

# **SOUTH-WESTERN SUBURBS DRAINAGE ACT, 1959-1970**

## **SUMMARY OF PROVISIONS**

### **PART I**

#### **PRELIMINARY**

- Section
- 1 Short title.
  - 2 Arrangement.
  - 2a Repeal and savings.
  - 3 Interpretation.
  - 4 (Repealed).
  - 5 Power to acquire land.

### **PART II**

#### **FLOODWATER DRAINAGE**

- 6 Power to construct and maintain works.

### **PART III**

#### **FINANCIAL PROVISIONS**

- 7 Councils liable for prescribed amount.
- 8 Payment by councils.
- 9 Notification of total cost and prescribed amount.
- 10 Rate of interest payable by councils.
- 11 Variation of rate of interest.
- 12 Councils responsible for maintenance of drains.
- 13 Minister of Works to maintain works on River Sturt at expense of councils.
- 13a Obligation on Municipal Council of Glenelg.

### **PART IV**

#### **MISCELLANEOUS**

- 14 Tenders for works.
- 15 Powers of Minister.
- 16 Compensation.
- 17 Variation of costs of works.
- 18 Delegation by Minister.
- 19 Power to lease and sell surplus land and property.
- 20 Payments by councils.
- 21 Remedies for non-payment by councils.
- 22 Penalty for obstructing construction.
- 23 Regulations.
- 24 Summary disposal of offences.
- 25 Indemnity of Minister from certain claims.
- 26 Power to require councils to have river cleared.

### **THE SCHEDULE**

# SOUTH-WESTERN SUBURBS DRAINAGE ACT, 1959-1970

being

South-Western Suburbs Drainage Act, 1959, No. 44 of 1959 [Assented to 17th December, 1959];

as amended by

South-Western Suburbs Drainage Act Amendment Act, 1970, No. 54 of 1970 [Assented to 10th December, 1970]<sup>1</sup>.

**An Act to authorize the construction and operation of works for the prevention and control of flooding in the South-Western Suburbs of the Metropolitan Area, and for other purposes.**

**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-Western Suburbs Drainage Act, 1959-1970".

Short title.  
Cf. 2201, 1935,  
s. 1.  
Citation  
amended by 54,  
1970, s. 1 (2).

2. The provisions of this Act are arranged as follows:—

Arrangement.

PART I—Preliminary.

PART II—Floodwater Drainage.

PART III—Financial Provisions.

PART IV—Miscellaneous.

2a. (1) The South-Western Suburbs (Supplementary) Drainage Act, 1966, is repealed.

Repeal and  
savings.  
S. 2a enacted by  
54, 1970, s. 3.

(2) Notwithstanding the repeal effected by subsection (1) of this section—

(a) any payment made by a council pursuant to the Act so repealed, before the day of commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970, shall for the purposes of this Act be regarded as a payment made by that council pursuant to section 8 of this Act;

(b) on and after the day of commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970, no further payment

<sup>1</sup> Came into operation 5th March, 1971: *Gaz.* 4th March, 1971, p. 958.

shall be required to be made by any council pursuant to the Act so repealed;

and

- (c) the total amount expended on the construction of the works authorized by section 6 of the Act so repealed shall be aggregated with and form part of the total amount expended on the construction of the works authorized by this Act.

Interpretation.

3. In this Act unless the context otherwise requires—

“councils” means and includes the municipal councils of Marion, Mitcham, West Torrens, Unley, Brighton, and Glenelg, the Garden Suburb Commissioner<sup>1</sup> and the district councils of Meadows and Stirling:

“Minister” means the Minister of Local Government:

Def. inserted by  
54, 1970,  
s. 4 (a).

“the Patawalonga works” means the works described in the schedule to this Act:

Def. substituted  
by 54, 1970,  
s. 4 (b).

“the plan” means Parliamentary Plan No. 340 signed A. K. Johnke, Commissioner of Highways and dated the Seventeenth day of November, 1970, and deposited in the office of the Surveyor-General, Adelaide:

Def. inserted by  
54, 1970,  
s. 4 (b).

