

House of Assembly—No 152

As laid on the table and read a first time, 15 October 2009

South Australia

**Upper South East Dryland Salinity and Flood
Management (Extension of Project) Amendment
Bill 2009**

A BILL FOR

An Act to amend the *Upper South East Dryland Salinity and Flood Management Act 2002*.

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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 (Extension of Project) Amendment Act 2009*.

5 2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Upper South East Dryland Salinity and Flood Management Act 2002*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *authorised officer* insert:

5 *Category A project works corridor* means a project works corridor within the
ambit of Part A of Schedule 1;

Category B project works corridor means a project works corridor within the
ambit of Part B of Schedule 1;

10 *Category C project works corridor* means a project works corridor within the
ambit of Part C of Schedule 1;

- (2) Section 3(1), definition of *project works corridor*—after paragraph (b) insert:

or

(c) any land on either side of any line described in Part C of Schedule 1
to a distance of 100 metres on each side of the line;

- 15 (3) Section 3(1)—after the definition of *spouse* insert:

statutory easement—see Part 3 Division 1;

- (4) Section 3—after subsection (6) insert:

(7) The Governor may, by regulation, prescribe various classes of
statutory easements (with provisions prescribed by the regulations)
20 that will apply for the purposes of this Act.

5—Amendment of section 10—Powers of authorised officers

Section 10(2)(a)—delete "vested in the Minister" and substitute:
within a project works corridor

6—Substitution of heading to Part 3 Division 1

25 Heading to Part 3 Division 1—delete the heading to Division 1 and substitute:

**Division 1—Vesting of land and creation of statutory
easements**

7—Amendment of section 12—Vesting of land (Category A and Category B project works corridors)

- 30 (1) Section 12(5) to (8)—delete subsections (5) to (8) (inclusive)

- (2) Section 12—after subsection (9) insert:

(9a) An application to the Registrar-General for the purposes of this
section must be made in a form determined or approved by the
Registrar-General (and must, if required by the Register-General, be
35 accompanied by a plan in a form determined or approved by the
Register-General).

(3) Section 12(10)—after paragraph (e) insert:

and

(f) this section will, from the commencement of this paragraph, only apply to land within a Category A or Category B project works corridor.

(4) Section 12—after subsection (10) insert:

(10a) The Governor may, by proclamation, declare that public land adjoining or adjacent to land within a Category A project works corridor will be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of the public land.

(10b) Any public land within the ambit of a proclamation under subsection (10a) may be identified in a Filed Plan lodged in the Lands Titles Registration Office (or in some other manner determined to be appropriate by the Governor).

(5) Section 12(11)—delete "subsection (1) or (5)" and substitute:

this section

(6) Section 12(12), definition of *public authority*—before paragraph (a) insert:

(aa) the Crown; or

(7) Section 12(12), definition of *public authority*, (a)—delete "an agency" and substitute:

a Minister or other agency

(8) Section 12(12)—after the definition of *public authority* insert:

public land means land vested in, held by, or under the care, control and management of, a public authority;

8—Insertion of sections 12A, 12B and 12C

After section 12 insert:

12A—Land to be revested (Category B project works corridors)

(1) On the commencement of this section (the *commencement date*), all land within a Category B project works corridor will vest in—

(a) unless paragraph (b) applies—the person who, on the vesting of the land in the Minister under section 12, was the owner of the remainder of the land in the parcel of land that was affected by the vesting (the *remaining land*); or

(b) if the person referred to in paragraph (a) is not, on the commencement date, the owner of the remaining land—the person who, on the commencement date, is the owner of the remaining land.

