

# METROPOLITAN DRAINAGE ACT, 1935.

BEING

METROPOLITAN DRAINAGE ACT, 1935, No. 2201 OF 1935  
[ASSENTED TO 14TH MARCH, 1935.]

AS AMENDED BY

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935  
[ASSENTED TO 19TH DECEMBER, 1935.]

An Act to authorise the construction of works for the drainage of land periodically flooded by the River Torrens, the River Sturt, and the Keswick and Brownhill Creeks, 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 "Metropolitan Drainage Act, 1935".

Short title.  
Cf. U.K.  
20 & 21  
Geo. 5 c. 44.

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

Arrangement.

PART I.—Preliminary.

PART II.—River Torrens Drainage and Financial Provisions.

PART III.—River Sturt and Keswick and Brownhill Creeks Drainage and Financial Provisions.

Part IV.—Miscellaneous.

3. In this Act, unless the context otherwise requires—

Interpretation.

"Commissioner" means the Commissioner of Public Works for the time being in office:

"council" includes the Garden Suburb Commissioner:

"works" mean the channels, drains, works, and conveniences referred to in sections 6 and 9.

PART I.

Incorporation.

4. The Compulsory Acquisition of Lands Act 1925, (except sections 49, 79, 80, 81 and 82), is incorporated with this Act.

Power to acquire land.

5. The Commissioner 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, maintaining, repairing, or extending any of the works.

PART II.

## PART II.

## RIVER TORRENS DRAINAGE AND FINANCIAL PROVISIONS.

Power to construct and maintain works.

6. (1) Subject to subsection (4) the Commissioner may, out of loan moneys to be provided by the Parliament of the State for the purpose and out of moneys provided for the purpose by any grant of the Commonwealth, carry out all or any of the following works :—

- I. The Commissioner may enlarge any part of any channel of the River Torrens below the bridge known as Taylor's Bridge :
- II. The Commissioner may construct new channels for the River Torrens so that the same shall discharge into the sea, which said new channels are delineated on the plan, signed "J. H. O. Eaton, Engineer-in-Chief", and deposited in the Land Office on the sixth day of February, nineteen hundred and thirty-five, and numbered 320 :
- III. The Commissioner may construct any regulators in any channel of the River Torrens necessary to prevent over-charging and to reduce the velocity of the water therein :
- IV. The Commissioner may construct tidal flaps at or near the outlet to the sea so as to prevent the inflow of the sea into the said channels :
- V. The Commissioner may construct or re-construct any bridges necessary to be constructed or re-constructed over the said channels and river :

vi. The Commissioner may construct such embankments as may be necessary for any of the said works and may remove any obstruction from and otherwise cleanse any part of the bed of the River Torrens :

vii. The Commissioner may carry out any works or conveniences connected with or necessary for the purposes of any of the said works.

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

(3) The Commissioner shall out of moneys to be provided by the Treasurer from the Metropolitan Drainage Maintenance Fund or out of moneys to be provided by Parliament, from time to time cleanse, repair, and maintain the said works, and remove any obstruction in, or fill in any hole in any part of the bed of the River Torrens cleansed as aforesaid, or of any channel constructed or altered as aforesaid.

(4) Before carrying out any of the works authorised by subsection (1), the Commissioner shall appoint a qualified engineer or engineers practising outside the State to inquire and report to the Commissioner whether the channel authorised by subsection (1) to be constructed for the discharge of the River Torrens into the sea, is designed in accordance with proper engineering practice and with engineering experience, and whether it is designed so as to secure the said discharge at all times and so as to prevent the influx of the sea in sufficient volume to injure properties abutting on the channel.

If the report of the engineer is that the said channel is not so designed, the Commissioner shall not carry out any of the works authorised by subsection (1) unless and until Parliament otherwise decides.

7. (1) Upon the completion of the works authorised by this Part the Treasurer shall publish in the *Gazette* a statement showing the amount of loan moneys provided by the Parliament of the State and expended on the construction of the works authorised by this Part.

Payment of  
interest by  
councils.

