

Rivers and Foreshores Improvement Act 1948 No 20

[1948-20]



New South Wales

Status Information

Currency of version

Historical version for 20 December 2002 to 19 June 2006 (accessed 24 November 2024 at 22:06)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)
- **Note**
The Act is to be repealed on the whole commencement of Sch 7, to the extent that it applies to this Act, to the [Water Management Act 2000 No 92](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 23 May 2006

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Rivers and Foreshores Improvement Act 1948 No 20



New South Wales

An Act to provide for the carrying out of works for the removal of obstructions from and the improvement of rivers and foreshores and the prevention of erosion of lands by tidal and non-tidal waters; to make provision as to payments to be made by owners of lands benefited by such works; to amend the *Water Act 1912-1946* and certain other Acts in certain respects; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Rivers and Foreshores Improvement Act 1948*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) (Repealed)

2 Definitions

In this Act, unless the context or subject matter otherwise indicates or requires:

Constructing Authority means:

- (a) the Minister for Public Works in respect of any work to which this Act extends in or in connection with any tidal waters or in or in connection with any coastal lake or lagoon not being a work for the purpose of preventing the inflow of sea water or saline water into the course of a river to enable water to be supplied to rural lands or for irrigation, and
- (b) the Ministerial Corporation in respect of any work to which this Act extends not being a work in respect of which the Minister for Public Works is the Constructing Authority under paragraph (a) of this definition.

Council means a council or a county council within the meaning of the *Local Government Act 1993*.

District means a River or Foreshore Improvement District or a River and Foreshore Improvement District constituted under this Act.

Local land board, in applying a provision in which the expression occurs, means:

- (a) the local land board constituted under the [Crown Lands Act 1989](#) for the land in relation to which the provision applies, or
- (b) if the land in relation to which the provision applies is land for which there are 2 or more local land boards, such one of those boards as the Ministerial Corporation may nominate.

Ministerial Corporation means the Water Administration Ministerial Corporation constituted by the [Water Administration Act 1986](#).

Owner, in relation to land, includes every person who jointly or severally, whether at law or in equity:

- (a) is entitled to the land for any estate of freehold in possession, or
- (b) is a person to whom the Crown has lawfully contracted to sell the land under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown, or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

Port of Sydney means so much of the port of Sydney, the rivers falling into it with their tributaries, and the lands on the margins thereof as is covered at mean high-water.

River includes any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream of water and any affluent, confluent, branch, or other stream into or from which the river flows and, in the case of a river running to the sea or into any coastal bay or inlet or into a coastal lake, includes the estuary of such river and any arm or branch of same and any part of the river influenced by tidal waters.

Tidal waters includes the waters of the sea or of any lake, estuary, harbour, river, bay, lagoon or inlet of the sea in which the tide ebbs and flows.

Work to which this Act extends means any work for the purpose of:

- (a) the removal of dead or growing timber, or other vegetation or aquatic plants, or of silt, shingle, soil, sand, gravel, stone, rock or other matter or thing whatsoever, from the bed, banks or foreshore of any tidal waters or coastal lake or lagoon, or from the water or the bed or banks of a river or from any adjoining, adjacent or nearby lands,

- (b) changing or preventing the changing of the course of a river,
- (c) preventing the erosion of the bed or banks of a river or of adjoining, adjacent or nearby lands by the waters of a river,
- (d) preventing the siltation of the course of a river where such work is confined to the bed or banks of a river and adjoining, adjacent or nearby lands,
- (e) preventing the flooding of land by the waters of a river,
- (f) deepening, widening, straightening, or improving the course of a river,
- (g) preventing the inflow of sea water or saline water into the course of a river, or
- (h) preventing the erosion of lands by tidal waters or by the waters of any coastal lake or lagoon.

