

**SOIL CONSERVATION (FURTHER AMENDMENT) ACT
1986 No. 142**

NEW SOUTH WALES



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**SOIL CONSERVATION (FURTHER AMENDMENT) ACT
1986 No. 142**

NEW SOUTH WALES



Act No. 142, 1986

An Act to amend the Soil Conservation Act 1938 so as to provide for the protection of trees on additional land, to increase certain penalties, to simplify appeal procedures, and for other purposes. [Assented to, 17 December 1986]

See also Water (Soil Conservation) Amendment Act 1986: Hunter Valley Flood Mitigation (Soil Conservation) Amendment Act 1986.

Soil Conservation (Further Amendment) 1986

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:

Short title

1. This Act may be cited as the "Soil Conservation (Further Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 10, 1938

3. The Soil Conservation Act 1938 is amended in the manner set forth in Schedule 1.

Previous objections not affected

4. If an objection has been lodged under section 21CA of the Soil Conservation Act 1938 and has not been disposed of before the commencement of this Act, that section applies to and in respect of the objection as if this Act had not been enacted.

Soil Conservation (Further Amendment) 1986

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE SOIL CONSERVATION ACT 1938

(1) Section 3 (Definitions)—

(a) Definition of “Bed”—

After the definition of “Bank”, insert:

“Bed”, in relation to a river or lake, means the whole of—

(a) the soil or other matter forming the channel in which the river flows; or

(b) the soil or other matter forming the bottom of the lake,

and includes so much of the sides and bottom of the channel or of the shores and bottom of the lake as contain the river or lake at its mean level (whether or not the river or lake is for the time being at its mean level), but does not include any part of the sides or bottom of the channel or of the shores or bottom of the lake covered by water in times of flooding only.

(b) Definition of “Lake”—

Before the definition of “Local land board”, insert:

“Lake” includes a lagoon, swamp or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.

(c) Definition of “River”—

After the definition of “Regulations”, insert:

“River” includes—

(a) a stream of water (whether or not consisting of or including saline water), whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel which has changed the course of the stream; and

(b) an affluent, confluent, branch or other stream of water (whether or not consisting of or including saline water) into or from which a stream referred to in paragraph (a) flows.

Soil Conservation (Further Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(d) Definition of “Tree”—

Omit the definition, insert instead:

“Tree” includes sapling, shrub and scrub.

(2) Section 15 (**Power of entry**)—

(a) Section 15 (1)—

Omit the subsection, insert instead:

(1) The Commissioner, any member of the Board or any officer or employee of the Service may, in the exercise of any power, authority, duty or function conferred or imposed on the Commissioner, the Board or the officer or employee by or under this Act, enter any land, and make such surveys, place such marks and carry out such investigations (including the taking of specimens of soil) as the Commissioner, the member or the officer or employee may deem necessary.

(b) Section 15 (2)—

After “Commissioner” where firstly occurring, insert “, the Board”.

(c) Section 15 (2)—

After “Commissioner” where secondly occurring, insert “, by a member of the Board, by an officer or employee of the Service on behalf of the Board”.

(d) Section 15 (3)—

After “Commissioner”, insert “, any member of the Board”.

Soil Conservation (Further Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(3) Sections 21A, 21AB, 21B—

Omit sections 21A and 21B, insert instead:

Prohibition in Division to prevail

21A. If a person is prohibited from doing anything by or under any provision of this Division, or an authority issued under this Division, nothing in any other Act shall operate to permit the doing of that thing.

Interpretation

21AB. (1) In this Division—

“bank” means the limit of the bed of any river or lake;

“protected land” means—

- (a) land identified on a map a copy of which has been deposited in the office of a District Soil Conservationist in accordance with section 21B; or
- (b) any land (not being land referred to in paragraph (a)) that is situated within, or within 20 metres of, the bed or bank of any prescribed river or lake,

but does not include—

- (c) any State forest, national forest, timber reserve or flora reserve, within the meaning of the Forestry Act 1916;
or
- (d) any national park, historic site, nature reserve or state game reserve, within the meaning of the National Parks and Wildlife Act 1974.

(2) A river or lake may be prescribed, for the purposes of paragraph (b) of the definition of “protected land” in subsection (1), by referring to lists of rivers or lakes published in the Gazette before or after the commencement of this section.

SCHEDULE 1—*continued*AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
*continued***Protected land**

21B. (1) The Board may, from time to time, cause to be prepared maps identifying, as protected land—

- (a) land within a catchment area, being land of which the surface generally has, in the opinion of the Board, a slope greater than 18 degrees from the horizontal;
- (b) land (whether or not within a catchment area), being land that is situated within, or within 20 metres of, the bed or bank of any part of a river or lake shown on any such map in some distinctive manner; or
- (c) land (whether or not within a catchment area), being land that is, in the opinion of the Board, environmentally sensitive or affected or liable to be affected by soil erosion, siltation or land degradation.

(2) When a map has been prepared under this section and certified by an officer to be a map identifying protected land, a copy of the map shall be deposited in the office of the District Soil Conservationist nearest to the land to which the map relates and may be deposited in such other Government offices as the Board thinks fit.

(3) A copy of a map deposited under this section may be inspected, without any fee being payable, during ordinary office hours.

(4) If a copy of a map is deposited in the office of a District Soil Conservationist under this section for the purpose of identifying land as protected land, any copy of a map previously deposited under this section shall have no effect to the extent to which it relates to the same land.

(5) A copy of a map deposited under this section before the commencement of the Soil Conservation (Further Amendment) Act 1986 shall be deemed to have been deposited under this section, as in force after that commencement.

