

SOIL CONSERVATION (AMENDMENT) ACT 1985 No. 201

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 201, 1985

An Act to amend the Soil Conservation Act 1938 to make further provision in relation to the prevention of soil erosion, to remove the requirement for the constitution of Assessment Boards, to extend the provisions for the notification of catchment areas, to replace advisory committees with a Soil Conservation Advisory Council, to increase penalties, and for certain other purposes. [Assented to, 10th December, 1985.]

Soil Conservation (Amendment) 1985

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 (Amendment) Act 1985".

Principal Act

2. The Soil Conservation Act 1938 is referred to in this Act as the Principal Act.

Schedules

3. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENT TO THE PRINCIPAL ACT
RELATING TO PREVENTION OF SOIL EROSION

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO AREAS OF EROSION HAZARD

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO CATCHMENT AREAS

SCHEDULE 4—AMENDMENT TO THE PRINCIPAL ACT TO
REPLACE ADVISORY COMMITTEES WITH AN ADVISORY
COUNCIL

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO PENALTIES

SCHEDULE 6—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

Amendment of Act No. 10, 1938

4. The Principal Act is amended in the manner set forth in Schedules 1-6.
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SCHEDULE 1

(Sec. 4)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PREVENTION OF SOIL EROSION

Part IIA—

After Part II, insert:

PART IIA
SOIL CONSERVATION NOTICES

Issue of notices

15A. (1) If the Commissioner is of the opinion that—

- (a) any act or thing done or proposed to be done on or in relation to any land; or
- (b) the failure to do any act or thing on or in relation to any land,

has caused or is likely to cause soil erosion or land degradation on that land or on other land and that the erosion or degradation or its effects can be mitigated or avoided, the Commissioner may by notice served personally or by post on the owner or occupier of, or on the holder or grantee of any timber rights over, the firstmentioned land require that owner, occupier, holder or grantee, within the time specified in the notice, to—

- (c) abstain from doing; or
- (d) do or permit to be done,

Soil Conservation (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PREVENTION OF SOIL EROSION—*continued*

such acts and things as may be specified in the notice.

(2) A notice under this section does not have any effect in respect of land while a notice under section 18 or 22 is in force in respect of that land.

(3) Notices may, in relation to the same area of land, be served on one or more of the persons referred to in subsection (1).

(4) A notice may be revoked, varied or amended by a like notice.

Objections

15B. (1) A person on whom a notice under section 15A has been served may, within 30 days after service of the notice, lodge with the Minister an objection in writing to the requirements of the notice.

(2) An objector shall specify the grounds of objection.

(3) The Minister shall, within 30 days of the receipt of an objection, determine the objection and may direct that—

(a) the notice be complied with;

(b) the notice be revoked; or

(c) the notice as varied or amended by the Minister be complied with.

Soil Conservation (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PREVENTION OF SOIL EROSION—*continued*

(4) Notice of the determination shall be served on the objector personally or by post.

Appeals

15C. (1) An objector may within 30 days of the service of the notice of a determination of the Minister under section 15B appeal against the determination to the Land and Environment Court.

(2) The Court shall have jurisdiction to hear and determine the appeal, the determination shall be final and the Minister shall give effect to the determination.

Compliance with notices

15D. (1) If a notice under section 15A requires a person to abstain from doing any act or thing, the person shall comply with that notice notwithstanding that an objection or appeal is lodged unless that requirement is dispensed with by the Minister or the Land and Environment Court.

(2) If an objection or appeal is lodged in respect of a notice requiring a person to do or permit to be done any act or thing, the requirement is suspended until the objection or appeal is determined.

Prosecution

15E. (1) A person who fails to comply with the requirements of a notice under section 15A within the time specified in the notice is guilty of an offence against this Act and liable to a penalty not exceeding \$2,000.

(2) It is a defence to a prosecution of a person if the court is satisfied that the person had no legal right to enter the land in respect of which the notice was given and comply with the requirements of the notice.

Soil Conservation (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PREVENTION OF SOIL EROSION—*continued***Commissioner may carry out work**

15F. (1) If a person does not comply with the requirements of a notice under section 15A within the time specified in the notice (whether that person has been convicted of an offence in respect of the notice or not), the Commissioner or an officer or employee of the Service authorised by the Commissioner may, where the notice required the doing of any act or thing on any land, enter upon the land and do the act or thing.

