

CONCURRENCE COPY

RIVERS AND FORESHORES IMPROVEMENT (AMENDMENT) BILL, 1981 (No. 2)

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to extend the provisions of section 23A of the Rivers and Foreshores Improvement Act, 1948 (which relates to the prohibition of excavations on, in or under, or the removal of soil from, the banks of rivers and land within 40 metres of the banks of rivers) so that the section will also apply to the beds of rivers (Schedule 1 (1));
- (b) to increase the penalty which may be imposed under section 23A from \$100 (or \$200 for subsequent offences) to \$5,000 (or \$10,000 in the case of corporations) (Schedule 1 (2)—proposed section 23A (3));
- (c) to clarify and extend the powers of a constructing authority (as defined in section 23A (10) and (11) of the Act), being the powers which allow an authority to require the carrying out of works to prevent damage being caused to a river, or to prevent the course of a river being changed, through the excavation or removal of soil—in particular to extend those powers so as to—
 - (i) allow an authority to direct the carrying out of repair works after damage has been caused;
 - (ii) allow an authority to direct the carrying out of repair works where damage has been, or is likely to be, caused to an area within 40 metres of a river; and
 - (iii) where a river has changed or is likely to change its course by reason of the excavation or removal of soil and the authority has determined that in the circumstances it would be expedient to change the course of the river, allow the authority to direct the carrying out of the works to ensure that the river follows a new course as determined by the authority,(Schedule 1 (2)—proposed section 23A (4));
- (d) to provide that a person who excavates or removes soil, as well as the owner or occupier of the affected land, may be required to carry out works under section 23A to repair or prevent damage (Schedule 1 (2)—proposed section 23A (4));

- (e) to amend the Rivers and Foreshores Improvement Act, 1948, by way of statute law revision (Schedule 2); and
- (f) to make other amendments to that Act of a minor, consequential or ancillary nature.

**RIVERS AND FORESHORES IMPROVEMENT
(AMENDMENT) BILL, 1981 (No. 2)**

No. , 1981.

A BILL FOR

An Act to amend section 23A of the Rivers and Foreshores Improvement Act, 1948, and to amend that Act by way of statute law revision.

[MR GORDON—26 November, 1981.]

Rivers and Foreshores Improvement (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Rivers and Foreshores Improvement (Amendment) Act, 1981".

Principal Act.

2. The Rivers and Foreshores Improvement Act, 1948, is referred to 10 in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT.

15 SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

Amendment of Act No. 20, 1948.

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

20 Savings.

5. The repeal and substitution of section 23A (3) of the Principal Act by section 4 and Schedule 1 (2) do not affect any penalty which may be imposed in respect of an offence committed against section 23A (3) of the Principal Act before the commencement of this Act.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT.

(1) Section 23A (1), (1A)—

5 Omit section 23A (1), insert instead:—

(1) In this section—

“make an excavation” includes cause or allow an excavation to be made;

10 “protected river land” means land comprising a bank or the bed of a river or land within 40 metres of a river (being 40 metres measured horizontally from the top of a bank of the river);

“remove soil” includes cause or allow soil to be removed.

15 (1A) No person shall, except with the permission of the Constructing Authority—

(a) make an excavation on, in or under protected river land; or

(b) remove soil from protected river land.

(2) Section 23A (3), (4)—

Omit the subsections, insert instead:—

20 (3) Any person who—

(a) contravenes subsection (1A); or

(b) fails to comply with any of the limitations or conditions for the time being attached to any permit granted to him under subsection (2),

25 shall be guilty of an offence and shall—

(c) where the person is not a corporation—be liable to a penalty not exceeding \$5,000; or

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT—*continued.*

- (d) where the person is a corporation—be liable to a penalty not exceeding \$10,000.

5 (4) Where—

- 10 (a) any excavation has been made on, in or under protected river land or any soil has been removed from protected river land contrary to the provisions of this section or any limitations or conditions for the time being attached to a permit granted under the provisions of this section, whether the excavation or removal was effected before or after the commencement of the Rivers and Foreshores Improvement (Amendment) Act, 1981; or
- 15 (b) the Constructing Authority is of the opinion that any excavation on, in or under any land (other than protected river land) or the removal of soil from any land (other than protected river land), whether effected before or after the commencement of the Rivers and Foreshores Improvement (Amendment) Act, 1981—
- 20 (i) has damaged or detrimentally affected or is likely to damage or detrimentally affect protected river land; or
- (ii) is likely to cause, whether directly or indirectly, a river to change its course,
- 25 the Constructing Authority may by notice in writing direct—
- (c) the person who is the owner or occupier of the land on, in or under which the excavation has been made or from which soil has been removed; or
- 30 (d) the person who has made the excavation or who has removed the soil,

