

LEGISLATIVE ASSEMBLY

Read 1° 10 May, 1978.

(Brought from the Legislative Council.)

A BILL

INTITULED

AN ACT

To amend the *Water Act* 1958, the *Local Government Act* 1958, and the *Drainage of Land Act* 1975, and for other purposes.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Water Drainage Act* 1978.

(2) In this Act the *Water Act* 1958 is called the Principal Act.

(3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

2. In section 33 of the Principal Act after the paragraph—

“ The systematic gauging and recording of the volume and flow of rivers and streams and of the volume of lakes

Short title.

Principal Act
No. 6413.
Reprinted to
No. 8729.
Subsequently
amended by
Nos. 8794, 8890
8893, 8967, 9078.

Commence-
ment.

Amendment of
No. 6413 s. 33.

and lagoons and the effect of climatic conditions upon such volumes within the State ;”—

there shall be inserted the following paragraph :—

“ Investigating, evaluating, implementing and co-ordinating drainage, flood mitigation and river management proposals ; ”. 5

New sections inserted.

3. After section 33 of the Principal Act there shall be inserted the following sections :—

“ 33A. (1) Where the Commission declares to the Minister that arrangements for consultation are desirable in investigating, evaluating, implementing and co-ordinating any particular drainage, flood mitigation or river management proposals, the Minister may recommend to the Governor in Council that the Governor in Council by Order published in the *Government Gazette* and in a newspaper circulating generally in the area affected by the proposal declare the area of such proposal to be an area to which the succeeding sub-sections shall apply and the Governor in Council may make such Order. 10 15

Consultative committees.

(2) The Commission may from time to time appoint one or more consultative committees for any such area. 20

(3) Every consultative committee shall consist of a representative or representatives of the Commission and of any Government departments or public authorities and persons appointed as representing relevant interests in the area.

(4) The functions of every consultative committee shall be to advise the Commission on matters arising in connexion with the drainage, flood mitigation or river management proposal in the area and to report to the Commission upon any matters relating to drainage, flood mitigation and river management referred to it by the Commission. 25 30

Commission to consult Soil Conservation Authority and Fisheries and Wildlife Division.

(5) The Commission shall from time to time consult the Soil Conservation Authority and the Fisheries and Wildlife Division of the Ministry for Conservation with respect to any proposals studied pursuant to the provisions of this section.

Declaration of approved scheme.

33B. Where the Commission has prepared a scheme for implementing any proposal in relation to drainage, flood mitigation or river management— 35

(a) the Commission may publish a notice of its intention to seek the declaration of the Governor in Council that the proposal be declared an approved scheme for the purposes of Division 8 of Part XXI. of the *Local Government Act 1958* in the *Government Gazette* and in a newspaper circulating generally in the area affected by the scheme ; and 40

(b) not

(b) not less than 60 days after the publication in the said newspaper of the notice under paragraph (a) the Governor in Council may by notice published in the *Government Gazette* declare the scheme (or any modification thereof) to be an approved scheme.”

4. After section 306 of the Principal Act there shall be inserted the following section :—

“ 306AA. The Governor in Council on the recommendation of the Minister may direct that the provisions of section 304 shall apply to the whole or any part of any moneys borrowed by a municipality for the construction under the provisions of Division 8 of Part XXI. of the *Local Government Act* 1958 of any works comprised in any approved scheme of drainage, flood mitigation or river management whereupon such provisions shall extend and apply to and in relation to any such whole or part as if the municipality were an authority referred to in that section. ”

New section inserted.

5. The *Local Government Act* 1958 shall be amended as follows :—

Amendment of No. 6299.

(a) In the Table for the expression “ Part XXI.—Sewers, Drains, Watercourses, &c., ss. 642–656.” there shall be substituted the expression “ Part XXI.—Sewers, Drains, Watercourses, &c., ss. 642–656B ;”

(b) In the Table after the expression “ Part XXI.—Sewers, Drains, Watercourses, &c., ss. 642–656 Division 7—Power to Scour, Cleanse and Keep Open certain Drains constructed by Owners of Lands, s. 656 ” there shall be inserted the expression “ Division 8.—Approved Schemes for Drainage, Flood Mitigation and River Management ss. 656A–656B.” ;

(c) After Division 7 of Part XXI. there shall be inserted the following Division :—

New Division inserted.