(2) Any costs incurred by the Commissioner under subsection (1) may be recovered in a court of competent jurisdiction from the person served with the notice as a debt due to the Crown.

(3) If the person is the owner of the land on which the act or thing is done, the costs incurred shall, until paid, be a charge on the land.

(4) A person who obstructs or hinders the Commissioner or an officer or employee of the Service in the exercise of powers under subsection (1) shall be liable to a penalty not exceeding \$500.

Civil actions

15G. (1) If a person fails to comply with a requirement of a notice under section 15A and damage is caused to the land of any other person, being damage which would not have been caused if the requirement had been complied with, the owner or occupier of the land damaged has a right of action against the person for the damage.

(2) Subsection (1) does not apply and shall be deemed never to have applied in respect of a requirement which, as a result of an objection or appeal, is not required to be complied with.

(3) No person shall be entitled to claim from or be paid by the Minister, the Commissioner or any officer or employee of the Service any compensation by reason of or arising out of the service of a notice under section 15A.

Soil Conservation (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
PREVENTION OF SOIL EROSION—*continued*

Leases under the Western Lands Act

15H. (1) Nothing in this Part authorises the service of a notice on the lessee or occupier of, or the holder or grantee of any timber rights over, a lease under the Western Lands Act 1901.

(2) Where the Commissioner is of the opinion that a notice under section 15A would have been served in respect of an area of land leased under the Western Lands Act 1901 if the land were not so leased, the Commissioner may notify the Western Lands Commissioner of the requirements that would have been included in such a notice.

(3) The Western Lands Commissioner may, under the authority of the Western Lands Act 1901, attach conditions to, or give directions under a condition attaching to, a lease under that Act for the purpose of achieving compliance with such of the requirements notified to the Western Lands Commissioner in respect of the land leased as have been agreed to by the Western Lands Commissioner.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AREAS
OF EROSION HAZARD

- (1) Section 3, definition of "Assessment Board"—
Omit the definition.
- (2) (a) Section 18(3)—
Omit the subsection.
- (b) Section 18 (7)—
Omit "Commissioner", insert instead "Minister".

Soil Conservation (Amendment) 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AREAS
OF EROSION HAZARD—*continued*

(c) Section 18 (8), (9)—

Omit the subsections, insert instead:

(8) Upon receipt of an objection, the Minister—

(a) shall consider the objection;

(b) may decide the objection by dismissing it or by varying or revoking the notice; and

(c) shall advise the objector personally or by post of the decision.

(9) The objector may within 21 days of the decision of the Minister appeal against the decision to the Land and Environment Court (which shall have jurisdiction to hear and determine the appeal) and the decision of the Court on the appeal shall be final.

(d) Section 18 (10)—

Omit “local land board or the Minister”, insert instead “Minister or the Court”.

(3) Section 18A—

Omit the section.

(4) (a) Section 18B (1)—

Omit the subsection.

Soil Conservation (Amendment) 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AREAS
OF EROSION HAZARD—*continued*

(b) Section 18B (2)—

Omit “For the purpose of the exercise and discharge of its powers, authorities, duties and functions such Assessment Board may”, insert instead “Without affecting the generality of section 15 (1), the Commissioner or any officer or employee of the Service may for the purpose of the Commissioner’s determining whether a direction referred to in section 18 (2) (c) should be given as to the total number of livestock or the numbers of livestock of specified classes which may be carried on any land or a specified part thereof within an area of erosion hazard and determining the contents of any such direction”.

(c) Section 18B (2) (a), (b)—

Omit “any lands in respect of which it is constituted” wherever occurring, insert instead “the land”.

(d) Section 18B (2) (b)—

Omit “the lands”, insert instead “the land”.

(e) Section 18B (2) (b)—

Omit “such Assessment Board” wherever occurring, insert instead “the Commissioner, officer or employee”.

(f) Section 18B (2) (c)—

Omit “are situated any lands in respect of which such Assessment Board is constituted,”, insert instead “is situated the land”.

(g) Section 18B (2) (c)—

Omit “of such Assessment Board”, insert instead “of the Commissioner, officer or employee”.

