



ANNO VICESIMO

ELIZABETHAE II REGINAE

A.D. 1971

No. 112 of 1971

An Act to amend the South-Eastern Drainage Act,
1931-1969.

[Assented to 9th December, 1971]

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

Short titles.

1. (1) This Act may be cited as the "South-Eastern Drainage
Act Amendment Act, 1971".

(2) The South-Eastern Drainage Act, 1931-1969, as amended
by this Act, may be cited as the "South-Eastern Drainage Act,
1931-1971".

(3) The South-Eastern Drainage Act, 1931-1969, is hereinafter
referred to as "the principal Act".

Commence-
ment.

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

Repeal of
s. 2 of
principal Act
and enactment
of section in
its place—

Acquisition of
land.

3. Section 2 of the principal Act is repealed and the following
section is enacted and inserted in its place:—

2. The board may, subject to and in accordance with the
Land Acquisition Act, 1969, acquire land for the purposes of
this Act.

Amendment of
principal Act,
s. 3—
Division of
Act.

4. Section 3 of the principal Act is amended by striking out the
item "PART IV—Provisions relating to repayment of part of the
cost of the scheme drains".

5. Section 6 of the principal Act is amended—

**Amendment of
principal Act,
s. 6—
Interpretation.**

- (a) by inserting before the definition of “board” in subsection (1) the following definition:—

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

- (b) by inserting after the definition of “drainage works” in subsection (1) the following definitions:—

“elected member” means a member of the board elected by ratepayers pursuant to the provisions of this Act:

“land” does not include land within the boundaries of a municipality, town or township;

- (c) by striking out from the definition of “landholder” the passage “Commissioner of Crown Lands” and inserting in lieu thereof the passage “Minister of Lands”;

- (d) by striking out the definition of “the Land and Valuation Court”;

and

- (e) by striking out subsection (3).

6. The following section is enacted and inserted in the principal Act immediately after section 7 thereof:—

**Enactment of
s. 7a of
principal Act—**

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.

**Extinguishment
of certain
liabilities.**

(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.

Repeal of
s. 10 of
principal Act
and enactment
of sections
in its place—
Constitution
of board.

7. Section 10 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

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.

Elections.

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.

(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 State shall conduct the election on a day determined by the Minister.

(6) The Returning Officer for the State 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 Officer 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 State thinks fit.

(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.

8. Section 13 of the principal Act is amended by inserting after the word "members" the passage " , of which at least one is an appointed member,".

Amendment of
principal Act,
s. 13—
Quorum.

9. Section 16 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection :—

Amendment of
principal Act,
s. 16—
Staff of
Board.

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

10. Section 17 of the principal Act is amended by inserting after the passage "drainage works" the passage "(except drains and drainage works within or relating to a municipality, town or township)".

Amendment of
principal Act,
s. 17—
Control of
drains.

Amendment of principal Act, s. 22—
Power of board to enter upon and survey land.

11. Section 22 of the principal Act is amended by striking out from subsection (2) the passage “Compulsory Acquisition of Land Act, 1925” and inserting in lieu thereof the passage “Land Acquisition Act, 1969”.

Repeal of s. 48 of principal Act and enactment of section in its place—

Drainage rate.

12. Section 48 of the principal Act is repealed and the following section is enacted and inserted in its place:—

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

(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.

Repeal of ss. 49-56 of principal Act and enactment of sections in their place—

Land subject to drainage rate.

13. Sections 49 to 56 (inclusive) of the principal Act are repealed and the following sections are enacted and inserted in their place:—

49. (1) The drainage rate shall be payable upon all ratable land in the South-East in proportion to the unimproved value of that land as assessed from time to time for the determination of land tax.

- (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.

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

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. **Notice.**

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

(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.

Quorum, etc.

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

(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.

Appeal.

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.

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

(a) that the appellant is not the landholder in respect of the land referred to in the notice, or is the landholder in respect of only part of that land;

or

(b) that the construction of the drains or drainage works has not resulted in any direct or indirect benefit to any portion of the land.

(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.

(5) The appeal board may, if satisfied upon the hearing of an appeal that the ground upon which the appeal was instituted has been established—

(a) declare that the appellant is not the landholder in respect of the land referred to in the notice, or is the landholder in respect of only part of that land;

or

(b) declare that the land subject to the appeal is not ratable land for the purposes of this Act.

(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.

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.

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.

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

(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 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.

Repeal of s. 57 of principal Act and enactment of section in its place—

14. Section 57 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Exemption from payment of rates.

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.

Amendment of principal Act, s. 58—
Recovery of rates.

15. Section 58 of the principal Act is amended by striking out from subsection (1) the passage “when the notice of the amount thereof is published in the *Gazette*” and inserting in lieu thereof the passage “on the date as from which the rate is declared and effective”.

Repeal of s. 59 of principal Act and enactment of section in its place—

16. Section 59 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Interest upon unpaid rates.

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 due and payable 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.

Repeal of ss. 60 and 61 of principal Act.

17. Sections 60 and 61 of the principal Act are repealed.

Repeal of heading and section 63 of principal Act and enactment of heading and section in their place.

18. Section 63 of the principal Act, and the heading immediately preceding that section, are repealed and the following heading and section are enacted and inserted in their place:—

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

Interpretation.

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

Amendment of principal Act, s. 69—
General powers of board.

19. Section 69 of the principal Act is amended by striking out from subsection (2) the passage “Compulsory Acquisition of Land Act, 1925” and inserting in lieu thereof the passage “Land Acquisition Act, 1969”.

20. Section 70 of the principal Act is amended by striking out from subsection (2) the passage "Compulsory Acquisition of Land Act, 1925" and inserting in lieu thereof the passage "Land Acquisition Act, 1969".

Amendment of principal Act, s. 70—
Compensation for damage.

21. Part IV of the principal Act (comprising sections 89 to 103 inclusive of the principal Act and the headings thereto) is repealed.

Repeal of Part IV of principal Act.

22. Section 103a of the principal Act is amended—

Amendment of principal Act, s. 103a—
Interpretation.

(a) by striking out from the definition of "The eastern division of the South-East" the passage "fifth schedule" and inserting in lieu thereof the passage "sixth schedule";

(b) by striking out the definition of "the western division of the South-East" and inserting in lieu thereof the following definition:—

"the western division of the South-East" means all portions of the South-East not comprised within the eastern division of the South-East;

and

(c) by striking out the definition of "betterment".

23. Sections 103c to 103j (inclusive) of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 103c to 103j of principal Act and enactment of section in their place—

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.

Removal of charges.

24. Section 107 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 107 of principal Act and enactment of section in its place—

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

Lease with right to purchase.

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.

(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.

Amendment of
principal Act,
s. 109—
Service.

25. Section 109 of the principal Act is amended—

(a) by striking out the word “or” immediately preceding subparagraph (c) of paragraph (2);

and

(b) by inserting after that subparagraph the following subparagraph:—

or

(d) sent by post to an address nominated by that person.

Re-designation
of schedules.

26. The penultimate and final schedules to the principal Act are redesignated “THE FIFTH SCHEDULE” and “THE SIXTH SCHEDULE” respectively.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor