



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 104 of 1983

An Act to amend the Local Government Act, 1934, and the Water Resources Act, 1976.

[Assented to 22 December 1983]

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

PRELIMINARY

1. This Act may be cited as the "Statutes Amendment (Flood Management) Act, 1983". Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

PART II

AMENDMENT OF THE LOCAL GOVERNMENT ACT

3. The Local Government Act, 1934, is referred to in this Part as "the principal Act". Reference to the Local Government Act, 1934.

4. Section 3 of the principal Act is amended by striking out the item:
PART XXXV—Rivers, Creeks and Watercourses Amendment of s. 3—Arrangement of Act.

DIVISION I—Provisions Applicable to Municipalities only:

DIVISION II—Provisions Applicable Generally

and substituting the item:

PART XXXV—WATERCOURSES AND FLOOD MANAGEMENT

DIVISION I—Protection and Maintenance of Watercourses:

DIVISION II—Flood Management:

DIVISION III—Appeals.

Amendment of
s. 5—
Interpretation.

5. Section 5 of the principal Act is amended—

(a) by inserting after the definition of “nomination day” the following definition:

“obstruction”, in relation to a watercourse, means anything (including vegetation growing in the watercourse) that impedes the free flow of water in the watercourse;

and

(b) by inserting after the definition of “vehicle” the following definition:

“watercourse” means a watercourse as defined in the Water Resources Act, 1976.

Repeal of Part
XXXV and
substitution of
new Part.

6. Part XXXV of the principal Act is repealed and the following Part is substituted:

PART XXXV

WATERCOURSES AND FLOOD MANAGEMENT

DIVISION I—PROTECTION AND MAINTENANCE
OF WATERCOURSES

Application of
Division.

633. This Division does not apply in respect of—

(a) a Proclaimed Watercourse under the Water Resources Act, 1976;

(b) a watercourse that is under the control of the Crown or that is, by statute, under the control of a particular body corporate;

or

(c) a watercourse declared by proclamation to be a watercourse to which this Division does not apply.

Protection of
watercourses.

634. The council shall be responsible for the protection of all watercourses within its area.

Interference with
watercourses.

635. (1) A person shall not—

(a) deposit anything in a watercourse;

(b) obstruct a watercourse or do anything that might result in the obstruction of a watercourse;

(c) alter the course of a watercourse;

or

(d) remove rock, sand or soil from the bed or banks of a watercourse or otherwise interfere with the bed or banks of a watercourse,

unless authorized to do so by the council.

Penalty: Two thousand dollars.

(2) An authorization may be granted under this section unconditionally or subject to conditions.

(3) An authorization conferring a right to remove rock, sand or soil from the bed or banks of a watercourse may be granted on conditions requiring the payment, on stipulated terms, of reasonable consideration to the council.

636. (1) A council may, by notice in writing served personally or by post on the owner of land through which a watercourse passes, require him, within a period specified in the notice, to carry out, or cause to be carried out, on his land work of a kind specified in the notice for the purposes of—

Requirement to remove obstructions.

(a) removing obstructions from the watercourse;

(b) making good damage to the watercourse;

or

(c) otherwise maintaining the watercourse in good condition.

(2) A person who fails to comply with a notice under subsection (1) within the period specified in the notice shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A notice given to a person pursuant to subsection (1) must contain particulars of the person's right of appeal under this Act against the notice, or a term or condition of the notice, and also of the procedure whereby such an appeal may be instituted.

637. (1) A council may cause such work to be carried out as may be reasonably necessary for the purposes of—

Responsibility for maintenance of watercourses.

(a) removing obstructions from a watercourse;

(b) making good damage to a watercourse;

and

(c) otherwise maintaining a watercourse in good condition.

(2) Where, in pursuance of this section, the council causes work to be carried out that should have been, but was not, carried out by the owner of land in pursuance of a notice under this Division, the council may, by further notice in writing served personally or by post on that owner, require him to pay to the council an amount determined by the council as being the cost of carrying out that work.

(3) After the expiration of thirty days from the date of service of the further notice under subsection (2), the council may proceed to recover the contribution to which the notice relates as a debt.

638. (1) An officer or employee of a council may, after giving reasonable notice to the occupier of land, enter and remain on the land for any purpose connected with the administration of this Part.

Powers of entry.

(2) A contractor engaged by a council may, after giving reasonable notice to the occupier of land, enter and remain on the land for the purpose of carrying out work at the direction of the council.

(3) A person who hinders another in the exercise of powers conferred by this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

639. (1) Proceedings for an offence against this Division—

Proceedings.

(a) shall not be commenced without the consent of the council;
and

(b) may be commenced within twelve months of the date on which the offence is alleged to have been committed.

(2) An apparently genuine document, purporting to be signed by the clerk, stating that the council has consented to the commencement of proceedings for an offence against this Division shall in any legal proceedings, in the absence of proof to the contrary, be accepted as proof of that consent.

DIVISION II—FLOOD MANAGEMENT

Acquisition of
land.

