

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

Section

- 1 Short title and commencement.
- 2 Acquisition of land.
- 3 Division of Act.
- 4 Repeal.
- 5 Saving of powers of district councils outside the South-East.
- 6 Definitions.
- 7 Proclamation of drain.
- 7a Extinguishment of certain liabilities.

PART II

ADMINISTRATION

- 8 Constitution of South-Eastern Drainage Board.
- 9 Judicial notice of seal.
- 10 Constitution of board.
- 10a Elections.
- 10b Shareholders and directors of bodies corporate may be eligible for election.
- 11 Dismissal from office.
- 12 Chairman and Deputy Chairman.
- 13 Quorum.
- 14 Validity of acts of board.
- 15 Responsibility of board.
- 16 Staff of board.
- 17 Control of drains by board.
- 18 Consequential amendments of documents and instruments.
- 19 Powers of board as to inquiries.
- 20 Powers of board in respect of witnesses.
- 21 Punishment for false evidence.
- 22 Power of board to enter on land for surveys.
- 23 Contracts for works.
- 24 Mode of entering into contracts.
- 25 Books and accounting.
- 26 Annual report and financial statement.
- 27 Disputes.

PART III

CONSTRUCTION AND MAINTENANCE OF DRAINS

DIVISION I—CONSTRUCTION OF DRAINS ON PETITION OF LANDHOLDERS

- 28 Petitions for drain.
- 29 Form of petition.
- 30 Preliminary inquiry.
- 31 Board's approval.
- 32 Board to decide whether petitioners are majority of landholders and hold three-fourths in value of benefited lands.
- 33 Construction of drain.
- 34 Cost to be paid by landholders.
- 35 Final report.
- 36 Preliminary apportionment of the cost.
- 37 Objection to the apportionment.
- 38 Determination of objection.
- 39 Adjustment of apportionment.
- 40 Final apportionment.
- 41 Notice of apportionment.
- 42 Repayment of cost of construction.
- 43 Lessees to pay proportion of cost to landholder.
- 44 Provision for apportionment of cost of drain where land charged is subdivided.
- 45 Recovery by distress.
- 46 Power to remit cost of Symon Petition Drain.

DIVISION II—MAINTENANCE OF DRAINS AND THE DRAINAGE RATE

- 47 Duty of board to maintain drains.
- 48 Drainage rate.

SUMMARY OF PROVISIONS—*continued*

Section

- 49 Liability to drainage rates.
- 50 Notice.
- 51 South-Eastern Drainage Appeal Board.
- 52 Quorum, etc.
- 53 Appeal.
- 54 Remuneration allowances and expenses.
- 55 Procedure of appeal board.
- 56 Powers of appeal board.
- 57 Exemption from payment of rates.
- 58 Recovery of rates.
- 59 Interest upon unpaid rates.
- 60, 61 (Repealed).
- 62 Recovery of drainage rates.

DIVISION III—RECOVERY OF RATES AND GENERAL PROVISIONS APPLICABLE TO RATES

- 63 Interpretation.
- 64 Recovery of rates.
- 65 Recovery by distress.
- 66 Charging of rates on land.
- 67 Lessees' liability to landholder for proportion of rates.

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

- 68 Property in water in drains.
- 69 General powers of board.
- 70 Compensation for damage.
- 71 Power to acquire land and sell lands not required.
- 72 Power to make roads.
- 73 Power to divert water from drain.
- 74 Power to impose fee.
- 75 Liability of landholder for cost of fence.
- 76 Penalty for obstructions or nuisances.
- 77 Penalty for interference with regulators, etc.
- 78 Penalty for removing timber or materials.
- 79 Penalty for cutting drain through road, etc.
- 80 Penalty on building unauthorized bridges, etc.
- 81 Licences to construct certain private drains.
- 81a Private drains and drainage works constructed without a licence.
- 82 Power to remove or alter any insufficient bridges, etc.
- 83 Power of board to construct bridges.
- 84 Animals trespassing on drains, etc.
- 85 Board may recover special damages.
- 86 Penalty for hindering work.
- 87 Board may do certain acts, and charge to defaulting person.
- 88 Maintenance of private drains.

PART IV

- 89-103 (Repealed).

PART IVA

DRAINAGE OF EASTERN AND WESTERN DIVISIONS OF THE SOUTH-EAST

- 103a Definitions.
- 103b Power to construct drains and drainage works.
- 103c Removal of charges.
- 103d-103j (Repealed).

PART V

MISCELLANEOUS PROVISIONS

- 104 Summary procedure for offences.
- 105 Current rate of interest.
- 106 Regulations.
- 107 Lease with right to purchase.
- 108 Liability of board.
- 109 Notices and demands, how served.

SCHEDULES

SOUTH-EASTERN DRAINAGE ACT, 1931-1974

being

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

as amended by

South-Eastern Drainage Act Amendment Act, 1933, No. 2126 of 1933 [Assented to 9th November, 1933];
 South-Eastern Drainage Act Amendment Act, 1935, No. 2219 of 1935 [Assented to 21st November, 1935];
 South-Eastern Drainage Act Amendment Act, 1947, No. 25 of 1947 [Assented to 20th November, 1947];
 South-Eastern Drainage Act Amendment Act, 1948, No. 34 of 1948 [Assented to 16th December, 1948];
 South-Eastern Drainage Act Amendment Act, 1959, No. 25 of 1959 [Assented to 26th November, 1959];
 South-Eastern Drainage Act Amendment Act, 1969, No. 91 of 1969 [Assented to 11th December, 1969]²;
 South-Eastern Drainage Act Amendment Act, 1971, No. 112 of 1971 [Assented to 9th December, 1971]³;
 South-Eastern Drainage Act Amendment Act, 1972, No. 152 of 1972 [Assented to 7th December, 1972]⁴;
 South-Eastern Drainage Act Amendment Act, 1974, No. 11 of 1974 [Assented to 28th March, 1974]⁵;

and

Statute Law Revision Act, 1974, No. 42 of 1974 [Assented to 11th April, 1974].

An Act to repeal the South-Eastern Drainage Acts, 1926 to 1931, and to enact other provisions for the control and management of the drainage system of the South-East, and for purposes incidental thereto.

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

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "South-Eastern Drainage Act, 1931-1974", and shall come into operation on a day to be fixed by proclamation¹.

Short title and commencement.
 Citation amended by 42, 1974, s. 3 (1) (2nd sched.).

2. The board may, subject to and in accordance with the Land Acquisition Act, 1969⁶, acquire land for the purposes of this Act.

Acquisition of land.
 S. 2 substituted by 112, 1971, s. 3.

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

Division of Act.
 S. 3 amended by 25, 1959, s. 3; 112, 1971, s. 4; 42, 1974, s. 3 (1) (2nd sched.).

PART I—Preliminary.

PART II—Administration.

PART III—Construction and maintenance of drains.

DIVISION I—Construction of drains on petition of landholders:

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

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

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

⁴ For date of operation of Act No. 152 of 1972, see s. 2 of that Act.

⁵ For date of operation of Act No. 11 of 1974, see s. 2 of that Act.

⁶ Now Land Acquisition Act, 1969-1972.

DIVISION II—Maintenance of drains and the drainage rate:

DIVISION III—Recovery of rates and general provisions applicable to rates:

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

Reference to Part IV struck out by 112, 1971, s. 4.

* * * * *

Reference to Part IVA inserted by 25, 1959, s. 3.

PART IVA—Drainage of eastern and western divisions of the South-East.

PART V—Miscellaneous provisions.

Repeal.

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

Saving of powers of district councils outside the South-East, 1781, 1926, s. 4a.

5. Notwithstanding the repeals effected by this Act or by the South-Eastern Drainage Act, 1926, any district council the whole or any part of the district of which is not for the time being included in the South-East as defined by this Act and any proclamation hereunder shall, so long as such district or part of a district is not so included, continue with respect to such district or part of a district, to have and be subject to all the rights, powers, functions, obligations, duties, and immunities vested in or imposed upon a district council under the Acts repealed by the South-Eastern Drainage Act, 1926, and (without limiting the generality of the foregoing provision) may during the period aforesaid continue to declare and levy drainage rates within such district or part of a district as provided by any of the Acts repealed by the South-Eastern Drainage Act, 1926; and so far as is necessary to give effect to this section all the provisions of any such Act relating to any of the said rights, powers, functions, obligations, duties, or immunities shall remain in force and be deemed to have remained in force continuously from the time of the enactment of those provisions.

