

South Australia

South East Drainage System Operation and Management Bill 2012

A BILL FOR

An Act to provide for the operation and management of the drainage system and related infrastructure in the South East of the State; to provide for the management of water flows and wetlands in the South East of the State; to establish the South Eastern Drainage Management Board; to repeal the *South Eastern Water Conservation and Drainage Act 1992*; to make related amendments to the *Natural Resources Management Act 2004*; 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 *South East Drainage System Operation and Management Act 2012*.

5 2—Commencement

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

3—Interpretation

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

10 ***approved stormwater management plan*** means a stormwater management plan that has been approved by the Stormwater Management Authority under clause 15 of Schedule 1A of the *Local Government Act 1999*;

authorised officer—see section 27;

council has the same meaning as in the *Local Government Act 1999*;

drain does not include a drain within a township;

Drainage Act or *repealed Drainage Act* means the *South Eastern Water Conservation and Drainage Act 1992* repealed under Schedule 1 Part 3;

5 *drainage hole* means an artificial or natural hole capable of allowing surface water to drain into the underground water system;

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

drainage system means—

- 10 (a) the water management works within the meaning of the repealed Drainage Act; and
- (b) any works operated, constructed or maintained by SEDMB for the purposes of this Act; and
- (c) any other works brought within the ambit of this definition by the regulations,

15 and includes all land within the drainage system area under the care, control and management of the Minister (other than any such land excluded by determination of the Minister) or SEDMB;

drainage system area means those areas of land described or delineated for the purposes of the drainage system by the regulations;

20 *ERD Court* means the Environment, Resources and Development Court;

key environmental feature means any of the following aspects of the environment located or occurring within the South East identified as key environmental features by the SE NRM Board in the Strategy:

- (a) wetlands;
- 25 (b) water resources;
- (c) native vegetation;
- (d) natural habitats;
- (e) environmental biodiversity;
- 30 (f) any other aspect of the environment that, in the opinion of the SE NRM Board, should be protected or enhanced;

landholder means an owner or occupier of land in the South East;

licence means a licence granted under Part 5 Division 4;

management agreement—see section 31;

35 *Minister for the River Murray* means the Minister to whom the administration of the *River Murray Act 2003* is committed;

Murray-Darling Basin has the same meaning as in the *Water Act 2007* of the Commonwealth;

River Murray has the same meaning as in the *River Murray Act 2003*;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

SEDMB means the *South Eastern Drainage Management Board* established under Part 4;

5 **SEDMB's area** means that part of the South East that does not fall within a township;

SE NRM Board means—

(a) subject to paragraph (b)—the *South East Natural Resources Management Board* established as a regional NRM Board under section 23 of the *Natural Resources Management Act 2004*; or

10 (b) if the Minister designates a regional NRM Board as the regional NRM Board in substitution for the Board referred to in paragraph (a)—that Board;

South East means—

15 (a) subject to paragraph (b)—that part of the State shown as the South East Natural Resources Management Region in General Registry Office Plan No GP27/2008, as varied from time to time by proclamation under the *Natural Resources Management Act 2004*; or

(b) if the Governor designates another area by proclamation made for the purposes of this definition—that area;

20 **South East Drainage and Wetland Management Strategy** or **Strategy** means the *South East Drainage and Wetland Management Strategy* prepared under Part 3;

substance means any solid, liquid or gas (or combination thereof), including waste;

township means—

25 (a) a government township and any land laid out as a township where plans of the township have been deposited in the Lands Titles Office, the General Registry Office or the Surveyor-General's Office; or

(b) any part of the area of a council that contains at least 20 residences and that is defined as a township by the council by notice in the Gazette;

vehicle includes any—

30 (a) vessel or craft; and

(b) plant or equipment designed to be moved or operated by a driver;

35 **wetland**, in relation to the South East, means an area of the South East that comprises land that is permanently or periodically inundated with water (whether through a natural or artificial process) where the water may be static or flowing and may range from fresh water to saline water and where the inundation with water influences the biota or ecological processes (whether permanently or from time to time), and includes any other area in the South East designated as a wetland—

(a) by an NRM plan under Chapter 4 of the *Natural Resources Management Act 2004*; or

(b) by a Development Plan under the *Development Act 1993*,

40 but does not include—

- (c) a dam or reservoir that has been constructed by a person wholly or predominantly for the provision of water for primary production or human consumption; or
- (d) an area within an estuary or within any part of the sea; or
- 5 (e) a pond for storing wastewater; or
- (f) an area excluded from the ambit of this definition by the regulations;

works means—

- (a) any channel, drain, artificial drainage hole, dam, bank or other device or works constructed, established or used for the purposes of—
- 10 (i) conserving, holding, draining, altering or managing the flow of surface water from or onto land; or
- (ii) utilising any such water,
- including any ancillary access road, bridge, culvert, bank, levee or other ancillary works; and
- 15 (b) any works constructed for the purpose of lowering water table levels; and
- (c) any other infrastructure or works related or ancillary to a system referred to in a preceding paragraph.

(2) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the *Natural Resources Management Act 2004*.

(3) To avoid doubt—

- (a) the Minister may make a declaration under paragraph (b) of the definition of **SE NRM Board** from time to time; and
- (b) the Governor may make a designation under paragraph (b) of the definition of **South East** from time to time.

4—Interaction with other Acts

(1) Subject to this section, this Act is in addition to and does not limit or derogate from the operation of any other Act and SEDMB must, in exercising powers under this Act, comply with the provisions of relevant Acts.

(2) The Minister to whom the administration of the *Upper South East Dryland Salinity and Flood Management Act 2002* is committed may—

- (a) enter into agreements or other arrangements with SEDMB to undertake, coordinate or advance activities, works or other initiatives that are relevant to the operation of that Act; and
- (b) delegate any power or function of the Minister under that Act to SEDMB.

(3) A power or function delegated under subsection (2)(b) may, if the instrument of delegation so provides, be further delegated.

(4) This Act is subject to—

- (a) the *Pulp and Paper Mills Agreement Act 1958*; and
- (b) the *Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964*.

Part 2—Objects

5—Objects

The objects of this Act include the management of water in the drainage system and wetlands in the South East, and the operation of the drainage system—

- 5
- (a) to protect infrastructure, land, soils and ecosystems in the South East from flooding and dryland salinity; and
- (b) to provide water for environmental purposes for the enhancement of the natural environment of the South East; and
- 10 (c) to protect and enhance agricultural land in the South East for the purposes of primary production; and
- (d) to assist in the proper conservation and management of water in the South East.

