s 4(9)	18.6.2006
s 13(14)		
<i>prescribed period</i>	<i>deleted by 29/2006 s 4(10)</i>	<i>18.6.2006</i>
land transfer finalisation date	inserted by 29/2006 s 4(10)	18.6.2006
land transfer finalisation declaration	inserted by 29/2006 s 4(10)	18.6.2006
relevant date	inserted by 29/2006 s 4(11)	18.6.2006
Pt 5		
s 29		
s 29(6)	amended by 17/2006 s 253(1), (2)	4.9.2006
s 29(8)	amended by 17/2006 s 253(3)	4.9.2006
Pt 6		
s 30		
s 30(4)	amended by 17/2006 s 254	4.9.2006
s 43		
s 43(1)	amended by 29/2006 s 5(1)	18.12.2006
s 43(3)	<i>deleted by 29/2006 s 5(2)</i>	<i>18.12.2006</i>
s 43A	inserted by 29/2006 s 6	18.12.2006
s 45		

**Upper South East Dryland Salinity and Flood Management Act 2002—10.5.2007 to 31.5.2007**  
Legislative history

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s 45(1)	amended by 29/2006 s 7(1), (2)	18.12.2006
s 45(3)	<i>deleted by 29/2006 s 7(3)</i>	<i>18.12.2006</i>
s 45(6a) and (6b)	inserted by 29/2006 s 7(4)	18.12.2006
s 45(7)	amended by 29/2006 s 7(5)	18.12.2006
Sch 1		
Pt B		
item 1	amended by 137/2005 r 10(1)	16.6.2005
item 2	amended by 137/2005 r 10(2)	16.6.2005
<b>item 3</b>	<b>inserted by 57/2007 r 4</b>	<b>10.5.2007</b>
Sch 2		
<i>cl 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>16.6.2005</i>

### **Historical versions**

16.6.2005  
18.6.2006 (electronic only)  
4.9.2006  
18.12.2006