

# **EIGHT MILE CREEK SETTLEMENT (DRAINAGE MAINTENANCE) ACT, 1959-1970**

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## **EIGHT MILE CREEK SETTLEMENT (DRAINAGE MAINTENANCE) ACT, 1959-1970**

being

Eight Mile Creek Settlement (Drainage Maintenance) Act, 1959, No. 40 of 1959 [Assented to 17th December, 1959];

as amended by

Eight Mile Creek Settlement (Drainage Maintenance) Act Amendment Act, 1965, No. 43 of 1965 [Assented to 9th December, 1965];

and

Eight Mile Creek Settlement (Drainage Maintenance) Act Amendment Act, 1970, No. 66 of 1970 [Assented to 17th December, 1970].

**An Act to provide for the maintenance and upkeep of the drainage system serving an area comprising portions of the hundreds of MacDonnell and Caroline, for works necessary for the protection and efficiency of that system, for contribution by landholders in the area towards such maintenance, upkeep and works, and for purposes incidental thereto.**

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

1. This Act may be cited as the “Eight Mile Creek Settlement (Drainage Maintenance) Act, 1959-1970”.

Short title.  
Citation  
amended by 66,  
1970, s. 1 (2).

2. In this Act, unless the context otherwise requires—

Interpretation.

“drainage works” means all walls, banks, tunnels, bridges, culverts, crossings, fords, dams, weirs, falls, races, sluices, hatches, locks, fences and works of maintenance, construction or otherwise on or appertaining or incidental to drains or any of them:

“drains” means any drains at any time constructed by the Crown or by any person on behalf of the Crown, whether before or after the coming into operation of this Act, and any river, stream, creek, canal, channel, watercourse or ditch:

“holding” means holding of land that is within the area at the time of the commencement of this Act and had been allotted under the scheme of land settlement envisaged by the War Service Land Settlement Agreement Act, 1945, in accordance with any agreement in force between the State and the Commonwealth, whether such land is since that time held under lease or licence from the Crown or otherwise or by a settler or any other person or persons:

“landholder” with respect to a holding comprising land held under lease or licence from the Crown or under any other form of tenure by agreement with the Crown means the lessee or licensee of that holding or the holder of the land held under such agreement; and

with respect to a holding comprising land held in fee simple, means the owner or owners of the estate in fee simple in that land:

Def. inserted by  
43, 1965, s. 3.

“rating period”—

(a) for the purposes of this Act as in force before the commencement of the Eight Mile Creek Settlement (Drainage Maintenance) Act Amendment Act, 1965, means the period of five years which ended on the thirtieth day of April, 1965; and

(b) for the purposes of this Act as in force after such commencement, means each complete period of five years the first of which periods commences on the first day of May, 1966, and each of which succeeding periods commences on the first day of May every five years thereafter:

“the area” means the area of land comprising the sections—

(a) numbered 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864 and 882 in the Hundred of MacDonnell, and

(b) numbered 634, 635, 636, 637, 638, 641, 642, 645, 646, 649, 650, 651, 652, 656, 657, 658, 661, 662, 663, 860 and 861 in the Hundred of Caroline:

“the board” means the Land Board constituted pursuant to the Crown Lands Act, 1929-1957<sup>1</sup>:

“the Director” means the Director of Lands:

Def. inserted by  
66, 1970, s. 2.

“the Land and Valuation Court” means the Land and Valuation Court constituted under the Supreme Court Act, 1935, as amended<sup>2</sup>.

“the Minister” means the Minister of Lands and includes the Minister of the Crown for the time being discharging the duties of the office of such Minister.

Maintenance of  
drainage system  
in the area to be  
duty of  
Minister.  
(Cf. S.E.D.  
Act, s. 47.)

3. (1) It shall be the duty of the Minister—

(a) to maintain all the drains and drainage works within the area in a proper state of efficiency and as occasion requires to cleanse and repair them; and

(b) to construct such other drains and carry out such other drainage works as he thinks necessary for the protection and efficiency of the drainage system in the area.

(2) The cost of all work performed pursuant to subsection (1) of this section and all other expenses connected with the care, control and management of the drains and drainage works shall be defrayed out of moneys to be provided by Parliament for the purpose.