Definitions.
1781, 1926, s. 5.

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

Def. inserted by 112, 1971, s. 5 (a).

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

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

“Commission” means the Irrigation Commission constituted by the Irrigation Act, 1922¹, and re-named by the South-Eastern Drainage Act, 1926, the Irrigation and Drainage Commission:

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

“drains” means all drains (including scheme drains and petition drains) at any time, whether before or after the commencement of this Act, constructed by the Crown or any person on behalf of the Crown in the South-East irrespective of whether the whole or any part of the cost thereof has been paid by some person other than the Crown, and any river, stream, creek, canal, channel, conductor, water-course, drain, ditch, or outfall of water declared by proclamation to be a drain for the purposes of this Act:

¹ The Irrigation Act, 1922, has been repealed and superseded by the Irrigation Act, 1930 (now Irrigation Act, 1930-1975).

“drainage works” means all walls, banks, tunnels, bridges, culverts, crossings, fords, dams, weirs, falls, races, bywashes, sluices, hatches, locks, fences, irrigation works, or works of construction on or belonging to or connected with the drains or any of them:

“elected member” means a member of the board elected by ratepayers pursuant to the provisions of this Act: Def. inserted by 112, 1971, s. 5 (b).

“land” does not include land within the boundaries of a municipality, town or township: Def. inserted by 112, 1971, s. 5 (b).

“landholder” means the owner of any freehold estate in land, the holder of land under agreement with the Crown for the sale of such land upon credit, the lessee of land held under perpetual lease from the Crown, and as to Crown lands unleased or leased on other than perpetual lease, the Minister of Lands: Def. amended by 112, 1971, s. 5 (c).

“petition drains” means all drains constructed by the Crown on the request of landholders pursuant to the South-Eastern Drainage Amendment Act, 1900, or on the petition of landholders pursuant to the South-Eastern Drainage Act Amendment Act, 1908, or this Act:

“private drain” means any artificially constructed channel in the South-East not being a channel constructed by or on behalf of the Crown: Def. inserted by 25, 1947, s. 3.

“private drainage work” means any dam, weir, embankment, culvert, ford or bridge in the South-East not being a dam, weir, embankment, culvert, ford or bridge constructed by or on behalf of the Crown: Def. inserted by 25, 1947, s. 3.

“proportionate rebate” in relation to drainage rates means a proportionate rebate determined under section 53 of this Act: Def. inserted by 152, 1972, s. 3.

“scheme drains” means the drains constructed pursuant to the South-Eastern Drainage Scheme Acts, 1908 and 1910:

“South-East” means the whole of the hundreds of Santo, Messent, Neville, Wells, Petherick, Duffield, Landseer, Peacock, Marcollat, Lacepede, Murrabinna, Minecrow, Woolumbool, Glen Roy, Lochaber, Mount Benson, Bowaka, Townsend, Ross, Conmurra, Joyce, Spence, Naracoorte, Robertson, Waterhouse, Bray, Smith, Fox, Coles, Killanoola, Comaum, Lake George, Symon, Kennion, Short, Monbulla, Penola, Riddoch, Grey, Nangwarry, Young, and Mingbool, and portions of the hundreds of McNamara, Hynam, Joanna, Rivoli Bay and Mount Muirhead, bounded as set forth in the first schedule: Def. amended by 25, 1959, s. 4 (a), (b), (c).

* * * * * Def. of “the Land and Valuation Court” inserted by 91, 1969, s. 3; struck out by 112, 1971, s. 5 (d).

(2) The Governor may by proclamation from time to time include any additional lands in the South-East as defined for the time being or may exclude any lands therefrom.

* * * * * Subsec. (3) struck out by 112, 1971, s. 5 (e).

7. The Governor may by proclamation declare any natural or artificial river, stream, creek, canal, channel, conductor, water-course, drain, ditch, or outfall of water to be a drain for the purposes of this Act. Proclamation of drain.

PART I

The Governor may also by proclamation declare any drain or part thereof to be closed, and from and after the time when the proclamation comes into force the drain or part thereof shall be closed and shall be no longer a drain or part thereof within the meaning of this Act.

Extinguishment
of certain
liabilities.
S. 7a enacted by
112, 1971, s. 6.

7a. (1) Any liability to pay an instalment or annual rate that falls or fell due on or after the first day of July, 1971, under Division I of Part III of this Act, Part IV of this Act, or Part IVA of this Act, in respect of drains and drainage works constructed before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, is hereby extinguished.

(2) This section does not affect any liability to pay an instalment or annual rate that fell due before the first day of July, 1971, and any such instalment or annual rate may be recovered pursuant to the provisions of this Act, as in force immediately before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, in all respects as if that amending Act had not been enacted.

(3) Any such liability that fell due before the first day of July, 1971, is unaffected by the repeal of provisions under which it arose by the South-Eastern Drainage Act Amendment Act, 1971.

(4) Any liability that fell due under Division II of Part III of this Act before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, is unaffected by the enactment of that Act.

PART II

PART II

ADMINISTRATION

Constitution of
South-Eastern
Drainage Board.

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

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

Judicial notice
of seal.

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

Constitution of
board.
S. 10
substituted, by
112, 1971, s. 7.

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

(a) two shall be landholders in respect of land situated in the South-East elected to office pursuant to the provisions of this Part;

and

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

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

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

(4) The members of the board in office immediately before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, shall remain in office, and be deemed to constitute the board until an election is held pursuant to the provisions of this Part.

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

(6) A person appointed pursuant to subsection (5) of this section to fill a casual vacancy in the office of an elected member must be a landholder in respect of land situated in the South-East.

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

10a. (1) The Minister shall cause to be prepared and maintained, a list of all persons who are for the time being liable to pay rates under the provisions of this Act in respect of land in the South-East.

Elections.
S. 10a enacted
by 112, 1971,
s. 7.

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

(3) A candidate for election to the board must be a landholder in respect of land situated in the South-East.

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

(5) The Returning Officer for the State¹ shall conduct the election on a day determined by the Minister.

(6) The Returning Officer for the State¹ shall have power to determine in a summary way any question relating to the qualification of a candidate for election, and the qualification of any person to vote, and his decision shall be final.

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

(8) Where there are no more than two candidates for election, the Returning Officer¹ may declare them duly elected without a vote being taken.

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

(10) Subject to this Act, and the regulations, an election shall be conducted in such manner as the Returning Officer for the State¹ thinks fit.

¹ By s. 6f of the Electoral Act, 1929-1973, (now Electoral Act, 1929-1975) it was provided, *inter alia*, that a reference in any other Act to the Returning Officer for the State shall on and after the commencement of the Electoral Act Amendment Act (No.2), 1973, be read as a reference to the Electoral Commissioner.

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

Shareholders and directors of bodies corporate may be eligible for election.
S. 10b enacted by 11, 1974, s. 3.

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

Dismissal from office.

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

- (a) for misbehaviour or incompetence; or
- (b) if he is adjudicated bankrupt or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than one hundred cents in the dollar¹; or
- (c) if he wilfully absents himself from three consecutive meetings of the board except on leave granted by the Minister; or
- (d) if he becomes in any way, except as member, concerned or interested in any contract made by or on behalf of the board or in any way participates or claims to be entitled to participate in the profits thereof, or in any benefit or emolument arising therefrom.

Chairman and Deputy Chairman.

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

(2) At all meetings of the board the chairman, or in his absence, the deputy chairman shall preside. When only two members are present the chairman or deputy chairman so presiding shall have a second or casting vote.

Quorum.
S. 13 amended by 112, 1971, s. 8.

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

Validity of acts of board.

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

Responsibility of board.

15. The board shall be responsible to the Minister for the discharge of its duties and functions under this Part.

Staff of board.
Subsec. (1) substituted by 112, 1971, s. 9.

16. (1) The Governor may, subject to the provisions of the Public Service Act, 1967, as amended², appoint officers and servants to act under the direction of the board in the administration of this Act.

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

Control of drains by board.
S. 17 amended by 112, 1971, s. 10.