6—Administration of Act to achieve objects and to be consistent with objects of certain other Acts

- 15 (1) The Minister and all other persons or bodies involved in the administration of this Act, or performing, exercising or discharging a function, power or duty under this Act, must have regard to, and seek to further, the objects of this Act.
- (2) The Minister and all other persons or bodies involved in the administration of this Act, or performing, exercising or discharging a function, power or duty under this Act,
- 20 must seek to act consistently with—
- (a) the objects of the *Natural Resources Management Act 2004* (insofar as they relate to the South East); and
- (b) the objects of the *Environment Protection Act 1993* (insofar as they relate to the South East); and
- 25 (c) the South East Drainage and Wetland Management Strategy.
- (3) The Minister and all other persons or bodies involved in the administration of this Act, or performing, exercising or discharging a function, power or duty under this Act, must, if or when taking any action under this Act within, or in relation to, any part of the Murray-Darling Basin, seek to act consistently with—
- 30 (a) the objects of the *River Murray Act 2003*; and
- (b) the *Objectives for a Healthy River Murray* under that Act, (insofar as they may be relevant).

Part 3—South East Drainage and Wetland Management Strategy

35 7—Preparation of Strategy and consultation

- (1) The SE NRM Board must prepare and maintain a strategy for the management of water in the drainage system, wetlands and watercourses in the South East to be called the *South East Drainage and Wetland Management Strategy*.

- (2) The Strategy—
- (a) must set out the proposals of the SE NRM Board in relation to surface waters, including—
 - (i) the management of the water in the drainage system; and
 - (ii) the management of wetlands and watercourses in the South East; and
 - (b) must identify key environmental features and significant agricultural issues in the South East and set out the proposals of the SE NRM Board in relation to the management of those features and issues; and
 - (c) should give consideration to Aboriginal heritage, and to the interests of the traditional owners of any land or water resources; and
 - (d) must identify the aspects of the Strategy for which SEDMB is responsible; and
 - (e) must identify the aspects of the Strategy for which any other person or body is responsible.
- (3) In setting out the SE NRM Board's proposals, the Strategy must—
- (a) include an assessment of the quantity and quality of water needed by the ecosystems that depend on the surface water and underground water resources and the times at which, or the periods during which, those ecosystems will need that water; and
 - (b) provide guidance and direction to SEDMB on the management of the water in the drainage system, including flow management objectives and performance standards within an adaptive flow management framework; and
 - (c) provide guidance and direction to the person or body (which may be SEDMB) to whom responsibility for the management of wetlands and watercourses is assigned; and
 - (d) address each of the following matters:
 - (i) the protection of infrastructure, land, soils and ecosystems from flooding;
 - (ii) the interaction between surface water and underground water;
 - (iii) the provision of water for human consumption and for environmental, primary production, social and cultural purposes;
 - (iv) the removal and disposal of underground water through the operation and management of the drainage system.
- (4) The Strategy must be consistent with the State NRM Plan and must take into account—
- (a) the provisions of any relevant regional NRM plan, or water allocation plan, under the *Natural Resources Management Act 2004*; and
 - (b) the provisions of any relevant plans of management under the *National Parks and Wildlife Act 1972*; and
 - (c) the *Environment Protection Act 1993* and the provisions of any relevant environment protection policy under that Act; and

- (d) any Aboriginal heritage issues and interests of the traditional owners of any land or other natural resources; and
- (e) any other heritage issues and interests of the community in relation to conserving heritage items and places; and
- 5 (f) any intergovernmental agreement relevant to the operation of this Act to which the State or the Commonwealth is a party; and
- (g) 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
- 10 (h) any other matter prescribed by the regulations.
- (5) The Strategy will be taken to form part of the SE NRM Board's regional NRM plan.
- (6) The SE NRM Board must review the Strategy at least once during each period of 5 years following adoption of the Strategy.
- (7) The SE NRM Board must, in relation to any proposal to create or amend the Strategy—
- 15 (a) prepare a draft of the proposal; and
- (b) take reasonable steps to consult on the draft proposal with—
- (i) the NRM Council; and
- (ii) SEDMB; and
- 20 (iii) insofar as the Strategy affects the River Murray—the regional NRM Board responsible for the Murray-Darling Basin; and
- (iv) each council that has a direct interest in the proposal; and
- (v) the relevant authorities under all Acts dealing with protection of the environment, soil conservation or management or protection of water resources, and act in conformity with the policies established under those Acts; and
- 25 (vi) the local community, including the local Aboriginal people; and
- (c) by public notice, give notice of the place or places at which copies of the draft of the proposal are available for inspection (without charge) and purchase and invite interested persons to make written representations on the draft within a period specified by the SE NRM Board.
- 30 (8) Subsection (7) does not apply in relation to an amendment that is being made at the direction, or with the concurrence, of the Minister—
- (a) in order to ensure that the Strategy is consistent with any plan, policy or strategy that—
- 35 (i) has been prepared, adopted or applied under another Act; and
- (ii) falls within a class prescribed by the regulations for the purposes of this provision; or

- 5 (b) in order to ensure that the Strategy is consistent with any plan, policy or strategy relevant to addressing an urgent situation that has arisen in relation to the protection of the drainage system or wetlands in the South East or in order to support the taking of urgent action to safeguard the ecological, environmental, social or economic value of the drainage system or wetlands in the South East; or
- (c) in order to remove or replace information in the Strategy that has been superseded by information that is more reliable or accurate; or
- 10 (d) in order to make a change of form (without altering the effect of an underlying policy reflected in the Strategy); or
- (e) in order to take action which is considered or accepted by the Minister to be—
- 15 (i) addressing or removing irrelevant material or a duplication or inconsistency (without altering the effect of an underlying policy reflected in the Strategy); or
- (ii) correcting an error.
- (9) The SE NRM Board must—
- (a) prepare a report on the matters raised during consultation on the draft of the proposal, including—
- 20 (i) a report from SEDMB on operational issues relating to the draft; and
- (ii) any recommended alterations to the draft; and
- (b) provide the Minister with a copy of the draft and report on the draft.

- (10) In this section—
- 25 ***related operational Act*** means an Act declared by the regulations to be a related operational Act.