(3) The moneys derived from the drainage rate hereinafter provided for shall be paid by the Director to the Treasurer of the State.

Contribution  
towards  
maintenance  
expenses to be  
recovered by  
annual drainage  
rate.

4. In order to raise moneys which the Minister considers a sufficient contribution towards—

(a) the cost of all work performed pursuant to subsection (1) of section 3 of this Act; and

<sup>1</sup> Now Crown Lands Act, 1929-1975.

<sup>2</sup> Now Supreme Court Act, 1935-1975.

- (b) the other expenses connected with the care, control and management of the drains and drainage works,

the Director shall in accordance with this Act declare and levy an annual drainage rate.

4a. (1) The annual drainage rate declared and levied on each of the holdings in the area in respect of the rating period which ended on the thirtieth day of April, 1965, shall be the drainage rate on that holding for the year ending on the thirtieth day of April, 1966, and shall become due and payable by the landholder or occupier of the holding to the Director when notice setting out the amount of that rate on that holding is served by post on such landholder or occupier, but no such rate shall be recoverable from any person until after the expiration of thirty days after the time when that notice has been so served.

Drainage rate for the year ending on 30th April, 1966.  
S. 4a enacted by 43, 1965, s. 4.

(2) If any drainage rate on any holding for the year ending on the thirtieth day of April, 1966, is not paid within thirty days from the time when such rate becomes recoverable under this section, interest at the rate of five per centum per annum from the date of the notice shall be added to such rate and shall be payable by and recoverable from the person liable to pay the same.

(3) The Minister may remit the whole or any part of the interest payable by any person under this section if he is satisfied that it is desirable to do so in order to prevent undue hardship or for any other reason which the Minister considers sufficient.

5. (1) For the purposes of determining the annual drainage rate in respect of each rating period that commences on or after the first day of May, 1966—

Rate to be determined after ascertaining average annual expenditure for rating period and valuations of holdings.  
Subsec. (1) substituted by 43, 1965, s. 5 (a); amended by 66, 1970, s. 3 (a).

(a) the Director shall, before the commencement of each rating period, prepare an estimate of the expenditure that would be incurred during that period in connection with the cost and expenses referred to in section 4 of this Act, and shall determine the amount representing the average annual expenditure for that period; and

(b) the board shall, not less than one month before the commencement of each rating period, make and lodge with the Director or cause to be made and lodged with the Director, a valuation of the unimproved value of the land comprised in each holding within the area.

Para. (b) substituted by 66, 1970, s. 3 (a).

(1a) For the purposes of this section “unimproved value” of any land shall have the meaning assigned to that expression in section 4 of the Land Tax Act, 1936-1961, as amended<sup>1</sup>.

Subsec. (1a) inserted by 43, 1965, s. 5 (a).

(2) The board shall make, or obtain from the valuer, a written report setting out the considerations upon which each valuation was made and shall forward the valuations together with the reports to the Director.

Subsec. (2) substituted by 66, 1970, s. 3 (b).

(2a) The Director shall, as soon as practicable after receiving from the board the valuations of all holdings within the area and the reports relating thereto cause to be served by post on the landholder or the occupier of each holding a copy of the valuation in respect of that holding and the report relating thereto.

Subsec. (2a) inserted by 66, 1970, s. 3 (b).

(3) Notwithstanding anything contained in this Act as in force before the commencement of the Eight Mile Creek Settlement (Drainage Maintenance) Act Amendment Act, 1965, any valuation made by the board before such

Subsec. (3) inserted by 43, 1965, s. 5 (b).

<sup>1</sup> Now Land Tax Act, 1936-1975.

commencement for the purpose of the rating period that, but for that Act, would have commenced on the first day of May, 1965, is hereby cancelled and shall have no force or effect.

Right of appeal  
against  
valuation.

6. Any landholder or occupier served with a valuation and report in accordance with paragraph (c) of subsection (2) of section 5 of this Act may appeal against any valuation on any of the following grounds:—

(a) that any holding has been valued above or below its full and fair valuation;

Para. (b)  
amended by 66,  
1970, s. 4.