“ DIVISION 8.—APPROVED SCHEMES FOR DRAINAGE, FLOOD MITIGATION AND RIVER MANAGEMENT.

656A. (1) The council may construct, operate, control, manage or maintain any works or undertakings which form the whole or part of a scheme declared under the provisions of the *Water Act* 1958, to be an approved scheme and such works or undertakings shall be permanent works and undertakings for the purposes of Part XV. of this Act.

(2) All works and undertakings which form the whole or part of an approved scheme under

Works to be property of council.

sub-section (1) constructed by or taken possession of by any council or upon or connected with any lands taken possession of and appropriated by any council shall be deemed to be the property of and be used by such council for the purposes of this Act. 5

Rates and improvement charges.

(3) For the purposes of any work or undertaking which in the exercise of any of the powers conferred upon it by sub-section (1), a council is empowered to execute, a council may if it thinks fit and pursuant to the provisions of this Act— 10

Power to make separate rate.

(a) make and levy a separate rate in respect of rateable property in any particular portion exclusively of the municipal district if it appears to the council that the work or undertaking is for the special benefit of such portion ; or 15

Power to make special improvement charge.

(b) make and levy a special improvement charge in respect of the properties within the municipal district in its opinion benefited by the work or undertaking. 20

Notwithstanding anything to the contrary in this Act the following provisions shall apply in respect of any such separate rate :— 25

Rate may be levied before commencement of work.

(i) The rate may be made and levied before the commencement of such work or undertaking without any confirmation by order of the Governor in Council ; 30

(ii) The rate shall be made and levied at different amounts in the dollar on the properties which benefit in proportion to the amount of benefit which in the opinion of the council is conferred on such properties by such work or undertaking. 35 40

Special improvement charge.

(4) Such special improvement charge shall be apportioned among the properties in respect of which it is made in proportion to the amount of 45

benefit

benefit which in the opinion of the council is conferred on the properties by such work or undertaking.

5 (5) As soon as the council has made such special improvement charge it may publish in the *Government Gazette* a notice of its intention to borrow money on the security of such charge for the purposes of the work or undertaking for which the charge was made and no other notice of intention to borrow shall be necessary. Notices.

10 (6) (a) Such money may be borrowed on the security of such special improvement charge by way of mortgage ; Borrowing.

15 (b) All such money shall be borrowed subject to such of the provisions in this Act with regard to borrowing on the security of a special improvement charge by mortgage as are applicable.

20 (c) For the purposes of this Part and notwithstanding anything to the contrary in this Part— Certain provisions of this Act as to extent of borrowing powers, preparation of plans, publication of notices and poll of ratepayers not to apply.

25 (i) the following sections of this Act shall not apply—sections 399 to 408 ; section 441 ; section 817 ;

(ii) the money may be borrowed on resolution of the council and without a special order.

30 656B. (1) When any council has pursuant to this Division completed any work or undertaking or any portion thereof or when any work not constructed pursuant to this Division is availed of for the purposes of this Division the council may, and when so required by the Minister shall, make and levy a special maintenance charge for the purposes and in the manner hereinafter provided and the council shall in respect of any such work or undertaking carry out such maintenance work as the Minister directs. Special maintenance charges.

35 (2) Such special maintenance charge may be made and levied for all or any of the following purposes :—

40 (a) Maintaining in an efficient condition any such work or undertaking ;

(b) Maintaining

- (b) Maintaining and operating any building plant machinery or equipment used in connexion with any such work or undertaking ;
- (c) Paying expenses incurred in the execution of the foregoing purposes or any of them or in making and levying such special maintenance charge. 5

Preparation of scheme.

(3) In any case where the council proposes to make any such special maintenance charge the council shall cause to be prepared a scheme setting forth— 10

- (a) such particulars of the proposed maintenance work as it thinks necessary ;
- (b) an estimate of the cost of such work including any expenses aforesaid ; 15
- (c) the proposed apportionment of such cost among the properties in respect of which the special maintenance charge is proposed to be made and levied— 20

but no special maintenance charge shall have any force or effect until it and the estimate prepared in connexion with it have been approved by the Governor in Council and notice of such approval has been published in the *Government Gazette* ; and before recommending any special maintenance charge to the Governor in Council the Minister may refer the proposal for the charge or the estimate aforesaid back to the council for amendment ; and the Governor in Council may approve any special maintenance charge or estimate either with or without amendments. 25 30

Notice and contents thereof.