(2) Interest at the rate of four pounds ten shillings per centum on one-third of the said amount shall be payable by the municipal and district councils mentioned in part I. of the first schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

## PART II.

(3) Interest at the rate of four pounds ten shillings per centum on one-third of the said amount shall be payable by the municipal and district councils mentioned in part II. of the first schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(4) Interest as aforesaid shall be payable by every such council on the first day of May in the financial year next after the financial year in which the statement aforesaid is published under subsection (1), and thereafter shall be payable on the first day of May in every year until interest as aforesaid has been paid for fifty-eight years, when the liability of the council to pay interest under this section shall be determined.

Payment of  
maintenance  
costs.

8. (1) Upon the completion of the works authorised by this Part the Treasurer shall publish in the *Gazette* a statement showing the total amount of moneys (comprising both loan moneys provided by the Parliament of the State and any grant provided by the Commonwealth) expended on the construction of the works authorised by this Part.

(2) An amount equal to one-half of one per centum of the said total amount (less a deduction of one hundred and twenty-five pounds) shall be annually payable by the municipal and district councils mentioned in part I. of the first schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(3) An amount equal to one-half of one per centum of the said total amount (less a deduction of one hundred and twenty-five pounds) shall be annually payable by the municipal and district councils mentioned in part II. of the first schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(4) Amounts payable under this section shall be payable by every such council on the first day of May in the financial year next after the financial year in which the statement aforesaid is published under subsection (1) and thereafter shall be payable on the first day of May in every year.

(5) All amounts paid pursuant to this section shall be paid into a fund to be called the "Metropolitan Drainage Maintenance Fund". The Treasurer shall without any further

appropriation than this Act pay to the Commissioner out of the said fund any amount which the Commissioner may require for the purposes of carrying out any maintenance or other works authorised by subsection (3) of section 6 or subsection (3) of section 9.

## PART III.

## PART III.

## RIVER STURT AND KESWICK AND BROWNHILL CREEKS DRAINAGE AND FINANCIAL PROVISIONS.

9. (1) The Commissioner may, out of loan moneys to be provided by the Parliament of the State for the purpose and out of moneys provided for the purpose by any grant of the Commonwealth, carry out all or any of the following works :—

Power to construct works for drainage of River Sturt, &c.

- I. The Commissioner may enlarge in any manner he thinks fit any of the channels of the River Sturt, the Keswick Creek, and the Brownhill Creek shown on the plan referred to in section 6 :
- II. The Commissioner may construct any regulators in the channel of the River Sturt, Keswick Creek, or Brownhill Creek, necessary to prevent over-charging and to reduce the velocity of the water therein :
- III. The Commissioner may line with concrete such portions of any channels of the River Sturt, Keswick Creek, and Brownhill Creek as he thinks fit :
- IV. The Commissioner may construct new channels for or alter the channels of the River Sturt, the Keswick Creek, and the Brownhill Creek as he thinks fit by the construction of embankments or otherwise :
- V. The Commissioner may construct or re-construct any bridges necessary to be constructed or re-constructed over the said channels and river and creeks :
- VI. The Commissioner may construct such embankments as may be necessary for any of the said works and may remove any obstruction from and otherwise cleanse any part of the bed of the River Sturt, Keswick Creek, and Brownhill Creek :

VII. The Commissioner may carry out any works or conveniences connected with or necessary for the purposes of any of the said works.

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

(3) The Commissioner shall out of moneys provided by the Treasurer from the Metropolitan Drainage Maintenance Fund or out of moneys to be provided by Parliament, from time to time cleanse, repair, and maintain the said works, and remove any obstruction in, or fill in any hole in any part the of bed of the River Sturt, Keswick Creek, or Brownhill Creek, cleansed as aforesaid, or of any channel constructed or altered as aforesaid.

Payment of  
interest by  
councils.

**10.** (1) Upon the completion of the works authorised by this Part the Treasurer shall publish in the *Gazette* a statement showing the amount of loan moneys provided by the Parliament of the State and expended on the construction of the works authorised by this Part.

(2) Interest at the rate of four pounds ten shillings per centum on one-third of the said amount shall be payable by the municipal and district councils mentioned in part I. of the second schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(3) Interest at the rate of four pounds ten shillings per centum on one-third of the said amount shall be payable by the municipal and district councils mentioned in part II. of the second schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(4) Interest as aforesaid shall be payable by every such council on the first day of May in the financial year next after the financial year in which the statement aforesaid is published under subsection (1) and thereafter shall be payable on the first day of May in every year until interest as aforesaid has been paid for fifty-eight years, when the liability of the council to pay interest under this section shall be determined.