(b) that in making any valuation the valuer—

(i) had not taken into account any matter that was material to the valuation; or

(ii) had taken into account any matter that was not fair or equitable for the purpose of determining the valuation.

Appeal to  
Minister in the  
first instance.

7. (1) Every appeal shall be made in the first instance to the Minister.

Subsec. (2)  
amended by 66,  
1970, s. 5.

(2) From the decision of the Minister on any appeal there shall be a further appeal to the Land and Valuation Court.

Procedure on  
appeal to  
Minister.

8. The following provisions shall apply in relation to any appeal to the Minister:—

(i) The appeal shall be instituted by notice setting out the ground or grounds of appeal and particulars of the matters giving rise to such ground or grounds:

(ii) The notice shall be lodged with the Minister and a copy thereof with the board within one month after the service of the valuation on the appellant:

(iii) The Minister may appoint such person or persons or body as he considers fit to hear and record the evidence of witnesses and the representations of parties with respect to any appeal and such person, persons or body shall hear and record the evidence and representations accordingly and shall submit the same together with a report thereon to the Minister for determination:

(iv) The Minister or the person, persons or body so appointed shall fix a convenient time and place for the hearing of each appeal and shall give the appellant and the board not less than seven days' notice thereof:

(v) If it appears to the Minister or to the person, persons or body so appointed that the interests of any person might become involved in any matter arising out of the appeal, he or they may give that person an opportunity to be present and make his representations at the hearing:

(vi) The board shall be a party to every appeal:

(vii) No notice of appeal under this section shall be invalid for want of form, if it clearly and reasonably states all matters relevant to the appeal:

(viii) The Minister shall determine each appeal in such manner as he thinks just after considering the evidence of such witnesses as are called, the representations of the parties and the report referred to in paragraph (iii) of this section:

- (ix) The order of the Minister on every appeal shall forthwith be communicated to the Director who shall alter any valuation in accordance with the order if the valuation is varied by the order, and make such consequential adjustments as are necessary to any notices served on landholders and occupiers of holdings pursuant to subsection (2) of section 11 of this Act:

- (x) The determination of the Minister on the appeal shall be subject to a further appeal to the Land and Valuation Court.

Para. (x) amended by 66, 1970, s. 6.

9. An appeal to the Land and Valuation Court may be made subject to the appropriate rules of the Supreme Court.

Appeal to Land and Valuation Court.  
S. 9 substituted by 66, 1970, s. 7.

10. Where a valuation of a holding for a rating period is varied on appeal to the Minister or on further appeal to the Land and Valuation Court the valuation as so varied shall for the purposes of the drainage rate referred to in section 11 of this Act, be the valuation of that holding for that period.

Variation of valuation on appeal.  
S. 10 amended by 66, 1970, s. 8.

11. (1) (a) The Director shall in respect of each rating period with the approval of the Minister declare the annual drainage rate on each of the holdings in the area.

The annual drainage rate.  
(Cf. S.E.D. Act, s. 56.)

(b) In determining the rate to be declared on each holding in respect of any rating period, the Director shall take into consideration—

- (i) the average annual expenditure for that period determined in accordance with paragraph (a) of subsection (1) of section 5 of this Act,
- (ii) the valuation of that holding for that period,
- (iii) the aggregate valuations for that period of all the holdings in the area, and
- (iv) any other matters that he thinks are proper for the determination of the rate,

but in no case shall the rate on any holding exceed that proportion of the average annual expenditure which the valuation of the holding for that period bears to the aggregate valuations of all the holdings in the area for the period.

(2) Within fourteen days after the declaration of the annual drainage rate for a rating period the Director shall cause to be served by post on the landholder or occupier of each holding a notice setting out the amount of the annual rate so declared on that holding for that period.

12. (1) The annual drainage rate on any holding for the first year of any rating period shall become due and payable by the landholder or occupier of that holding when the notice of the amount thereof is served on the landholder or occupier of that holding but no such rate shall be recoverable from any person until after the expiration of thirty days after the time when that notice has been so served.

Annual drainage rate when payable.  
(Cf. S.E.D. Act, s. 58.)

