

# Very Fast Train (Route Investigation) Act 1989

## No 44

[1989-44]



New South Wales

### Status Information

#### Currency of version

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#### Provisions in force

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

#### Authorisation

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# Very Fast Train (Route Investigation) Act 1989 No 44



New South Wales

An Act to facilitate the investigation of a route for a very fast train linking Sydney with other centres within or outside the State; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Very Fast Train (Route Investigation) Act 1989*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**approved person** means a person to whom a declaration in force under section 6 applies.

**Director-General** means the Director-General of the Department of State and Regional Development.

**owner**, in relation to land, means any person having an estate or interest in the land.

**permit** means a permit that is in force under section 8.

**survey** has the same meaning as in the *Surveying and Spatial Information Act 2002*.

### 4 Act binds the Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### 5 Object of Act

The object of this Act is to facilitate the surveying, examining and testing of land so as to

allow the thorough investigation of a route for a very fast train linking Sydney with other centres within or outside the State.

## **Part 2 Permits**

### **6 Approved persons**

- (1) The Minister may, by an order published in the Gazette, declare a specified person or persons of a specified class to be an approved person or approved persons for the purposes of this Act and may, in the same way, revoke any such declaration.
- (2) The Minister may not approve any person under this section unless the Minister is satisfied that the person:
  - (a) has access to technical expertise that is adequate to enable appropriate surveys, examinations and tests to be carried out efficiently, and
  - (b) has available sufficient resources to compensate owners and occupiers of such land as may be affected by those activities.

### **7 Applications for permits**

- (1) An approved person may apply to the Minister for a permit to enter land in connection with the investigation of the whole or any part of a proposed route for a very fast train.
- (2) An application shall not be made unless the applicant has caused a notice:
  - (a) declaring that the application is intended to be made, and
  - (b) identifying the area of land intended to be entered under the permit, and
  - (c) requesting any owner or occupier of that land who wishes to make a submission to the Minister about whether the permit should be granted or about conditions to be included in the permit to do so within 21 days,

to be given or published in a manner approved by the Minister having regard to the object of bringing notices of that kind to the attention of any persons who may be owners or occupiers of the relevant land.

- (3) An application:
  - (a) shall be in a form approved by the Minister, and
  - (b) shall, together with a fee determined by the Minister, be lodged with the Director-General, and
  - (c) shall specify, in a manner approved by the Minister, the area of land intended to be entered under the permit, and

(d) shall include such information as the Minister requires, and

(e) may include any other information that the applicant wishes the Minister to consider.

(4) The Minister may, at any time, request further information about an application from an applicant.

(5) The Minister may refuse to further consider an application until any such request has been complied with to the Minister's satisfaction.

## **8 Grant or refusal of permits**

(1) After considering an application for a permit, the Minister may:

(a) grant a permit in respect of the whole or any part of the land to which the application relates, or

(b) refuse the application.

(2) Before granting a permit to enter land, the Minister shall take into consideration:

(a) any relevant submission received by the Minister within 21 days of publication of a notice under section 7 relating to the application, and

(b) all information included in the application under section 7 (3) (d) or (e), and

(c) whether any other permit has been granted in respect of the same land, and

(d) whether the grant of the permit would, in the Minister's opinion, result in unreasonable duplication of surveys, examinations or tests, and

(e) any features that, in the Minister's opinion, are special features of the land or of adjacent land,

and may take into consideration any other matters the Minister considers relevant.

## **9 Duration of permits**

(1) A permit comes into force on the day specified for the purpose in the permit and, unless sooner surrendered or revoked, remains in force:

(a) for such period not exceeding 6 months as is specified in the permit, and

(b) for any further period for which it is extended under this section.

(2) The Minister may, on written application made by the holder of a permit to the Minister before the permit ceases to be in force, extend the permit from time to time for such period not exceeding 6 months as the Minister thinks fit and specifies in a notice given to the holder.

- (3) A permit can not be granted or renewed after the seventh anniversary of the commencement of this section.
- (4) Any permit that, in the absence of this subsection, would be in force after the seventh anniversary of the commencement of this section ceases to be in force on that seventh anniversary.

