

# REPRINT

## **RIVER WATERS ACT (CAP. 135)**

**As in force at: 1 October 2009**

**STATUS: CURRENT**

For details see Endnotes

**AN ACT TO PROVIDE FOR THE CONTROL OF RIVER WATERS AND FOR THE  
EQUITABLE AND BENEFICIAL USE THEREOF AND FOR MATTERS  
INCIDENTAL THERETO AND CONNECTED THEREWITH**

## RIVER WATERS ACT (CAP. 135)

### Table of provisions

1	Short title and application	1
2	Interpretation	1
3	Appointment and powers of inspectors	1
4	Power to prohibit erections in flood channels etc.	1
5	Offences in relation to rivers	2
6	Removal of obstructions, restoration of banks etc.	2
7	Permits to divert water	3
8	Other permits	4
9	Power to grant easements	4
10	Registration of easements	4
11	Suspension etc., of permits and easements by the Minister	5
12	Notice to be given prior to grant etc. of permits and easements	6
13	Authority to enter land	7
14	Presumptions	7
15	Liability for damage	7
16	Provisions relating to appeals	7
17	Payment into Court	8
18	Miscellaneous offences	8
19	Power to make regulations	9

# RIVER WATERS ACT (Cap. 135)

As in force at: 1 October 2009

## 1 Short title and application

This Act may be cited as the *River Waters Act*, and shall apply to such part or parts of Solomon Islands, including any river or part thereof, as the Minister may by order declare.

## 2 Interpretation

In this Act, except where the context otherwise requires:

**“inspector”** means a person appointed to be an inspector pursuant to section 3(1);

**“river”** includes any watercourse whether natural or artificial and any dam, lake, pond, swamp, marsh or other body of water forming part of that watercourse.

## 3 Appointment and powers of inspectors

- (1) A person may be appointed to be an inspector for the purposes of this Act.
- (2) In addition to any other powers conferred upon him, an inspector may at any reasonable time, and upon production of his authority if demanded, enter and inspect any land or premises, other than a dwelling-house, for the purpose of ascertaining whether the provisions of this Act or the conditions of any permit or easement thereunder granted are being complied with.

## 4 Power to prohibit erections in flood channels etc.

The Minister may by order prohibit the construction or siting of any building, structure or erection in the flood channel of any river or in any place in which it appears to him that such building, structure or erection may impede, or obstruct, or otherwise affect the flow of a river.

## **5 Offences in relation to rivers**

Any person who, except under and in accordance with the terms and conditions of a permit issued under this Act:

- (a) by means of a ditch, drain, channel, pipe or any other means whatsoever, diverts any water from a river;
- (b) fells any tree so that it falls into a river or river bed;
- (c) in any manner obstructs or interferes with a river or river bed;
- (d) builds any bridge, jetty or landing stage over or beside any river;
- (e) damages or interferes with the banks of any river; or
- (f) contravenes any order made under section 4 of this Act,

shall be guilty of an offence and without prejudice to the provisions of section 6, shall be liable to a fine of two hundred penalty units or to imprisonment for six months or to both such fine and such imprisonment:

Provided that nothing in this section shall apply to the diversion of water by any person for domestic purposes.

## **6 Removal of obstructions, restoration of banks etc.**

- (1) An inspector may in writing order any person, whether or not such person has been prosecuted under the preceding section, to remove any construction, works, installation, bridge, jetty, landing stage, building, structure, erection or tree, built, installed, sited or felled, or to repair any damage caused, by that person in contravention of the preceding section, within such reasonable time as shall be specified.
- (2) Any person who fails to comply with any written order given under the preceding subsection shall be guilty of an offence and liable to a fine of one hundred penalty units or to imprisonment for three months or to both such fine and such imprisonment.
- (3) Without prejudice to any prosecution under the preceding subsection, where any person fails to comply with any written order given under subsection (1), any inspector may himself effect or cause

to be effected the removal or repair and the reasonable cost thereof shall be a civil debt due to the Government by the person in default, and may be sued for and recovered by the Attorney-General or any inspector.

## **7 Permits to divert water**

- (1) Upon application therefor made to him in the prescribed form, if any, and upon submission of such information, maps and plans as he may require, the Minister may grant to any person a permit to divert water from any river and such permit shall be published in such manner as he may determine.
- (2) In granting any permit under this section the Minister shall have regard to the existing use of water and shall safeguard such existing use of water as far as appears to him to be practicable and consistent with the provisions and purposes of this Act.
- (3) The permit shall specify the river and that part thereof from which water may be diverted, the quantity thereof and such other terms and conditions as the Minister may impose.
- (4) Every permit shall, unless sooner cancelled, remain in force for the period therein provided, or where no period is so provided, until it is cancelled.
- (5) The permit may authorise the construction of dams, weirs, races and any other works whatsoever for the purpose of diverting the quantity of water authorised.
- (6) Nothing in this section, nor any permit issued thereunder shall confer upon the holder of such a permit any right or legal authority to enter upon any other person's land or to do anything therein or thereupon without that other person's authority, but no action shall lie in respect of the diversion of water under and in accordance with a permit issued under this section.
- (7) Any person who used water from a river at the time a permit was granted to divert water from that river, may sue and recover from the holder of the permit damages arising out of the failure to comply with or the breach of any term or condition of a permit, as if such term or condition formed part of a valid contract subsisting between such

person and the holder of the permit.