“the prescribed amount” means the prescribed amount ascertained as provided by subsection (2) of section 9 of this Act:

Def. of “the  
report” struck  
out by 54, 1970,  
s. 4 (c).

\* \* \* \* \*

“works” means the channels, dam, drains, works, and conveniences referred to in section 6.

S. 4 repealed by  
54, 1970, s. 5.

\* \* \* \* \*

Power to  
acquire land.  
2201, 1935, s. 5.  
S. 5 amended by  
54, 1970, s. 6.

5. The Minister may, under and in accordance with the Land Acquisition Act, 1969<sup>2</sup>, take and acquire, either compulsorily or by agreement, all such lands and easements in or over any lands as he may require for the purpose of constructing, completing, repairing, or extending any of the works.

PART II

PART II

FLOODWATER DRAINAGE

Power to  
construct and  
maintain works.  
Cf. 2201, 1935,  
s. 6.

6. (1) The Minister may, out of moneys to be provided by Parliament for the purpose, carry out all or any of the following works:—

Para. I  
substituted by  
54, 1970, s. 7.

- I. The Minister may construct the drains numbered 1, 2, 2A, 3, 4, 6, 7, 8, 10, 11, 12, 14C, 15A, 15B, 16, 18, 19, 20, 21, 22, 24 delineated on the plan:

Para. 1A  
inserted by 54,  
1970, s. 7.

IA. The Minister may construct and carry out the Patawalonga works:

- II. The Minister may construct works for the improvement of the channel of the River Sturt including new channels for the said river and any embankments that may be necessary in connection

<sup>1</sup> See ss. 24 and 25 of the Garden Suburb Act, 1919, as amended and proclamations under that Act (*Gaz.* 27th March, 1975, p. 1262, and *Gaz.* 1st May, 1975, p. 1698).

<sup>2</sup> Now Land Acquisition Act, 1969-1972.

with any of such works and may remove any obstruction from and otherwise cleanse any part of the said river:

- III. The Minister may construct a flood control dam on the River Sturt to delay the flow of floodwaters from the upper reaches of the said river and to prevent floodwaters from those reaches or from surrounding suburban areas from creating a flow beyond the capacity of the said river:
- IV. The Minister may carry out any works or conveniences connected with or necessary for the purposes of any of the works:
- V. The Minister may enter into contracts with any council, person, or persons, for the construction or carrying out of the whole or any part of the works or portion of the works or for the provision of any materials, equipment, or services required in connection with such construction or with the works or any part thereof.

(2) The Minister may carry out the works with such (if any) alterations and variations as may from time to time be found necessary or convenient.

### PART III

### PART III

#### FINANCIAL PROVISIONS

7. (1) The councils shall pay to the Treasurer in the manner and in the proportions hereinafter provided the prescribed amount.

Councils liable for prescribed amount.  
Subsec. (1) amended by 54, 1970, s. 8 (a).

(2) The amount payable by each of the councils shall be an amount equal to the percentage of the prescribed amount which is shown opposite the name of each respective council in the following table:—

Subsec. (2) amended by 54, 1970, s. 8 (b), (c).

Municipal Council of Marion .....	55.18 per centum
Municipal Council of Mitcham .....	19.10 per centum
Municipal Council of West Torrens .....	1.57 per centum
Municipal Council of Unley .....	2.20 per centum
Municipal Council of Brighton .....	11.57 per centum
Municipal Council of Glenelg .....	7.44 per centum
The Garden Suburb Commissioner <sup>1</sup> .....	0.94 per centum
District Council of Meadows .....	1.47 per centum
District Council of Stirling .....	0.53 per centum

8. (1) Each of the councils shall pay to the Treasurer on the first day of May in the financial year next after the financial year in which the Minister notifies the councils that the sum of one million pounds has been expended upon the works, and on each succeeding first day of May thereafter until and including the first day of May in the financial year during which the statement referred to in section 9 is published, an amount equal to an annual instalment calculated to pay over a period of fifty-three years the amount payable in pursuance of section 7, together with interest upon the amount from time to time remaining unpaid at the rate of five and one-eighth per centum per annum.