Payment of  
maintenance  
costs.

**11.** (1) Upon the completion of the works authorised by this Part the Treasurer shall publish in the *Gazette* a statement showing the total amount of moneys (comprising both loan

moneys provided by the Parliament of the State and any grant provided by the Commonwealth) expended on the construction of the works authorised by this Part.

(2) An amount equal to one-half of one per centum of the said total amount shall be payable by the municipal and district councils mentioned in part I. of the second schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(3) An amount equal to one-half of one per centum of the said amount shall be payable by the municipal and district councils mentioned in part II. of the second schedule. The amount payable by each such council shall be calculated at the percentage of the whole amount payable pursuant to this subsection which is shown opposite the name of the council in the said part.

(4) Amounts payable under this section shall be payable by every such council on the first day of May in the financial year next after the financial year in which the statement aforesaid is published under subsection (1), and thereafter shall be payable on the first day of May in every year.

(5) All amounts paid pursuant to this section shall be paid into the Metropolitan Drainage Maintenance Fund, and shall be applied in manner provided by subsection (5) of section 8.

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#### PART IV.

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#### PART IV.

#### MISCELLANEOUS.

**12.** (1) The Commissioner may call for tenders for the construction of the works authorised 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.

(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 Commissioner may, according to the circumstances, himself construct or complete the works.

Commissioner  
may do  
certain acts  
in connection  
with the works.

**13.** For the purpose of constructing, completing, extending, or maintaining the works, and for the purpose of carrying out the provisions of this Act, the Commissioner 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 spoil 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 authorised 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.



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

Compensation to persons suffering damage.

(2) In every case where the Commissioner 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 Torrens, River Sturt, Keswick Creek, or Brownhill Creek.

(4) No compensation shall be payable by reason of the entry by the Commissioner 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.

15. (1) If, at the time of the publication of any notice pursuant to section 7, 8, 10, or 11, 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 any such notice aforesaid by the addition thereto of the amount of any compensation required to be paid.

Variation of costs of works.

(2) The amount so varied shall, from the time of the publication provided for by this section, be deemed to be the amount upon which payments by councils shall be estimated as provided by sections 7, 8, 10, or 11, as the case may be.

16. (1) The Commissioner may authorise such person as he shall think proper to do all or any of the acts, matters, and things which the Commissioner is by this Act empowered or required to do.

Power of Commissioner to delegate his powers.

(2) Every person so authorised shall have and enjoy all such and the like powers as are hereby conferred on the Commissioner 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 Commissioner.

(4) Every person so authorised 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 Commissioner would have had or enjoyed if he had done such act, matter, or thing.

## PART IV.

Power to  
lease and sell  
surplus land  
and property.

17. (1) The Commissioner 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.

(2) The Commissioner'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 Commissioner to the Treasurer of the State, and shall be credited against the loan moneys mentioned in section 7 or section 10, according to whether the work in respect of which the land was acquired was carried out pursuant to Part II. or Part III.

Variation of  
percentages.

18. (1) The Commissioner may from time to time at any time after ten years after the completion of the works, cause an inquiry to be held by any person or persons with a view to ascertaining whether, in view of the circumstances existing at the time of the inquiry, the percentages, upon which contributions under this Act of councils are based, and which are provided or deemed to be provided in any part of the first or second schedule, are just or equitable. No inquiry under this section shall, except in the case of the first inquiry under this section, be made until after the expiration of five years from the completion of the last preceding inquiry under this section.

(2) The said person or persons shall consider the said percentages and, if thought just or equitable, may recommend to the Commissioner that the percentages in any part aforesaid shall be altered, but so that in all cases the total of the percentages in each part shall be one hundred.

(3) Every such recommendation shall be laid before both Houses of Parliament, and may be approved by resolution of both Houses of Parliament. Notice of the passing of any such resolution shall be published in the *Gazette*.

(4) Upon publication as aforesaid the part of the first or second schedule to which the resolution applies shall be deemed to be amended in manner provided by the resolution and this Act shall be construed accordingly.

