

Queensland



WATER RESOURCES AMENDMENT ACT 1993

Act No. 7 of 1993

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Water Resources Amendment Act 1993

Act No. 7 of 1993

An Act to amend the *Water Resources Act 1989*

[Assented to 26 March 1993]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *Water Resources Amendment Act 1993*.

Amended Act

2. The *Water Resources Act 1989* is amended as set out in this Act.

Amendment of long title

3. Long title (after 'watercourses;')—

insert—

'protecting and improving the physical integrity of watercourses;'

Amendment of s.1.4 (Interpretation)

- 4.(1) Section 1.4(1) (definition "watercourse", last sentence)—

omit.

- (2) After section 1.4(2)(b)—

insert—

- '(2A)** In provisions of this Act that concern—

- (a) the exercise of the right to the use, flow and control of water; and
- (b) the control of quarry material; and
- (c) limiting the destruction of watercourse vegetation and otherwise protecting or improving the physical integrity of watercourses;

"watercourse" includes bed and banks and any other element of a river, creek or stream that confines or contains water.'

Amendment of s.3.11 (General powers etc. of Commission and Commissioner)

5.(1) After section 3.11(2)(f)—

insert—

‘(g) the protection and improvement of—

- (i) the beds and banks of watercourses; and
- (ii) other elements of watercourses that confine or contain water.’.

(2) After section 3.11(3)(f)—

insert—

‘(fa) monitor the physical integrity of—

- (i) the beds and banks of watercourses; and
- (ii) other elements of watercourses that confine or contain water; and

(fb) take any action necessary or desirable to protect—

- (i) the beds and banks of watercourses; and
- (ii) other elements of watercourses that confine or contain water; and’.

Amendment of s.4.40 (Offences as to dealing with water)

6. After section 4.40(1)—

insert—

‘**(1A)** For the purposes of subsection (1), but without limiting that subsection, a person interferes with or obstructs water or a flow of water if the person does something that either by itself or in conjunction with other acts (whether or not done by the person), or happenings (whether or not caused by the person), is likely to result in the future in interference with or obstruction of water or the flow of water.’.

Insertion of new Division 5 in Part 4

7. After section 4.41—

insert—

Division 5—Protecting and improving the physical integrity of watercourses

‘Definitions

‘4.42 In this Division—

“destruction” of vegetation means the removing, clearing, killing, cutting down, felling, ringbarking, digging up, pushing over, pulling over or poisoning of vegetation;

“fill” means any kind of material in solid form (whether or not naturally occurring) capable of being deposited at a place;

“placing of fill” in a watercourse includes doing something that, in conjunction with other acts (regardless of who does those acts) or happenings (regardless of who, if anyone, causes those happenings) is likely to result in the depositing of fill in the watercourse;

“vegetation” means any native plants, and includes any native trees, shrubs, bushes, seedlings, saplings and reshoots.

‘Division binds the Crown

‘4.43(1) This Division binds the Crown.

(2) Nothing in this Division renders the Crown liable to be prosecuted for an offence.

(3) However, subsection (2) does not prevent an officer, employee or agent of the Crown from being prosecuted for an offence.

‘Destruction of vegetation, excavation or placing of fill

‘4.44(1) A person must not—

- (a) destroy vegetation in a watercourse; or
- (b) excavate in a watercourse; or

- (c) place fill in a watercourse;

unless—

- (d) the destruction, excavation or placing of fill is authorised by a permit under section 4.45; and
- (e) the person complies with the terms of the permit.

Maximum penalty—

- (a) in the case of an individual—400 penalty units; or
- (b) in the case of a corporation—800 penalty units.

‘(2) Subsection (1) does not apply to—

- (a) destruction of vegetation, excavation or the placing of fill—
 - (i) that is permitted or required, or happens as a necessary and unavoidable part of some other activity that is permitted or required, under a licence, permit, notice or other authority under another section of this Act; or
 - (ii) that is permitted or required under the *River Improvement Trust Act 1940*; or
 - (iii) that happens as a necessary and unavoidable part of the extraction of quarry materials or forest products under the *Forestry Act 1959*; or
 - (iv) in prescribed watercourses; or
 - (v) in watercourses within prescribed areas; or
 - (vi) in the case of excavation or the placing of fill—happening within prescribed quantity limits; or
 - (vii) that is permitted under the regulations; or
- (b) destruction of vegetation—
 - (i) that is required under a requisition concerning the reduction of fire risk given under the *Fire Service Act 1990*; or
 - (ii) that is permitted or required to be carried out under the *Electricity Act 1976* to prevent—
 - (A) obstruction of, or interference with, an electric line; or

- (B) creation of an electrical hazard; or
- (iii) that happens as a necessary part of works that are carried out under this Act other than under a licence, permit or notice; or
- (iv) if the vegetation is regrowth, and does not consist of mulga or other fodder trees, following destruction under a permit given under section 4.45 less than 2 years previously; or
- (v) if the vegetation has been lawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes; or
- (vi) that is necessary—
 - (A) to prevent personal injury or property damage; or
 - (B) to provide for emergency access.

