

SOUTH AUSTRALIA

RIVER TORRENS PROTECTION ACT, 1949

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River Torrens Protection Act, 1949, No. 21 of 1949
[Assented to 27 October 1949]¹

¹ Came into operation 1 October 1950: *Gaz.* 31 August 1950, p. 521.

An Act to provide for the protection of the banks and bed of the River Torrens, and for incidental purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *River Torrens Protection Act, 1949*.

Commencement of Act

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

Interpretation

3. In this Act, unless the context otherwise requires—

"Minister" means the Minister of the Crown to whom, for the time being, the administration of this Act is committed by the Governor:

"occupier" means any person who, either jointly or alone, has the actual physical possession of any land to the substantial exclusion of all other persons from participating in the enjoyment thereof:

"owner" means—

- (a) the registered proprietor under *The Real Property Act, 1886-1945*, of any estate of freehold in possession;
- (b) as regards land not under *The Real Property Act, 1886-1945*, any person who is seised of any estate of freehold in possession, or if the said estate is subject to redemption under any mortgage, the person who, upon payment of all such mortgages, would be entitled to a conveyance of such an estate;
- (c) as regards any land belonging to the Crown, any person who has agreed to purchase the land from the Crown or is in possession of the land under any lease granted by the Crown;
- (d) any mortgagee in possession who is by himself or his tenant in occupation of any land, and is entitled to receive the rents and profits thereof:

"river" means the River Torrens but does not include any of its tributaries.

Application of Act

4. (1) Subject to subsection (2), this Act shall apply within such part of the State as the Governor, by proclamation, declares that this Act shall apply.

Subject to subsection (2), the Governor may by proclamation declare that this Act shall apply within any part of the State specified in the proclamation and may by proclamation revoke or vary any such proclamation.

3.

(2) This Act shall not apply within the boundaries of the City of Adelaide nor to any land forming part of the bed or banks of the river which is under the care, control and management of any municipal or district council.

Licensing of sand washers, etc.

5. (1) No person shall carry on the business of washing sand, gravel, crushed stone or other similar material in the river or at any place so that any effluent from any washing operation carried on by him flows or is likely to flow into any part of the river or any tributary thereof unless he is licensed by the Minister under this Act.

Penalty: Not exceeding one-hundred dollars.

(2) Upon application being made in the prescribed form and upon payment of the prescribed fee the Minister may issue a licence to any person to carry on the business of washing sand, gravel, crushed stone or other similar material in the river or upon or near the banks of the river or at any such place aforesaid.

Disposal of silt, etc.

6. No person shall—

- (a) return or cause or permit to return to the river any effluent from any washing operation carried on by him containing any silt, sludge or other matter containing solids; or
- (b) deposit or cause or permit to be deposited any such silt, sludge or other matter containing solids in the river or in such a position that the same is or is liable to be carried into the river either by flood or otherwise.

Penalty: Not exceeding one-hundred dollars.

Prohibition of certain excavations

7. (1) No person shall dig or excavate or cause to be dug or excavated any hole in the bed or in or near any bank of the river which might give rise to or increase the erosion of such bed or any bank of the river.

Penalty: Not exceeding one-hundred dollars.

(2) If any hole is dug or excavated in contravention of this section, the Minister may give notice in writing to the owner or occupier of the land wherein the hole is dug or excavated requiring him to fill in the hole.

Removal of obstructions

8. (1) If any land abuts upon the bank of the river, the owner or occupier of that land shall do the following upon such part of the bed or bank of the river as abuts his land and extends to the centre of the main stream for the time being of the river:—

- I. Before the thirty-first day of March in each calendar year cut down all trees, bamboos, bushes, undergrowth or other vegetation growing upon the said part of the bed or bank which might obstruct the free flow of water in the river;

- II. Before the thirtieth day of April in each calendar year remove from the said part of the bed or bank all trees, bamboos, bushes, undergrowth or other vegetation cut down as aforesaid:

Provided however that this subsection shall not apply to any trees, bamboos, bushes, undergrowth or other vegetation which, in the opinion of the Minister, acts as a protection against erosion of the river banks.

(2) The owner of any land forming part of the bed or bank of the river shall, upon being required by notice in writing by the Minister so to do, remove from that land any obstruction whether natural or artificial to the free flow of water in the river including any stone in the bed of the river: Provided however that this subsection shall not apply to any floor, bottom, wall or cover placed or constructed in or over or across the river within any municipality or district council district with the consent in writing of the council thereof.

