



ANNO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1959

No. 44 of 1959

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.

[Assented to 17th December, 1959.]

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.

Short title.
Cf. 2201, 1935,
s. 1.

1. This Act may be cited as the "South-Western Suburbs Drainage Act, 1959".

Arrangement.

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

PART I.—Preliminary.

PART II.—Floodwater Drainage.

PART III.—Financial Provisions.

PART IV.—Miscellaneous.

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 and the district councils of Meadows and Stirling :

PART I.

“Minister” means the Minister of Local Government :

“the plan” means the plan attached to and forming part of the report :

“the report” means the report of the Parliamentary Standing Committee on Public Works dated the 6th day of October, 1959, made pursuant to the Metropolitan Drainage Works (Investigation) Act, 1957 :

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

4. The Compulsory Acquisition of Land Act, 1925 (except sections 49, 79, 80, 81, and 82 thereof) is incorporated with this Act. Incorporation. 2201, 1935, s. 4.

5. The Minister may, under the Act incorporated with this Act, 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. Power to acquire land. 2201, 1935, s. 5.

PART II.PART II.

FLOODWATER DRAINAGE.

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

- I. The Minister may construct the drains numbered 1 (in part), 2, 4, 7, 8, 11, 12, 14, 15, 19, 21, 22, and 23 delineated on the plan and described in the report for the purposes of carrying waters rising east of the River Sturt into that river and of discharging directly into the sea waters rising west of the said river :
- 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 with any of such works and may remove any obstruction from and otherwise cleanse any part of the said river :

PART II.

- 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.

Councils liable
for half cost
of works.

7. (1) The councils shall pay to the Treasurer in the manner and in the proportions hereinafter provided one-half of the total cost of the works.

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

Municipal Council of Marion	58·91 per centum
Municipal Council of Mitcham	16·90 per centum
Municipal Council of West Torrens . .	0·58 per centum
Municipal Council of Unley	2·20 per centum
Municipal Council of Brighton	13·50 per centum
Municipal Council of Glenelg	4·79 per centum
The Garden Suburb Commissioner . .	1·03 per centum
District Council of Meadows	1·47 per centum
District Council of Stirling	0·62 per centum

PART III.

8. 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. For the purpose of determining payments to be made under this section the total cost of the works shall be deemed to be two million one hundred and fifty-eight thousand six hundred pounds and the liability of the councils shall, for the purposes of calculating interest, be deemed to have arisen on the first day of May of the financial year during which the said notification is given by the Minister.

Payment by
councils.

9. 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 such amount shall be the total cost for the purposes of section 7.

Notification of
total cost.

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.

Rate of interest
payable by
councils.

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

Variation of
rate of
interest.

PART III.

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.

Councils
responsible for
maintenance
of drains.

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.

(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.

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

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.

(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.

PART IV.

PART IV.

MISCELLANEOUS.

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.

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

(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.

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—

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

- 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:

PART IV.

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, 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.

Variation of
costs of works.
2201, 1935,
s. 15.

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 has not been determined, the Treasurer shall, upon the claim being determined, by notice published in the *Gazette*, vary the amount included in such statement by the addition thereto of the amount of any compensation required to be paid.

(2) The amount so varied shall thereupon be the total cost of the works 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.

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.

(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.

PART IV.

(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.

20. (1) Every council 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, without any consent of rate-payers, 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 one hundred pounds.

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

Regulations.
2201, 1935,
s. 23.

- 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 :
- 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 twenty pounds 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.

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 fifty pounds.

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

R. A. GEORGE, Governor.