*Rivers and Foreshores Improvement (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT—*continued.*

5 to carry out, in such manner and within such time as may be specified in the notice, such of the following kinds of works as the Authority considers are necessary and as are specified in the notice:—

- (e) works to repair any damage caused to protected river land by reason of the excavation or removal of soil;
- 10 (f) works to ensure that protected river land will not be damaged or detrimentally affected or further damaged or detrimentally affected, as the case may require, by the excavation or removal of soil;
- (g) works to correct any change caused, whether directly or indirectly, to the course of a river by reason of the excavation or removal of soil;
- 15 (h) works to ensure that a river will not be caused or further caused, as the case may require, to change its course, whether directly or indirectly, by reason of the excavation or removal of soil;
- 20 (i) where a river has changed, or is likely to change, its course by reason of the excavation or removal of soil and the Constructing Authority has determined that in the circumstances it would be expedient to change the course of the river—works to ensure that the river follows a course as determined by the Constructing Authority.

25 (3) Section 23A (5)—

Omit “any owner or occupier”, insert instead “any person”.

(4) Section 23A (5)—

Omit “authorise any person”, insert instead “authorise any other person”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT—*continued.*

(5) Section 23A (5)—

Omit “measures”, insert instead “works”.

5 (6) Section 23A (5)—

Omit “such owner or occupier”, insert instead “that firstmentioned person”.

(7) Section 23A (7)—

Omit the subsection, insert instead:—

10 (7) Where the Constructing Authority is of the opinion that an excavation made on, in or under any land, or the removal of soil from any land, in the exercise of any of the rights referred to in subsection (6) (whether before or after the commencement of the Rivers and Foreshores Improvement (Amendment) Act, 1981)—

15 (a) has damaged or detrimentally affected or is likely to damage or detrimentally affect protected river land; or

(b) has caused or is likely to cause, whether directly or indirectly, a river to change its course,

20 the Constructing Authority may by notice in writing direct the person, statutory body or council by whom or on whose behalf any such excavation has been made or any such soil has been removed to carry out in such manner and within such time as may be specified in the notice, such of the kinds of works referred to in paragraphs (e)–(i) of subsection (4) as the Authority considers are necessary
25 and as are specified in the notice.

(8) Section 23A (8)—

Omit “measures”, insert instead “works”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO SECTION 23A OF THE PRINCIPAL ACT—*continued.*

(9) Section 23A (10), definition of “Constructing Authority”—

- 5 (a) Omit “immediately adjacent to the land on”, insert instead “above or immediately adjacent to the land on, in or under”.
- (b) Omit “or is being” wherever occurring.

(10) Section 23A (11)—

10 Omit “where the bed of the river immediately adjacent to the land on which an excavation has been or is being made or from which soil has been or is being removed, is vested in that Board.”, insert instead:—

where—

- (a) the bed of the river; or
- 15 (b) the bed of the river immediately adjacent to the land, on, in or under which an excavation has been made or from which soil has been removed, is vested in that Board.

SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
20 REVISION.

(1) (a) Section 1 (1)—

Omit “1948.’”, insert instead “1948’.”.

(b) Section 1 (3)—

Omit the subsection, insert instead:—

25 (3) This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1, 2.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

PART II.—CONSTRUCTION OF WORKS—*ss. 3–7.*

5 PART III.—RIVERS AND FORESHORES IMPROVEMENT
DISTRICTS—*ss. 8–22.*

DIVISION 1.—*Rivers and Foreshores Improvement
Board—s. 8.*

DIVISION 2.—*Constitution of Districts—ss. 9–15.*

10 DIVISION 3.—*Contributions and Rates—ss. 16–22.*

PART IV.—MISCELLANEOUS—*ss. 23–26.*

(2) Section 2, definition of “Council”—

15 Omit “as amended by subsequent Acts, and includes a county council
constituted under that Act, as so amended”, insert instead “and
includes a county council constituted under that Act”.

(3) (a) Section 4 (2) (a)—

Omit “, as amended by subsequent Acts”.

(b) Section 4 (2) (b)—

Omit “as amended by subsequent Acts”.

20 (c) Section 4 (2) (b)—

Omit “the said Act as so amended”, insert instead “that Act”.

(d) Section 4 (2) (c)—

Omit “said Act as so amended”, insert instead “Public Works
Act, 1912”.