17. All drains and drainage works (except drains and drainage works within or relating to a municipality, town or township) within the South-East shall be vested in and under the care, control, and management of the board.

¹ Pursuant to s. 8 (2) of the Acts Republishing Act, 1967, as amended, a reference to the proportion expressed in decimal currency substituted for the reference to the proportion expressed in the old currency.

² Now Public Service Act, 1967-1975.

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

Consequential amendments of documents and instruments.
1781, 1926, s. 9.

19. In addition to and without prejudice to the other powers vested in it, the board shall, for the purpose of obtaining information to assist it in carrying out its powers, functions, and duties under this Act, and in formulating schemes for extending agriculture and closer settlement in the South-East, have the following powers, that is to say:—

Powers of board as to inquiries.
1781, 1926, s. 11.

- (1) Any member or members of the board or any person appointed by the board for the purpose, may enter upon and inspect any land, building, or place, and inspect any goods and other things, the entry upon or inspection of which appears to them or him to be requisite for the purposes aforesaid:
- (2) The board may require, by summons under the hand of the chairman, the attendance of all such persons as it thinks fit to call before it, and may require answers or returns to such inquiries as it thinks fit to make:
- (3) The board may by notice in writing, signed as aforesaid, require and compel the production of any books, papers, or documents:
- (4) The board may inspect any books, papers, and documents produced before it, and retain them for such reasonable periods as it thinks fit, and may make copies of such matters therein as are relevant, or take extracts of such matters:
- (5) The board may examine witnesses on oath, affirmation, or declaration, which may be administered by any member of the board.

20. (1) If any person—

Powers of board in respect of witnesses.
1781, 1926, s. 12.

- (a) who has been personally served with a summons to attend before the board, and whose expenses, as provided in subsection (2) hereof, have been paid or tendered to him, neglects to attend in obedience to such summons; or
- (b) wilfully insults the board, or any member thereof; or
- (c) misbehaves himself before the board; or
- (d) interrupts the proceedings of the board; or
- (e) being called or examined as a witness before the board, refuses to be sworn, or to affirm or declare, or refuses or neglects to produce any books, papers, or documents mentioned in the notice under the last preceding section personally served upon him, or prevaricates in his evidence or refuses to answer any lawful question,

such person shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding one hundred dollars¹.

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

(2) Every person required by the board, under the powers conferred by this Act, to attend before it, shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court, and in case of dispute as to the amount to be allowed, the same shall be referred to the Master of the Supreme Court, who, on request under the hand of the chairman, shall ascertain and certify the proper amount of such expenses.

Punishment for false evidence.
1781, 1926,
s. 14.

21. Any person who, upon oath, affirmation, or declaration taken or made under this Act, wilfully and corruptly gives any false evidence before the board shall be guilty of perjury, and may be imprisoned, with or without hard labour, for any term not exceeding four years.

Power of board to enter on land for surveys.
1781, 1926,
s. 11a.

22. (1) Any member of the board and any person employed or authorized by the board may—

(a) on giving not less than three days' notice to the occupier of any land in the South-East enter upon such land for the purpose of doing all or any of the things hereinafter in this section mentioned, and remain thereon so long as is reasonably necessary for the said purpose:

(b) survey and take levels of any such land and do anything incidental thereto:

(c) examine the soil and subsoil of any such land, and do anything incidental thereto:

(d) do anything necessary to ascertain whether any such land is suitable for drainage or to determine suitable positions for drains.

Subsec. (2) amended by 112,
1971, s. 11.

(2) The board shall pay compensation to all persons interested in the land for any damage done under this section and the compensation shall be determined in the manner provided in the Land Acquisition Act, 1969¹.

Contracts for works.
1781, 1926,
s. 16.

23. (1) The board may enter into contracts with any person for the execution of any works directed by this Act or any other Act to be executed by the board, or which the board thinks proper to do or to direct to be done under or by virtue of the powers conferred upon the board by this Act, or for the supply of any goods or things whatsoever necessary for enabling the board to carry the purposes of this Act into execution, in such manner and for such sum of money, and under such stipulations, conditions, and restrictions as the board thinks proper: Provided that no contract made by the board, the consideration for which exceeds four thousand dollars², shall have any force or effect unless sanctioned by the Minister.

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

Mode of entering into contracts.
1781, 1926,
s. 17.

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

1. Any contract which, if made between private persons, would be by law required to be in writing and under seal, the board may make in writing in its corporate name under its common seal, and in like manner may vary or discharge the same:

¹ Now Land Acquisition Act, 1969-1972.

² Pursuant to s. 8 of the Acts Republishing Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

II. Any contract which, if made between private persons, would be by law required to be in writing and signed by the parties thereto, the board may make in writing in its corporate name signed by any two members, and in like manner may vary or discharge the same:

III. Any contract which, if made between private persons, would be by law valid although made by parol only and not reduced into writing, the board or any two of them, acting by direction and on behalf of the board, may make by parol only without writing, and in like manner may vary or discharge the same.

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

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

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

Books and
accounting.
1781, 1926,
s. 19.

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

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

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

Annual report
and financial
statement.
1781, 1926,
s. 20.

I. a report of its proceedings during the financial year then next preceding, including the contracts entered into, the works carried on or completed, and the transactions generally of the board during the year; and

II. a financial statement showing the moneys received and disbursed by the board during the year, setting forth the matters in respect of which they have been received and the purposes for which they have been disbursed, and showing in regard to each of such matters and purposes the balance of receipts and disbursements brought forward from the previous year and the balances at the end of the financial year dealt with in the statement.

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

27. (1) If any dispute arises or is about to arise between the board and any officer or department of the Government of the State with respect to—

Disputes.
1781, 1926,
s. 25.

(a) any property, real or personal, vested in the board;

(b) any right, interest, title, privilege, obligation, or liability transferred by this Act, or any question whether any such matter or thing is so transferred or not;

(c) any power, duty, or function conferred or imposed upon the board by this Act, or the exercise or discharge of or failure to exercise or discharge the same; or

(d) any other matter or thing arising under this Act,

the Governor shall determine such dispute in such manner as he thinks fit.

(2) For the purpose of making any such determination the Governor may appoint any officer to make such investigation and report as the Governor may direct, and the Governor, in making such determination, may act upon such report.

(3) The determination of the Governor shall be final and binding upon all the parties to the dispute and upon all other officers and departments of the Government of the State.

PART III

PART III

CONSTRUCTION AND MAINTENANCE OF DRAINS

DIVISION I

DIVISION I—CONSTRUCTION OF DRAINS ON PETITION OF LANDHOLDERS

Petitions for
drain.
1781, 1926,
s. 26.

28. A petition may be presented to the board by landholders, requesting that a drain or drains (hereafter in this Division called "the drain") indicated in the petition be constructed.

Form of
petition.
1781, 1926,
s. 27.

29. Such petition shall be in the form in the second schedule hereto, and each signature thereto shall be witnessed by some person who shall make a declaration before a Justice of the Peace in the form at the end of the said schedule; and any person wilfully making any false statement in such declaration shall be guilty of a misdemeanour, and shall be liable, on conviction, to imprisonment with hard labour for any term not exceeding two years.

Preliminary
inquiry.
1781, 1926,
s. 28.

30. The board shall forthwith upon receiving a petition—

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

Board's
approval.
1781, 1926,
s. 29.

31. (1) If the board after due enquiry considers that it is expedient to construct the drain, it may by notice in the *Gazette* declare—

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

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

Board to decide
whether
petitioners are
majority of
landholders and
hold
three-fourths in
value of
benefited lands.
1781, 1926,
s. 30.

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

the lands which will be benefited by the drain. A "substantial number" means a number considered by the board to be substantial.

(2) In this section "value" means—

I. as to lands assessed for the purposes of land tax, the unimproved value of such lands as so assessed:

II. as to lands not so assessed, the unimproved value of such lands as assessed by the board.

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

33. If the board decides that the petitioners are a majority of the landholders of the lands which will be benefited by the drain, and that the value of the lands of which they are the landholders is at least three-fourths of the value of the lands which will be benefited by the drain, the board shall, after the publication of its decision in the *Gazette*, proceed with the construction of the drain out of money provided by Parliament for the purpose of constructing drains:

Construction of drain.
1781, 1926,
s. 31.