640. A council may, subject to and in accordance with the Land Acquisition Act, 1969, acquire land for the purpose of carrying out works for the prevention or mitigation of floods.

Power of council
to act in
emergency.

641. (1) Where flooding in the area of a council has occurred or is imminent and the council is of the opinion that a situation of emergency has arisen in which there is danger to life or property, it may order such action to be taken as it thinks fit to avert or reduce the danger.

(2) A person who acts in good faith in pursuance of an order of a council under subsection (1) incurs no civil liability by doing so.

(3) A person who suffers loss in consequence of action taken in pursuance of this section shall be entitled to reasonable compensation from the council in respect of the loss.

(4) The following provisions apply in respect of compensation under this section:

(a) compensation is not payable in respect of loss that would have occurred in any event whether or not action had been taken in pursuance of this section;

and

(b) in determining the extent of the loss in respect of which compensation is payable, any loss that the claimant would have suffered if action had not been taken in pursuance of this section shall be set off against the loss resulting from that action.

(5) While a declaration of a state of disaster is in force in relation to the area of the council under the State Disaster Act, 1980, the powers conferred by that Act operate to the exclusion of the powers of the council under this section.

DIVISION III—APPEALS

Appeals.

642. (1) An appeal lies to the Water Resources Appeal Tribunal—

(a) against a refusal of the council to grant an authorization under this Part;

(b) against the imposition by the council of a term or condition in respect of an authorization under this Part;

or

(c) against a notice given under this Part (not being an order under section 641) or against any term or condition of such a notice.

(2) The provisions of the Water Resources Act, 1976, relating to appeals to the Water Resources Appeal Tribunal shall extend, with such modifications as may be necessary for the purpose and such further modifications as may be prescribed, to an appeal under this section.

7. Section 780a of the principal Act is repealed and the following section is substituted:

Repeal of s. 780a and substitution of new section.

780a. (1) A person who constructs, maintains, manages or operates any building, structure or works upon, across, under or over a public street or road, without being authorized to do so under this Act or any other Act, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Persons constructing buildings, etc., across street or road without authority.

(2) The council may remove any building, structure or other works constructed, maintained, managed or operated in contravention of this section and may recover the cost of the removal from the person who so contravened this section.

(3) In any legal proceedings under this section, the onus of proving that the defendant was authorized under this Act or any other Act to construct, maintain, manage or operate the building, structure or works shall lie upon the defendant.

PART III

AMENDMENT OF THE WATER RESOURCES ACT

8. The Water Resources Act, 1976, is referred to in this Part as "the principal Act".

Reference to the Water Resources Act, 1976.

9. Section 3 of the principal Act is amended by striking out the item:

PART III—SURFACE WATERS

Amendment of s. 3—Arrangement.

and substituting the items:

PART III—CONSERVATION OF SURFACE WATERS

PART IIIA—WATERCOURSES AND FLOOD MANAGEMENT

DIVISION I—Protection and Maintenance of Watercourses

DIVISION II—Flood Management.

10. Section 5 of the principal Act is amended—

Amendment of s. 5—Interpretation.

(a) by inserting in subsection (1) after the definition of "the chairman" the following definition:

"council" means a council constituted under the Local Government Act, 1934.;

and

(b) by inserting in subsection (1) after the definition of “domestic purposes” the following definition:

“obstruction”, in relation to a watercourse, means anything (including vegetation growing in the watercourse) that impedes the free flow of water in the watercourse.

Repeal of s. 6 and substitution of new section.

11. Section 6 of the principal Act is repealed and the following section is substituted:

Crown rights in respect of orders.

6. (1) Subject to this Act, the right to the use and flow, and to the control, of waters is vested in the Crown.

(2) Riparian rights in respect of watercourses (not being Proclaimed Watercourses) continue to exist subject to the super-eminent right of the Crown under subsection (1).

(3) Subsection (2) shall be deemed to have come into operation on the day that this Act came into operation.

Repeal and substitution of new heading.

12. The heading immediately preceding section 25 of the principal Act is repealed and the following heading is substituted:

PART III

CONSERVATION OF SURFACE WATERS

Insertion of new Part IIIA.

13. The following Part is inserted after Part III of the principal Act:

PART IIIA

WATERCOURSES AND FLOOD MANAGEMENT

DIVISION I—PROTECTION AND MAINTENANCE OF WATERCOURSES

Division not to apply in certain cases.

40a. This Division does not apply in respect of—

(a) a Proclaimed Watercourse;

or

(b) a watercourse under the protection of a council by virtue of the provisions of the Local Government Act, 1934.

Interpretation.

40b. In this Division—

“appropriate authority”, in relation to a watercourse, means the public authority (not being a council) in which the control of the watercourse is vested.

Interference with watercourses.

