

South Australia

Metropolitan Drainage Act 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.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Metropolitan Drainage Act 1935*.

3—Interpretation

In this Act, unless the context otherwise requires—

council includes the Garden Suburb Commissioner;

the Minister means the Minister of Works or any other Minister of the Crown who is for the time being acting for the Minister of Works or in whom the powers of the Minister of Works under this Act are for the time being vested;

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

5—Power to acquire land

Subject to and in accordance with the *Land Acquisition Act 1969*, as amended, the Minister may 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 2—River Torrens drainage and financial provisions

6—Power to construct and maintain works

- (1) Subject to subsection (4) the Minister 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 Minister may enlarge any part of any channel of the River Torrens below the bridge known as Taylor's Bridge:

- II The Minister 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, 1935, and numbered 320:
 - III The Minister 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 Minister 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 Minister may construct or re-construct any bridges necessary to be constructed or re-constructed over the said channels and river:
 - VI The Minister 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 Minister may carry out any works or conveniences connected with or necessary for the purposes of any of the said works.
- (2) The Minister 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 Minister 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 Minister shall appoint a qualified engineer or engineers practising outside the State to inquire and report to the Minister 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 Minister shall not carry out any of the works authorised by subsection (1) unless and until Parliament otherwise decides.

7—Payment of interest by councils

- (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 and one-half per centum on one-third of the said amount shall be payable by the councils mentioned in Part 1 of Schedule 1. 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 and one-half per centum on one-third of the said amount shall be payable by the councils mentioned in Part 2 of Schedule 1. 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.

8—Payment of maintenance costs

- (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 two hundred and fifty dollars) shall be annually payable by the councils mentioned in Part 1 of Schedule 1. 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 two hundred and fifty dollars) shall be annually payable by the councils mentioned in Part 2 of Schedule 1. 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 Minister out of the said fund any amount which the Minister 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 3—River Sturt and Keswick and Brownhill Creeks drainage and financial provisions

9—Power to construct works for drainage of River Sturt etc

- (1) The Minister 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 Minister 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 Minister 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 Minister may line with concrete such portions of any channels of the River Sturt, Keswick Creek, and Brownhill Creek as he thinks fit:
 - IV The Minister 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 Minister may construct or re-construct any bridges necessary to be constructed or re-constructed over the said channels and river and creeks:
 - VI The Minister 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 Minister may carry out any works or conveniences connected with or necessary for the purposes of any of the said works.
- (2) The Minister 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 Minister 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.

10—Payment of interest by councils

- (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 and one-half per centum on one-third of the said amount shall be payable by the councils mentioned in Part 1 of Schedule 2. 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 and one-half per centum on one-third of the said amount shall be payable by the councils mentioned in Part 2 of Schedule 2. 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.

11—Payment of maintenance costs

- (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 councils mentioned in Part 1 of Schedule 2. 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 councils mentioned in Part 2 of Schedule 2. 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.

Part 4—Miscellaneous

12—Tenders for works

- (1) The Minister 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.
- (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.

13—Minister may do certain acts in connection with the works

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 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—Compensation to persons suffering damage

- (1) Subject to subsections (3) and (4), 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 as if it were a disputed claim within the meaning of section 23 of the *Land Acquisition Act 1969*, as amended, 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 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.

15—Variation of costs of works

- (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.
- (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—Power of Minister to delegate his powers

- (1) The Minister may authorise such person as he shall think proper to do all or any of the acts, matters, and things which the Minister is by this Act empowered or required to do.
- (2) Every person so authorised 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 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 Minister would have had or enjoyed if he had done such act, matter, or thing.

17—Power to lease and sell surplus land and property

- (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.
- (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 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 2 or Part 3.

18—Variation of percentages

- (1) The Minister 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 Schedule 1 or 2, 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 Minister 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 Schedule 1 or 2 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—Contribution by Municipal Tramways Trust

- (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 five hundred dollars.
- (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 two hundred and fifty dollars required to be deducted from the amounts payable pursuant to subsections (2) and (3) of section 8 shall cease to be so deducted.

20—Payments by councils

- (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 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 Minister, any such special rate may be declared on the ratable property within part only of the area of the council.

21—Remedies for non-payment by councils

- (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.
- (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—Penalty for obstructing construction of works

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; or
- (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; or

- (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 Torrens, River Sturt, Keswick Creek, or Brownhill Creek, or any channel cleansed or constructed pursuant to this Act; or
- (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 dollars.

23—Regulations

- (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 twenty dollars for the breach of the same or any other regulation.

24—Offences to be disposed of summarily

All offences against this Act shall be disposed of summarily.

25—Immunity of Minister from certain claims

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.

26—Power to require councils to have creeks cleared

- (1) The Minister may by notice in writing under his hand require any council referred to in Schedules 1 and 2 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 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 one hundred dollars.

27—Financial provisions

- (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.

- (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.

Schedule 1

Part 1

Name of 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
Municipal Council of Walkerville	5 per centum
Municipal Council of Enfield	6 per centum
Municipal Council of Payneham	6 per centum
Municipal Council of Campbelltown	8 per centum

Part 2

Name of 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
Municipal Council of West Torrens	33 per centum

Schedule 2

Part 1

Name of 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
Municipal Council of West Torrens	5 per centum
Municipal Council of Marion	5 per centum
Municipal Council of Mitcham	17 per centum
The Garden Suburb Commissioner	13 per centum

Part 2

Name of council	Percentage of total required to be paid by each council
Municipal Council of Glenelg	5 per centum
Municipal Council of West Torrens	75 per centum
Municipal Council of Marion	20 per centum

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1935	2201	<i>Metropolitan Drainage Act 1935</i>	14.3.1935	14.3.1935
1935	2246	<i>Statute Law Revision Act 1935</i>	19.12.1935	19.12.1935
1974	84	<i>Statute Law Revision Act (No. 2) 1974</i>	21.11.1974	Sch 2—21.11.1974

Provisions amended since 3 February 1976

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	