Provided that before the construction of any such drain is proceeded with the board shall supply to one of the petitioners, to be nominated for the purpose by a majority of the petitioners a plan and specification of the proposed works to be undertaken, together with an estimate of the cost thereof:

Provided also that so soon as tenders shall have been received for the proposed works copies of all tenders and the amounts thereof shall be similarly supplied to the person nominated by the petitioners.

If within twenty-one days from the receipt of the tenders by the petitioners' nominee a majority of the petitioners shall signify to the board that they do not desire the works to be proceeded with, the board shall not accept any tender for the proposed works. The costs of the preparation of plans and calling for tenders shall be borne by the petitioners who shall be jointly and severally liable for the amount thereof.

34. The cost of constructing the drain shall be deemed to be an advance by the board to all the landholders of the lands which will be benefited by the drain, and such advance shall be repaid to the board by such landholders, with interest thereon at the current rate per centum per annum, in the proportions to be ascertained as hereinafter mentioned.

Cost to be paid by landholders.
1781, 1926,
s. 32.

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

Final report.

36. (1) The board shall, within three years after the date of completion of the drain, make a preliminary apportionment of the cost of the construction thereof amongst all the landholders of the lands benefited by the drain, as declared by the board's declaration.

Preliminary apportionment of the cost.
1781, 1926,
s. 34.

(2) The board shall, by notice published in the *Gazette*, set forth the preliminary apportionment. Such notice may be in the form in the third schedule hereto. The *Gazette* containing such notice shall be conclusive as to such apportionment.

DIVISION I

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

Objection to the
apportionment.
1781, 1926,
s. 35.

37. Any landholder may, within two months after the publication of the notice of preliminary apportionment, object to the proportion of the cost apportioned to him by such apportionment. The objection shall be made by notice served on the board, and may be in the form in the fourth schedule hereto.

Determination
of objection.
1781, 1926,
s. 36.

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

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

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

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

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

Adjustment of
apportionment.
1781, 1926,
s. 37.

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

Final
apportionment.
1781, 1926,
s. 38.

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

Notice of
apportionment.
1781, 1926,
s. 39.

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

(2) Such notice may be in the form in the fifth schedule hereto, and shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

42. (1) The amount of the proportion of the cost of construction apportioned to any landholder shall be a debt due from such landholder to the board, and shall be a first charge upon the land of such landholder which is benefited by the drain, and shall be paid by such landholder to the board, with interest on the balance thereof owing for the time being at the current rate in force at the time when the notice of the final apportionment is published in the *Gazette*, in forty-two equal yearly instalments. The amount of the annual instalment for every two hundred dollars¹ payable by a landholder in respect of the proportion of the cost of construction apportioned to him shall be fixed by notice published by the board in the *Gazette* at the time of publication of the notice of the final apportionment.

Repayment of
cost of
construction.
1781, 1926,
s. 40.

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

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

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

(5) The charge upon the land may be enforced by the board as if it were a mortgagee under The Real Property Act, 1886².

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

Lessees to pay
proportion of
cost to
landholder.
1781, 1926,
s. 41.

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

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

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

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

¹ Pursuant to s. 8 of the Acts Republishment Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

² Now Real Property Act, 1886-1975.

PART III

DIVISION I

(6) The board shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding ten dollars¹.

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

Provision for apportionment of cost of drain where land charged is subdivided. 1781, 1926, s. 42.

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

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

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

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

Recovery by distress. 1781, 1926, s. 43.

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

Power to remit cost of Symon Petition Drain. 1781, 1926, s. 43a.

46. The board may, in its discretion, with the approval of the Minister, remit the whole or any part of the amount due by any landholder as his proportion of the cost of the petition drain known as the Symon Petition Drain or as interest on the amount of such proportion.

DIVISION II

DIVISION II—MAINTENANCE OF DRAINS AND THE DRAINAGE RATE

Duty of board to maintain drains. 1781, 1926, s. 44.

47. (1) It shall be the duty of the board to maintain the drains and drainage works at all times in a proper state of efficiency, and from time to time as may be necessary to cleanse and repair them.

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

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

(3) The moneys derived from the drainage rate hereinafter mentioned shall be paid to the Treasurer of the State, and form part of the General Revenue thereof, and shall be credited to the repayment of moneys provided by Parliament for the purposes of subsection (2) hereof, and of the moneys paid by the Treasurer to the Public Debt Commission as a sinking fund contribution on the amount of any loan moneys spent on the construction of drains and drainage works in the South-East, not being loan moneys which pursuant to this Act are repayable by landholders.

48. (1) The board shall declare and levy an annual drainage rate in order to raise an annual sum to be applied towards—

Drainage rate.
S. 48 substituted
by 112, 1971,
s. 12.

(a) the cost of cleansing and repairing the drains and drainage works and maintaining them in a proper state of efficiency;

and

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

(2) The amount to be raised by a rate declared and levied under subsection (1) of this section shall not include any component in respect of structural deterioration or depreciation (as distinct from the cost of repair and maintenance) of the drains and drainage works.

(3) Subject to subsection (4) of this section, the Minister may, by instrument in writing, direct the board as to what amount is to be raised by a rate declared and levied under subsection (1) of this section, and the board shall comply with any such direction and declare and levy the rate accordingly.

(4) The amount to be raised shall not exceed an amount that could be realized from a rate of three-tenths of one cent for every dollar of the total ratable value of all land subject to the rate.

(5) The rate shall be declared by notice published in the *Gazette*.

(6) The first rate under this section shall be declared and effective as from the first day of July, 1972, and each subsequent rate shall be declared and effective as from the first day of July in each succeeding year.

49. (1) Drainage rates shall be payable upon all ratable land in the South-East.

Liability to
drainage rates.
S. 49 substituted
by 112, 1971,
s. 13; 152, 1972,
s. 4

(2) In this section—

“ratable land” means all land—

(a) that has, in the opinion of the Board, been benefited by the construction of drains and drainage works;

and

(b) that is delineated on a plan prepared by, or under the direction of, the Board and deposited in the Central Plan Office of the Department of Lands,

but does not include land declared by the appeal board not to be ratable land for the purposes of this Act if the declaration is for the time being in force.

(3) The Board may from time to time alter and revise the plan referred to in subsection (2) of this section.

(4) The amount of the drainage rates to be paid upon any ratable land by a landholder for any financial year shall be—

(a) an amount calculated on the basis of the unimproved value of that ratable land as determined under the Valuation of Land Act, 1971-1972¹, in determinations of unimproved value in force at the commencement of the financial year;

less

(b) the amount of the proportionate rebate (if any) of drainage rates applicable to that ratable land.

(5) A determination of unimproved value shall be deemed to be in force at the time referred to in subsection (4) of this section if it is in force as at that time under the Valuation of Land Act, 1971-1972¹, whether the determination is actually made before or after that time.

(6) Where a determination of unimproved value in force at the time referred to in subsection (4) of this section is subsequently corrected or amended pursuant to the provisions of the Valuation of Land Act, 1971-1972¹, (whether in pursuance of an objection or appeal under that Act or otherwise), the determination of value, as corrected or amended, shall be deemed to have been in force at the time referred to in subsection (4) of this section.

(7) The right of the Board to recover drainage rates under this Act shall not be suspended or delayed by any objection to or appeal against, a determination of value under the Valuation of Land Act, 1971-1972¹, and the Board may recover drainage rates on the assumption that the determination of value is correct but if any alteration to a determination of value affecting the amount of the drainage rates payable in respect of any land is made under the Valuation of Land Act, 1971-1972¹, (whether in consequence of an objection or appeal, or otherwise) the Board shall refund to the landholder any excess amount recovered as drainage rates, or may recover any additional amount, recoverable on the basis of an altered determination of value, as arrears.

(8) The Valuer-General shall, at the request of the Board, determine in accordance with the Valuation of Land Act, 1971-1972¹, the unimproved value of any land in respect of which such a determination is required for the purpose of levying drainage rates under this Act.

Notice.

S. 50 substituted by 112, 1971, s. 13.

50. The board shall, as soon as practicable after it determines that any land should be ratable land for the purposes of this Act, serve notice in writing of that determination on the landholder.