Parts 2, 3

3-22 (Repealed)

Part 3A Protection of rivers and lakes

22A Definitions

In this Part:

Constructing Authority, when used in connection with protected waters or land under or adjacent to protected waters, means:

- (a) if the bed of the waters is vested in the Waterways Authority or a Port Corporation (within the meaning of the [Ports Corporatisation and Waterways Management Act 1995](#))—the Minister for Ports, or
- (b) if the waters are tidal and paragraph (a) does not apply—the Minister for Public Works, or
- (c) in any other case—the Ministerial Corporation.

make an excavation includes cause or allow an excavation to be made.

material means any part of the surface of any land or any matter lying beneath that surface.

permit means a permit in force under this Part.

protected land means:

- (a) land that is the bank, shore or bed of protected waters, or
- (b) land that is not more than 40 metres from the top of the bank or shore of protected

waters (measured horizontally from the top of the bank or shore), or

- (c) material at any time deposited, naturally or otherwise and whether or not in layers, on or under land referred to in paragraph (a) or (b).

protected waters means a river, lake into or from which a river flows, coastal lake or lagoon (including any permanent or temporary channel between a coastal lake or lagoon and the sea).

remove material includes cause or allow material to be removed.

22B Permit required for excavation etc

- (1) A person must not:

- (a) make an excavation on, in or under protected land, or
- (b) remove material from protected land, or
- (c) do anything which obstructs, or detrimentally affects, the flow of protected waters, or which is likely to do so,

unless the person is either authorised to do so by a permit under this Part and does so in accordance with any conditions to which the permit is subject, or is authorised to do so by the regulations.

- (2) A person who contravenes subsection (1) is guilty of an offence and is liable:

- (a) in the case of a corporation—to a penalty not exceeding 1,250 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues, or
- (b) in the case of an individual—to a penalty not exceeding 600 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 300 penalty units for each day the offence continues.

- (3) It is a defence to any proceedings against a person in respect of a contravention of subsection (1) for the person to establish:

- (a) that the commission of the offence was due to causes over which the person had no control and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence, or
- (b) in the case of proceedings for a contravention of subsection (1) (c), that the person could not reasonably have foreseen that the person's actions would result in, or in the likelihood of, the obstruction or detrimental effect concerned.

- (4) A person does not commit an offence under subsection (1) if the activity concerned relates to a work, or class of work, specified by the Ministerial Corporation by order

published in the Gazette.

Editorial note—

For orders under this subsection see Gazettes No 110 of 1.7.2004, p 5514; No 120 of 16.7.2004, p 5923 and No 200 of 17.12.2004, p 9523.

22C Grant etc of permit

- (1) Application for a permit is:
 - (a) to be made to the Constructing Authority in the form approved by the Authority, and
 - (b) to be accompanied by the fee determined by the Authority.
- (2) As a pre-condition to the grant of a permit, the Constructing Authority may require the applicant to give security for the due performance of the applicant's obligations under and in connection with the permit for an amount, in a form and on such terms and conditions as the Constructing Authority may require.
- (3) The Constructing Authority may, after any investigation it thinks necessary, refuse a permit or grant one subject to such conditions as it thinks appropriate.
- (3A) The issue of a permit in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 5 of Part 4 of that Act.
- (4) The Constructing Authority may at any time by notice in writing given to the holder of a permit vary or revoke the permit or the conditions of the permit.
- (5) The conditions subject to which a permit is granted under this section may include conditions relating to the protection of the environment.

22D Stop order

- (1) If the Constructing Authority is satisfied that a person is contravening, or is about to contravene, section 22B, the Constructing Authority may, by written notice given to the person, order the person not to engage in that activity.
- (2) The order takes effect immediately or from a later time specified in the notice and is subject to such conditions as the Constructing Authority may specify in the order.
- (3) The Constructing Authority may vary or revoke the order or the conditions of the order by further notice in writing given to the person subject to the order.
- (4) An order under this section remains in force until one of the following happens:
 - (a) the order is revoked by the Constructing Authority,
 - (b) the period (if any) for which the order is expressed in the notice to be in force

elapses,

(c) a period of 3 months elapses (being a period that commences on the day on which the order takes effect).

(5) A person who does not comply with an order in force under this section is guilty of an offence and is liable:

(a) in the case of a corporation—to a penalty not exceeding 1,250 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues, or

(b) in the case of an individual—to a penalty not exceeding 600 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 300 penalty units for each day the offence continues.