Power of Minister, upon default, to cause work to be done and recover the cost thereof

9. (1) If the requirements of any notice under section 7 or section 8 are not complied with to the satisfaction of the Minister within the time specified in the notice, then the Minister may cause to be done such work as he considers necessary to comply with the notice, and may recover the cost thereof in any court of competent jurisdiction from the person to whom the notice was given as a debt due to the Minister.

(2) If the requirements of subparagraphs (a) and (b) of subsection (1) of section 6 are not complied with to the satisfaction of the Minister, then the Minister may cause to be done such work as he considers necessary to comply therewith and may recover the cost from the owner or occupier of the land whereon the work is done in any court of competent jurisdiction as a debt due to the Minister.

Prohibition of deposit of rubbish

10. No person shall deposit or cause or permit to be deposited in the river or any of its tributaries or upon any land forming part of the bed or bank of the river or any of its tributaries any dead animal, offal, carrion, filth or offensive matter of any description, or any earth, stone, wood, tins, scrap metal, boxthorn, bamboos, or rubbish of any description whatsoever: Provided however that the owner or occupier of any such land may, with the consent in writing of the Minister, or of the council of the municipality or district council district in which the land is situate, construct any work for the protection of the bed or bank of the river or any of its tributaries from erosion.

Penalty: Not exceeding one-hundred dollars.

Power of Minister to enter upon lands

11. (1) The Minister may enter upon any lands for the purpose of ascertaining whether the provisions of this Act are being observed or for the purpose of exercising any power conferred upon him by this Act.

(2) No person shall obstruct or wilfully delay the Minister in the exercise of any power conferred upon him by this Act.

Penalty: Not exceeding one-hundred dollars.

Swimming pools

12. (1) The Minister may grant a permit upon such terms as he may think fit, to any *bona fide* swimming club to construct and maintain a swimming pool upon any land forming part of the bed or banks of the river which is owned or occupied by the club.

(2) No such permit shall relieve any swimming club or the members thereof from any liability to which it or they would have been subject if the permit had not been granted.

Power of Minister to delegate powers

13. (1) The Minister may authorize any person he thinks 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 authorized 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 authorized 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.

Service of notice

14. Any notice provided for in this Act may be given by post in a prepaid letter addressed to the person concerned at his usual or last known place of business or abode.

Summary disposal of offences

15. All proceedings for offences against this Act shall be disposed of summarily.

Institution of proceedings

16. (1) No proceedings in respect of any offence against this Act shall be taken without the consent in writing of the Minister.

(2) Any such consent may be proved by the production of a document to that effect purporting to be signed by the Minister.

Facilitation of proof

17. (1) In any proceedings in respect of offences against this Act the allegation in any complaint that, upon the date or between the dates specified therein—

- (a) any person was the owner or occupier of any land;
- (b) any person dug or excavated any hole; or
- (c) any notice authorized by this Act was given to any person,

shall be *prima facie* evidence of the matter alleged.

(2) In any proceedings for an offence against this Act, the allegation that any place is situated within the part of the State to which this Act applies shall be *prima facie* evidence of the matter alleged.

(3) In any proceedings by the Minister to recover the cost of any work done by him under section 9, a document purporting to be signed by the Minister—

- (a) stating that, upon the date or between the dates specified therein—
 - (i) any person was the owner or occupier of any land;
 - (ii) any person dug or excavated any hole;
 - (iii) any notice authorized by this Act was given; or
- (b) stating the work done by the Minister and the cost thereof,

shall be admissible in evidence and shall be *prima facie* proof of the matters so stated.

Saving provisions

18. Nothing in this Act shall in any way effect—

- (a) any of the provisions of Part XXXV or Division III of Part XLV of the *Local Government Act, 1934-1948*, except that subsections (2), (3) and (4) of section 639 thereof shall not apply to any bridge, dam, fence, floor, bottom, wall, or cover erected across or constructed in the river with the consent in writing of the Minister;
- (b) the exercise by the Minister of Works of any of his powers under the *Metropolitan Drainage Act, 1935*.

Non-application of Soil Conservation Act, 1939-1947

19. The provisions of the *Soil Conservation Act, 1939-1947*, shall not apply within any part of the State to which this Act applies.

Regulations

20. The Governor may make regulations, not inconsistent with this Act, prescribing all things which by this Act are required contemplated or permitted to be prescribed, or which may be necessary to be prescribed for giving effect to the provisions and objects of this Act, and amongst others the following things—

- (a) prescribing forms for and conditions as to the grant of licences or permits under this Act;
- (b) prescribing the manner in which and the reasons for which any such licence or permit may be cancelled by the Minister;
- (c) prescribing fees to be paid on the grant of any such licence or permit.