(5) Every resolution of both Houses of Parliament under this section shall be passed by both Houses in the same session of Parliament, or shall be passed by one House in one session and by the other House in the next succeeding session of that Parliament.

**19.** (1) The Municipal Tramways Trust shall, on the first day of May in every year after the completion of the works, pay to the Treasurer a sum of two hundred and fifty pounds.

Contribution  
by Municipal  
Tramways  
Trust.

(2) Every such payment shall be paid into the Metropolitan Drainage Maintenance Fund.

(3) The liability of the Municipal Tramways Trust under this section shall cease when the Municipal Tramways Trust ceases to operate any transport service between Torrensville and Henley Beach, and in that event, the amount of one hundred and twenty-five pounds required to be deducted from the amounts payable pursuant to subsections (2) and (3) of section 8 shall cease to be so deducted.

**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.

Payments by  
councils.

(2) The said amount may be paid out of the general revenues of the council, or may be paid out of the proceeds of a special rate, or may be paid partly out of the general revenues 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, 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 Commissioner, any such special rate may be declared on the ratable property within part only of the area of the council.

**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 or by the Municipal Tramways Trust.

Remedies for  
non-payment  
by councils.

(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.

**22.** Every person who—

Penalty for  
obstructing  
construction of  
works.

(a) wilfully obstructs any person acting under the authority of the Commissioner 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 Commissioner places any obstruction in or digs any hole in any part of the bed of the River Torrens, River Sturt, Keswick Creek, or Brownhill Creek, 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 fifty pounds.

**Regulations.**

**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 purpose of this Act :
- II. For the protection of the works from trespass, injury, or pollution :
- III. 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 ten pounds for the breach of the same or any other regulation.

**Offences to be disposed of summarily.**

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

**Immunity of Commissioner from certain claims.**

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

**Power to require councils to have creeks cleared.**

**26.** (1) The Commissioner may by notice in writing under his hand require any municipal or district council referred to in the first and second schedules to exercise with regard to the River Torrens, River Sturt, Keswick Creek, or Brownhill Creek, 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.

(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.

27. (1) The Treasurer may, until loan moneys are raised pursuant to any Act of Parliament for the purpose of carrying out the works, advance any sums of money necessary for the purpose of carrying out any of the works. For the purposes of sections, 7, 8, 10 and 11 any such moneys shall be deemed to be loan moneys provided by the Parliament of the State.

Financial  
provisions.

(2) An amount equal to the sums of money so advanced shall be retained by the Treasurer out of any loan moneys provided as aforesaid and applied in repayment of the moneys so advanced.

## SCHEDULES.

Amended by  
S.L.R. Act,  
1935.

## THE FIRST SCHEDULE

## PART I.

Name of Municipal or District Council.	Percentage of Total required to be Paid by each Council.
Municipal Council of Adelaide .....	27 per centum
Municipal Council of St. Peters .....	18 per centum
Municipal Council of Kensington and Norwood .....	18 per centum
Municipal Council of Prospect .....	3 per centum
Municipal Council of Burnside .....	9 per centum
District Council of Walkerville .....	5 per centum
District Council of Enfield .....	6 per centum
District Council of Payneham .....	6 per centum
District Council of Campbelltown .....	8 per centum

## PART II.

Name of Municipal or District Council.	Percentage of Total required to be Paid by each Council.
Municipal Council of Henley and Grange .....	33 per centum
Municipal Council of Thebarton .....	7 per centum
Municipal Council of Woodville .....	27 per centum
District Council of West Torrens .....	33 per centum

Amended by  
S.L.R. Act,  
1935.

## THE SECOND SCHEDULE.

## PART I.

Name of Municipal or District Council.	Percentage of Total required to be Paid by each Council.
Municipal Council of Adelaide .....	7 per centum
Municipal Council of Unley .....	33 per centum
Municipal Council of Thebarton .....	10 per centum
Municipal Council of Burnside .....	10 per centum
District Council of West Torrens .....	5 per centum
District Council of Marion .....	5 per centum
District Council of Mitcham .....	17 per centum
The Garden Suburb Commissioner .....	13 per centum

## PART II.

Name of Municipal or District Council.	Percentage of Total required to be Paid by each Council.
Municipal Council of Glenelg .....	5 per centum
District Council of West Torrens .....	75 per centum
District Council of Marion .....	20 per centum