South-Eastern
Drainage
Appeal Board.
S. 51 amended by 91, 1969, s. 4; substituted by 112, 1971, s. 13.

51. (1) There shall be for the purposes of this Act an appeal board entitled the "South-Eastern Drainage Appeal Board".

(2) There shall be five members of the appeal board appointed by the Governor of whom—

(a) one, who shall be chairman, shall be a person nominated by the Minister;

(b) two shall be landholders in respect of land situated in the eastern division of the South-East;

and

(c) two shall be landholders in respect of land situated in the western division of the South-East.

¹ Now Valuation of Land Act, 1971-1975.

(3) For the purpose of hearing and determining any appeal the appeal board shall be constituted of the chairman and two other members nominated by the Minister to sit upon the appeal board for the purpose of hearing and determining that appeal.

(4) A member of the appeal board shall hold office at the pleasure of the Governor.

(5) The Governor may, subject to this section, make such appointments as may be necessary to fill any vacancy in the membership of the appeal board.

(6) A suitable person shall be appointed by the Governor to be secretary to the appeal board.

(7) The office of secretary to the appeal board may be held in conjunction with any other office in the public service of the State.

(8) In this section—

“the eastern division of the South-East” means the eastern division of the South-East as defined in Part IVA of this Act:

“the western division of the South-East” means all portions of the South-East not comprised within the eastern division of the South-East.

(9) Where a body corporate is a landholder in respect of land situated in the South-East, a person who is a director of the body corporate, or a member of its board of management, shall, for the purposes of this section, be deemed to be a landholder in respect of that land.

Subsec. (9)
inserted by 11,
1974, s. 4.

52. (1) Two members of the appeal board shall constitute a quorum for the purpose of any proceedings of the appeal board.

Quorum, etc.
S. 52 amended
by 91, 1969,
s. 5; substituted
by 112, 1971,
s. 13.

(2) Any decision of the appeal board must be concurred in by at least two members of the board.

(3) No act or proceeding of the appeal board shall be invalid or illegal by reason only of a vacancy in the office of a member of the appeal board or any defect in the appointment of any member or purported member of the appeal board.

53. (1) A person may, within one month after the day on which notice is served on him of a determination by the board that land should be ratable land for the purposes of this Act, appeal to the appeal board against the determination.

Appeal.
S. 53 substituted
by 91, 1969,
s. 6; 112, 1971,
s. 13.

(2) An appeal may be instituted on any of the following grounds:—

(a) that the appellant is not the landholder in respect of the landholding, or is the landholder in respect of only part of that landholding;

Para. (a)
substituted by
152, 1972,
s. 5 (a).

or

(b) that the landholding, or any of the land comprised therein, has received no direct or indirect benefit from the construction of the drains or drainage works.

Para. (b)
substituted by
152, 1972,
s. 5 (a).

(3) An appeal shall be instituted by notice in writing served personally or by post upon the secretary to the appeal board.

(4) The secretary to the appeal board shall notify the appellant in writing, at least seven days before the hearing of the appeal, of the time and place appointed for hearing the appeal.

DIVISION II

Subsec. (5)
substituted by
152, 1972,
s. 5 (b).

(5) Upon the hearing of an appeal, the appeal board may—

- (a) if satisfied that the appellant is not the landholder in respect of the landholding, or any part thereof, make a declaration of that fact;
- (b) if satisfied that none of the land comprised in the landholding, or in a separate part of the landholding, has received any direct or indirect benefit from the construction of the drains or drainage works, declare that the land comprised in the landholding, or that part of the landholding, is not ratable land for the purposes of this Act;

or

- (c) if satisfied that a part of the land comprised in the landholding has received no direct or indirect benefit from the construction of the drains or drainage works, and that that part of the landholding does not constitute a separate part of the landholding, make a determination describing or delineating, with sufficient particularity to enable it to be identified, the land that has received no direct or indirect benefit from the construction of the drains or drainage works.

Subsec. (5a)
inserted by 152,
1972, s. 5 (b).

(5a) Where the appeal board has made a determination under paragraph (c) of subsection (5) of this section, the South-Eastern Drainage Board shall cause the Valuer-General to make an assessment of the unimproved value of the land, identified in the determination of the appeal board as having received no direct or indirect benefit from the construction of the drains and drainage works, and the unimproved value of the whole of the ratable land comprised in the landholding.

Subsec. (5b)
inserted by 152,
1972, s. 5 (b).

(5b) Where a determination has been made under paragraph (c) of subsection (5) of this section in respect of any ratable land, there shall, subject to this section, be a proportionate rebate of the drainage rates payable upon that ratable land for the financial year commencing on the first day of July, 1972, and each subsequent financial year.

Subsec. (5c)
inserted by 152,
1972, s. 5 (b).

(5c) The proportionate rebate shall be the proportion of the drainage rates that would, but for the determination of the appeal board, be payable upon the ratable land that the unimproved value of the part of the ratable land that has, in the opinion of the appeal board, received no direct or indirect benefit from the construction of the drains or drainage rates bears to the unimproved value of the whole of the ratable land.

Subsec. (5d)
inserted by 152,
1972, s. 5 (b).

(5d) The unimproved values upon which the proportionate rebate is based shall be those determined by the Valuer-General under subsection (5a) of this section and the proportionate rebate shall be unaffected by any subsequent change in unimproved values.

Subsec. (5e)
inserted by 152,
1972, s. 5 (b).

(5e) Where ratable land to which a proportionate rebate applies is divided into separate portions subject to separate tenure, the South-Eastern Drainage Board shall determine the proportionate rebate (if any) applicable to each portion of the ratable land, and that determination shall not be subject to appeal.

Subsec. (5f)
inserted by 152,
1972, s. 5 (b).

(5f) Where a declaration or determination has been made by the appeal board under this section and it is, in the opinion of the South-Eastern Drainage Board, just that the declaration or determination be varied or revoked by reason of the construction of drains or drainage works after the date of the declaration or determination, the South-Eastern Drainage Board may by notice

in writing served personally or by post on the landholder, revoke or vary the declaration or determination.

(5g) The landholder may appeal to the appeal board against the revocation or variation of a declaration or determination under subsection (5f) of this section, and the appeal board may, upon the hearing of any such appeal, vary or revoke the determination of the South-Eastern Drainage Board.

Subsec. (5g)
inserted by 152,
1972, s. 5 (b).

(6) A decision of the appeal board shall be final and without appeal.

(7) An appeal under this section shall not suspend the right of the board to recover rates under this Act but if in consequence of the hearing of an appeal it appears that any amount of rates has been overpaid, or paid by a person who is not liable to pay those rates, the board shall refund that amount to the person by whom it was paid.

(8) In this section—

Subsec. (8)
inserted by 152,
1972, s. 5 (c).

“landholding” means the whole of the land referred to in a notice served under section 50 of this Act:

“separate part” of a landholding means—

(a) a part of the landholding that is not contiguous with any other part of the landholding;

or

(b) a part of the landholding that is described as a section, part section or block in a certificate of title, agreement or lease under which the land is held.

54. A member of the appeal board shall be entitled to receive such remuneration allowances and expenses as may be determined by the Minister.

Remuneration
allowances and
expenses.
S. 54 amended
by 91, 1969,
s. 7; substituted
by 112, 1971,
s. 13.

55. Subject to this Act, the appeal board may adopt such practice and procedure in the hearing of an appeal as it thinks fit.

Procedure of
appeal board.
S. 55 substituted
by 112, 1971,
s. 13.

56. (1) For the purposes of this Act, the appeal board may—

Powers of
appeal board.
S. 56 substituted
by 112, 1971,
s. 13.

(a) by summons under the hand of the chairman require any person to attend before the appeal board;

(b) by summons under the hand of the chairman require any person to produce any books, maps, plans, papers, and documents in his possession or power relating to any matter before the appeal board;

(c) examine witnesses on oath or affirmation which may be administered by any member of the appeal board;

and

(d) enter upon any land and make any inspection pertinent to any matter in dispute.

(2) If a person—

(a) fails to comply with a summons under subsection (1) of this section;

or

(b) obstructs the appeal board, misbehaves himself before the appeal board, or being called as a witness refuses to be sworn or to

DIVISION II

affirm, or to answer any question lawfully put to him by any member of the appeal board,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Exemption
from payment
of rates.
S. 57 substituted
by 112, 1971,
s. 14.