8—Adoption of Strategy by Minister

- (1) On receipt of the draft of a proposal to create or amend the Strategy and a report on the draft under section 7, the Minister may—
- 30 (a) adopt the draft with or without amendment; or
- (b) refer the draft back to the SE NRM Board for further consideration.
- (2) The Minister must consult with the SE NRM Board before making an amendment under subsection (1)(a).
- (3) If the Minister adopts the draft proposal with amendment, the Minister must give—
- 35 (a) a copy of the draft as amended; or
- (b) if it appears to the Minister that the part or parts of the draft that have been amended can conveniently be substituted in the draft proposal—a copy of that part or those parts as amended,
- to the SE NRM Board.

- (4) If the Minister refers the draft proposal back to the SE NRM Board, it must prepare a new draft proposal and follow the procedures as to consultation provided for by this Part in respect of the new draft.
- (5) The Minister adopts a draft proposal to create or amend the Strategy by signing a certificate endorsed on the draft proposal that the Minister has adopted the Strategy as so created or amended.
- (6) The Strategy, and any amendment to the Strategy (other than an amendment made by the Minister under section 7(8)), have no force or effect until adopted by the Minister.

9—Availability of Strategy

- (1) The SE NRM Board must—
- (a) make reasonable provision for the publication of the Strategy; and
 - (b) ensure that copies of the Strategy are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister; and
 - (c) ensure that public notice is given of any amendment to the Strategy within a reasonable time after the amendment is made.
- (2) The Strategy is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (3) A failure of the SE NRM Board to comply with a requirement of this Part cannot be taken to affect the validity of the Strategy, or any other plan or instrument under this Act.
- (4) If a part of the Strategy is found to be invalid—
- (a) the balance of the Strategy may nevertheless continue to have full force and effect; and
 - (b) if the part that is found to be invalid arises from, or is attributable to, an amendment (or purported amendment) to the Strategy then the amendment (or purported amendment) will, to the extent of the invalidity, be disregarded and the Strategy will, to that extent, revert to the position that applied immediately before it was sought to give the amendment (or purported amendment) effect.

Part 4—Administration

Division 1—South Eastern Drainage Management Board

Subdivision 1—Establishment of South Eastern Drainage Management Board

10—Establishment of South Eastern Drainage Management Board

- (1) The *South Eastern Drainage Management Board* (*SEDMB*) is established.
- (2) *SEDMB*—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and

- (c) can sue and be sued in its corporate name; and
- (d) is an instrumentality of the Crown and holds its property on behalf of the Crown; and
- (e) has the functions and powers assigned or conferred by or under this or any other Act.

5 (3) If a document appears to bear the common seal of SEDMB, it will be presumed, in the absence of proof to the contrary, that the common seal of SEDMB was duly fixed to the document.

10 (4) SEDMB is, in the performance of its functions, subject to control and direction by the Minister.

Subdivision 2—Membership and proceedings

11—Membership

15 (1) SEDMB will consist of not more than 7 members appointed by the Governor on the nomination of the Minister, being persons who collectively have, in the opinion of the Minister, knowledge, skills and experience necessary to enable SEDMB to carry out its functions effectively.

(2) For the purposes of subsection (1), the Minister must (as far as is reasonably practicable in the circumstances) give consideration to nominating persons—

(a) who reside or otherwise have a close association with the South East; and

(b) so as to provide a range of knowledge, skills and experience across the following areas:

(i) business or financial management;

(ii) civil engineering;

(iii) infrastructure management;

(iv) primary production;

(v) environmental or natural resources management;

(vi) Aboriginal interest in the land and water, and Aboriginal heritage;

(vii) public sector management;

(viii) community affairs at the regional level.

30 (3) The Governor may, on the nomination of the Minister—

(a) appoint a member to be the presiding member of SEDMB; and

(b) appoint a suitable person to be the deputy of a member of SEDMB (other than the presiding member) and a person so appointed may act as a member of SEDMB in the member's absence.

35 (4) At least 1 member of SEDMB must be a woman and 1 a man.

(5) The Minister may, by instrument in writing, authorise a person or persons to attend any meeting of SEDMB in order to represent the interests of the State or local government.

- (6) A person who holds an authorisation under subsection (5) is entitled—
- (a) to receive notice of a meeting of SEDMB; and
 - (b) to have access to papers provided to members of the SEDMB for the purposes of any meeting; and
 - (c) to attend, and participate in, any meeting of the SEDMB (but has no entitlement to vote).

12—Conditions of membership

- (1) A member of SEDMB will be appointed for a term not exceeding 4 years and on conditions determined by the Governor and specified in the instrument of appointment.
- (2) A member of SEDMB will, at the expiration of a term of appointment, be eligible for reappointment (subject to the qualification that a person cannot serve as a member for more than 8 consecutive years).
- (3) The Governor may remove a member from office—
- (a) for misconduct; or
 - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
 - (c) for contravention of a condition of his or her appointment; or
 - (d) if serious irregularities have occurred in the conduct of SEDMB's affairs or SEDMB has failed to carry out its functions satisfactorily and its membership should, in the opinion of the Governor, be reconstituted for that reason.
- (4) The office of a member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (e) is removed from office under subsection (3).
- (5) On the office of a member becoming vacant, a person may be appointed in accordance with this Division to the vacant office.

13—Proceedings

- (1) The presiding member of SEDMB will preside at each meeting of SEDMB at which the member is present.
- (2) If the presiding member is absent from a meeting of SEDMB, a member chosen by the members present at the meeting will preside at the meeting.
- (3) Subject to subsection (4), a quorum of SEDMB consists of half of the total number of its members (ignoring any fraction resulting from the division) plus 1.

- (4) If during a meeting of SEDMB—
- 5 (a) a member absents himself or herself from the meeting room (whether because of the member's duty with respect to a conflict of interest or for some other reason) during a discussion or voting in relation to a matter decided or under discussion by SEDMB; and
- (b) as a result of the member's absence, there is no longer a quorum present, those remaining members constitute a quorum for the purpose of any discussion or voting at that meeting in relation to that matter.
- 10 (5) A decision carried by a majority of the votes cast by members at a meeting is a decision of SEDMB.
- (6) Each member present at a meeting of SEDMB has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- 15 (7) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of SEDMB at which the participating members are present.
- (8) A proposed resolution of SEDMB becomes a valid decision of SEDMB despite the fact that it is not voted on at a meeting of SEDMB if—
- 20 (a) notice of the proposed resolution is given to all members in accordance with procedures determined by SEDMB; and
- (b) a majority of the members express their concurrence in the proposed resolution by letter, fax or other written communication setting out the terms of the resolution.
- (9) SEDMB must cause accurate minutes to be kept of its proceedings.
- 25 (10) Subject to this Act, SEDMB may determine its own procedures.
- (11) Subject to the directions of SEDMB and section 14, this section applies to a committee of SEDMB in the same way as to SEDMB.