## **10 Conditions of permits**

- (1) A permit is subject to such conditions as the Minister thinks fit and specifies in the permit.
- (2) Despite subsection (1), if the conditions of a permit have been varied under this section, the permit is subject to those conditions as varied for the time being.
- (3) Without limiting the kinds of conditions to which a permit may be subject, conditions of a permit may:
  - (a) prohibit or regulate the carrying out of specified activities on the land to which the permit relates by the holder of the permit or anyone authorised by the holder, and
  - (b) provide for the payment of compensation and the restoration of land by the holder of the permit, and
  - (c) require information relating to anything done under the permit on that land by those persons to be submitted by the holder of the permit to the Minister on a periodic or any other basis.
- (4) The Minister may, by a written notice given to the holder of a permit, vary the conditions of the permit:
  - (a) by adding new conditions, or
  - (b) by amending an existing condition, or
  - (c) by revoking an existing condition.

## **11 Reduction of permit area**

The Minister may, on written application made by the holder of a permit to the Minister, reduce the area of land to which the permit applies by a written notice given to the holder.

## **12 Surrender or revocation of permits**

- (1) The holder of a permit may surrender the permit by a written notice given to the Director-General.
- (2) The Minister may, for such reason as the Minister thinks sufficient, revoke a permit by a written notice given to the holder of the permit.

- (3) Without limiting the Minister's powers to revoke a permit, the Minister may revoke a permit by a written notice given to the holder if:
  - (a) the holder or any person authorised to enter land by the holder contravenes this Act or the regulations, or
  - (b) a condition of the permit is contravened.
- (4) Proceedings may be taken against a person for an offence under section 15 relating to the contravention of a condition of a permit whether or not the permit has been revoked or has otherwise ceased to be in force since the contravention occurred.

### **13 Rights conferred by permits**

- (1) Subject to its conditions, a permit authorises the holder of the permit, and any other persons authorised by the holder in accordance with the conditions of the permit, to enter the area of land to which it applies for the time being and:
  - (a) to undertake on that land such surveys, examinations and tests (including the drilling of bore holes, the sinking of shafts and the cutting of trenches), to take from that land such samples for examination and to carry out on that land such investigations, as the holder of the permit considers necessary for the purpose of ascertaining the suitability of the land:
    - (i) as a route for a very fast train, or
    - (ii) as a site for any structure or work the use of which may be incidental to the operation of a very fast train, or
    - (iii) as a means of access to any such route or site, or
  - (b) to use that land as a means of access to other land specified in the permit so that activities of the kind described in paragraph (a) may be carried out on the other land.
- (2) A person is not authorised by a permit:
  - (a) to enter a dwelling or the curtilage of a dwelling, or
  - (b) to enter any land, unless written notice of the person's intention to enter the land has been given in accordance with this section in a form approved by the Minister.
- (3) A notice under this section must be served on the owner and each occupier of the land at least 7 days before the land is first entered under the authority of the permit concerned.
- (3A) A notice that is required to be served on a person may be served:
  - (a) personally or by post, or



- (b) by email to an email address specified by the person for the service of documents of that kind, or
  - (c) by any other method authorised by the regulations for the service of documents of that kind.
- (4) Service on the owner of the land may be effected by serving the notice on any person who, according to the records of the local council or any other statutory authority, is liable for a rate or other charge that is or may become a charge on the land.
- (5) If, after reasonable inquiry, the land appears to be unoccupied, service on occupiers of the land may be effected by causing a copy of the notice to be displayed:
- (a) on each gate providing access to the land, or
  - (b) if there is no such gate, in a prominent position on the boundary of the land nearest to a public road,
- for at least 7 days before the land is first entered under the authority of the permit concerned.
- (6) In the case of land in which there are native title rights and interests but in respect of which there is no approved determination of native title (within the meaning of the [Native Title Act 1993](#) of the Commonwealth), the notice is to be served in accordance with section 103 of the [Native Title \(New South Wales\) Act 1994](#) at least 7 days before the land is first entered under the authority of the permit concerned.

#### **14 Restriction on exercise of rights**

- (1) Except as provided by this section, nothing in this Act allows the holder of a permit or any person authorised to enter land by such a holder to disregard the provisions of any Act, statutory rule or environmental planning instrument prohibiting or regulating (or having the effect of prohibiting or regulating) the exercise by the holder or person of any right conferred by this Act or the permit.
- (2) Anything authorised to be done by a permit:
- (a) is not prohibited by any environmental planning instrument, and
  - (b) does not require development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#).
- (3) In this section:

**environmental planning instrument** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

**statutory rule** has the same meaning as in the [Interpretation Act 1987](#).

## **15 Contravention of condition of permit**

- (1) The holder of a permit shall not contravene a condition to which the permit is subject.
- (2) A person authorised by the holder of a permit to enter land to which the permit relates shall not knowingly contravene a condition of the permit.
- (3) The holder of a permit is guilty of an offence if:
  - (a) a person authorised by the holder to enter land to which the permit relates contravenes a condition of the permit, and
  - (b) the holder directed or permitted the person to contravene the condition.