Payment by councils.  
S. 8 amended by 54, 1970, s. 9 (a), (b), (c), (d), (e); redesignated s. 8 (1) by 54, 1970, s. 9 (f).

<sup>1</sup> See ss. 24 and 25 of the Garden Suburb Act, 1919, as amended and proclamations under that Act (*Gaz.* 27th March, 1975, p. 1262, and *Gaz.* 1st May, 1975, p. 1698).

For the purpose of determining payments to be made under this section, after the commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970, the prescribed amount shall be deemed to be \$4,332,898 and the liability of the councils shall, for the purposes of calculating interest in respect of payments made pursuant to this section after the commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970, be deemed to have arisen on the first day of May of the financial year immediately preceding the day of commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970.

Subsec. (2)  
inserted by 54,  
1970, s. 9 (f).

(2) For the purposes of ascertaining the amount payable pursuant to this section by each council on the first day of May next following the day of commencement of the South-Western Suburbs Drainage Act Amendment Act, 1970, and each first day of May that occurs thereafter, the Treasurer shall, having regard to the amendments effected to this Act by that Act, recalculate the payments required to be made by each council and the payments, as recalculated, shall be the payments required to be made pursuant to this section.

Subsec. (3)  
inserted by 54,  
1970, s. 9 (f).

(3) Upon the application of a council the Treasurer may defer payment, upon such terms and conditions as he specifies, of such part of any payment required to be made by that council pursuant to this section on the first day of May, next following the day of commencement of the South-Western Suburbs Drainage Act Amendment Bill, 1970, as is equal to the difference between the amount of the payment that the council would have been required to make pursuant to this section together with the amount of the payment, if any, that the council would have been required to make pursuant to section 8 of the South-Western Suburbs (Supplementary) Drainage Act, 1966, had the South-Western Suburbs Drainage Act Amendment Act, 1970 not been enacted and the amount of the payment that the council is required to make pursuant to this section.

Notification of  
total cost and  
prescribed  
amount.

S. 9 amended by  
54, 1970,  
s. 10 (a);  
redesignated  
s. 9 (1) by 54,  
1970, s. 10 (b).

9. (1) Upon completion of the works the Treasurer shall publish in the *Gazette* a statement certified by the Auditor-General showing the total amount expended on the construction of the works and the prescribed amount, which shall be ascertained as provided in subsection (2) of this section.

Subsec. (2)  
inserted by 54,  
1970, s. 10 (b).

(2) For the purposes of this Act the prescribed amount shall be ascertained by reference to the following formula:—

$$A = \frac{T - (P + \$1,000,000)}{2}$$

where:—

A = the prescribed amount expressed in dollars:

P = the amount expended on the construction of the Patawalonga works, as certified by the Auditor-General, expressed in dollars:

T = the total amount expended on the construction of the works expressed in dollars.

Rate of interest  
payable by  
councils.

10. Each of the councils shall pay to the Treasurer on the first day of May in the financial year next following the financial year during which the Treasurer publishes the statement referred to in section 9, and on each succeeding first day of May thereafter until there have been fifty-three annual payments (including payments made pursuant to section 8), equal annual instalments of principal and interest calculated to repay the amount payable in pursuance of section 7, together with interest upon the amount from time to

time remaining unpaid at the rate hereinafter set out, namely, such rate as the Treasurer shall determine as proper, having regard to rates paid by him on loan moneys raised at long-term rates during the period of the construction of the works. For the purposes of this section any variation in the amount payable by each council shall be deemed to have become effective on the first day of May of the financial year during which the publication was made by the Treasurer of the said statement.