‘(3) On the conviction of a person for an offence against subsection (1), the court may order the person to pay to the State, in addition to any penalty imposed, the cost of any remedial work or rehabilitation necessary or desirable because of the commission of the offence.

‘Permit to destroy vegetation or to excavate or fill

‘4.45(1) The owner of land that—

- (a) wholly contains a watercourse or a length of a watercourse; or
- (b) abuts a watercourse;

may apply to the chief executive for a permit to do any of the following—

- (c) destroy vegetation in the watercourse;
- (d) excavate in the watercourse;
- (e) place fill in the watercourse.

‘(2) The application must—

- (a) be made in writing; and
- (b) specify the proposed activity and the purpose of the activity; and
- (c) be accompanied by the prescribed fee.

‘(3) The chief executive may require the applicant to supply further

information in support of the application (including a statement of environmental effects).

‘(4) The chief executive may—

- (a) issue a permit; or
- (b) issue a permit on terms specified in the permit; or
- (c) refuse to issue a permit.

‘(5) If the chief executive issues a permit on terms specified in the permit, the permit is to be accompanied by a notice stating the reasons for the inclusion of the terms.

‘(6) The chief executive must give written notice to an applicant of a refusal to issue a permit.

‘(7) The notice is to state the reasons for the refusal.

‘(8) The permit is to specify how long it is to stay in force.

‘(9) No compensation is payable because of—

- (a) a refusal to issue a permit; or
- (b) the terms on which a permit is issued.

‘Matters to be considered by chief executive

‘4.46(1) In deciding whether to issue a permit, and in deciding the terms to be specified in a permit, the chief executive must first consider—

- (a) the effects of the proposed activity on water quality; and
- (b) the quantity of—
 - (i) vegetation to be destroyed; or
 - (ii) material to be excavated or placed; and
- (c) the type of—
 - (i) vegetation to be destroyed; or
 - (ii) material to be excavated or placed; and
- (d) the seasonal factors that influence the watercourse from time to time; and

- (e) the position in the watercourse of—
 - (i) the vegetation to be destroyed; or
 - (ii) the proposed excavation or placing of fill; and
- (f) the reasons given by the applicant for wishing to carry out the activity; and
- (g) any other matters the chief executive considers to be relevant.

‘(2) The chief executive must then consider—

- (a) whether, and to what extent, the activity that the permit would allow may have an adverse effect on the physical integrity of the watercourse; and
- (b) the implications of granting the permit for the long-term sustainable use of the river systems of Australia, and especially the cumulative effect of granting the application and likely similar applications.

‘Cancellation of permit or amendment of terms of permit

‘4.47(1) The chief executive may cancel a permit issued under this Division, or amend the terms of a permit, if—

- (a) the terms of the permit are not being complied with or have been contravened; or
- (b) it becomes evident that any adverse effect of the permitted activity on the physical integrity of the watercourse is greater than was anticipated when the permit was issued.

‘(2) Before deciding whether a permit should be cancelled or whether the terms of a permit should be amended, the chief executive must issue a written notice calling on the holder of the permit to show cause why—

- (a) the permit should not be cancelled; or
- (b) the terms of the permit should not be amended as set out in the notice.

‘(3) The notice must—

- (a) specify a day, time and place when and where cause may be shown; and

(b) be given to the holder of the permit.

‘(4) In choosing the day, time and place specified in a notice to show cause, the chief executive may take into consideration the degree of urgency involved.

‘(5) The holder of a permit to whom a notice to show cause is given may be heard on the matter of the cancellation of the permit or the amendment of the terms of the permit.

‘(6) If, at the day, time and place specified in the notice to show cause, or to which the matter is adjourned, sufficient cause is not shown to the satisfaction of the chief executive, the chief executive may by written order cancel the permit or amend the terms of the permit.

‘(7) An order cancelling the permit or amending the terms of the permit—

(a) is to be given to the holder of the permit; and

(b) takes effect immediately the order is given to the holder of the permit, unless the chief executive specifies a later time in the order.

‘Suspension of permit in exceptional circumstances

‘4.48(1) In addition to giving to the holder of a permit a written notice under section 4.47(2), the chief executive may give to the holder a written notice that immediately suspends the permit.

‘(2) A notice may be given under subsection (1) only if the chief executive is satisfied that exceptional circumstances exist in relation to the permit to cause the chief executive reasonable concern for the physical integrity of a watercourse.

