

CHAPTER 136

RIVERS AND STREAMS

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Ordinances Nos. 14 of 1880, 10 of 1925, 2 of 1945, 12 of 1962, 37 of 1966, 66 of 1968. Legal Notices Nos. 112 of 1970, 118 of 1970

AN ACT TO DEFINE THE PUBLIC RIGHTS IN THE RIVERS AND STREAMS OF FIJI

[11 March 1882]

Short title

1. This Act may be cited as the Rivers and Streams Act.

What waters shall be open to the public

2. All waters in Fiji which the natives have been accustomed to traverse in takias or canoes, whether the same be navigable for vessels built on the European model or not, and whether the tide flows and reflows in the river or at the particular part thereof navigable by takias or canoes or not, which are hereinafter styled "rivers", and also those waters which are included by the term "rivers" by the law

of England, shall, with the soil under the same, belong to the Crown and be perpetually open to the public for the enjoyment of all rights incident to rivers.

Easement on the banks of waters open to the public

3. The banks of the said rivers to the breadth of 20 feet from the ordinary water-line in the wet season and the highest spring tide shall be subject to an easement in favour of the public for all purposes necessarily incident to the free use of the rivers:

Provided that, if, in any area constituted under section 5 of the Town Planning Act as a town planning area, any land on the bank of a river which is subject to the easement created by this section be scheduled in a town planning scheme for any use other than use by the general public, or if interim development permission is granted in respect of such land for any use other than use by the general public, the easement created by this section shall thereupon cease. (Cap. 139.,

(Amended by Ordinance 12 of 1962, s. 2; Legal Notice 118 of 1970.)

Public rights of way already existing or powers of Crown not to be affected

4. The provision in section 3 shall not be construed—

- (a) as impairing the public right in any path or right of way along the said banks to a greater breadth than 20 feet where any such right existed prior to 11 March 1882 or which hereafter may be created; or
- (b) so as to limit the power of the Crown to take any greater breadth of adjacent land for the construction of public highways for land traffic under any reservations in Crown grants or by virtue of any Act, or otherwise.

What streams shall be open to the public

5. All streams, whether forming the affluents and feeders of rivers and streams or themselves flowing directly to the sea, with the bed thereof belong to the Crown, to be perpetually open to the public for all purposes for which streams may be enjoyed.

Upper courses of rivers to be deemed streams

6. The upper courses of rivers above the portions navigated or navigable by takias or canoes shall be considered as streams for the purposes of section 5.

Persons living near rivers shall have same rights as public and may be granted other rights

7. Proprietors of land or towns and villages or inhabitants adjacent to rivers or streams shall not only have the fullest enjoyment of the same as part of the public but they may also be granted by the Director of Lands and Surveyor-General* (hereinafter in this Ordinance referred to as "the Director") special rights to lead off, for purposes of irrigation, industry, agriculture or domestic use or other uses beneficial to their property, such portion of water as may be agreed on, the water remaining after the special purpose is served for which the water-right is granted being, in all cases, restored to the river, stream or water-course:

Provided that the Director shall not grant any special right for a term exceeding 25 years without the prior approval of the Minister.

(Amended by Ordinance 12 of 1962, s. 3; Legal Notice 112 of 1970.)

Where temporary water-rights may be granted

8. In seasons of drought, a temporary water-right of the nature described in section 7 may be allowed by an officer authorised in writing for this purpose by the Director to any proprietor adjacent to the river or stream, upon such terms as he may think proper, but no such temporary right shall exist for a period longer than one year, and the granting thereof shall be reported by the authorised officer without delay to the Director.

Individual rights to be subordinate to the preservation of public rights

9. In the granting of such permanent or temporary water-rights, due regard shall be paid to the wants of other proprietors and of towns, villages or residences on the banks of such river or stream lower down than the property for which the water-right is prayed for, any private right or benefit to be deemed secondary and subordinate to the public use of the river or stream.

Application to be made to the Director for authority to erect wharves, etc.

10.—(1) Where any proprietor or lessee of land adjacent to any river desires to establish a wharf, pier, landing-place or any building or erection of a permanent character, for the purposes of his property, upon the bank within the extent of the 20 feet mentioned in section 3, or wholly or partially within the waters of such river, so as to interfere with or encroach on the free public right thereto or to the easement of the banks of rivers hereinbefore provided for, an application shall be made to the Director for a licence so to do.

(2) The applicant shall advertise such application in a manner approved by the Director as being sufficient to bring the nature of the licence applied for to the notice of those members of the public concerned, in 2 consecutive issues of the Gazette and in 2 consecutive issues of a newspaper circulating in Fiji.

(3) Any person wishing to object to the grant of such licence shall, within 30 days of the date of the latest advertisement, submit the grounds of his objection to the Director.

Director may grant or refuse application

11.—(1) The Director, after hearing the applicant and any person opposing the granting of the licence applied for, and after any further or additional intimation which may seem desirable, may grant or refuse such licence as shall seem meet, with a due regard to the encouragement of private enterprise, the public necessities and convenience and the preservation of the public rights in such rivers.