11. The Treasurer shall, in every tenth year after the year in which payments commence under section 10, vary or re-affirm as he deems proper, having regard to the rates paid by him on loan moneys raised at long-term rates during the preceding year, the rate of interest to be payable by the councils on amounts from time to time remaining unpaid. Upon any such variation the remaining annual instalments payable by each council shall be varied so as to complete repayment at the end of the fifty-third year after the notification referred to in section 8.

Variation of  
rate of interest.

12. (1) Upon completion of a major drain or part of a major drain within the area of any one of the councils the Minister shall notify that council of such completion.

Councils  
responsible for  
maintenance of  
drains.

(2) After such notification that council shall from time to time at its own expense cleanse, repair, and maintain the same and remove any obstruction therein and fill in any holes and repair any breakages in any part thereof.

13. (1) The Minister of Works shall, out of moneys to be provided by Parliament from time to time, cleanse, repair and maintain that part of the works which relates to the improvement of the River Sturt and the flood control dam referred to in paragraphs II and III of subsection (1) of section 6.

Minister of  
Works to  
maintain works  
on River Sturt  
at expense of  
councils.

(2) The cost of such cleansing, repair and maintenance shall be payable to the Treasurer by the councils in the proportions set out in section 7.

(3) On the first day of May next following the completion of the part of the works referred to in this section and on the first day of May of each of the two next succeeding years, the amount payable by the councils for the purposes aforesaid shall be five thousand pounds. On the first day of May of each succeeding year thereafter the amount payable shall be such sum as the Treasurer shall determine every third year in advance having regard to the costs of such cleansing, repair, and maintenance.

(4) The Treasurer shall pay all amounts received by him under subsection (2) of this section into a maintenance fund to be held by him and the Treasurer may, without further appropriation, recover the cost of such cleansing, repair and maintenance out of the said fund.

13a. The Municipal Council of Glenelg shall, at its own expense, cleanse, repair and maintain that part of the works being the Patawalonga works in accordance with the directions of the Minister of Works which directions the said Minister is hereby authorized and empowered to give.

Obligation on  
Municipal  
Council of  
Glenelg.  
S. 13a enacted  
by 54, 1970,  
s. 11.

## PART IV

## PART IV

## MISCELLANEOUS

Tenders for  
works.  
2201, 1935,  
s. 12.

14. (1) The Minister may call for tenders for the construction of the works authorized by this Act, either as a whole or in sections, to be sent in within such time to such place, and to be upon and subject to such terms, conditions, and provisions as he deems advisable, and may accept or reject any tender.

(2) If no tender is accepted, or if a tender for the whole or any part of the work is accepted, and the contractor making such tender fails to begin or complete the work or any part thereof in accordance with the contract, the Minister may, according to the circumstances, himself construct or complete the works.

Powers of  
Minister.  
2201, 1935,  
s. 13.

15. For the purpose of constructing, completing, extending, or maintaining the works, and for the purpose of carrying out the provisions of this Act, the Minister may exercise any of the powers following, that is to say—

- I. He may enter upon any lands and take levels thereof and set out such parts thereof as he shall think necessary, and deposit soil thereon, and dig, break, and trench the soil of any such lands, and remove and use all earth, stone, minerals, trees, or other things dug or obtained out of or from any such lands:
- II. He may enter upon, take, and hold, either temporarily or permanently, such lands as he may from time to time deem necessary for the construction, maintenance, repair, or improvement of the works, and may manufacture and work upon the land so entered upon, taken, or held:
- III. He may, for any purpose authorized by this Act, or for the purpose of obtaining entry to any land for any such purpose, enter upon any land:
- IV. He may dam, bar, and stop up with any weir or dam, any river, pool, stream, or watercourse, or impound the water from any river, pool, stream or watercourse:
- V. He may deepen, widen, straighten, alter, divert, scour, or cleanse any river, pool, stream, or watercourse:
- VI. He may make any embankment against any river, pool, stream, or watercourse, and place on any land stones, piles, earth, soil, or other materials for the purposes of the works or any of them, or for the more effectual protection of any land, or for the better carrying of the waters from any land into the sea or into any river, pool, stream, or watercourse:
- VII. He may stop up or divert any road, or remove or strengthen any bridge, and build any new road or bridge:
- VIII. He may do all such things as may be necessary or convenient for the purpose of constructing, maintaining, cleansing, and repairing the works.

Compensation.  
2201, 1935,  
s. 14.

16. (1) Subject to subsection (3) and (4) of this section, the Minister shall make compensation to all persons interested for all damage suffered by them by reason of the exercise by the Minister of the powers conferred upon him by this Act.

(2) In every case where the Minister cannot agree with the owner or claimant as to the amount of compensation, the amount shall be ascertained, and the case, in other respects, shall, subject as aforesaid, be dealt with in manner provided by the Compulsory Acquisition of Land Act, 1925<sup>1</sup>, for determining the amount and application of the compensation.

(3) No compensation shall be payable in respect of any earth, stone, minerals, trees, or other things dug or obtained out of or from the bed or the banks of the River Sturt.

(4) No compensation shall be payable by reason of the entry by the Minister on any land, unless as the result of the entry damage is occasioned, in which event the compensation shall be limited to the amount of the damage.

17. (1) If, at the time of the publication of the statement referred to in section 9, any claim for compensation arising out of the construction of the works (other than such a claim arising out of the construction of works being the Patawalonga works) has not been determined, the Treasurer shall, upon the claim being determined, by notice published in the *Gazette*, vary the prescribed amount by adding thereto one-half of the amount of any compensation required to be paid.

Variation of costs of works. 2201, 1935, s. 15. Subsec. (1) amended by 54, 1970, s. 12 (a), (b).

(2) The prescribed amount so varied shall thereupon be the prescribed amount for the purposes of section 7, and as from and including the first day of May of the financial year next following the financial year in which the said publication is made, the annual instalments payable by each council under section 10 or section 11, as the case may be, shall be varied so that payment of all amounts payable by the councils shall be completed at the end of the fifty-third year after the notification mentioned in section 8. For the purposes of this section any addition to the liability of each council by reason of any such variation shall be deemed to take effect on the first day of May of the financial year during which notice thereof was published by the Treasurer.

Subsec. (2) amended by 54, 1970, s. 12 (c), (d).

18. (1) The Minister may authorize such person or persons as he shall think proper to do all or any of the acts, matters, and things as the Minister is by this Act empowered or required to do.

Delegation by Minister. 2201, 1935, s. 16.

(2) Every person so authorized shall have and enjoy all such and the like powers as are hereby conferred on the Minister to enable him to do such acts, matters and things respectively.

(3) All such acts, matters, and things, when done under such authority, shall be as valid and effectual as if they had been done by the Minister.

(4) Every person so authorized shall have and enjoy in respect of each such act, matter, or thing so done by him, all such immunities from personal liability as the Minister would have had or enjoyed if he had done such act, matter, or thing.

19. (1) The Minister may demise any land purchased by him and which he does not immediately require for the purposes of this Act, for such period, at such rent, and upon such conditions, as he shall think fit, and may sell or otherwise dispose of any such land or other property which he does not further require for the purposes of the works, and may transfer or convey such land or other property to the purchaser, or as he shall direct.

Power to lease and sell surplus land and property. 2201, 1935, s. 17.

<sup>1</sup> The Compulsory Acquisition of Land Act, 1925, and its amendments have been repealed by the Land Acquisition Act, 1969. (Now Land Acquisition Act, 1969-1972). (See also s. 5 (3) of Act No. 93 of 1969).



(2) The Minister's receipt shall be a sufficient discharge to the purchaser for the purchase-money in the receipt expressed to be received, and the rent of land demised.

(3) The money accruing from the sale or other disposition of the property sold or disposed of shall be paid by the Minister to the Treasurer, and shall be taken into account by the Treasurer in compiling the statement referred to in section 9.

Payments by  
councils.  
2201, 1935,  
s. 20.  
Subsec. (1)  
amended by 54,  
1970, s. 13.

20. (1) Each of the councils shall on every day appointed by this Act for the payment of any amount by the council, pay to the Treasurer the amount required to be paid by the council.

(2) The said amount may be paid out of the ordinary funds of the council, or may be paid out of the proceeds of a special rate, or may be paid partly out of the ordinary funds and partly out of the proceeds of a special rate. The said special rate shall be declared and levied under the provisions of the Local Government Act, 1934-1959<sup>1</sup>, without any consent of ratepayers, and all the provisions of the said Act shall apply to the declaration, levying, and recovery of the rate. With the consent in writing of the Minister, any such special rate may be declared on the ratable property within part only of the area of the council.

Remedies for  
non-payment by  
councils.  
2201, 1935,  
s. 21.

21. (1) The Treasurer may by action in any court of competent jurisdiction recover any sum payable to him under this Act by any council.

(2) If any such sum of money due and payable by a council is not paid on the day on which it becomes payable, the Governor may direct that the sum, or any part thereof, be retained and paid to the Treasurer on behalf of the council out of any other moneys payable by the Crown or any Minister thereof to the council, and the said sum, or part thereof, shall be retained and paid accordingly.

Penalty for  
obstructing  
construction.  
2201, 1935,  
s. 22.

22. Every person who—

- (a) wilfully obstructs any person acting under the authority of the Minister in setting out the line of any of the works;
- (b) pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the line of any of the works;
- (c) without the consent in writing of the Minister places any obstruction in or digs any hole in any part of the bed of the River Sturt or any channel cleansed or constructed pursuant to this Act;
- (d) destroys or injures any of the works; or
- (e) causes or permits any obstruction in, or otherwise injuriously affecting any of the works,

shall be guilty of an offence against this Act and liable to a penalty not exceeding two hundred dollars<sup>2</sup>.

Regulations.  
2201, 1935,  
s. 23.

23. (1) The Governor may make regulations for all or any of the following purposes:—

- I. For regulating the conduct of persons employed under or for the purposes of this Act:
- II. For the protection of the works from trespass, injury, or pollution:

<sup>1</sup> Now Local Government Act, 1934-1975.

<sup>2</sup> 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.

III. For any other purpose necessary or convenient for carrying this Act into effect.

(2) Any such regulation may fix penalties not exceeding in any case the sum of forty dollars<sup>1</sup> for the breach of the same or any other regulation.

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

Summary disposal of offences. 2201, 1935, s. 24.

25. No claim or action whatsoever shall be made or brought against the Minister arising out of or in respect of the escape of any waters from any river, pool, stream, watercourse, reservoir, or channel.

Indemnity of Minister from certain claims. 2201, 1935, s. 25.

26. (1) The Minister may by notice in writing under his hand require any of the councils to exercise with regard to the River Sturt, and any lands mentioned in the notice, and the owner or occupier thereof, the power conferred upon municipal and district councils by section 643 of the Local Government Act, 1934-1959<sup>2</sup>.

Power to require councils to have river cleared. 2201, 1935, s. 26.

(2) Any council which, having received a notice as mentioned in subsection (1) of this section fails to comply therewith within two months after receiving the notice, shall be guilty of an offence against this Act and liable to a penalty not exceeding one hundred dollars<sup>1</sup>.

#### THE SCHEDULE

Sched. enacted by 54, 1970, s. 14.

The Patawalonga Works comprising:—

1. Deepening and widening of basin to an average width of 300ft. with necessary adjustments to services and facilities.
2. Construction of three additional outlet regulators, reconstruction of outlet channel and replacement of facilities.
3. Extension of King Street Bridge and dismantling bridge at Anderson Avenue.
4. Diversion of northern end of Adelphi Terrace and realignment of Military Road adjacent to Glenelg Sewage Treatment Works.

<sup>1</sup> 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.

<sup>2</sup> Now Local Government Act, 1934-1975.