

# Soil Conservation Act 1938 No 10

[1938-10]



New South Wales

## Status Information

### Currency of version

Historical version for 6 July 2009 to 5 January 2012 (accessed 18 July 2024 at 3:46)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 16 November 2011

# Soil Conservation Act 1938 No 10



New South Wales

## Contents

<b>Long title</b> .....	6
<b>Part 1 Preliminary</b> .....	6
1 Name of Act and commencement .....	6
2 (Repealed) .....	6
3 Definitions .....	6
<b>Part 2 Appointment and functions of Commissioner</b> .....	8
4 Commissioner of Soil Conservation Service .....	8
4A Deputy Commissioners .....	9
4B Commissioner to be corporation sole for certain purposes .....	10
4C Powers, authorities, duties and functions of Commissioner .....	10
5 Officers and employees .....	12
6 Experimental and research work .....	12
7 Power of Minister to direct special investigations .....	12
8 Power of Minister to direct or authorise the making of surveys etc .....	13
9 (Repealed) .....	13
10 Projects .....	13
11 Agreements relative to projects .....	14
12 Advances and payments .....	14
13 Carrying out of works by Government departments and statutory bodies .....	15
14 Carrying out of works by Minister or Commissioner .....	15
14A Minister may let machinery etc .....	16
15 Power of entry .....	16

<b>Part 2A Soil conservation notices</b> .....	17
15A Issue of notices .....	17
15B Objections .....	17
15C Appeals .....	18
15D Compliance with notices .....	18
15E Prosecution.....	18
15F Commissioner may carry out work .....	18
15G Civil actions.....	19
15H Leases under the Western Lands Act .....	19
<b>Part 3 Areas of erosion hazard</b> .....	19
16 Snowy River catchment to be an area of erosion hazard .....	19
17 Areas of erosion hazard .....	19
18 Direction to carry out works or measures.....	21
18A (Repealed).....	23
18B Powers of Commissioner etc .....	23
<b>Part 4 Proclaimed works and catchment areas</b> .....	24
<b>Division 1 Declaration of proclaimed works and constitution of catchment areas</b> .....	24
19 Proclaimed works .....	24
20 Catchment area.....	24
21 Certain proclaimed works.....	25
<b>Division 2 (Repealed)</b> .....	26
<b>Division 3 Protection of catchment areas and proclaimed works</b> .....	26
22 Preservation of proclaimed works.....	26
<b>Part 4A Advances for works of soil conservation, erosion mitigation and farm water supply and conservation</b> .....	29
22A Definition.....	29
22B Application for an advance.....	29

22C Minister may grant or refuse application.....	29
22D Authority to make advances .....	30
22E Conditions precedent to advances .....	30
22F Provision of money to meet costs and expenses .....	30
22G Payment of advances .....	30
22H Minister may carry out work where advance is made .....	31
22HA Determination of amount of advance .....	31
22I Advances when machinery let etc .....	31
22J Joint works .....	31
22K Repayment of advance secured by deed of charge.....	32
22L Minister may carry out work where advance is not made.....	33
22M Minister may carry out investigations, prepare estimates etc .....	33
22N Entry on land and use of materials .....	34
22O Offences.....	34
22P Obligations of lessees .....	34
<b>Part 5 General</b> .....	<b>35</b>
23-23C (Repealed) .....	35
24 Acquisition of land .....	35
25 Leases .....	35
25A Sale of land not required for purposes of Act .....	35
25B Easements etc.....	35
25C Powers of Corporation with respect to land and contracts .....	35
26 Vesting of works in statutory body .....	36
26A Temporary accommodation .....	36
26B Other financial accommodation .....	36
26C Purposes for which money may be borrowed.....	37
26D Corporation Account .....	37
27 Interference with or damage to works etc.....	38
28 Alteration of covenants etc of certain leases.....	38
29 Penalties .....	38
30 Information .....	39
30A Delegation.....	39
31 Protection of Minister, Commissioner and officers etc.....	39

31A Act binds Crown .....	40
32 (Repealed) .....	40
32A Savings, transitional and other provisions.....	40
<b>Part 6 Regulations</b> .....	<b>40</b>
33 (Repealed) .....	40
34 Regulations.....	40
35 Penalty for breach of regulations.....	40
36 (Repealed) .....	40
<b>Part 7 Amendment of various Acts</b> .....	<b>41</b>
37 Amendments to Acts .....	41
<b>First Schedule Savings, transitional and other provisions</b> .....	<b>41</b>
<b>Second, Third Schedules (Repealed)</b> .....	<b>43</b>
<b>Fourth Schedule Loans</b> .....	<b>43</b>
<b>Fifth Schedule Provisions relating to the members and procedure of catchment committees</b> .....	<b>51</b>
<b>Sixth Schedule (Repealed)</b> .....	<b>53</b>

# Soil Conservation Act 1938 No 10



New South Wales

An Act to make provision for the conservation of soil resources and farm water resources and for the mitigation of erosion; for these and other purposes to amend the *Crown Lands Consolidation Act 1913* and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Soil Conservation Act 1938*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**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.