(2) The decision of the Director, together with a brief summary of the reasons therefor, shall be conveyed in writing to every applicant and every objector, and every applicant and objector shall have a right of appeal to the Minister against such decision. (*Inserted by Ordinance 12 of 1962, s. 6; amended by Legal Notice 112 of 1970.*)

(3) Every appeal shall be submitted to the Director for onward transmission to the Minister within 30 days of the receipt of the notification of the Director's decision. (*Inserted by Ordinance 12 of 1962, s. 6; amended by Legal Notice 112 of 1970.*)

(4) The decision of the Minister shall be final. (*Inserted by Ordinance 12 of 1962, s. 6; amended by Legal Notice 112 of 1970.*)

(5) If an appeal is lodged, no licence shall be issued by the Director until the Minister has given his decision. (*Inserted by Ordinance 12 of 1962, s. 6; amended by Legal Notice 112 of 1970.*)

Application, if granted, to be forwarded to Registrar of Titles for registration

12.—(1) As soon as any water-right or licence has been granted under the provisions of section 7, it shall be the duty of the Director to transmit a copy thereof, together with plans or diagrams relating thereto, to the Registrar of Titles, who shall enter a record thereof in a register to be styled the "Register of River Rights".

(2) When such water-right or licence has been granted, it shall be conclusive in all questions which may thereafter be raised in any court of law as to the right of the person to whom authority has been so granted as between himself and other riparian proprietors or other proprietors or members of the public whomsoever. (*Section amended by Ordinance 12 of 1962, s. 7; subsection (1) amended by Ordinance 66 of 1968, s. 2.*)

Provisions of this Act not to extend to rivers and streams in certain cases

13. The provisions of this Act shall not apply to any river or stream which rises, flows and falls into any other river or stream or into the sea wholly within the island or property belonging to a single proprietor which, unless the same be navigable in the meaning of the law of England, shall not be subject to the public rights and uses by this Act recognized and defined, but, if—

(a) the said island or property shall, at any time hereafter, be divided among more proprietors than one so that the river or stream shall cease to flow wholly through the property of the one proprietor; or

(b) towns, villages or residences be established on the banks of any such river or stream,

then the same shall cease to be excepted from the provisions of this Act and the law applicable to other rivers and streams of Fiji shall be applicable thereto.

Water-rights and licences not to be of nature of personalty

14. Water-rights granted under the provisions of section 7 and licences granted under the provisions of section 11, when granted in connection with any specified property or residence, shall not be of the nature of personalty but shall be real rights attached for the time they are granted to the property or residence in respect of which they are given and, in all transfers, transmissions and certificates of title of the lands, they may be referred to after the description of the lands and by reference to the entry made thereof in the Register of River Rights as transferred or transmitted with the lands themselves, and all transfers and transmissions of river rights shall be duly recorded in such register.

(*Amended by Ordinance 12 of 1962, s. 8.*)

Fees

15. The Registrar of Titles, with the approval of the Ministers shall prescribe the fees to be charged by him or by the Director under the provisions of this Act. (*Substituted by Ordinance 37 of 1966, s. 47; amended by Ordinance 66 of 1968, s. 2; Legal Notice 112 of 1970.*)

Grantee of water-right to have right of easement on adjoining lands where necessary

16.—(1) When a right to water has been granted which cannot be conveniently enjoyed by the grantee, unless he have power to take the quantity of water granted at a point higher up the river than the property or residence in respect of which the grant is made, the grantee shall have the right to the easement of taking the water in pipes or otherwise under or above the surface, as may be arranged with the proprietors of the lands above, through the properties of such proprietors as may lie between the property or residence in respect of which the water has been granted and the point at which the water may be most beneficially taken from the river for the purpose for which it is granted.

(2) Any dispute or difference in relation to the mode of taking the water or the point from which it may most beneficially be taken shall be determined by the Director.

(Amended by Ordinance 12 of 1962, s. 10.)

Water-rights to be described and defined

17. The Director, in granting a water-right, shall describe and define it either by the size of the pipe through which the water is to be carried or the number of cubic inches of water per hour which is granted or by any other more improved method which may be in use for the time being for defining such right, and the dams, works, apertures or pipes necessary for the carrying off of the definite quantity granted shall be executed under the direction of the Director or his authorised agent.

River boards

18.—(1) The Commissioner of each Division may appoint river boards within such Division, to consist of 3 persons, who shall have power to make regulations, subject to the approval of the Governor in Council and not inconsistent with this Act or any regulations made under the Marine Board Act or the Harbour Act, generally for the maintenance of facilities for traffic and the safety of traffic upon rivers and streams and may prescribe penalties for the breach thereof. *(Inserted by Ordinance 10 of 1925, s. 2; amended by Ordinance 2 of 1945, s. 12.)*

(Cap. 183.) (Cap. 184.)

(2) Every such river board shall, in the month of January in each year, render to the Commissioner a brief annual report, together with the accounts of the board for the preceding year.

(Inserted by Ordinance 2 of 1945, s. 12.)

Controlled by Ministry of Lands, Energy and Mineral Resources