14—Committees

- (1) SEDMB may establish committees—
- 30 (a) to advise SEDMB on any matter; or
- (b) to carry out functions on behalf of SEDMB.
- (2) The membership and conditions of membership of a committee will be determined by SEDMB and may, but need not, consist of, or include, members of SEDMB.
- (3) SEDMB will determine who will be the presiding member of a committee.
- 35 (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
- (a) as determined by SEDMB; and
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

15—Validity of acts

An act or proceeding of SEDMB or a committee of SEDMB is not invalid by reason only of a vacancy in its membership.

16—Remuneration

5 A member of SEDMB is entitled to remuneration, allowances and expenses determined by the Governor.

Subdivision 3—Functions

17—Functions

(1) The functions of SEDMB are—

- 10 (a) to carry out each of the following in accordance with the Strategy:
- (i) to construct, manage, repair, clean and otherwise maintain the drainage system and related works;
 - (ii) to operate the drainage system;
 - (iii) to manage water flow in the South East;

15 (iv) to manage wetlands and watercourses in the South East; and
- (b) to carry out any other function assigned to SEDMB—
- (i) at the request of the Minister or by negotiation with another person or body—that may assist the Minister or the other person or body in connection with the protection, management or enhancement of any

20 aspect of the environment in the South East; or

 - (ii) under the Strategy; or
 - (iii) under this Act or any other Act; or
 - (iv) by the Minister.

(2) In carrying out its functions, SEDMB must—

- 25 (a) ensure that its activities are consistent with the Strategy; and
- (b) encourage and promote active community involvement in water conservation and management matters; and
- (c) seek, in the first instance, to undertake its activities on the basis of negotiation with landholders and all other relevant persons or authorities.

30 (3) SEDMB may, with the approval of the Minister, undertake activities outside the South East in connection with the operation of subsection (1).

Subdivision 4—Powers

18—General powers

35 (1) SEDMB has the powers of a natural person and may do anything necessary, expedient or incidental to performing the functions conferred on SEDMB under this Act or any other Act.

(2) Without limiting the operation of subsection (1), SEDMB may do any or all of the following for the purposes of this Act:

(a) enter into a contract, agreement or arrangement of any kind (whether with landholders or any other person or authority);

(b) acquire, hold, deal with or dispose of real or personal property or any interest in real or personal property, including for the purposes of a statutory easement;

(c) seek expert or technical advice on any matter from any person on such terms and conditions as SEDMB thinks fit.

(3) SEDMB may, with the consent of the Minister, compulsorily acquire land under the *Land Acquisition Act 1969*.

19—Power to enter, inspect etc land

(1) SEDMB may, for the purposes of this Act, do any or all of the following within SEDMB's area:

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

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

(c) inspect any private works related to the drainage system;

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

(2) The power to enter land is, except in cases where urgent action is required to deal with a flood, potential flood or other emergency, exercisable only at a reasonable time of the day and on giving reasonable notice (being not less than 1 day) to the landholder.

20—Power to carry out works

(1) Subject to this section—

(a) SEDMB may construct such works, or alter or remove such of SEDMB's works, as SEDMB thinks necessary or desirable for the drainage system in accordance with the Strategy and for the purposes of this Act; and

(b) undertake any other activity as SEDMB thinks fit as may be contemplated by the Strategy and for the purposes of this Act.

(2) SEDMB must endeavour to maintain its works relating to the drainage system in a good state of safety, cleanliness and repair and in efficient working order.

(3) SEDMB may not, except with the approval of the Minister, undertake any work under this section that is not contemplated by the Strategy or SEDMB's approved business plan.

(4) SEDMB may not, except with the approval of the Minister for the River Murray, undertake any work under this section that might affect the River Murray that is not contemplated by the Strategy or SEDMB's approved business plan.

21—Power to fence works

(1) SEDMB—

(a) may cause any of its works relating to the drainage system or a drainage reserve under its care, control and management to be fenced to such extent and in such manner as is reasonably adequate—

(i) for the purpose of protecting the works or reserve from damage; or

(ii) for any other purpose reasonably connected with the operation of the drainage system or drainage reserve; and

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

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

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

(b) if there is more than 1 such landholder—each is liable to SEDMB for that proportion of the share to be borne by all such landholders that the length of the fence situated on the landholder's land, or the landholder's common boundary with the works or drainage reserve (as the case may be), bears to the overall length of the fence.

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

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

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

(a) is recoverable by SEDMB as a debt; and

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

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

Subdivision 5—Business plan

22—Business plan

(1) SEDMB must, before 31 March in each year, submit a business plan to the Minister for approval.

(2) A business plan must be developed in consultation with the SE NRM Board.

(3) A business plan must—

(a) incorporate an implementation program for the next 3 financial years that includes—

- (i) an assessment of the staff and physical resources that SEDMB expects to require during each of those years; and
- (ii) an assessment of the infrastructure and land that SEDMB wishes to acquire during each of those years; and
- 5 (iii) a work program that includes an assessment of the risks and identifies priorities for each of those years in respect of SEDMB's functions under this Act; and
- (b) set out SEDMB's budget for the next financial year (including estimates of its income and expenditure for that period); and
- 10 (c) contain such other information or material contemplated by this Act or required by the Minister or the regulations.
- (4) The Minister may approve a business plan submitted under this section with or without modification.
- (5) If a business plan is not approved by the Minister (with or without modification) before the commencement of the period to which it relates, SEDMB may proceed as if it were approved (but is bound by any modifications subsequently required by the Minister).
- 15 (6) SEDMB may, at any time, submit a variation of its business plan to the Minister for the Minister's approval (which may be with or without modification).
- 20 (7) SEDMB must ensure that its business plan, as last approved under this section, is available for public inspection on a website and at its principal place of business during normal office hours.
- (8) In this section—
- financial year* means—
- 25 (a) the period starting from a date specified by the Minister and ending on 30 June following the commencement of this section; or
- (b) a succeeding period of 12 months commencing on 1 July.