57. If the amount of rates payable for any year under this Division by any person would, apart from this section, be an amount of less than five dollars, no such amount shall be payable by that person in respect of that year.

Recovery of
rates.
1781, 1926,
s. 59.
Subsec. (1)
amended by 112,
1971, s. 15.

58. (1) All drainage rates shall become due and payable on the date as from which the rate is declared and effective; but no rates shall be recoverable from any person until after the expiration of twenty-one days from the time when a notice in writing from an officer of the board has been given to such person, informing him of the amount of the rates payable by him and in respect of what property the same are payable.

(2) Drainage rates may be recovered from the landholder or the occupier of the land on which they are declared.

Interest upon
unpaid rates.
S. 59 substituted
by 112, 1971,
s. 16.
Subsec. (1)
amended by 11,
1974, s. 5.

59. (1) If any drainage rates are not paid within three months after the day on which the rates become recoverable as provided by section 58 of this Act, interest at the rate of ten per centum per annum calculated in respect of a period extending from the day on which the rates became recoverable until payment of the rates shall be added to the amount of the rates.

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

Ss. 60, 61
repealed by 112,
1971, s. 17.

* * * * *

Recovery of
drainage rates.
1781, 1926,
s. 61.

62. Drainage rates may be recovered in the manner provided in Division III of this Part.

DIVISION III

Heading
substituted by
112, 1971, s. 18.

DIVISION III—RECOVERY OF RATES AND GENERAL PROVISIONS APPLICABLE TO RATES

Interpretation.
S. 63 substituted
by 112, 1971,
s. 18.

63. In this Division “rates” means drainage rates and any interest payable thereupon.

Recovery of
rates.
1781, 1926,
s. 63.

64. (1) Rates may be recovered in the name or on behalf of the board from any person liable to pay them—

- (a) by action in any court of competent jurisdiction;
- (b) at any time within three years after they become due and payable in a summary way before any two or more justices; or
- (c) by distress, as provided in the next section.

(2) In any proceedings for the recovery of any rates a document purporting to be a certificate under the seal of the board stating any or all of the following matters, namely:—

- (a) that any person is the landholder or occupier of any land;
- (b) that any rates are due and owing in respect of any land;

(c) that any fine or interest is due on any arrears of rates in respect of any land,

shall be *prima facie* evidence of the matters so stated.

65. In addition, and without prejudice to any other remedy, the board may recover any rates which remain unpaid for six months after they have become due, by distress and sale of any goods and chattels on any land in respect of which the rates are due to the board.

Recovery by distress.
1781, 1926,
s. 64.

66. All rates shall be a first charge upon the land in respect of which they are due, and such charge may be enforced by the board, as if it were a mortgagee under The Real Property Act, 1886¹.

Charging of rates on land.
1781, 1926,
s. 65.

67. (1) Where any land on which any rates are payable is subject to a lease to any person other than the landholder of such land, the lessee under such lease shall pay to the landholder during the currency of such lease such proportion of the rates paid by the landholder as may be agreed between them.

Lessees' liability to landholder for proportion of rates.
1781, 1926,
s. 66.

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

(3) Such application shall be made by notice served on or sent by registered post to the other party and the board.

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

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

(6) The board shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding ten dollars².

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

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

DIVISION IV

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

Property in water in drains.
1781, 1926,
s. 68.

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

General powers of board.
1781, 1926,
s. 69.

(a) enter into and upon any land whatsoever for the purpose of depositing spoil thereon, or of constructing, altering or repairing any drain or drainage work, obtaining or carrying away therefrom materials for constructing, altering, or repairing any drain or

¹ Now Real Property Act, 1886-1975.

² Pursuant to s. 8 of the Acts Republication Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

drainage work, and for any other purpose connected with the administration of this Act;

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

Subsec. (2)
amended by 112,
1971, s. 19.

(2) The powers conferred on the board by this section are in addition to and not in substitution for any powers which the board might exercise under the Land Acquisition Act, 1969¹.

Compensation
for damage.
1781, 1926,
s. 70.

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

Subsec. (2)
amended by 112,
1971, s. 20.

(2) If the amount of the compensation is not agreed between the owner or occupier and the board, it shall be determined in the same manner as disputed claims for compensation for land acquired are determined under the Land Acquisition Act, 1969¹.

Power to
acquire land and
sell lands not
required.
1781, 1926,
s. 71.

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

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

Power to make
roads.
1781, 1926,
s. 72.

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

Power to divert
water from
drain.
1781, 1926,
s. 73.

73. (1) The owner or occupier of any land adjacent to any drain or drainage work may, with the written consent of the board, and for such period and in such manner as it may allow, divert any water in any such drain or

¹ Now Land Acquisition Act, 1969-1972.

drainage work into his land so that such water shall not be permanently retained on such land.

(2) Any person diverting water from any such drain or drainage work into his own land, or any other person's land without such consent, or for a longer period than that allowed, or in any other manner than that allowed as aforesaid shall be guilty of an offence, and shall be liable to a penalty of not less than four dollars¹ nor more than forty dollars¹, and a further penalty not exceeding four dollars¹ for every day during which the offence is continued.

74. (1) The board may impose a fee of the prescribed amount for the use of water diverted from any drain or drainage work, to be estimated either according to the quantity diverted or the time elapsing between such diversion and the redelivery of the water to such drain or drainage work; and such fee may be recovered by distress of the goods and chattels of the person so using the same, or upon complaint before a special magistrate or two or more justices in a summary way.

Power to
impose fee.
1781, 1926,
s. 74.

(2) Fees received under this section shall be paid into the general revenue of the State.

75. (1) Where any fence or any part of a fence constructed by the board forms the boundary or part of the boundary of any land (other than land vested in or in possession of the board), the owner of such land shall be liable to pay to the board the cost of constructing such fence or part of a fence.

Liability of
landholder for
cost of fence.
1781, 1926,
s. 75.

(2) The said cost shall be a debt due to the board by the owner of the land and may be recovered by the board by action in any court of competent jurisdiction or upon complaint before a Special Magistrate or two or more justices in a summary way.

76. Any person causing or permitting any obstruction in, or otherwise injuriously affecting any drain or drainage work, or causing any filthy or unwholesome water, or washings of manufactories or mines, or other foul or poisonous liquid to flow into any drain or drainage work without the consent of the board first had and obtained, shall be guilty of an offence and shall be liable to a penalty not exceeding forty dollars¹, and a further penalty not exceeding four dollars¹ for every day during which the offence is continued.

Penalty for
obstructions or
nuisances.
1781, 1926,
s. 76.

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

Penalty for
interference
with regulators,
etc.
1781, 1926,
s. 76a.

(2) No person shall without the authority of the board (the proof of which authority shall be upon the defendant) open, shut, raise, lower, or tamper with any regulator, sluice, gate or weir appertaining to any of the drains or drainage works.

(3) Any person contravening this section shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred dollars¹.

78. Any person who, without the written consent of the board, cuts down or removes any timber, or excavates or removes gravel, sand, earth, or any other material in, adjacent to, or forming part of any drain, drainage work, or reserve adjoining any drain or drainage work shall be guilty of an offence and shall be liable to a penalty of not less than four dollars¹ nor more than forty dollars¹.

Penalty for
removing timber
or materials.
1781, 1926,
s. 77.

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

DIVISION IV

Penalty for cutting drain through road, etc.
1781, 1926, s. 78.

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

- (a) opens or cuts through any bank, roadway, or reserve adjacent to any drain or drainage work, which bank, roadway, or reserve is made out of materials excavated from any such drain; or
- (b) makes any drain or opening through any roadway or reserve, or portion of any roadway or reserve, at the side of or adjacent to any drain or drainage work,

shall be guilty of an offence and shall be liable to a penalty of not less than four dollars¹ nor more than forty dollars¹.

Penalty on building unauthorized bridges, etc.
1781, 1926, s. 79.

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

- (a) without the licence in writing of the board; or
- (b) otherwise than in accordance with the terms and conditions of such a licence.

Any person guilty of any contravention of this subsection shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred dollars¹.