40c. (1) A person shall not—

(a) deposit anything in a watercourse;

(b) obstruct a watercourse or do anything that might result in the obstruction of a watercourse;

(c) alter the course of a watercourse;

or

(d) remove rock, sand or soil from the bed or banks of a watercourse or otherwise interfere with the bed or banks of a watercourse,

unless authorized to do so by the appropriate authority.

Penalty: Two thousand dollars.

(2) An authorization may be granted under this section unconditionally or subject to conditions.

(3) An authorization conferring a right to remove rock, sand or soil from the bed or banks of a watercourse may be granted on conditions requiring the payment, on stipulated terms, of reasonable consideration to the appropriate authority.

40d. (1) The appropriate authority in relation to a watercourse may, by Order in writing served personally or by post on the owner of land through which the watercourse passes, require him, within a period specified in the Order, to carry out, or cause to be carried out, on his land work of a kind specified in the Order for the purposes of—

Requirement to remove obstructions.

(a) removing obstructions from the watercourse;

(b) making good damage to the watercourse;

or

(c) otherwise maintaining the watercourse in good condition.

(2) A person who fails to comply with an Order under subsection (1) within the period specified in the Order shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) An Order given to a person pursuant to subsection (1) must contain particulars of the person's right of appeal under this Act against the notice, or a term or condition of the notice, and also of the procedure whereby such an appeal may be instituted.

40e. (1) The appropriate authority in relation to a watercourse may cause such work to be carried out as may be reasonably necessary for the purposes of—

Responsibility for maintenance of watercourses.

(a) removing obstructions from the watercourse;

(b) making good damage to the watercourse;

and

(c) otherwise maintaining the watercourse in good condition.

(2) An officer or employee of an appropriate authority, or of a contractor engaged by an appropriate authority, may enter land for the purpose of carrying out work at the direction of the appropriate authority under subsection (1).

(3) Where, in pursuance of this section, the appropriate authority causes work to be carried out that should have been, but was not, carried out by the owner of land in pursuance of an Order under this Division, the appropriate authority may, by notice in writing served personally or by post on that owner, require him to pay to the authority an amount determined by the authority as being the cost of carrying out that work.

(4) After the expiration of thirty days from the date of service of a notice under subsection (3), the appropriate authority may proceed to recover the contribution to which the notice relates as a debt.

DIVISION II—FLOOD MANAGEMENT

Flood risk maps.

40f. (1) The Minister may prepare maps delineating land that is, in his opinion, subject to significant risk of inundation by flood waters.

(2) Where a map is to be prepared under this section in relation to land within the area of a council, the Minister shall, in the course of preparing the map, consult with the council.

(3) The Minister may, instead of preparing a map under this section, adopt a map, prepared by a council, delineating land that is subject to significant risk of inundation by flood waters.

(4) A copy of each map prepared or adopted under this section shall be—

(a) deposited in the General Registry Office;

and

(b) published in the *Gazette*.

Flow forecasts and flood predictions.

40g. The Minister may from time to time publish—

(a) forecasts of the rate of flow;

and

(b) assessments of the likelihood of flooding,

in respect of a watercourse.

Exemption from liability.

40h. No liability attaches to the Crown, a council, the Minister or any other person in respect of the contents of, or any omission from, a map, forecast or assessment published under this Division.

Amendment of s. 64—
Appeals.

14. Section 64 of the principal Act is amended—

(a) by striking out from paragraphs (a) and (b) of subsection (1) the passage “licence or permit” wherever it occurs and substituting, in each case, the passage “licence, permit or authorization”;

(b) by striking out from paragraph (b) of subsection (4) the passage “the Minister should have made” and substituting the passage “should have been made”;

and

(c) by striking out paragraph (c) of subsection (4) and substituting the following paragraph:

(c) refer the case in relation to which the decision was made back for reconsideration by the appropriate person or authority, with or without directions as to the matters that are to be taken into account on the reconsideration.

Amendment of s. 70—
Power to construct works.

15. Section 70 of the principal Act is amended by inserting after paragraph (g) the following paragraph:

(ga) the prevention or mitigation of floods;

16. Section 72 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

Amendment of
s. 72—
Authorized
officers.

(2) A public authority in which a watercourse or the control of a watercourse is vested may appoint a person to be an authorized officer for the purposes of Part IIIA.

(3) An authorized officer appointed by a public authority may exercise his powers as such only in relation to a watercourse vested in, or under the control of, that public authority.

17. Section 76 of the principal Act is amended by striking out from paragraph (c) of subsection (1) the passage "or permit" and substituting the passage ", permit or authorization".

Amendment of
s. 76—
Evidentiary.

18. Section 78 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

Amendment of
s. 78—
Summary
procedure, etc.

(a) shall not be commenced without the consent in writing—

(i) in the case of an offence under Part IIIA—of the appropriate authority;

(ii) in any other case—of the Minister;;

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) An apparently genuine document purporting to record the consent of the Minister or an authority to proceedings for an offence against this Act and to be signed by an officer of the Minister or the authority shall, in the absence of proof to the contrary, be proof of the consent.

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

D. B. DUNSTAN, Governor