(h) Section 18B (2) (c)—

Omit “the lands”, insert instead “the land”.

(i) Section 18B (2) (c)—

Omit “any such lands”, insert instead “the land”.

Soil Conservation (Amendment) 1985

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AREAS
OF EROSION HAZARD—*continued*

(j) Section 18B (3)—

Omit “any determination referred to in subsection (1) such Assessment Board”, insert instead “a determination the Commissioner”.

(k) Section 18B (3)—

Omit “lands” wherever occurring, insert instead “land”.

(l) Section 18B (3) (b)—

Omit “surfaces”, insert instead “surface”.

(m) Section 18B (3) (i)—

Omit “Assessment Board”, insert instead “Commissioner”.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CATCHMENT AREAS

(1) Section 3, definition of “Catchment area”—

After the definition of “Board”, insert:

“Catchment area” means an area in respect of which a notification under section 20 is, or is deemed to be, in force.

(2) (a) Section 10 (1) (a)—

Omit the paragraph.

(b) Section 10 (6)—

After section 10 (5), insert:

Soil Conservation (Amendment) 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CATCHMENT AREAS—*continued*

(6) Unless the Minister otherwise directs, subsection (1) (b) need not be complied with in respect of the notification of a catchment area which substantially replaces an existing catchment area.

(3) (a) Section 20 (1)—

Omit section 20 (1) and (1A), insert instead:

(1) Where the Minister is of the opinion that the stability of—

(a) a river, lake, dam, port, harbour, bay, lagoon, creek, swamp or marsh, or catchment thereof; or

(b) a number of those watercourses, bodies of water or catchments,

is adversely affected or liable to be adversely affected by soil erosion, siltation or land degradation, the Minister may notify in the Gazette an area of land as the catchment area of the watercourse or body of water, or of the watercourses or bodies of water, as the case may require.

(b) Section 20 (3)–(6)—

After section 20 (2), insert:

(3) For the purposes of subsections (1) and (2), an area of land may be described by reference to a map or maps kept by the Service.

(4) An area of land—

(a) notified as a catchment area under subsection (1) or (1A) of this section; or

(b) constituted as a catchment area under section 21,

Soil Conservation (Amendment) 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CATCHMENT AREAS—*continued*

as in force before the commencement of the Soil Conservation (Amendment) Act 1985, shall, as from that commencement, be deemed to be an area of land notified as a catchment area under subsection (1).

(5) The amendment, by the Soil Conservation (Amendment) Act 1985, of the provisions of this Act relating to the constitution or notification of catchment areas does not affect any scheme of operations or project in existence under section 10 or any protected land defined under Division 2 before the commencement of that Act.

(6) If, on the revocation or modification of a notification of a catchment area, an area of land within that catchment area becomes part of another catchment area or remains part of the catchment area as modified—

- (a) any scheme of operations or project in existence under section 10; and
- (b) any protected land defined under Division 2,

in respect of the area of land immediately before the revocation or modification shall (unless the Minister otherwise orders in the notification of the revocation or modification) be deemed to remain in existence or remain defined, as the case may be, in respect of that area of land as if the notification of the catchment area had not been revoked or modified.

(4) Section 21—

Omit the section, insert instead:

Certain proclaimed works

21. A reference in any provision (other than section 19) of this Part to a “proclaimed work” includes a reference to the Burrinjuck Dam, the Hume Reservoir and the Wyangala Dam.

Soil Conservation (Amendment) 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CATCHMENT AREAS—*continued*

(5) Section 21c (3) (b)—

After “protected land” where lastly occurring, insert “and the ringbarking, cutting down, felling, poisoning or otherwise destroying or topping, lopping or removing is for a purpose other than the development of the land for a banana plantation, horticulture or the growing of crops”.

(6) Part IV, Division 3, heading—

Omit “*Preservation of Proclaimed Works and Catchment Areas*”, insert instead “*Protection of Catchment Areas and Proclaimed Works*”.