22E Injunctions

(1) On the application of the Constructing Authority, the Land and Environment Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of section 22B.

(2) An injunction may be granted without the Constructing Authority's being required to show a likelihood of damage.

(3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

(4) When the Constructing Authority makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Authority or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

22F Impounding orders—material removed from protected land

(1) If the Constructing Authority is satisfied that a person has removed material from protected land in contravention of section 22B, the Constructing Authority may by notice in writing given to the person issue an impounding order in respect of either or both of the following:

(a) the whole or a specified part of the material removed,

(b) any specified plant or equipment used in the removal.

(2) The order takes effect immediately or from a later time specified in the notice and is subject to such conditions as the Constructing Authority may specify in the order.

(3) A person issued with an impounding order must not cause, permit, suffer or allow any material, plant or equipment that is the subject of the order to be used, moved, sold,

disposed of or otherwise dealt with, except as permitted by the order.

Maximum penalty: 100 penalty units.

- (4) The Constructing Authority may vary or revoke an impounding order or the conditions of an impounding order by further notice in writing given to the person concerned.
- (5) An impounding order remains in force until one of the following happens:
 - (a) the order is revoked by the Constructing Authority,
 - (b) a period of 12 months elapses after the order is first issued without proceedings having been commenced within that period for an offence under section 22B in respect of the removal from protected land of the material concerned,
 - (c) proceedings for such an offence are commenced within that period and have been finally dealt with (whether before or after the end of that period).
- (6) If a person issued with an impounding order is convicted of an offence under this Part in respect of the removal of material, the court before which the person is convicted may, on the application of the Constructing Authority, make either or both of the following orders:
 - (a) an order that any material with which the proceedings are concerned and which is the subject of the impounding order be forfeited to the Crown,
 - (b) an order that any plant or equipment used in the removal of that material and which is the subject of the impounding order be forfeited to the Crown.
- (7) Material, plant or equipment ordered to be forfeited to the Crown under this section is to be disposed of or otherwise dealt with by the Constructing Authority as the Minister directs. Any proceeds of disposal are to be applied towards the costs incurred by the Constructing Authority in carrying out work under section 22G in respect of the protected land from which the material concerned was removed.

22G Directions for remedial work

- (1) If the Constructing Authority is satisfied:
 - (a) that an excavation has been made on, in or under protected land or any material has been removed from protected land in contravention of section 22B, or
 - (b) that any excavation on, in or under any land (other than protected land) or the removal of material from any land (other than protected land) has damaged or detrimentally affected or is likely to damage or detrimentally affect protected land or is likely to cause, whether directly or indirectly, protected waters to change their course,

the Constructing Authority may, by notice in writing, direct any one or more of the

appropriate persons to carry out specified work in a specified manner and within a specified time.

- (2) Any one or more of the following types of work may be directed to be carried out by a notice under subsection (1):
 - (a) work to repair any damage caused to protected land by the excavation or the removal of material,
 - (b) work to ensure that protected land will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the excavation or the removal of material,
 - (c) work to correct any change caused, whether directly or indirectly, to the course of protected waters by the excavation or the removal of material,
 - (d) work to ensure that protected waters will not, whether directly or indirectly, be caused or further caused to change their course by reason of the excavation or the removal of material,
 - (e) if protected waters have changed, or are likely to change, their course by reason of the excavation or the removal of material and the Constructing Authority has determined that in the circumstances it would be expedient to change the course of the protected waters—work to ensure that the protected waters follow a course as determined by the Constructing Authority.
- (3) If something has been done on land that the Constructing Authority is satisfied has obstructed or detrimentally affected the flow of protected waters, or that is likely to do so, the Constructing Authority may, by notice in writing, direct any one or more of the appropriate persons to carry out specified work in a specified manner and within a specified time.
- (4) In this section, **appropriate persons** means the person who is the owner of the land, the person who is the occupier of the land and the person who has made the excavation or removed the material concerned or done the thing concerned.
- (5) If a person fails to comply with a direction under this section, the Constructing Authority may authorise any other person to enter the land and carry out the specified work.
- (6) The Constructing Authority may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Constructing Authority.
- (7) Until repayment, the cost is to be a charge on the land.