25 (e) Section 4 (3)—

Omit “as amended by subsequent Acts”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

- (f) Section 4 (3)—
5 Omit “paragraph (c) of subsection (2)”, insert instead
“subsection (2) (c)”.
- (g) Section 4 (4)—
Omit “as amended by subsequent Acts.”.
- (h) Section 4 (8)—
10 Omit “subsection (6), or subsection (7)”, insert instead “(6)
or (7)”.
- (i) Section 4 (10)—
Omit “one hundred dollars”, insert instead “\$100”.
- (j) Section 4 (11)—
15 Omit “two hundred and fifty dollars”, insert instead “\$250”.
- (4) (a) Section 6 (2) (c)—
Omit “twenty-eight”, insert instead “28”.
- (b) Section 6 (2) (c)—
Omit “ten dollars”, insert instead “\$10”.
- 20 (c) Section 6 (2) (c) (ii)—
Omit “the said”.
- (d) Section 6 (3)—
Omit “as amended by subsequent Acts.”.
- (e) Section 6 (3)—
25 Omit “license permit”, insert instead “license, permit”.
- (5) Section 7 (1)—
Omit “three”, insert instead “3”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

- (6) (a) Section 8 (2)—
5 Omit “four”, insert instead “4”.
- (b) Section 8 (3)—
Omit “paragraph (a) of subsection (2)”, insert instead
“subsection (2) (a)”.
- (c) Section 8 (3)—
10 Omit “paragraph (b) of subsection (2)”, insert instead
“subsection (2) (b)”.
- (d) Section 8 (5)—
Omit “Public Service Act, 1902, or of any Act amending that
Act”, insert instead “Public Service Act, 1979,”.
- 15 (e) Section 8 (5)—
Omit “any such”, insert instead “that”.
- (7) (a) Section 9 (4)—
Omit “eight”, insert instead “8”.
- (b) Section 9 (4)—
20 Omit “one third”, insert instead “one-third”.
- (8) Section 11 (4)—
Omit “eight”, insert instead “8”.
- (9) (a) Section 12 (3)—
Omit “eight”, insert instead “8”.
- 25 (b) Section 12 (3)—
Omit “one third”, insert instead “one-third”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

- (10) (a) Section 14—
5 Omit “five”, insert instead “5”.
(b) Section 14—
Omit “subsection (1) of section 18”, insert instead “section 18 (1)”.
- (c) Section 14—
10 Omit “ten dollars”, insert instead “\$10”.
- (11) (a) Section 16 (2)—
Omit “subsection (1) of section 9 or subsection (2) of section 11 or subsection (2) of section 12 or”, insert instead “section 9 (1), 11 (2) or 12 (2) or,”.
- 15 (b) Section 16 (6)—
Omit “thirty”, insert instead “30”.
- (12) (a) Section 17 (2)—
Omit “the first day of July,”, insert instead “1st July”.
- (b) Section 17 (3) (a)—
20 Omit “Colonial”.
- (13) (a) Section 18 (1) (b)—
Omit “the first day of” wherever occurring, insert instead “1st”.
- (b) Section 18 (1) (c)—
Omit “section 11 or section 12”, insert instead “11 or 12”.
- 25 (c) Section 18 (2)—
Omit “thirty”, insert instead “30”.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

- (14) (a) Section 19 (1) (b)—
5 Omit “three”, insert instead “3”.
- (b) Section 19 (1) (b) (i)—
Omit “five per centum”, insert instead “5 per cent”.
- (c) Section 19 (1) (b) (ii)—
Omit “seven per centum”, insert instead “7 per cent”.
- 10 (d) Section 19 (1) (b) (iii)—
Omit “ten per centum”, insert instead “10 per cent”.
- (e) Section 19 (1) (d)—
Omit “three” wherever occurring, insert instead “3”.
- (15) (a) Section 21 (1)—
15 Omit “paragraph (b) of subsection (2) of section 6”, insert
instead “section 6 (2) (b)”.
- (b) Section 21 (1)—
20 Omit “Conveyancing Acts, 1919–1943, the expression ‘rate or
tax’ in paragraph (b) of section 187 of the said Acts”, insert
instead “Conveyancing Act, 1919, the expression ‘rate or tax’
in section 187 (b) of that Act”.
- (16) Section 23—
Omit “three”, insert instead “3”.
- (17) Section 23A (6)—
25 Omit “, as amended by subsequent Acts” wherever occurring.

Rivers and Foreshores Improvement (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW
REVISION—*continued.*

- (18) Section 24—
5 Omit “, as amended by subsequent Acts” wherever occurring.
- (19) (a) Section 25 (3)—
Omit “one hundred dollars”, insert instead “\$100”.
- (b) Section 25 (3)—
Omit “twenty-five dollars”, insert instead “\$25”.
- 10 (c) Section 25 (4), (5)—
Omit the subsections, insert instead:—
- (4) Section 41 of the Interpretation Act, 1897, applies in
respect of a regulation made under this Act as if this Act had
been passed after the commencement of the Interpretation
15 (Amendment) Act, 1969.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

[50c]

1971

...

...

...

...

...