(7) (a) Section 22 (1) (a), (b)—

Omit the paragraphs, insert instead:

(a) that any act or thing done or proposed to be done—

(i) on or in relation to any land has caused or is likely to cause damage to or has interfered or is likely to interfere with the utility of any proclaimed work;
or

(ii) on or in relation to any land within a catchment area has caused or is likely to cause soil erosion, siltation or land degradation; and

(b) that that damage, interference, soil erosion, siltation or land degradation can be mitigated or avoided,

(b) Section 22 (1)—

After “the proclaimed work”, insert “or to mitigate or avoid soil erosion, siltation or land degradation”.

Soil Conservation (Amendment) 1985

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
CATCHMENT AREAS—*continued*

(c) Section 22 (2)–(2C)—

Omit section 22 (2), insert instead:

(2) A person upon whom a notice or a copy of a notice is served may appeal to the Land and Environment Court against the requirements of the notice.

(2A) The Court shall have jurisdiction to hear and determine an appeal.

(2B) 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.

(2C) If the Court so determines, the Minister shall amend the requirements of the notice or revoke the notice.

(d) Section 22 (6)—

Omit “owner”, insert instead “person”.

(8) Section 34 (2) (a)—

Omit “or constituted”.

(9) First, Second and Third Schedules—

Omit the Schedules.

SCHEDULE 4

(Sec. 4)

AMENDMENT TO THE PRINCIPAL ACT TO REPLACE ADVISORY
COMMITTEES WITH AN ADVISORY COUNCIL

Section 23—

Omit the section, insert instead:

Soil Conservation (Amendment) 1985

SCHEDULE 4—*continued*AMENDMENT TO THE PRINCIPAL ACT TO REPLACE ADVISORY COMMITTEES WITH AN ADVISORY COUNCIL—*continued***Soil Conservation Advisory Council**

23. (1) There is constituted by this Act a Soil Conservation Advisory Council.

(2) The Council—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act; and
- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

(3) The Council shall consist of—

- (a) the Commissioner, who shall be chairperson of the Council; and
- (b) 7 other members who shall be appointed by the Minister.

(4) The appointed members shall be persons selected by the Minister from the following classes of persons, one person being selected from each class:

- (a) persons engaged in agricultural pursuits;
- (b) persons engaged in pastoral activities;
- (c) persons with experience in urban land use planning and development;
- (d) representatives of educational interests (other than those referred to in paragraph (e));
- (e) representatives of tertiary educational interests, or of scientific institutions, which have an interest in soil conservation;
- (f) persons experienced in land resource conservation;
- (g) the community at large.

Soil Conservation (Amendment) 1985

SCHEDULE 4—*continued*AMENDMENT TO THE PRINCIPAL ACT TO REPLACE ADVISORY
COMMITTEES WITH AN ADVISORY COUNCIL—*continued*

(5) An appointed member shall hold office for such period not exceeding 3 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(6) In the event of the office of a member becoming vacant a person may, subject to this Act, be appointed to fill the vacancy.

(7) The chairperson shall call the meetings of the Council, preside at those meetings and determine the procedure for the conduct of business.

(8) The quorum for a meeting of the Council shall be 5 members (including the chairperson).

(9) The chairperson shall have a deliberative vote and, in the case of an equality of votes, shall have a second or casting vote.

(10) The chairperson may be referred to as the chairman or chairwoman, as the case requires.

(11) The Council shall advise the Minister on such matters relating to soil conservation, soil erosion and land degradation as are referred to the Council by the Minister or the Commissioner.

(12) An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(13) In this section—

- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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Soil Conservation (Amendment) 1985

SCHEDULE 5

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO PENALTIES

(1) Section 15 (3)—

Omit "\$200", insert instead "\$500".

(2) Section 18 (12)—

Omit "\$1,000", insert instead "\$2,000".

(3) Section 21C (4)—

Omit "\$500", insert instead "\$2,000".

(4) Section 21CA (12) (a)—

Omit "\$1,000", insert instead "\$2,000".

(5) Section 22 (6)—

Omit "\$400", insert instead "\$2,000".

(6) Section 22O—

Omit "\$500", insert instead "\$800".

(7) Section 27—

Omit "\$400", insert instead "\$2,000".

(8) (a) Section 29 (1)—

Omit "\$200", insert instead "\$500".

(b) Section 29 (2)—

Omit the subsection, insert instead:

Soil Conservation (Amendment) 1985

SCHEDULE 5—*continued*
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PENALTIES—*continued*

(2) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or 2 or more justices of the peace.