22H Application of Part to certain persons

- (1) Except as provided by this section, this Part does not apply to or in respect of the exercise of any rights lawfully exercisable:
 - (a) under any lease, licence, permit or other right in force under any Act relating to mining or under the *Crown Lands Act 1989* or *Crown Lands (Continued Tenures) Act 1989*, or
 - (b) by any public or local authority.
- (2) If the Constructing Authority is satisfied that an excavation made on, in or under any land, or the removal of material from any land, in the exercise of any of the rights referred to in subsection (1):
 - (a) has damaged or detrimentally affected or is likely to damage or detrimentally affect protected land, or
 - (b) has caused or is likely to cause, whether directly or indirectly, protected waters to change their course,the Constructing Authority may, by notice in writing, direct the person by whom or on whose behalf the excavation has been made or the material has been removed to carry out specified work (being any or all of the types of work referred to in section 22G (2)) in a specified manner and within a specified time.
- (3) Furthermore, if the Constructing Authority is satisfied that something has been done in the exercise of any of those rights that has obstructed or detrimentally affected the flow of protected waters or that is likely to do so, the Constructing Authority may, by notice in writing, direct the person by whom or on whose behalf the thing was done to carry out specified work in a specified manner and within a specified time.
- (4) If a person fails to comply with a direction under this section, the Constructing Authority may authorise any other person to enter the land and to carry out the specified work.
- (5) The Constructing Authority may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Constructing Authority.

22I Power to obtain information

- (1) In this section:

authorised officer means a person authorised in writing by the Constructing Authority for the purposes of this section.

relevant information means information about a possible offence under this Part.

- (2) The Constructing Authority may, by notice in writing served on a person, require the person:
 - (a) to give to an authorised officer, orally or in writing signed by the person (or, if the person is a body corporate, statutory body, council or other non-natural person, by a competent officer of the person) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge, or
 - (b) to produce to an authorised officer, in accordance with the notice, any document containing relevant information.
- (3) An authorised officer may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.
- (4) A person must not:
 - (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

- (5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (6) Any information or document obtained from a person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.
- (7) An authorised officer exercising any power under this section must, if requested to do so, produce the authorised officer's certificate of authorisation to a person served with a notice under this section.

22J Powers of entry authorised by Constructing Authority

- (1) For the purposes of this Part, a person authorised by the Constructing Authority for the purposes of this section may enter upon and inspect any land.
- (2) The power conferred by subsection (1) may not be exercised unless the person proposing to exercise the power:
 - (a) is in possession of a certificate of authority issued to the person by the Constructing Authority, and
 - (b) gives reasonable notice to the occupier of the land of intention to exercise the

power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and

- (c) exercises the power at a reasonable time, unless it is being exercised in an emergency, and
- (d) produces the certificate of authority if required to do so by the occupier of the land, and
- (e) uses no more force than is reasonably necessary to effect the entry.

(3) A certificate of authority must:

- (a) state that it is issued under the *Rivers and Foreshores Improvement Act 1948*, and
- (b) give the name of the person to whom it is issued, and
- (c) describe the nature of the powers conferred and the source of the powers, and
- (d) state the date, if any, on which it expires, and
- (e) describe the kind of land to which the power extends.

(4) If unauthorised damage is caused to property of the owner or occupier by a person exercising a power under this section to enter land, a reasonable amount of compensation is recoverable as a debt owed by the employer of the person to the person whose property was damaged unless the occupier obstructed the exercise of the power.

(5) Nothing in this section authorises a person to enter any part of premises that is used for residential purposes, except with the consent of the occupier of that part.

22K Owner may enter occupied land to comply with direction

(1) An owner of land who does not occupy the land, or another person with the written authority of such an owner, may:

- (a) at any reasonable time, enter the land for the purpose of complying with a direction of the Constructing Authority requiring the owner to do anything on the land, and
- (b) do on the land anything necessary to enable the owner to comply with the direction.

(2) The powers conferred by this section may be exercised only:

- (a) by agreement with the occupier, or
- (b) if the occupier does not agree or a reasonable attempt by the owner or authorised person to confer with the occupier has failed—after reasonable notice of intention

to exercise the power has been served on the occupier.