Subdivision 6—Staff

23—Staff

- 30 (1) SEDMB's staff consists of Public Service employees assigned to assist SEDMB.
- (2) SEDMB may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

Subdivision 7—Miscellaneous

35 24—Delegation

- (1) For the purpose or in the course of performing its functions, SEDMB may delegate a function—
- (a) to a particular committee, reference group or any other person or body; or
- (b) to the person for the time being occupying a particular office or position.

- (2) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- (a) must be made by instrument in writing; and
 - 5 (b) may be made subject to conditions specified in the instrument of delegation; and
 - (c) is revocable at will and does not prevent the delegator from acting in a matter.

25—Accounts and audit

- (1) SEDMB must cause proper accounts to be kept of its financial affairs and must cause financial statements to be prepared in respect of each financial year.
- 10 (2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements required under subsection (1).

26—Annual report

- (1) SEDMB must, on or before 30 November in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June (and need not provide a report under the *Public Sector Act 2009*).
- 15 (2) The report must include an assessment of the extent to which SEDMB has succeeded in implementing during the relevant financial year the aspects of the Strategy for which SEDMB is responsible.
- 20 (3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Division 2—Authorised officers and their powers

27—Appointment of authorised officers

- 25 (1) The Minister may appoint an authorised officer under the *Natural Resources Management Act 2004* to be an authorised officer 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.
- 30 (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.
- 35 (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.

28—Powers of authorised officers

- 5
- (1) An authorised officer appointed under section 27 may, subject to any conditions or limitations specified in the instrument of the appointment, exercise his or her powers under the *Natural Resources Management Act 2004* for the purposes of the administration and enforcement of this Act.
 - (2) This Act is to be read as if the provisions of Chapter 3 Part 6 of the *Natural Resources Management Act 2004* were incorporated in this Act (subject to any modifications prescribed by regulation) together with any definitions contained in that Act of terms used in those provisions.

10 Part 5—Operation, maintenance etc of drainage system

Division 1—Vesting of works related to drainage system

29—Vesting of works related to drainage system

- 15
- (1) The Minister may, by notice in the Gazette, vest—
 - (a) specified private works related to the drainage system in SEDMB; or
 - (b) specified SEDMB works related to the drainage system in another specified person or body.
 - (2) The Minister may, by notice in the Gazette, vest specified works of the Minister related to the drainage system in SEDMB.
 - (3) The Minister cannot issue a notice under subsection (1) except at the request of, or with the approval of, each person or body (other than SEDMB) in whom works the subject of the notice are vested or are to be vested.
 - (4) If works are vested or are to be vested in SEDMB, the Minister must consult with SEDMB before issuing a notice under this section.
- 20

Division 2—Water in drainage system is property of Crown

25 30—Water in drainage system is property of Crown

- (1) Water in the drainage system under this Act is the exclusive property of the Crown.
 - (2) A person must not take or use water from the drainage system except in accordance with an authorisation of the Minister.
 - (3) The Minister must not authorise the taking or using of water from the drainage system under this section unless the Minister is satisfied that the taking or use of the water is consistent with the Strategy.
 - (4) An authorisation of the Minister under this section to take or use water from the drainage system—
 - (a) may be subject to such conditions as the Minister thinks fit; and
 - (b) ceases—
 - (i) on the day specified in the authorisation; or
- 30
- 35

- (ii) if the water to be taken or used under the authorisation is from a part of the drainage system that is, after the authorisation has been granted, prescribed as a water resource under the *Natural Resources Management Act 2004*—on the day on which the regulation under which the water resource is prescribed comes into operation,

whichever is the earlier.

- (5) A person must not take or use water from the drainage system in contravention of this section.

Maximum penalty:

- (a) in the case of a body corporate—\$200 000;
(b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.

- (6) A person must not contravene or fail to comply with an authorisation of the Minister under this section or a condition to which such an authorisation is subject.

Maximum penalty:

- (a) in the case of a body corporate—\$70 000;
(b) in the case of a natural person—\$35 000.

Expiation fee: \$750.

- (7) This section does not apply if the water is taken or used—

- (a) from a part of the drainage system that is a prescribed water resource under the *Natural Resources Management Act 2004*; or
(b) for firefighting in urgent circumstances.

Division 3—Management agreements

31—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 drainage system,

with the owner of land within the South East.

- (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;

- 5
- (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 measures to protect the environment or programs to improve the environment;
- (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 6;
- (h) provide for remission of rates or taxes in respect of the land;
- 10 (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 a management agreement providing for the remission of rates or taxes has effect despite any law to the contrary.
- 15 (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).
- 20 (6) If 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.
- 25 (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).
- 30 (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—Licence to carry out work or activities relating to drainage system

32—Application of Division

35 This Division does not apply to a person undertaking a water affecting activity under the *Natural Resources Management Act 2004* authorised (whether before or after the commencement of this section) under Chapter 7 of that Act.

33—Certain work and activities not to be carried out without licence

- (1) A person must not, except under a licence granted under this Division—
- (a) undertake any work on land in the South East; or

South East Drainage System Operation and Management Bill 2012

Part 5—Operation, maintenance etc of drainage system

Division 4—Licence to carry out work or activities relating to drainage system

(b) remove or alter any works relating to the drainage system (whether constructed before or after the commencement of this Act) on land in the South East; or

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

5 if to do so would, or would be likely to, stop, increase, decrease or otherwise affect the flow of water from or onto the land, or the flow of water into a watercourse, wetland or the drainage system.

Maximum penalty:

(a) in the case of a body corporate—\$200 000;

10 (b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.

(2) A person must not, except under a licence granted under this Division, erect a bridge or construct a culvert or ford over, through or along any works relating to the drainage system or a drainage reserve.

15 Maximum penalty:

(a) in the case of a body corporate—\$200 000;

(b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.

(3) Subsections (1) and (2) do not apply—

20 (a) to a person who, in accordance with Part 6 of the *Environment Protection Act 1993*—

(i) carries out works for—

(A) the construction or alteration of a building or structure for use for a prescribed activity of environmental significance; or

25 (B) the installation or alteration of any plant or equipment for use for a prescribed activity of environmental significance; or

(ii) undertakes a prescribed activity of environmental significance; or

30 (b) to a council that, following consultation with SEDMB, carries out works for—

(i) the construction or alteration of a building or structure for stormwater or flood management activities in a township; or

35 (ii) the installation or alteration of any plant or equipment for stormwater or flood management activities in a township.

(4) A person must not, except under a licence granted under this Division, discharge a substance into the drainage system.

Maximum penalty:

(a) in the case of a body corporate—\$200 000;

40 (b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.