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

Licences to construct certain private drains.
1781, 1926, s. 79a.
Subsec. (1) amended by 25, 1947, s. 4.

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

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

Any person contravening this subsection shall be guilty of an offence, and shall, in addition to any other liability which he may incur, be liable to a penalty not exceeding one hundred dollars¹.

¹ Pursuant to s. 8 of the Acts Republishing Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

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

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

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

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

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

(6) If any water discharges directly or indirectly into any drain or drainage work from any private drain or drainage work constructed after the commencement of this Act, and for which a licence has not been obtained under this section, the person who constructed that private drain or drainage work or his successor in title shall be guilty of an offence and liable to a penalty not exceeding four dollars¹ for every day on which water discharges as aforesaid.

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

Private drains and drainage works constructed without a licence.
S. 81a enacted by 25, 1947, s. 5.

- (a) water discharges or is likely to discharge from that private drain or private drainage work, directly or indirectly into any drain or drainage work; or
- (b) the private drain or private drainage work prevents or impedes, or is likely to prevent or impede, the flow of water into any drain or drainage work; or

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

DIVISION IV

- (c) the private drain or private drainage work alters or is likely to alter, the course taken by water which flows or, but for the alteration, would flow into any drain or drainage work,

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

(2) If any person fails to comply with any requirement of a notice given to him under this section the board may do the work specified in the notice and, by action in any court of competent jurisdiction, recover from that person the cost of so doing: Provided that where the notice relates to a private drain or private drainage work lawfully constructed five years or more before the passing of the South-Eastern Drainage Act Amendment Act, 1947, the board shall pay the cost of all work done pursuant to the notice.

Power to
remove or alter
any insufficient
bridges, etc.
1781, 1926,
s. 80.

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

Power of board
to construct
bridges.

83. Where any land in the South-East is intersected by any drain whenever constructed other than a petition drain, or separated from a road by any such drain, the board may, in its discretion, and out of moneys voted by Parliament for the purpose, construct a bridge over that drain for the accommodation of the occupier of the land.

Animals
trespassing on
drains, etc.
1781, 1926,
s. 81.

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

Board may
recover special
damages.
1781, 1926,
s. 82.

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

Penalty for
hindering work.
1781, 1926,
s. 83.

86. Any person who wilfully hinders or prevents any other person from carrying out or performing any work which he is authorized or directed by the board to do, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding forty dollars¹.

¹ Pursuant to s. 8 of the Acts Republishation Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

PART III

DIVISION IV

Board may do certain acts, and charge to defaulting person.
1781, 1926, s. 84.

Maintenance of private drains.
1781, 1926, s. 85.

87. If the person legally liable neglects to perform any act required by or pursuant to this Division to be done the board may perform the same, after giving to such person or leaving at his last or usual place of abode or upon the land in respect of which such act is required to be done, fourteen days' notice in writing to do such act, and after the doing of such act the board may recover the costs, charges, and expenses thereof from the person so in default by action in a court of competent jurisdiction or upon complaint in a summary way.

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

(2) Any person failing to comply with this section shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars¹.

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

* * * * *

Subsec. (4) struck out by 25, 1947, s. 6.

* * * * *

Part IV (comprising heading and ss. 89-103) amended by 91, 1969, ss. 8-11; repealed by 112, 1971, s. 21.

PART IVA

DRAINAGE OF EASTERN AND WESTERN DIVISIONS OF THE SOUTH-EAST

103a. In this Part—

“the eastern division of the South-East” means the whole of the hundreds of Petherick, Marcollat, Woolumbool, Glen Roy, Lochaber, Spence, Naracoorte, Robertson, Killanoola, Comaum, Monbulla, Penola, Grey, Nangwarry, Young and Mingbool and portions of the Hundreds of Messent, McNamara, Wells, Peacock,

PART IVA

Part IVA and Heading enacted by 34, 1948, s. 3. Heading amended by 25, 1959, s. 5.

Definitions.
S. 103a enacted by 34, 1948, s. 3.

Def. inserted by 25, 1959, s. 6; amended by 112, 1971, s. 22 (a).

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

PART IVA

Minecrow, Hynam, Joyce, Joanna, Coles, Short and Riddoch as set forth in the sixth schedule:

Def. substituted by 112, 1971, s. 22 (b).

“the western division of the South-East” means all portions of the South-East not comprised within the eastern division of the South-East:

Def. of “betterment” struck out by 112, 1971, s. 22 (c).

* * * * *

Power to construct drains and drainage works.

S. 103b enacted by 34, 1948, s. 3.

Subsec. (1) amended by 25, 1959, s. 7.

103b. (1) For the purpose of improving land in the eastern and western divisions of the South-East, the board, with the consent of the Minister, may construct drains and drainage works.

(2) The cost of such drains and drainage works shall be paid out of money voted by Parliament for that purpose.

Removal of charges.

S. 103c enacted by 34, 1948, s. 3; amended by 25, 1959, s. 8 (a), (b), (c); substituted by 112, 1971, s. 23.

103c. Where a charge has been registered under this Part as it existed before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, the board may, by instrument in writing, direct the Registrar-General to register a memorandum or memorial of the removal of the charge and the Registrar-General shall comply with any such direction.

S. 103d enacted by 34, 1948, s. 3; amended by 91, 1969, s. 12; repealed by 112, 1971, s. 23.

* * * * *

Ss. 103e-103f enacted by 34, 1948, s. 3; repealed by 112, 1971, s. 23.

* * * * *

S. 103g enacted by 34, 1948, s. 3; amended by 25, 1959, s. 9; repealed by 112, 1971, s. 23.

* * * * *

Ss. 103h-103j enacted by 34, 1948, s. 3; repealed by 112, 1971, s. 23.

* * * * *

PART V

PART V

MISCELLANEOUS PROVISIONS

Summary procedure for offences.
1781, 1926, s. 99.

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

Current rate of interest.

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

Regulations.
1781, 1926, s. 100.

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

(a) to ensure the proper maintenance and protection of the drains and drainage works:

- (b) to ensure the proper maintenance, cleanliness, and freedom from obstruction of any private drains which discharge into the drains directly or indirectly;
- (c) for regulating the manner, times, and quantities in which water may be diverted from any drain or drainage work, and the person by whom and purposes for which water may be so diverted and the fees payable therefor;
- (d) for fixing the poundage fees payable by the owners of animals trespassing on the drains or drainage works or any land owned by or under the control of the board;
- (e) prescribing forms to be used for the purposes of this Act, and modifying any forms contained in any schedule to this Act.

(2) Any regulation made under this section may fix penalties not exceeding one hundred dollars¹ for breach of the same or any other regulation.

107. (1) Subject to subsection (4) of this section, no person holding a lease of Crown lands with a right of purchase shall be entitled to complete the purchase unless he pays to the Minister of Lands all amounts, together with simple interest thereon at the rate of four per centum per annum, paid during the original term of the lease, or any subsequent term for which it has been renewed, by the Commissioner of Crown Lands, or the Minister of Lands in respect of the land under Part IV of the South-Eastern Drainage Act Amendment Act, 1908, or under the South-Eastern Drainage Scheme Acts, 1908 and 1910, or under any provisions of this Act, whether or not those provisions were repealed by the South-Eastern Drainage Act Amendment Act, 1971.

Lease with right to purchase.
S. 107 substituted by 112, 1971, s. 24.

(2) Subject to subsection (4) of this section, any such person shall be liable to pay to the Minister of Lands all amounts that the Minister is called upon to pay under the statutory provisions referred to in subsection (1) after the enactment of this section.

(3) Any liability that had fallen due under section 107 of this Act, as it existed before the commencement of the South-Eastern Drainage Act Amendment Act, 1971, shall be unaffected by the repeal of that section by that amending Act and the enactment of this section in its place.

(4) A person shall not be liable to pay to the Minister of Lands under this section any amount that the Land Board certifies to be included in the purchase price of the land.

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

Liability of board.

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

(2) No action or other proceedings shall be brought against the board, the Minister, the Crown, or any employee of the board, the Minister, or the Crown

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

on the ground that the flow of water from, to, or through any land has been increased or diminished or altered in any way whatever by reason of any drain or drainage work.

Notices and demands, how served.
1781, 1926,
s. 102.

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

- (1) Such notice shall be addressed to such person:
- (2) Such notice shall be deemed duly served or given if the same has been—
 - (a) given to such person personally;
 - (b) left at his usual or last known place of abode;
 - (c) sent by post to such place of abode;
 or
 - (d) sent by post to an address nominated by that person:
- (3) Any notice required to be given to the board shall be sent by post or delivered to the board at its office:
- (4) Where there is more than one landholder or occupier of the same land, and this Act requires notice to be given to the landholder or occupier of such land, service upon any one of them in manner aforesaid shall be deemed service upon all.

Para. (b) amended by 112, 1971, s. 25 (a).

Para. (d) inserted by 112, 1971, s. 25 (b).

SCHEDULES

THE FIRST SCHEDULE

“South-Eastern Drainage Act, 1931”

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

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

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

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

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

Portion of the Hundred of Rivoli Bay bounded as follows:—

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

1st Sched. substituted by 25, 1959, s. 10.

said section 4001 and production to the sea-coast; thence generally north-easterly, north-westerly, southerly and north-westerly following the said sea-coast to the point of commencement.

Portion of the Hundred of Mount Muirhead bounded as follows:—

Commencing at the north-eastern corner of the Hundred of Mount Muirhead; thence southerly along portion of the eastern boundary of the said hundred to its intersection with the production south-easterly of the south-western boundary of section 209; generally north-westerly along the latter production and boundary and the south-western boundaries of sections 211, 212, Stone Reserve, and sections 218 and 292 to the northern boundary of the Hundred; thence easterly along portion of the latter boundary to the point of commencement.

THE SECOND SCHEDULE

“South-Eastern Drainage Act, 1931”

Form of Petition to Construct Drain

To the South-Eastern Drainage Board, Adelaide.

We, the undersigned, being a majority of landholders, and representing three-fourths in value of the land to be improved by the construction of the drain hereinafter mentioned, hereby request you to construct the drain following, namely [*describe drain*].

The following are the lands which will be benefited by such drain [*here set out sections or blocks and hundreds*].

And we each undertake to pay our proportion of the cost of the construction of such drain at the times and in the manner provided by the “South-Eastern Drainage Act, 1931”.

The full names, addresses and occupations of each of us, and particulars of the lands to be benefited by the drain of which we are landholders, are set out below:—

Christian and Surname in full	Address	Occupation	Particulars of Land, giving Section Number and Hundred	Signature	Signature of Witness

Dated the day of 19....

Declaration by Witness

I solemnly and sincerely declare that the signatures to the above petition, opposite to which my name is signed, are the genuine signatures of the persons whose signatures they purport to be.

[*Signature of Witness*]

Declared before me at this day of , 19....

..... *Justice of the Peace.*

THE THIRD SCHEDULE

“South-Eastern Drainage Act, 1931”

Notice of Apportionment

The South-Eastern Drainage Board has made a preliminary apportionment of the cost of construction of [*describe drain*] amongst the landholders of the lands benefited by such drain.

Name of Landholder	Section or Block and Hundred	Amount of Apportionment
John Smith	94, Grey.	\$ c ¹ 50.00 ¹
William Jones	110, Grey.	100.00 ¹

Dated the day of , 19....

.....
.....
..... } Members of the
South-Eastern Drainage
Board.

¹ Pursuant to s. 8 of the Acts Republiation Act, 1967, as amended, references to amounts of money expressed in decimal currency substituted for references to amounts of money expressed in the old currency.

THE FOURTH SCHEDULE

"South-Eastern Drainage Act, 1931"

Notice of Objection

To the South-Eastern Drainage Board, Adelaide.

Take notice that I object to the amount of the cost of [*here describe the drain by a name it is known by, or otherwise shortly and sufficient to identify it*] apportioned to me by the preliminary apportionment of the South-Eastern Drainage Board, on the ground that such amount is too much.

Dated the day of, 19....

[Signature of objector]

[Address and occupation]

4th Sched.
redesignated 5th
Sched. by 112,
1971, s. 26.

THE FIFTH SCHEDULE

"South-Eastern Drainage Act, 1931"

Notice of final apportionment of the cost of constructing the [describe drain]

Name of Landholder	Section or Block and Hundred	Proportion of Cost to be borne by Landholder	Interest for Five Years as per Section 42	Amount of Annual Instalments to be paid by each Landholder	Date when First Instalment becomes Due
John Smith	94, Grey.	\$ c ¹ —	—	\$ c ¹ —	1st June, 19
William Jones	110, Grey.	—	—	—	1st June, 19

Dated the day of, 19....

.....
.....
..... } Members of the
South-Eastern Drainage
Board.

5th Sched.
inserted by 25,
1959, s. 11;
redesignated 6th
Sched. by 112,
1971, s. 26.

THE SIXTH SCHEDULE

"South-Eastern Drainage Act, 1931"

Land Comprised in the Eastern Division of the South-East

Portion of the Hundred of Messent north-east of a straight line extending from the north-western corner of the Hundred to the western corner of section 15 of the said Hundred.

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

Portion of the Hundred of Wells north-east of a straight line extending from the southern corner of section 16 Hundred of Wells to the south-eastern corner of the said Hundred.

Portion of the Hundred of Peacock north-east of a straight line extending from the southern corner of section 9, Hundred of Peacock to the western corner of section 47, of the said Hundred.

Portion of the Hundred of Minecrow north-east of a straight line extending from the eastern corner of section 202, Hundred of Minecrow to the south-eastern corner of section 137 of the said Hundred.

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

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

Portion of the Hundred of Joyce east of the eastern boundary of road west of sections 456, 458, 1A, 410, 411, 425, 448, 395, 393 and 415 of the said hundred.

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

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

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

Portion of the Hundred of Coles east of the following boundary:—

Commencing at the south-western corner of section 415, Hundred of Joyce; thence southerly by a straight line to the north-western corner of section 92, Hundred of Coles; generally southerly along the eastern boundary of road west of sections 92 and 91 and generally south-easterly along the north-eastern boundary of road south-west of sections 86, 63, 62, 52, 39 and portion of section 36 to its intersection with the production east-north-easterly of the north-western boundary of section 37; west-south-westerly along said production and boundary; south-south-easterly and easterly along the south-western and portion of the southern boundaries respectively of the latter section to the north-eastern corner of section 131; southerly and westerly along the eastern and portion of the southern boundaries respectively of the latter section to its intersection with the production northerly of the western boundary of section 13; southerly along the latter production and boundary and easterly along portion of the southern boundary of the latter section to the north-western corner of section 4; thence southerly along the western boundary of said section 4 and production to the southern boundary of the said Hundred.

Portion of the Hundred of Short east of the following boundary:—

Commencing at the north-western corner of section 123 (Drainage Reserve) Hundred of Short; thence generally south-south-easterly along the western boundaries of section 123 aforesaid and sections 124 and 125 to the south-western corner of the latter section; westerly along portion of the northern boundary of section 16 to the north-western corner of the said section; thence southerly along the western boundary of section 16 aforesaid and section 127 to the southern boundary of the said Hundred.

Portion of the Hundred of Riddoch east of the following boundary:—

Commencing at a point on the northern boundary of the Hundred of Riddoch being its intersection with the production north-north-easterly of the western boundary of Drainage Land intersecting section 58 of the said Hundred; generally south-south-westerly along the latter production and boundary, the western boundary of section 187 (Drain Reserve) and the western boundary of Drain Reserve intersecting Part section 48 and production across road to the northern boundary of Part section 40; generally north-westerly along portion of the northern boundary of the latter section and south-westerly along the north-western boundaries of sections 41E and 41W; south-easterly along the south-western boundary of the latter section; south-westerly and south-easterly along portion of the north-western and the south-western boundaries respectively of section 34 and south-easterly along the south-western boundaries of section 31, Block 29 and portion of the south-western boundary of section 22 to its intersection with the production north-easterly of the north-western boundary of section 25; south-westerly along the latter production and boundary; south-easterly along the south-western boundary of said section 25 and production to its intersection with the production north-easterly of a north-western boundary of Part section 10; generally south-westerly along the latter production and boundary and the north-western boundaries of sections 6, 139, 128, 127E, 127W and 133; thence generally southerly along the western boundaries of the latter section and section 134 to the southern boundary of the said Hundred.