(4) The council not less than fourteen days before making any special maintenance charge shall cause to be served on every person intended to be made liable thereto a notice in writing— 35

- (a) stating that the council proposed to make a special maintenance charge for the purposes specified in the notice, and the estimated amount of such person's liability thereunder ; 40
- (b) specifying the time at which such charge is proposed to be made and the period of twelve months in respect of which such charge is to be made ; 45

(c) describing

- (c) describing generally the locality of the property in respect of which such charge is proposed to be made ;
- 5 (d) naming the place where a copy of the scheme is deposited for inspection ;
- (e) and stating—
- (i) that on a date therein mentioned and being not less than fourteen days from the service of such notice the council will proceed to consider the making of the proposed special maintenance charge and the liability of such person in respect thereof ;
- 10
- (ii) that any such person may appear on such date before such council or a committee of such council appointed for such purpose to raise objections thereto ; and
- 15
- (iii) that in default of any person so objecting the special maintenance charge will be made and all persons on whom notice has been served will be considered as having admitted that the council has complied with all the requirements of this Act and also their respective liabilities as appearing in the said notice and will be in all respects then finally bound and concluded thereby.
- 20
- 25
- 30
- 35 (5) Any person interested in or affected by the proposed special maintenance charge may appear before the council or a committee of such council appointed for such purpose on such date or on any date to which the consideration of the matter may be adjourned and object to such charge ; but in no case shall it be necessary for the council to give notice to any person of any adjournment of such consideration.
- 40
- 45 (6) (a) Upon the date so fixed or any date to which the consideration of the matter may be adjourned the council may if no person so objects make the said special maintenance charge ;
- Objections by persons interested.
- Making of special maintenance charge.

(b) If

(b) If any person so objects the council or a committee of such council appointed for such purpose shall thereupon or at some future date inquire into and consider the matter in the presence of such person if he attends, and after hearing the objections (if any) then made if it appears to the council expedient so to do may make the said charge ; 5

(c) If at any time before making the said special maintenance charge the council considers it necessary to make any other person liable to such charge or to make any variation in the particulars of the scheme or in the estimate or in the proposed apportionment of such charge or in any other particulars, the council may do so ; but the council shall give to every person affected by such addition or variation a like notice at least fourteen days before making the said charge, and every such person shall be in all respects in the same position as if his name had been originally included or as if such variation had been part of the original scheme. 10 15 20 25

Effect of making special maintenance charge.

(7) Upon the making of the special maintenance charge every person upon whom notice has been served and who has been made liable to the said charge as made shall be considered as having admitted that the council has complied with all the requirements of this Division and such person shall be finally bound and concluded by all the matters aforesaid. 30

Application of moneys received in respect of special maintenance charge.

(8) All moneys received by the council in respect of any special maintenance charge shall be applied to the payment of the cost and expenses incurred by the council in the execution of the purposes authorized by this Division and to no other purpose whatsoever. 35 40

Separate account to be kept of special maintenance charge.

(9) The council shall in every case in which it makes and levies any special maintenance charge cause a separate and distinct account to be kept of all moneys collected and received and of all payments and disbursements in respect of such charge. 45

(10) Every special maintenance charge shall be vested in the municipality and shall be payable at such times and either in whole or in such parts or instalments as the council appoints.

Special maintenance charge vested in municipality and payable as the council may appoint.

5

(11) (a) When any property in respect of which a special maintenance charge has been made is subsequently subdivided and becomes the property of different owners the council may apportion and declare the respective liability to be thereafter borne and discharged in respect of such charge by each of such owners.

Apportionment of charge on subdivision of property.

10

(b) Such liability as so apportioned and declared shall thereafter be borne and discharged by and be recoverable by the council from each of such owners as if he had been originally made liable to such charge.

15

20

(c) The amount which upon such apportionment is declared to be due in respect of each part of such property and no more shall be and until paid remain a charge on such part."

25 6. In section 1 (1) of the *Drainage of Land Act 1975* for the expression "Part VI.—Amendments of Various Acts" there shall be substituted the expression "Part VI.—General".

Amendment of No. 8811 s. 1 (1)

7. Section 33 (1) of the *Drainage of Land Act 1975* shall be amended as follows :—

Amendment of No. 8811 s. 33 (1).