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- 5
- (2) A vesting under subsection (1) operates by force of that subsection and without the need to execute any instrument, to undertake or obtain any registration (including in the Lands Titles Registration Office) or to obtain any consent or approval.
- 10
- (3) If land was, immediately before its vesting in the Minister under section 12(1), part of a road vested in a council, the land will, when revested under this section, be reinstated as a public road under the *Local Government Act 1999*.
- 15
- (4) Subject to subsection (3), land vested under this section will be vested in the same estate as the remaining land and, on the vesting of land under this section, the title to the land will be taken to have been restored as if no change had ever occurred and as if the land had never been vested under section 12 (subject to any dealing with the remaining land between 19 December 2002 and the commencement date and without giving rise to any retrospective liability for any tax, rate or charge in connection with the land that has been revested).
- 20
- (5) Any land within a Category B project works corridor will, on its vesting under this section, be taken to be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land or as private land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of the land.
- 25
- (6) Subject to the statutory easement, land vested under this section will be subject to any relevant interest in relation to the remaining land.
- 30
- (7) Without limiting subsection (4) but subject to the statutory easement, land vested under this section will merge with the remaining land so as to create 1 or more amalgamated allotments (being an allotment or allotments for the purposes of the *Real Property Act 1886* and, if determined to be appropriate by the Register-General in any particular case, so as to reinstate any allotment boundaries that existed before the original vesting), subject to any provision made by the Governor by proclamation for the purposes of this subsection.
- 35
- (8) The Governor may, by proclamation, in connection with the vesting of land under this section, make any other provision that the Governor considers to be necessary or expedient on account of the vesting.
- 40
- (9) Any vesting under this section, and any provision of a proclamation under this section, will have effect despite any other Act or law and may have effect so as to create or adjust any legal or equitable interest associated with land (including with respect to rights appurtenant to land).

(10) The Registrar-General—

- 5
- (a) must, on application by the Minister or any other person in whom an estate in fee simple in land is vested by operation of this section, take such action as the Registrar-General considers appropriate to record or give effect to the vesting of land under this section (including by issuing, noting or amending any certificate of title); and
- 10
- (b) must, on application by the Minister, register or note an easement in favour of the Minister under this section on any relevant certificate of title or against any land (without the need to obtain any consent or approval); and
- 15
- (c) 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).

20

(11) An application to the Registrar-General for the purposes of this section must be in a form determined or approved by the Registrar-General (and must, if required by the Registrar-General, be accompanied by a plan in a form determined or approved by the Registrar-General).

(12) No stamp duty is payable with respect to a vesting of land under this section.

25

(13) In this section—

relevant interest, in relation to land, means any estate, interest, trust, restriction, dedication, reservation, obligation, mortgage, easement, encumbrance, caveat, contract or licence that relates to the land.

12B—Acquisition of interest in land by statutory easement (Category C project works corridors)

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(1) On the commencement of this section, all land within a Category C project works corridor will, by force of this section, be taken to be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land or as private land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of the land.

35

(2) The Registrar-General—

- 40
- (a) must, on application by the Minister, register or note an easement in favour of the Minister under this section on any relevant certificate of title or against any land (without the need to obtain any consent or approval); 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.

(3) An application to the Registrar-General for the purposes of this section must be in a form determined or approved by the Registrar-General (and must, if required by the Register-General, be accompanied by a plan in a form determined or approved by the Register-General).

12C—Statutory easements

(1) A statutory easement under section 12, 12A or 12B—

(a) will be an easement in gross; and

(b) will have effect by force of this Act and without the need to execute any instrument, to undertake or obtain any registration (including in the Lands Titles Registration Office) or to obtain any consent or approval; and

(c) will bind the owner from time to time of the relevant land even if not registered on the original certificate for the land or on the duplicate certificate under the *Real Property Act 1886* or, in the case of Crown land, even if not registered, recorded or endorsed in relation to the land (including an owner who takes the land on a genuine basis for valuable consideration in a situation where the easement has not been registered, recorded or endorsed) and will bind any other person who takes possession of the land (on any basis and at any time); and

(d) will have effect according to its terms and despite any other Act or law and will prevail over any other relevant interest to the extent of any inconsistency; and

(e) will have effect despite the fact that it may provide for exclusive possession over land; and

(f) may provide for the undertaking of work, the alteration of land, the construction, fixing or placing of works and other items, and the taking of other action in connection with the Project; and

(g) may prohibit, restrict or regulate access to the land subject to the easement (including access by the owner of the land); and

(h) may place obligations on the owner of the land (including an obligation to maintain land subject to the easement); and

(i) may, by instrument lodged by the Minister in the Lands Titles Registration Office and without the need to obtain any consent or approval—

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(i) be varied by altering the extent or area of the easement; or

(ii) be varied by agreement between the Minister and the owner of the relevant land (including in a manner, or to provide for a matter, that is not contemplated by the regulations); or

(iii) be extinguished; and

(j) may not be otherwise varied or extinguished without the consent of the Minister; and

(k) may have effect over or in relation to a public street or road; and

(l) subject to a preceding paragraph, will be taken to be an easement for the purposes of the *Real Property Act 1886*.