## **8 Other permits**

- (1) The Minister or, subject to the directions of the Minister, any inspector may in writing grant permits authorising, subject to the provisions of this Act and any regulations made thereunder and to such terms and conditions as shall be therein specified, any of the acts specified in paragraphs (b), (c), (d) and (e) of section 5.
- (2) Nothing in this section nor in any permit granted thereunder shall confer upon the holder of such a permit any right or legal authority to enter any other person's land or to do anything therein or thereupon without that other person's authority.

## **9 Power to grant easements**

- (1) Any person who has been granted a permit under section 7 to divert water or to construct works, or who is applying or has applied for such a permit, may, if he has been unable to secure upon terms the Minister considers to be reasonable, such rights and licences as may be necessary to divert water or construct the works, apply to the Minister in the prescribed form, if any, for the grant of such easements as may be necessary.
- (2) The Minister may require the applicant to submit maps, plans and any other information he may consider relevant, and upon such inquiry, if any, as he may consider to be necessary, and notwithstanding the provisions of any other law, in particular sections 179 and 241 of the *Land and Titles Act*, the Minister may by certificate in writing grant any easement over or in respect of any land, upon such terms and conditions including the amount of compensation payable as shall be specified.

## **10 Registration of easements**

- (1) No grant of an easement under this Act shall be valid until:
  - (a) it has been registered or recorded in accordance with the provisions of this section; and
  - (b) all compensation ordered to be paid has been paid to the

persons entitled thereto or into court.

- (2) The grantee of an easement under this Act shall procure and annexe to the certificate of grant, a plan approved and signed by or on behalf of the Surveyor-General for the purpose of this section.
- (3)
  - (a) Upon production to him of the certificate of grant of an easement and the plan approved and signed by or on behalf of the Surveyor-General, payment of the prescribed fee (if any), and, where compensation has been ordered to be paid, upon production of proof of the payment thereof in accordance with subsection (1) (b), the Registrar of Titles shall:
    - (i) where the easement burdens registered land, register it in the land register; and
    - (ii) where the easement burdens unregistered land, record it in such manner as will enable it to be registered in the land register upon the land which it burdens becoming registered land.
  - (b) In this subsection “**land register**”, “**registered land**” and “**unregistered land**” shall have the meanings ascribed to them in the *Land and Titles Act*.

## **11 Suspension etc., of permits and easements by the Minister**

- (1) The Minister may at any time without prior notice and without assigning any reason, suspend any permit or easement granted under this Act for a period not exceeding two months upon any single occasion.
- (2) Subject to section 12 the Minister may cancel or alter any permit or easement upon such terms and conditions as he thinks fit, including the payment to the Government of such sums as may be necessary to meet in whole or in part any compensation payable under subsection (4):

Provided that in the case of an easement the cancellation or alteration shall be effected by means of a written certificate.

- (3) The Minister shall forthwith, upon the cancellation or alteration of any easement, serve upon the Registrar of Titles a copy of the relevant certificate; and the Registrar of Titles shall register or record such certificate in the manner provided in section 10(3).
- (4) Except where the suspension, cancellation or alteration of any permit or easement has been occasioned by the default or misconduct of, or requested by, the grantee thereof, or where an easement has not been used for three years, the Government shall compensate the grantee of every permit, or easement in respect of any loss arising from the suspension, cancellation or alteration of the permit or easement.
- (5) In this section “Minister” shall in relation to a permit issued by an inspector, include that inspector and every other inspector.

## **12 Notice to be given prior to grant etc. of permits and easements**

- (1) No permit or easement shall be granted, cancelled or altered unless one month's notice of the application therefor or of the intention so to do and an opportunity to make representations thereon shall have been given to every person who, in the opinion of the Minister or an inspector, as the case may be, is likely to be adversely affected by such grant, cancellation or alteration:

Provided that nothing in this subsection shall apply:

- (i) to any person who has requested or consented to the grant, cancellation or alteration, or
  - (ii) in the case of the cancellation of an easement that has not been used for three years.
- (2) Upon payment of the prescribed fee by the applicant, notice under this section shall be given by the Minister or an inspector.
  - (3) Where the Minister or inspector considers that it is not possible to give notice to every person required to be given notice under subsection (1) without involving such delay or expense as would be unreasonable in the particular circumstances, the Minister or inspector may post the notice or cause it to be posted in a conspicuous position on or near the land affected.