Soil Conservation (Further Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(6) Without limiting the generality of subsection (1) (c), land that is environmentally sensitive may consist of or include—

- (a) land in arid, semi-arid, landslip or saline areas;
- (b) land containing rare or endangered fauna or flora;
- (c) land containing sites of archaeological or historical interest;
- (d) land containing bird breeding grounds;
- (e) wetlands; and
- (f) areas of scenic beauty.

(4) Section 21C (**Destruction of trees on protected land prohibited except under authority**)—

(a) Section 21C (2)—

After “that subsection”, insert “on land referred to in section 21B (1) (a) or on any other protected land prescribed for the purposes of this subsection”.

(b) Section 21C (3)—

Omit “protected land” where firstly occurring, insert instead “land referred to in section 21B (1) (a) or of any other protected land prescribed for the purposes of this subsection”.

(c) Section 21C (4)—

Omit “\$2,000”, insert instead “\$10,000”.

(5) Section 21CA (**Prevention of soil erosion and repair of damage**)—

(a) Section 21CA (1)—

Omit “soil erosion on the protected land or any adjacent land”, insert instead “, on or in the vicinity of the protected land or any adjacent land, soil erosion, degradation of the land or siltation of, or obstruction to, the flow of any river or lake or any adverse effect on the environment”.

*Soil Conservation (Further Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(b) Section 21CA (1)—

After “the erosion”, insert “, degradation, siltation or obstruction”.

(c) Section 21CA (2)—

Omit the subsection.

(d) Section 21CA (3)—

Omit “, occupier or mortgagee” wherever occurring, insert instead “or occupier”.

(e) Section 21CA (5)–(11)—

Omit the subsections, insert instead:

(5) A person on whom a notice or a copy of a notice is served may, within 30 days after being served with the notice or copy, appeal to the Land and Environment Court against any requirement of the notice and, except as provided by subsection (6), when an appeal has been made, the time specified in the notice for complying with the requirements of the notice shall commence—

(a) except as provided by paragraph (b), on the determination or earlier withdrawal of the appeal; or

(b) where the Court gives a direction under subsection (8) (c), on the altered requirements of the notice being notified as specified by the Court.

(6) If a notice requires a person to abstain from doing anything, the person shall comply with the requirement even though an appeal has been made unless that requirement is dispensed with by the Court.

(7) The Court shall have jurisdiction to hear and determine an appeal.

(8) The Court may determine an appeal—

(a) by dismissing the appeal;

Soil Conservation (Further Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(b) by revoking the notice which is the subject of the appeal;
or

(c) by directing that the requirements of the notice be altered
by the Board, by a notification served in a specified
manner, to requirements specified by the Court.

(9) The Court shall not make an order against the appellant in
respect of costs unless the Court decides that the appeal is
frivolous or vexatious.

(f) Section 21CA (12)—

Omit “subsection (2)”, insert instead “subsection (5)”.

(g) Section 21CA (12) (a)—

Omit “wilfully”.

(h) Section 21CA (12) (a)—

Omit “\$2,000”, insert instead “\$10,000”.

(6) Section 21D (**Authority to destroy timber on protected land**)—

(a) Section 21D (3)—

Omit “conditions—”, insert instead “conditions:”.

(b) Section 21D (3) (g)–(i)—

Omit section 21D (3) (g), insert instead:

(g) requiring an act or thing to be done or not to be done to
eliminate or mitigate any soil erosion, degradation of the
land or siltation of, or obstruction to, the flow of any river
or lake;

(h) requiring an act or thing to be done or not to be done to
eliminate or mitigate any adverse effects of the authorised
action on the environment;

(i) such other conditions as to the Board seem proper.

*Soil Conservation (Further Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(c) Section 21D (3A)—

After section 21D (3), insert:

(3A) Without limiting the generality of subsection (3) (h), the Board may impose a condition under that paragraph if it is of the opinion that the authorised action is likely to have—

- (a) an adverse effect on the aesthetic, recreational, scientific or other environmental quality or value of the land concerned or its locality;
- (b) an adverse effect on a locality, place or building which has, in the opinion of the Board, aesthetic, anthropological, architectural, cultural, historical, scientific or social significance or other special value;
- (c) an adverse effect on rare or endangered species of fauna or flora;
- (d) the effect of curtailing beneficial uses of the environment;
- (e) the effect of increasing demands, as a result of the action, on resources (other than the trees the subject of the action) which are, or are likely to become, in short supply; or
- (f) a cumulative adverse effect on the environment when considered with existing or likely future activities on or in relation to the land.

(7) Section 29 (**Penalties**)—

Section 29 (2) and (3)—

Omit section 29 (2), insert instead:

(2) Proceedings for an offence against this Act shall be dealt with in a summary manner before—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) in the case of an offence under section 21C (4) or 21CA (12) (a)—the Land and Environment Court or a Magistrate.

Soil Conservation (Further Amendment) 1986

SCHEDULE 1—*continued*AMENDMENTS TO THE SOIL CONSERVATION ACT 1938—
continued

(3) If proceedings for an offence against this Act are brought in a Local Court, the maximum penalty that the Court may impose in respect of the offence is \$2,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(8) Section 32 (**Catchment Areas Protection Board**)—

Section 32 (1) (h1), (h2)—

After section 32 (1) (h), insert:

- (h1) the person for the time being holding the office of Director of Environment and Planning, Department of Environment and Planning, or an officer of that department nominated by that Director;
 - (h2) the person for the time being holding the office of Director of the State Pollution Control Commission, or an officer of that Commission nominated by that Director;
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