Maximum penalty: 400 penalty units.

## **16 Interference with authorised activities**

- (1) A person shall not, without reasonable excuse:
  - (a) prevent another person from doing something the other person is authorised to do by a permit, or
  - (b) hinder or obstruct another person who is attempting to do something the other person is authorised to do by a permit.

Maximum penalty: 50 penalty units.

- (2) A person is not guilty of an offence under this section:
  - (a) of preventing another person from entering land under the authority of a permit, or
  - (b) of hindering or obstructing another person who is attempting to enter land under the authority of a permit,

unless the other person, before being so prevented, hindered or obstructed, produced for inspection by the person alleged to have committed the offence a notice in a form approved by the Minister issued by the holder of the permit and confirming the other person's authority to enter the land.

## **Part 3 Compensation**

### **17 Agreements for compensation**

- (1) An owner or occupier of land may enter into a written agreement with the holder or former holder of a permit for or with respect to the payment of compensation, or the carrying out of work, (or both) by or on behalf of the holder or former holder in respect of any loss or damage that the owner or occupier may suffer or may have suffered as a result of anything done or omitted:

- (a) by the holder or former holder, or
  - (b) by a person authorised to enter land by the holder or former holder.
- (2) With the written consent of the holder or former holder of a permit, an agreement under this section may be entered into on behalf of the holder or former holder by any person.

### **18 Liability for compensation**

Each owner or occupier of land is entitled to be paid compensation by the holder or former holder of a permit for any loss or damage suffered by the owner or occupier as a result of anything which was done or omitted:

- (a) by the holder or former holder, or
- (b) by a person authorised to enter land by the holder or former holder,

while exercising or performing (or purporting to exercise or perform) any power, authority, duty or function conferred or imposed by the permit.

### **19 Determination of claim for compensation**

- (1) An owner or occupier of land may, by complaint made to the Land and Environment Court, claim that compensation is payable under this Part to the owner or occupier.
- (2) The Land and Environment Court has jurisdiction:
  - (a) to hear and determine a complaint under this section, and
  - (b) in determining any such complaint, to assess the amount of any compensation found to be payable, and
  - (c) to order the payment of any amount of compensation so assessed.
- (3) Part 15 of the *Mining Act 1992* applies in relation to any such complaint or order as if it were a complaint or order made under that Act.
- (4) If compensation is found to be payable for any loss or damage and the amount of the compensation is provided for in an agreement made under section 17, the amount required to be assessed is to be taken to be the amount so provided for.
- (5) In making an assessment of compensation, the value of any work done pursuant to an agreement made under section 17 shall be taken into account.
- (6) Section 317 (Costs may be allowed) of the *Mining Act 1992* applies in relation to proceedings under that Act, as applied by this section.
- (7) (Repealed)

## **Part 4 Miscellaneous**

### **20 Delegation**

The Minister may delegate to:

- (a) the Director-General, or
- (b) (Repealed)
- (c) a prescribed person or a person of a prescribed class,

any of the powers, authorities, duties or functions conferred or imposed on the Minister by this Act or the regulations, other than this power of delegation.

### **21 Proceedings for offences**

- (1) Proceedings for an offence against this Act shall be dealt with summarily before the Local Court.
- (2) Despite subsection (1), proceedings for an offence under section 15 may be dealt with before the Land and Environment Court in its summary jurisdiction.
- (3) The maximum monetary penalty that the Local Court may impose for an offence against this Act is 50 penalty units.
- (4) The maximum penalty that the Land and Environment Court may impose for an offence under section 15 is 400 penalty units.
- (5) Proceedings in the Land and Environment Court for an offence under section 15 must be commenced not later than 6 months after the offence was alleged to have been committed.

### **22 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **23 Transitional provision**

A form prescribed for the purposes of section 13 (2) (b) or 16 (2) by a regulation in force immediately before the commencement of this section is taken to be a form approved by the Minister for the purposes of the section concerned.