30

(a) In the interpretation of "Drainage Authority" for paragraph (a) there shall be substituted the following paragraph :—

35

"(a) in relation to those lands which are within the metropolis as defined in the *Melbourne and Metropolitan Board of Works Act 1958* and in respect of which the Board exercises powers under Part X. of that Act—the Melbourne and Metropolitan Board of Works ; and "

40

(b) After the interpretation of "Drainage Authority" there shall be inserted the following interpretation :—

" "Land" includes any easement right or privilege in over or affecting any land."

8. After section 34 of the *Drainage of Land Act 1975* there shall be inserted the following sections :—

New section inserted.

“ 34A. A drainage authority may by agreement take, purchase, lease or hold any land or part thereof, any part of which is within an area declared under section 35 (1) to be liable to flooding by any river or group of rivers and in respect of any land so taken purchased or held, may lease, grant licences for, exchange or sell such land or part thereof. 5

Lands Compensation Act 1958 incorporated herewith.

34B. (1) The provisions of the *Lands Compensation Act 1958* shall (except insofar as they are inconsistent with or modified by this Part) be incorporated with this Part as to any land to be purchased taken or acquired for any works or undertaking within the meaning of the said *Lands Compensation Act 1958*. 10

(2) For the purposes of this Part in the construction of the said *Lands Compensation Act 1958* the words “ Special Act ” shall mean this Part and the words “ Minister ” or “ Minister of Public Works ” shall mean a drainage authority.”. 15

Amendment of No. 8811 s. 41.

9. In section 41 (11) of the *Drainage of Land Act 1975* for the word “ determined ” there shall be substituted the words “ prescribed by regulations made from time to time ”. 20

Amendment of No. 8811, heading of Part VI.

10. After section 48 of the *Drainage of Land Act 1975* for the heading “ Part VI.—AMENDMENTS OF VARIOUS ACTS ” there shall be substituted the heading “ PART VI.—GENERAL ”.

New section substituted.

11. For sections 49 to 57 inclusive of the *Drainage of Land Act 1975* there shall be substituted the following sections :— 25

‘ 49. (1) Except where otherwise expressly provided any notice order or demand to be given to an owner or occupier of any building or land may be served upon the owner or occupier—

(a) by delivering it to him personally or to his authorized agent ; 30

(b) by leaving it with a person apparently of or above the age of 18 years at the usual or last known place of residence of the owner or occupier ;

(c) by posting it to him at the usual or last known place of residence or business or his usual or last known postal address ; or 35

(d) in the case of any body of persons corporate—by posting it to or delivering it at the office thereof addressed to the chairman, clerk or secretary thereof.

(2) Where the owner or occupier of any building or land or his place of residence is unknown to an authority or where the owner or occupier is believed by an authority to be absent from his building or land and the owner or occupier has no agent known to the authority and resident in Victoria, the notice order or demand may be served by being affixed on the building or in some conspicuous place upon the land.

(3) Every notice order or demand so affixed shall be deemed and taken to be sufficient notice to the owner or occupier from the time of its being so affixed.

(4) It shall not be necessary for any such notice order or demand to specify the name of any person as owner or occupier of the building or land and any such notice order or demand may be addressed by the description of "the owner" or "the occupier" of the building or land (naming it) to which it relates without further name or description.

(5) In this section and in section 50 the expression "authority" includes a drainage authority and an applicant.

50. Except where otherwise expressly provided any notice order or demand to be given by an authority to the owner of any building or land shall be deemed to have been sufficiently served if it is served in accordance with the provisions of this Act upon—

Service upon persons rated or registered as owners, &c.

(a) the person described in any rate-book kept under the *Local Government Act 1958* at the time of the service as the owner of the building or land ; or

(b) any person who appears from any memorial of registration of any deed conveyance or other instrument to be the owner thereof or any person whose name appears in the Register Book kept under the *Transfer of Land Act 1958* as proprietor thereof.

51. A proclamation or declaration made by the Governor in Council pursuant to this Act notwithstanding any defect error or apparent invalidity in any procedure or matter relating to the service of notices shall be valid and shall not be challenged in any court whatsoever and every owner or occupier intended to be made liable under the proclamation or declaration shall be liable accordingly.'