(2) A person who has an interest in land that is affected by the creation of an easement in favour of the Minister by operation of this Act does not have an immediate right to claim compensation from the Minister or the Crown in respect of the creation of the easement but may have an entitlement to compensation under section 13 or 13A.

(3) The Minister should, pending the performance of work on land subject to an easement under this Part (insofar as may be relevant in the circumstances), give consideration to the extent to which the land can be made available to the owner or occupier of the land adjoining the easement without adversely affecting any work under this Act or the furtherance of the objects of this Act and may, as the Minister thinks fit, enter into an agreement with a person so as to allow some or all of the land subject to the easement to be used for a purpose approved by the Minister (and then the easement will have effect subject to the terms of any such agreement).

(4) For the avoidance of doubt, the *Land Acquisition Act 1969* does not apply to or in relation to the creation of an easement under this Part (other than to the extent provided by section 13A).

(5) The Minister may, by instrument lodged in the Lands Titles Registration Office, assign the Minister's interest under an easement to another public authority.

(6) If an assignment is effected under subsection (5), a reference in a preceding subsection of this section, and in the relevant easement, to the Minister will be taken to be a reference to the relevant public authority (and the public authority may exercise any power with respect to the easement vested in the Minister by or under this Act or any other law, or by the easement itself).

5 (7) If Schedule 1 is varied so as to alter land constituting a Category B project works corridor or a Category C project works corridor, the statutory easement over land affected by the variation will be adjusted accordingly (and any necessary variation may be made with respect to any registration or noting on any certificate of title or against any land).

(8) In this section—

public authority means—

- 10 (a) a Minister or other 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;

15 *relevant interest*, in relation to land, means any estate, interest, trust, restriction, dedication, reservation, obligation, mortgage, easement, encumbrance, caveat, contract or licence that relates to the land.

9—Amendment of section 13—Entitlement to compensation

(1) Section 13(1)—after "within a" insert:

Category A or Category B

20 (2) Section 13(2)(b)—delete paragraph (b) and substitute:

(b) despite any work undertaken by the Minister within the project works corridor between the commencement of this section and the relevant date—

- 25 (i) the value of the adjoining land, as at the relevant date; plus
- (ii) the value of any land within the project works corridor returned to the person after the commencement of this section (including by operation of section 12A), as at the relevant date, after taking into account the effect of any statutory easement over the land on the value of the land that
- 30 has been returned (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) Section 13(13b)—delete subsection (13b) and substitute:

35 (13b) The Minister must, in relation to each parcel of land under this section within a Category A or Category B project works corridor, issue a finalisation declaration within a reasonable period after completing all work to be undertaken for the purposes of the Project within the corridor.

(4) Section 13(13c)—delete "land transfer"

- (5) Section 13(14), definitions of *land transfer finalisation date* and *land transfer finalisation declaration*—delete the definitions and substitute:

finalisation date means—

- (a) in relation to land within a Category A project works corridor—

(i) unless a different date is fixed under subparagraph (ii)—
19 December 2010; or

(ii) a date that is not later than 19 December 2011 fixed by the
Governor by proclamation made for the purposes of this
paragraph; and

- (b) in relation to land within a Category B project works corridor—a
date that is not later than 19 December 2014 fixed by the Governor
by proclamation for the purposes of this paragraph;

finalisation declaration means a statement in writing issued by the Minister
for the purposes of this section relating to a particular parcel of land declaring
that all work for the purposes of the Project has been completed on the land;

- (6) Section 13(14), definition of *relevant date*—delete the definition and substitute:

relevant date means—

- (a) in relation to a parcel of land where the Minister has issued a
finalisation declaration—the date on which the 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 finalisation date—the finalisation date in relation to that parcel of
land.

10—Insertion of section 13A

After section 13 insert:

13A—Entitlement to compensation—Category C project works corridors

- (1) Subject to this section, the Minister is, in respect of the acquisition of
a statutory easement over land within a Category C project works
corridor, liable to pay compensation to any person who is the holder
of an estate or interest in the land that is subject to the easement on
the relevant date (and an entitlement to compensation under this
section with respect to a particular easement does not arise before the
relevant date).

- (2) The compensation will be determined—

(a) as if the Minister had acquired the easement on the relevant
date; and

(b) as if the acquisition had occurred in accordance with the
Land Acquisition Act 1969.