- (5) Subsection (4) does not apply to a council that, following consultation with SEDMB, discharges stormwater into the drainage system in accordance with an approved stormwater management plan.
- (6) The regulations may prescribe exemptions from the operation of this section (which exemptions may operate subject to such conditions as the regulations may prescribe).

34—Grant of licences

- (1) SEDMB may grant a licence authorising a person to carry out work or an activity specified in the licence.
- (2) An application for a licence must be in a form approved by the Minister and must be accompanied by the prescribed fee.
- (3) A licence may be subject to such conditions as SEDMB thinks fit and specifies in the licence.
- (4) The conditions of a licence may, by notice in writing addressed to the holder of the licence, be varied, revoked or added to at any time by SEDMB.
- (5) A person who contravenes or fails to comply with a condition of a licence under this Division is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$200 000;
- (b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.
- (6) If an application for a licence relates to work that is to be carried out within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this section (which class may be prescribed so as to consist of applications for all such licences), SEDMB must, before making its decision on the application—
- (a) consult the Minister for the River Murray; and
- (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the licence be subject to conditions specified by the Minister).
- (7) If an application for a licence relates to the discharge of a substance into the drainage system and is within a class of applications prescribed by the regulations for the purposes of this section (which class may be prescribed so as to consist of applications for all such licences), SEDMB must, before making its decision on the application—
- (a) take into account the *Environment Protection Act 1993* and the provisions of any relevant environment protection policy under that Act; and
- (b) —
- (i) consult the Minister responsible for the administration of the *Environment Protection Act 1993*; and
- (ii) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the licence be subject to conditions specified by the Minister).

Division 5—Discharge by council of stormwater into drainage system

35—Discharge by council of stormwater into drainage system

A council must not discharge stormwater into the drainage system except—

- 5
- (a) in accordance with an approved stormwater management plan following consultation with SEDMB; or
 - (b) under a licence granted under Division 4.

Note—

See—

- 10
- (a) section 33(4) and (5); and
 - (b) Division 4 of Schedule 1A of the *Local Government Act 1999* for the action that may be taken against a council that fails to comply with an approved stormwater management plan.

Division 6—Drainage system not to be interfered with

36—Drainage system not to be interfered with

- 15
- (1) A person must not, without the permission of SEDMB, act in a manner that the person knows will interfere with, or is likely to interfere with—
- (a) the drainage system; or
 - (b) works related to the drainage system, or the operation of any such works; or
 - (c) a drainage reserve; or
 - 20 (d) a road adjoining a drainage reserve; or
 - (e) any other aspect of the drainage system.

Maximum penalty:

- (a) in the case of a body corporate—\$200 000.
- 25 (b) in the case of a natural person—\$100 000 or imprisonment for 2 years, or both.

- (2) A person must not, without the permission of SEDMB, act in a manner that the person ought reasonably to know is likely to interfere with—

- (a) the drainage system; or
- (b) works related to the drainage system, or the operation of any such works; or
- 30 (c) a drainage reserve; or
- (d) a road adjoining a drainage reserve; or
- (e) any other aspect of the drainage system.

Maximum penalty:

- (a) in the case of a body corporate—\$50 000;
- 35 (b) in the case of a natural person—\$25 000.

- (3) The permission of SEDMB under this section may be granted—
- (a) as part of a licence; or
 - (b) in such other manner as SEDMB thinks fit.
- (4) The granting of permission under this section may be subject to such conditions as SEDMB thinks fit.
- (5) A person must not contravene or fail to comply with a condition of permission imposed under subsection (4).
Maximum penalty: \$50 000.
- (6) Subsection (5) does not limit the operation of section 34(3).

Division 7—Orders

37—Protection orders

- (1) SEDMB may issue a protection order—
- (a) for the purpose of addressing an activity that, in the opinion of SEDMB, is having an adverse effect on—
 - (i) the operation or management of any part of the drainage system; or
 - (ii) a wetland or watercourse; or
 - (iii) a key environmental feature; or
 - (b) for the purpose of securing compliance with—
 - (i) a management agreement; or
 - (ii) a condition of a licence; or
 - (iii) a condition of permission of SEDMB under Division 6; or
 - (iv) any other requirement imposed by or under this Act.
- (2) A protection 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 either or both 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 SEDMB;
 - (ii) a requirement that a person take specified action within a specified period.

- (3) Without limiting the generality of subsection (2), a protection 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 measure or program to protect or improve the environment;
 - (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 protection order imposing requirements of a kind referred to in subsection (2)(d) or (3).
- (5) An emergency protection order may be issued orally.
- (6) If an emergency protection 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 protection order issued by SEDMB and served on the relevant person.
- (7) SEDMB may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.
- (8) A person to whom a protection order is issued must comply with the order.
- Maximum penalty:
- (a) in the case of a body corporate—\$200 000.
 - (b) in the case of a natural person—\$100 000.
- (9) A person cannot claim compensation from SEDMB or the Crown (or from an authorised officer) in respect of a requirement imposed by a protection order.

38—Reparation orders

- (1) If—
- (a) any work has been carried out or any other thing done by a person in contravention of this Part; or
 - (b) a person contravenes or fails to comply with a condition of a licence; or
 - (c) SEDMB is of the opinion that works constructed by a person under a licence (whether before or after the commencement of this Division) are having an adverse effect on the proper management or conservation of surface or underground water in the South East,
- SEDMB may issue an order (a *reparation order*) under this section requiring the person to take specified action within a specified period to remedy the contravention or non-compliance, or to ensure the proper management or conservation of surface or underground water (as the case may be).

- (2) 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 (which may include the complete removal of any work)—
 - (i) to remedy the contravention or non-compliance; or
 - (ii) to ensure the proper management or conservation of surface or underground water; and
 - (e) may include or address any other prescribed matter.
- (3) SEDMB 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:
- (a) in the case of a body corporate—\$200 000.
 - (b) in the case of a natural person—\$100 000.
- (5) A person cannot claim compensation from SEDMB or the Crown (or from any authorised officer) in respect of a requirement imposed by a reparation order.

39—Registration of orders

- (1) The Registrar-General must—
- (a) on application by SEDMB under this section; and
 - (b) on 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 SEDMB, 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) SEDMB 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 SEDMB takes action under this Division to carry out the requirements of the order—on payment to SEDMB of the amount recoverable by SEDMB under this Division in relation to the action so taken.