- (3) An exercise of a power conferred by this section is not a breach of a covenant entitling the occupier to quiet enjoyment of possession of the land.

22L Appeal to Land and Environment Court

- (1) A person aggrieved by a decision of the Constructing Authority under this Part may appeal against the decision to the Land and Environment Court in accordance with rules of court.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the decision appealed against.
- (3) The Land and Environment Court is required, in carrying out its appeal functions under this section and in making any determination with respect to any such appeal, to take into account, and to have due regard to, the following matters:
- (a) any relevant policy that concerns the subject-matter of the appeal and that is brought to the attention of the Court,
 - (b) any State-wide rivers and foreshores management objectives that are brought to the attention of the Court.
- (4) In this section, **relevant policy** means any governmental policy relating to the management, protection and enhancement of the State's rivers and foreshores. The Minister may certify, in writing, that a particular policy is, or was, a relevant policy in relation to a particular matter. The certificate is evidence of the relevant policy concerned.

22M Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the [Water Management Act 2000](#) applies in relation to controlled activity approvals within the meaning of that Act.

Part 4 Miscellaneous

23 Construction of works in navigable waters

In respect of any work to which this Act extends which may affect navigation upon the inland waters of the State, or in or in connection with the navigable waters lying within 3 nautical miles of the coast, such provision for navigation shall be made as may be determined by the Minister for Ports, and no work which shall prevent navigation in such waters shall be constructed without the approval of the Minister for Ports.

23A, 24 (Repealed)

25 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) the Governor may make regulations:
 - (a) for the prevention of injury to works to which this Act extends,
 - (b) with respect to the fixing, assessing, levying and collection of rates and contributions,
 - (c) prescribing the forms of notices required under this Act and the manner of and periods for giving same,
 - (d) generally for carrying out the provisions of this Act.
- (3) The regulations may impose a penalty not exceeding 1 penalty unit for any breach thereof and where the breach continues not exceeding 0.5 penalty unit for every day during which such breach continues.
- (4) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Act.
- (5) (Repealed)

26 Proceedings and penalties for offences

- (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily:
 - (a) by a Local Court constituted by a Magistrate sitting alone, or
 - (b) by the Land and Environment Court.
- (2) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is the maximum monetary penalty (if any) specifically provided for in relation to that offence, or:
 - (a) 100 penalty units (including any daily penalty) for an offence committed by a corporation, or
 - (b) 50 penalty units (including any daily penalty) in any other case,whichever is the lesser.
- (3) Proceedings for an offence under this Act or the regulations may be commenced up to but not later than 12 months after the act or omission alleged to constitute the

offence.

27 Service of documents

- (1) A document required or permitted by this Act to be served on a person, whether the expression “serve”, “give” or “send” or any other expression is used, may be served:
 - (a) on a Constructing Authority (as defined in Part 3A) by leaving it at, or sending it by post to, an office of the Authority, or
 - (b) on a natural person by delivering it to the person personally or by leaving it at, or sending it by post to, the address of the place of residence or business of the person last known to the person serving the document, or
 - (c) in any other case by leaving it at, or sending it by post to, the head office, a registered office or a principal office of the person.
- (2) Nothing in this section affects the operation of any law or of the rules of a court authorising a document to be served in any other manner.

28 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 28)

Provisions consequent on the enactment of the [Rivers and Foreshores Improvement \(Amendment\) Act 1991](#)

1 General saving

Anything done under or for the purposes of a provision of section 23A before its repeal is, after its repeal, to be considered to have been done under or for the purposes of the corresponding provision of Part 3A.

2 Directions for remedial work—application to prior contraventions

- (1) A reference in section 22G to something done in contravention of section 22B includes a reference to something done in contravention of section 23A before the commencement of section 22B.
- (2) Section 22H (2) applies to things done before the commencement of that section as well as to things done after that commencement.

3 Costs charged on land

A charge on land arising under section 23A and in force immediately before the

repeal of that section is to be considered to be a charge arising under the corresponding provision of Part 3A.