(9) Section 35—

Omit "\$200", insert instead "\$500".

SCHEDULE 6

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Part II, heading—

Omit "SOIL CONSERVATION SERVICE", insert instead "APPOINTMENT AND FUNCTIONS OF COMMISSIONER".

(2) Section 4C—

After section 4B, insert:

Powers, authorities, duties and functions of Commissioner

4c. With the aim of ensuring the conservation of the soil resources of the State, and the mitigation of soil erosion and land degradation, the Commissioner shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the Commissioner by or under this or any other Act and, in particular, the Commissioner shall have and may exercise and perform the following powers, authorities, duties and functions:

Soil Conservation (Amendment) 1985

SCHEDULE 6—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (a) the encouragement and guidance of experimental and research work for or in connection with any purpose contemplated by this Act, the publication of the results of experimental and research work and the establishment of research centres;
- (b) the collection, collation, interpretation, publication and promulgation of data concerning the physical capability of lands;
- (c) the evaluation of the present condition of the State's soil resources, and the future requirements for the mitigation of soil erosion and land degradation;
- (d) the maintenance of a repository of relevant data on soils and on methods of protecting soils;
- (e) the carrying out of surveys and investigations;
- (f) the mapping of catchment areas, protected lands and areas of erosion hazard;
- (g) the protection of any proclaimed works, notified catchment areas, rivers, lakes, dams, ports, harbours, bays, lagoons, creeks, swamps and marshes from the effects of soil erosion, land degradation, siltation and sedimentation;
- (h) the administration of areas of erosion hazard;
- (i) the preparation of schemes of operations;
- (j) the carrying into effect and administration of projects;
- (k) the preparation of designs for any works proposed to be carried out on any lands;
- (l) the stimulation of interest in soil conservation, land management and improved land use practices;
- (m) the initiation, arrangement and conduct of field days and demonstrations;
- (n) the formulation, co-ordination and implementation of plans for the assessment, conservation, protection and utilisation of the State's soil resources;

*Soil Conservation (Amendment) 1985*SCHEDULE 6—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (o) the provision of advice and assistance to persons whose lands have been or are liable to be affected by soil erosion or land degradation;
- (p) the instruction and supervision of landholders, contractors and constructing authorities in matters pertaining to soil conservation and reclamation;
- (q) the training and education of persons engaged in soil conservation;
- (r) having regard to the objects of this Act, the co-ordination, in relation to soil conservation and the mitigation of soil erosion and land degradation, of the policies and activities of government departments, statutory authorities, local authorities and other public bodies;
- (s) the management, by arrangement with the Water Resources Commission or any other water supply authority, of acquired foreshore land within the catchment of any dam for public water supply under the control of the Commission or the other authority; and
- (t) the making of inquiries and recommendations in respect of matters referred to the Commissioner by the Minister.

(3) Section 5 (4), (5)—

After section 5 (3), insert:

(4) The Commissioner may employ, and shall be deemed always to have had power to employ, such casual and general employees as the Commissioner considers necessary for the purposes of this Act.

(5) The Public Service Act 1979 does not apply, and shall be deemed never to have applied, to or in respect of the employment of casual and general employees by the Commissioner and a person is not, as such a casual or general employee, subject to that Act.

Soil Conservation (Amendment) 1985

SCHEDULE 6—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Section 6 (2)—

Omit the subsection.

(5) Section 9—

Omit the section.

(6) Section 11 (4)—

After section 11 (3), insert:

(4) An agreement under this section, whether entered into before or after the commencement of the Soil Conservation (Amendment) Act 1985, may be terminated by the Minister at any time by the serving of a notice of termination of the agreement personally or by post on the other party or parties to the agreement.

(7) Section 22P—

After section 22O, insert:

Obligations of lessees

22P. The following provisions apply to an owner or occupier of land to whom an advance is made:

- (a) the owner or occupier shall not let the land unless the owner or occupier has provided to the proposed lessee a copy of the conditions to which the advance is subject;

Soil Conservation (Amendment) 1985

SCHEDULE 6—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) the owner or occupier shall include in any lease of the land a condition to the effect that the lessee shall comply with such of the conditions referred to in paragraph (a) as require the carrying out of works on the land and the maintenance of those works.
-