40—Action on non-compliance with order

- (1) If the requirements of an order under this Division are not complied with, SEDMB may take any action required by the order.
- (2) Action taken by SEDMB under subsection (1) may be taken on SEDMB's behalf by an authorised officer, a member of SEDMB's staff, or another person authorised by SEDMB for the purpose.
- (3) A person must not hinder or obstruct SEDMB 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 SEDMB in taking action under this section may be recovered by SEDMB 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 SEDMB under subsection (4)—
- (a) SEDMB 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 so payable is, until paid, a charge in favour of SEDMB 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 SEDMB or the Crown (or from any person acting under subsection (2)) in respect of any action taken under this section.

Division 8—Civil remedies

41—Orders of ERD Court

- (1) Applications may be made to the ERD Court for 1 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—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 7)—an order requiring the person to take that action (including to comply with an order under that Division);

- (c) 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.
- 5 (2) The power of the ERD 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
- 10 (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.
- 15 (3) The power of the ERD 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
- 20 (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.
- 25 (4) In assessing an amount to be ordered in the nature of exemplary damages, the ERD 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 ERD Court.
- (6) An application may be made without notice to the respondent and, if the ERD Court is satisfied on the application that the respondent has a case to answer, it may grant
- 30 permission to SEDMB 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 ERD Court is satisfied that, in order to preserve
- 35 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
- 40 (b) may be made subject to such conditions as the ERD Court thinks fit; and
- (c) will not operate after the proceedings in which it is made are finally determined.

(9) The ERD 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 ERD 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.

42—Interim restraining orders to prevent harm to key environmental features

(1) If it appears that—

(a) an activity may cause, or may be causing, harm to a key environmental feature; but

(b) there is insufficient information available to SEDMB to enable SEDMB to assess the likelihood of harm, or the extent or impact of harm, to the key environmental feature; and

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

the ERD Court may, on the application of SEDMB, 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 ERD Court on application by SEDMB.

(3) The ERD Court may, by subsequent order, vary or revoke an order made by the Court under this section.

(4) An application by SEDMB 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 SEDMB or the Crown in respect of the issuing of an order under this section.

Division 9—Appeals

43—Rights of appeal

(1) A right of appeal lies to the ERD Court in the following cases:

(a) an applicant for a licence under Division 4 may appeal against a decision of SEDMB to refuse a licence;

(b) the holder of a licence may appeal against a decision of SEDMB to vary or add to the conditions to which the licence is subject;

(c) a person who has been required by SEDMB by a notice under Division 7 to take specified steps may appeal against a requirement of the notice.

(2) An appeal must be instituted in the prescribed manner and form within 6 weeks of the decision or requirement appealed against or within such further time as the ERD Court considers to be reasonable in the circumstances.

(3) On an appeal, the ERD Court may—

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

(b) remit the subject matter of the appeal to SEDMB for further consideration.

44—Decision or requirement may be suspended pending appeal

10 (1) Where a decision or requirement has been made by SEDMB and SEDMB or the ERD Court is satisfied that an appeal against the decision or requirement has been instituted, or is intended, SEDMB or the Court may suspend the operation of the decision or requirement until the determination of the appeal.

15 (2) A suspension under subsection (1) may be terminated at any time by SEDMB or the ERD Court (as the case may require).

Part 6—Contribution to funding of drainage system

45—Contribution to funding of drainage system

(1) The Minister may levy contributions from the following persons:

(a) landholders;

20 (b) a person whose activities, in the opinion of the Minister, contribute to the need for the drainage system;

(c) any other person who, in the opinion of the Minister, benefits from the drainage system.

(2) However—

25 (a) a contribution will not be levied in respect of land to the extent that a management agreement relating 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.

30 (3) The Minister must, before levying a contribution under this Part—

(a) carry out an assessment of the expected social impact of the imposition of any such levy, including an assessment of the relative private and public benefits of the provision and management of the drainage system (a *social impact assessment*); and

35 (b) consult with SEDMB.

(4) The Minister must review the social impact assessment if, in the opinion of the Minister, there has been in the period during which a contribution is levied significant change in the social and economic circumstances of the persons, or classes of persons, on whom contributions are levied.

(5) An exemption under subsection (2)(b) may operate in respect of a period commencing before publication of the notice.

(6) 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 purposes of this Act, including towards the cost to SEDMB of the carrying out of its functions.

(7) 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.

(8) Rates of contribution may vary according to factors specified by the Minister in the notice.

(9) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.

(10) The Minister may establish a scheme for the collection of contributions under this section.

(11) A scheme may, for example, make provision for any of the following:

(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 SEDMB, or a person prescribed for the purpose, on behalf of the Minister.

(12) 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% 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).

(13) The Minister may remit an amount payable under subsection (12) in whole or in part.

(14) 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).

(15) In this section—

prescribed percentage means a percentage calculated as follows:

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

where—

5 **DBR** is the designated bank rate for that financial year

designated bank rate, for a particular financial year, means a rate designated by the regulations for the purposes of this item at the commencement of the financial year

p is the prescribed percentage

private land means land that is not—

- 10 (a) unalienated land of the Crown; or
(b) vested in or under the care, control or management of SEDMB or some other specified person or authority.

Part 7—Miscellaneous

46—Native title

- 15 (1) Nothing done under this Act will be taken to affect native title in any land or water.
(2) However, subsection (1) does not apply if the effect is valid under a law of the State or the *Native Title Act 1993* of the Commonwealth.

47—Immunity provision

20 No act or omission undertaken or made by the Minister or any other person engaged in the administration of this Act, or by another person or body acting under the authority of the Minister, with a view to exercising or performing a power or function under this Act (including by causing the level of any water resource to rise or fall, inundating any place, causing or allowing any water to escape or to be redirected, taking action that may damage any land or property, or adversely affecting the use or enjoyment of
25 any land or property), gives rise to any liability (whether based on a statutory or common law duty to take care or otherwise) against the Minister, person or body, or the Crown.

48—Delegation

- 30 (1) Subject to this section, 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, or under any other Act that, in the opinion of the Minister, is relevant to the operation or administration of this Act.
(2) A delegation under this section—
35 (a) must be by instrument in writing; and
(b) may be absolute or conditional; and
(c) is revocable by the Minister at will; and
(d) does not derogate from the power of the Minister to act in any matter.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(4) The Minister cannot delegate the function under Part 5 Division 1 or this section.

49—Power to waive or defer payments

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

(2) The relevant authority may waive or defer payment on such conditions as it thinks fit, including a condition providing for the payment of interest on an amount deferred.