### **13 Authority to enter land**

- (1) An inspector may issue to any person a written authority authorising him to enter and inspect any land or premises, other than a dwelling-house, for the purpose of securing data or drawing maps and plans that may be required for the purpose of making application for the grant of a permit or easement under this Act.
- (2) Every such authority shall be issued subject to the condition that all reasonable steps are taken to avoid any inconvenience to the owners and the occupiers of the land entered.
- (3) An inspector may in writing at any time cancel any authority issued under this section and the cancellation shall take effect upon notification thereof to the person to whom the authority was issued.

### **14 Presumptions**

Where any water is diverted, or any tree is felled, or any obstruction, interference or building takes place or any damage is caused in contravention of section 5, the owner and the occupier of any land benefiting from such diversion, felling, obstruction, interference, building or damage, shall, in any proceedings under this Act, be presumed, in the absence of any evidence to the contrary to have caused or effected the diversion, felling, obstruction, interference, building or damage as the case may be.

### **15 Liability for damage**

No permit or authority granted under this Act shall exempt any person from liability in respect of any damage occasioned by such person to any property, nor shall any easement so granted exempt any person from liability in respect of any damage that does not necessarily result from the due exercise of that easement.

### **16 Provisions relating to appeals**

- (1) Any person who claims that he is entitled to be compensated under the provisions of this Act and has not been so compensated, or who is dissatisfied with the amount of compensation awarded to him under the provisions of this Act may appeal, where the amount of compensation or additional compensation claimed does not exceed

five hundred dollars, to a Magistrate's Court, and in all other cases, to the High Court.

- (2) Every appeal under this section shall be filed within three months of the grant, cancellation or suspension of any permit or easement or the award of compensation, as the case may be.
- (3) No appeal shall lie to any court against the grant, cancellation or suspension of any permit or easement or against the refusal to grant, cancel or suspend any permit or easement.

## **17 Payment into Court**

- (1) Where any compensation is payable or ordered to be paid under the provisions of this Act and the identity of the person or persons entitled to such compensation is not known, or is in doubt or is disputed, the compensation may be paid, where it does not exceed five hundred dollars, into a Magistrate's Court, and in all other cases into the High Court.
- (2) Upon being so paid the compensation shall be irrebuttably presumed to have been paid to the person or persons thereto entitled, and such presumption shall not be questioned in any proceedings whatsoever.
- (3) Any person claiming to be entitled to payment of the whole or any part of compensation so paid into Court may, within twelve years of the payment into Court, make application to the Court for the payment to him of the compensation or part thereof.
- (4) The Court may of its own motion or upon application by a claimant order the whole or part of any sum paid into Court under this section, to be paid to any person or persons.
- (5) Where any compensation paid into Court under this section has not been paid out within twelve years, it shall be credited to and form part of the Consolidated Fund.

## **18 Miscellaneous offences**

- (1) Any person who contravenes or fails to comply with any of the terms and conditions of any permit or attached to any easement under this Act, not being a term or condition requiring the payment of

compensation, shall be guilty of an offence and liable to a fine of one hundred penalty units.

(2) Any person who:

- (a) obstructs any other person in the due exercise of that other person's rights or licences under any permit or easement granted under this Act; or
- (b) obstructs any inspector in the due exercise of his powers under this Act,

shall be guilty of an offence and liable to a fine of one hundred penalty units or to imprisonment for three months or to both such fine and such imprisonment.

## **19 Power to make regulations**

The Minister may make regulations for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing such regulations may:

- (a) prescribe fees for the doing of anything by this Act required or authorised to be done;
- (b) provide penalties not exceeding a fine of one hundred penalty units or imprisonment for three months or both such fine and such imprisonment.

## ENDNOTES

1

### KEY

<b>amd = amended</b>	<b>Pt = Part</b>
<b>Ch = Chapter</b>	<b>rem = remainder</b>
<b>Div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>GN = Gazette Notice</b>	<b>Sch = Schedule</b>
<b>hdg = heading</b>	<b>Sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SIG = Solomon Islands Gazette</b>
<b>lt = long title</b>	<b>st = short title</b>
<b>LN = Legal Notice</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 135 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act since that date.

2

### LIST OF LEGISLATION

#### ***River Waters Act (Cap. 135)***

<i>Constituent legislation:</i>	19 of 1964 (Commenced 30 December 1964)
	6 of 1968
	LN 46A of 1978
	LN 88 of 1978

#### ***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

Assent date	29 July 2009
Gazetted	1 October 2009
Commenced	1 October 2009

3

### LIST OF AMENDMENTS

s 5	amd by Act No. 14 of 2009
s 6	amd by Act No. 14 of 2009
s 18	amd by Act No. 14 of 2009
s 19	amd by Act No. 14 of 2009