(2) The annual drainage rate on any holding for any succeeding year of that rating period shall become due and payable by the landholder or occupier of that holding on the first day of May in that year, or within such further time as may be allowed by the Director and specified by notice served by post on such landholder or occupier, but no such rate shall be recoverable from any person until after the expiration of thirty days after it has become so due and payable.

Subsec. (2) amended by 43, 1965, s. 6.

Interest to be added to overdue rates. Subsec. (1) amended by 66, 1970, s. 9.

**13.** (1) If any annual drainage rates are not paid within thirty days from the time when they become recoverable as provided in section 12 of this Act, interest at the rate of ten per centum per annum from the first day of May in the year in which the rates became due and payable shall be added to such rates and shall be payable by and recoverable from the person liable to pay the same.

(2) The Minister may remit the whole or any part of the interest payable by any person under this section if he is satisfied that it is desirable to do so in order to prevent undue hardship, or for any other reason which the Minister considers sufficient.

Payment and recovery of annual drainage rates. (Cf. Waterworks Act, s. 93.)

**14.** (1) All annual drainage rates and interest payable under this Act shall be paid to or recovered by the Director or a person nominated by the Minister.

(2) Any amount so payable shall, until paid, be and remain a charge upon the land comprising the holding with respect to which the amount is payable.

(3) The amount due in respect of each holding shall be payable by and recoverable from the landholder or occupier for the time being of the holding.

Further powers of recovery of unpaid rates. (Cf. Waterworks Act, s. 95.)

**15.** (1) If any drainage rates or interest recoverable under this Act are unpaid, the Director may exercise all or any of the powers and authorities of the Minister<sup>1</sup> under section 95 of the Waterworks Act, 1932-1956<sup>2</sup>, and the provisions of that section with necessary modifications shall apply as if expressly enacted by this Act and as if in that section the expression—

“water rates” included drainage rates;

“charges” included interest;

“Minister<sup>1</sup>” included the Director of Lands;

“owner” included landholder; and

“land or premises” included holding.

(2) (a) Where any drainage rates or interest in respect of any holding have been due and owing for not less than three years the Director may request the Minister to exercise the powers conferred upon him by the Crown Rates and Taxes Recovery Act, 1945, for the purpose of recovering the rates and interest so due and owing.

(b) Upon such a request being made the provisions of the Crown Rates and Taxes Recovery Act, 1945, shall apply so far as may be applicable with necessary modifications as if expressly enacted for the purposes of this Act, and as if in that Act the expression—

“Crown rates or taxes” included drainage rates or interest under this Act;

“Crown rating or taxing authority” included the Director of Lands, and

“land” included holding.

Liability for and right to recover rates not suspended by appeal.

**16.** The liability to pay and the right to recover drainage rates shall not be suspended by any appeal against a valuation but where the amount of any annual rate paid in respect of any holding exceeds the amount which, according to any final decision on an appeal, was payable as such, the excess shall forthwith be repaid by the Director to the person who paid it or on whose behalf it was paid.

<sup>1</sup> A reference to Minister has been substituted for the reference to Commissioner, pursuant to s. 7 (1) (c) of the Acts Republication Act, 1967, as amended.

<sup>2</sup> Now Waterworks Act, 1932-1975.

17. (1) The Governor may make such regulations as he considers necessary or convenient for giving effect to this Act or to the purposes of this Act and, without limiting the generality of this provision, may make regulations for all or any of the following purposes:—

Regulations.

- (a) to ensure the proper construction, maintenance and protection of drains and drainage works within the area;
- (b) to ensure the premises served by any drains or drainage works are properly maintained, clean and free of any matter or thing likely to cause obstruction to any drains or drainage works;
- (c) for regulating the manner, times and quantities in which and the purposes for which, water from any drain or drainage work may be used by any person and prohibiting persons other than authorized persons from using or diverting such water;
- (d) prescribing such forms as he considers necessary desirable or convenient to be used for the purposes of this Act.

(2) Any regulation made under this section may fix penalties not exceeding one hundred dollars<sup>1</sup> for the breach of any regulation.

(3) (a) The breach of any regulation shall constitute an offence against this Act.

(b) All proceedings for offences against this Act shall be disposed of summarily.

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<sup>1</sup> Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency have been substituted for references to amounts of money expressed in the old currency.