‘(3) The holder of the permit must comply with a notice under this section.

Maximum penalty—

(a) in the case of an individual—400 penalty units; or

(b) in the case of a corporation—800 penalty units.

‘(4) A notice given under subsection (1) stays in force until the chief executive has decided whether the permit should be cancelled or whether the

terms of the permit should be amended.

‘Limited nature of permit

‘4.49 A person who is issued with a permit under this Division to carry out an activity must nevertheless comply with any other Act or law concerning the activity.

‘Notice to stop activities etc.

‘4.50(1) If—

- (a) it appears to the chief executive that a person is engaging in, or is about to engage in—
 - (i) destroying vegetation in a watercourse; or
 - (ii) excavating or placing fill in a watercourse; and
- (b) a permit under this Division is required, but has not been obtained, for the activity;

the chief executive may give written notice to the person requiring the person to stop or not to engage in the activity.

‘(2) A person must not contravene a notice under subsection (1).

Maximum penalty—

- (a) in the case of an individual—200 penalty units; or
- (b) in the case of a corporation—400 penalty units.

‘(3) A penalty may be imposed under this section in relation to an activity in addition to any penalty that is imposed under section 4.44 in relation to the activity.

‘Notice to remove vegetation etc.

‘4.51(1) If—

- (a) there is on any land vegetation, litter, refuse or other matter; and
- (b) it appears to the chief executive that—
 - (i) the vegetation, litter, refuse or matter—

- (A) has obstructed, or may obstruct, the flow of water in a watercourse; or
 - (B) has had, or may have, an adverse effect on the physical integrity of a watercourse; or
 - (C) has adversely affected, or may adversely affect, the quality of water in a watercourse; and
- (ii) it is necessary or desirable that action be taken in relation to the vegetation, litter, refuse or matter to protect or restore the flow of water in the watercourse, the physical integrity of the watercourse or the quality of water in the watercourse;

the chief executive may give written notice to the occupier of the land or, if there is no occupier, the owner of the land requiring the person to take the action within the time and in the way (if any) specified in the notice.

‘(2) If the person contravenes the notice, the person commits an offence.

Maximum penalty—

- (a) in the case of an individual—200 penalty units; or
- (b) in the case of a corporation—400 penalty units.

‘(3) If the person contravenes the notice, the chief executive may take such action (whether on the land or elsewhere) as is reasonably necessary or desirable, because of the vegetation, litter, refuse or matter, to protect or restore the flow of water in the watercourse, the physical integrity of the watercourse or the quality of water in the watercourse.

‘(4) For the purpose of enabling action to be taken under subsection (3), the chief executive may authorise persons, with or without vehicles, machinery, plant and equipment (of any description), to enter and remain on the land.

‘(5) The person is liable for all costs reasonably incurred by the chief executive in taking action under subsection (3).

‘(6) The amount of the costs is recoverable as a debt due by the person to the State.

‘(7) If the person is convicted of an offence against subsection (2), the court may, in addition to any penalty imposed, order the person to pay the amount of the costs to the State.

‘(8) In this section—
“vegetation” includes non-native vegetation of any kind.

‘Appeals

‘4.52(1) If the chief executive decides under this Division—

- (a) to refuse to issue a permit; or
- (b) to issue a permit, but on terms that the applicant objects to; or
- (c) to cancel a permit; or
- (d) to amend the terms of a permit;

the applicant or holder may appeal to a Magistrates Court against the decision.

‘(2) The Magistrates Court that has jurisdiction to hear the appeal is the Court exercising jurisdiction at or nearest the place of the activity for which—

- (a) a permit was applied for and refused; or
- (b) a permit was granted.

‘(3) If the chief executive gives a notice to a person under section 4.50 or 4.51, the person may appeal to a Magistrates Court against the decision to give the notice.

‘(4) The Magistrates Court that has jurisdiction to hear the appeal is the Court exercising jurisdiction at or nearest the place of the activity, proposed activity or land concerned.

‘(5) An appeal under this section is instituted by—

- (a) filing with the clerk of the court written notice of the appeal; and
- (b) serving a copy of the notice on the chief executive.

‘(6) The notice of appeal must specify fully the grounds of appeal and the facts relied on.

‘(7) An appeal is to be by way of rehearing.

‘(8) The Magistrate hearing the appeal may give such directions in relation to the hearing of the appeal as the Magistrate considers appropriate.

‘(9) For the purposes of the appeal, the Magistrates Court has all the powers and functions of the chief executive.

‘(10) If, on appeal, the Magistrates Court upsets or varies the decision of the chief executive, the Magistrates Court’s decision is taken, for the purposes of this Act, to be that of the chief executive.’.