(3) In this section—

10 *relevant authority* means SEDMB or the Minister, as the case requires.

50—Proceedings for offences

Proceedings for an offence against this Act may be commenced within 5 years after the date on which the offence is alleged to have been committed.

51—Offences by body corporate

15 If a body corporate is guilty of an offence against this Act, the manager and each member of the governing body of the body corporate is guilty of an offence against this Act and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless the manager or member (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the
20 commission of the offence.

52—Vicarious liability

For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

53—Continuing offence

25 (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

30 (a) is liable, subject to any determination of a court, 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

35 (b) is, if the act or omission continues after the conviction, subject to any determination of a court, 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.

40 (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.

54—General defence

- 5 (1) It is a defence to a charge of an offence against this Act for the defendant to prove that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 51.

55—Evidentiary

- 10 (1) An allegation by the prosecution in any proceedings for an offence against this Act that on a specified day—
- (a) a specified person was or was not the holder of a licence, permit or other authority under this Act; or
 - (b) a specified person was or was not the owner or occupier of specified land; or
 - (c) a specified person was or was not permitted to do something; or
 - 15 (d) specified works relating to the drainage system were SEDMB works; or
 - (e) a specified piece of land constituted a drainage reserve under the care, control and management of a specified authority; or
 - (f) specified land fell within SEDMB's area under this Act; or
 - (g) a specified person was an authorised officer or other person engaged in the
 - 20 administration of this Act,
- will, in the absence of proof to the contrary, be taken to have been proved.
- (2) In any proceedings for an offence against this Act, if it is proved that—
- (a) works relating to the drainage system have been constructed, removed, altered, closed off or obstructed in any way on land in the South East; or
 - 25 (b) a bridge has been erected or a culvert or ford constructed over, through or along any works relating to the drainage system on land in the South East; or
 - (c) the drainage system, or works relating to the drainage system, or the operation of any such works, have been otherwise interfered with,
- it will be presumed, in the absence of proof to the contrary, that the occupier of the
- 30 land on which the drainage system, works relating to the drainage system, bridge, culvert or ford is situated, or a person acting on his or her behalf, was the person who—
- (d) constructed, removed, altered, closed off or obstructed the works relating to the drainage system; or
 - 35 (e) erected the bridge or constructed the culvert or ford.
- (3) In any proceedings for an offence against this Act, if it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer or person assisting an authorised officer, the alleged fact will, in the absence of proof to the contrary, be taken to have been proved.

- 5 (4) In any proceedings for an offence against this Act, a document purporting to be certified by the Minister, SEDMB or an authorised officer as an accurate copy of a licence, permit or other authority under this Act will, in the absence of proof to the contrary, be taken to be an accurate copy of the licence, permit or authority in question.

56—Regulations

- 10 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or desirable for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 15 (a) provide for the granting by the Minister of conditional or unconditional exemptions from provisions of this Act; and
- (b) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, SEDMB or another prescribed person or body; and
- 20 (c) fix fees and provide for their payment, recovery or waiver; and
- (d) fix penalties not exceeding \$10 000 for breaches of the regulations.
- (3) Any regulation under this Act may be of general or limited application according to—
- (a) the classes of person, land or works; or
- (b) the circumstances; or
- (c) any other specified factor,
- to which the regulation is expressed to apply.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Interpretation

1—Amendment provisions

25 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Natural Resources Management Act 2004*

2—Amendment of section 3—Interpretation

30 Section 3(1), definition of *wetland*—after paragraph (b) insert:

or

- 35 (ba) by the South East Drainage and Wetland Management Strategy prepared under the *South East Drainage System Operation and Management Act 2012*,

3—Amendment of section 129—Activities not requiring permit

Section 129(1)(i)—delete "Part 3 Division 2 of the *South Eastern Water Conservation and Drainage Act 1992*" and substitute:

the *South East Drainage System Operation and Management Act 2012*

5 **Part 3—Repeal**

4—Repeal of *South Eastern Water Conservation and Drainage Act 1992*

The *South Eastern Water Conservation and Drainage Act 1992* is repealed.

Part 4—Transitional provisions

10 **5—South Eastern Water Conservation and Drainage Board continues as South Eastern Drainage Management Board**

- (1) The South Eastern Drainage Management Board or SEDMB is the same body corporate as the South Eastern Water Conservation and Drainage Board continued under the Drainage Act.
- (2) A reference in an Act or instrument or document to the South Eastern Water Conservation and Drainage Board is (where the context admits) to be read as a reference to the South Eastern Drainage Management Board or SEDMB and to be construed accordingly.
- (3) The offices of the members of the South Eastern Water Conservation and Drainage Board are vacated on the commencement of this subclause.

20 **6—Other offices vacated**

On the commencement of this clause—

- (a) the offices of the Eight Mile Creek Water Conservation and Drainage Advisory Committee under the Drainage Act are vacated; and
- (b) the offices of the members of any other advisory committee under the Drainage Act are vacated.

30 **7—Upper South East Drainage Network Management Strategy**

On the commencement of this clause, the Upper South East Drainage Network Management Strategy in force under section 43A of the *Upper South East Dryland Salinity and Flood Management Act 2002* will be taken to have been adopted by the Minister as the South East Drainage and Wetland Management Strategy under section 8 of this Act (subject to such modifications as the Minister thinks fit).

8—Management plan continues as business plan

On the commencement of this clause, the management plan of the South Eastern Water Conservation and Drainage Board in existence immediately before the repeal of the Drainage Act will be taken to be the first business plan for SEDMB for the purposes of section 22 of this Act.

9—Ministerial authorisations

An authorisation of the Minister in force under section 37 of the Drainage Act immediately before the repeal of that Act will be taken to be an authorisation of the Minister under section 30 of this Act.

5 10—Licences

A licence in force under Part 3 Division 2 of the Drainage Act immediately before the repeal of that Act will be taken to be a licence granted under Part 5 Division 4 of this Act.

11—Fencing agreements

10 A fencing agreement between a landholder and the South Eastern Water Conservation and Drainage Board in force under section 40 of the Drainage Act immediately before the repeal of that Act will be taken to be a fencing agreement between the landholder and SEDMB under section 21 of this Act (and, hence, any amount due and payable to the South Eastern Water Conservation and Drainage Board under a notice under
15 section 40 of the Drainage Act still outstanding on the repeal of that Act will be due and payable to SEDMB under section 21 of this Act).