5 (3) In connection with the operation of subsection (2), the Minister must make an offer of compensation within 6 weeks after the relevant date and that offer will be taken to have been made under section 23A of the *Land Acquisition Act 1969* (and then the succeeding provisions of that Act will apply in relation to the processes for arriving at an amount to be paid as compensation and, if relevant, interest but without affecting any possession of land already obtained under an easement by virtue of this Act).

10 (4) In this section—

relevant date means—

(a) in relation to a parcel of land where the Minister has issued a works finalisation declaration—the date on which the works finalisation declaration is issued to the owner of the parcel of land; or

15 (b) if paragraph (a) does not apply before 19 December 2014—
19 December 2014;

works finalisation declaration means a statement in writing issued by the Minister in relation to a particular parcel of land to the owner of the land in which the Minister declares, in connection with land within a project works corridor that comprises part of that parcel, that no further work is to be undertaken as part of the implementation of the Project under this Act.

11—Amendment of section 17—Entry onto land

(1) Section 17(1)(f)—delete "vested in the Minister" and substitute:

25 within a project works corridor

(2) Section 17(1)(g)—delete "vested in the Minister" and substitute:

within a project works corridor

(3) Section 17(1)(h)—delete "vested in the Minister" and substitute:

within a project works corridor

30 12—Amendment of section 21—Fencing works and drainage reserves

(1) Section 21—after subsection (2) insert:

35 (2a) The Minister may require the owner of land where a statutory easement is situated to carry out specified fencing work for the purposes of protecting any Project works or land from damage, or any livestock from injury.

(2b) The owner of land where a designated fence is situated is responsible for maintaining that fence in reasonable condition and, if reasonably necessary, for replacing the fence.

40 (2c) Subject to the terms of any agreement reached with the Minister, the Minister is required to pay one half of the reasonable costs of any work associated with the operation of subsection (2a) or (2b), in accordance with a scheme established by the Minister.

(2) Section 21(4)—delete subsection (4) and substitute:

(4) The *Fences Act 1975* does not apply in relation to any fence constructed, or to be constructed, in connection with the operation of this Act.

(5) For the purposes of this section—

(a) fencing work means any work associated with the construction of a fence; and

(b) a reference to a fence extends to 1 or more gates.

(6) In this section—

designated fence means a fence designated by the Minister by notice served on the owner of land where the fence is situated.

(7) The Minister may by subsequent notice served on the owner of land, revoke the designation of a fence under subsection (6).

13—Amendment of section 23—Contribution to funding of project

Section 23(13), definition of *the prescribed percentage*—delete the definition and substitute:

the prescribed percentage means a percentage calculated as follows:

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

where—

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;

14—Amendment of section 44—Regulations

Section 44(2)(a)—after "Schedule 1" insert:

(including so as to substitute any Rack Plan referred to in the Schedule)

15—Amendment of section 45—Expiry of Act

(1) Section 45(1)—delete "2009" and substitute:

2012

(2) Section 45(4)—before paragraph (a) insert:

(aa) a statutory easement in force immediately before the expiry—

(i) will continue to have full force and effect (in the manner and according to the provisions applying in relation to the easement immediately before the expiry of this Act); and

- (ii) in the case of a statutory easement in favour of the Minister—will, by force of this paragraph, be assigned to SEWCDB; and

- (3) Section 45(6a)—after "section 13" insert:

or 13A

- (4) Section 45(6a)—delete "that section" wherever occurring and substitute, in each case: those sections

16—Variation of Schedule 1—Project works corridors

Schedule 1—after Part B insert:

Part C—Description of lines for the purposes of paragraph (c) of the definition of project works corridor

The lines shown on Rack Plan 943 lodged in the Surveyor-General's Office at Adelaide on 4 September 2009.

Schedule 1—Transitional provisions

1—Transitional provisions

- (1) In this clause—

principal Act means the *Upper South East Dryland Salinity and Flood Management Act 2002*.

- (2) Despite section 23(13) of the principal Act (as in existence before or after the commencement of this clause), the rate to be applied for the purposes of the definition of *the prescribed percentage* in section 23(13) of the principal Act with respect to the 2009/2010 financial year will be 8.39% (which will be taken to be both the prime bank rate and the designated bank rate for the purposes of the operation of section 23 of the principal Act with respect to that financial year).