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

**Catchment committee** means a soil conservation catchment committee constituted in accordance with section 23A.

**Commissioner** means the Commissioner of the Service appointed under this Act.

**Corporation** means the corporation constituted by section 4B (1).

**Crown lands** means Crown lands within the meaning of the [Crown Lands Consolidation Act 1913](#).

**Deputy Commissioner** means a Deputy Soil Conservation Commissioner holding office as such under Chapter 1A of the [Public Sector Employment and Management Act 2002](#).

**Farming lands** means:

- (a) lands used for farming, agricultural, horticultural, viticultural, vegetable-growing, market gardening, pastoral, grazing, poultry farming, silvicultural, floricultural or piscicultural purposes, and
- (b) any other lands declared by the regulations to be farming lands for the purposes of this Act.

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

**Local land board** means the local land board constituted under the [Crown Lands Act 1989](#) for the land district in which are situated the lands in respect of which a reference to a local land board under this Act may be made, or if those lands be situated in more than one land district the local land board for any such district.

**Occupier**, in relation to land, includes a person having the control or management of the land, whether residing thereon or not.

**Owner**, in relation to land, includes every person who jointly or severally, whether at law or in equity:

- (a) is entitled to the land for any estate of freehold in possession, or
- (b) is a person to whom the Crown has lawfully contracted to sell the land under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown, or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession or otherwise, or
- (d) is the holder of any lease granted under the Crown Lands Acts or any other Act relating to the disposition of lands of the Crown.

**Regulations** means regulations made under this Act.

**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.

**Service** means the Soil Conservation Service of New South Wales.

**Tree** includes sapling, shrub and scrub.

**Works**, other than in Part 4, means:

- (a) works necessary for the conservation of soil or the mitigation of erosion and any operations incidental thereto, or
  - (b) works necessary for the conservation of water resources or the provision or improvement of the water supply to farming lands for domestic or stock purposes, and any operations incidental thereto, not being the construction or improvement of a bore (within the meaning of the *Farm Water Supplies Act 1946*).
- (2) In this Act, a reference to the conservation of water resources is a reference to the conservation of water resources on farming lands, not being water resources concerned primarily with irrigation and not being sub-surface water resources.

## Part 2 Appointment and functions of Commissioner

### 4 Commissioner of Soil Conservation Service

- (1) The Governor may from time to time appoint a Commissioner of the Soil Conservation Service of New South Wales who shall subject to the control and direction of the Minister exercise and discharge the powers, authorities, duties and functions conferred and imposed upon the Commissioner under this Act.
- (1A) The employment of the Commissioner is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (2)–(5) (Repealed)
- (6)
  - (a) In the case of the absence from duty of the Commissioner the Governor may appoint a person to act in place of the Commissioner during the Commissioner's absence.
  - (b) While so acting the person shall have the immunities and may exercise and



discharge all the powers, authorities, duties and functions of the Commissioner.

- (c) A person appointed under this subsection may if the Minister thinks fit be paid such remuneration for the person's services, including travelling and subsistence allowances, as the Minister may determine.
- (d) No body shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of the Commissioner, or as to the necessity or propriety of any appointment of a person under this subsection, and all acts or things done or omitted by a person when so acting as aforesaid shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the Commissioner for whom the person is acting.

(7)-(8) (Repealed)

#### **4A Deputy Commissioners**

(1), (2) (Repealed)

(3) A Deputy Commissioner:

- (a) shall assist the Commissioner in the exercise or discharge of the Commissioner's powers, authorities, duties and functions,
- (b) may, with the approval of the Minister, act in the place of the Commissioner or, if a person has been appointed under section 4 (6) to act in the place of the Commissioner, in the place of the person if the Commissioner or the person, as the case may be:
  - (i) is absent from duty, or
  - (ii) though not absent from duty, is not available to exercise or discharge his or her powers, authorities, duties and functions,

and while so acting shall have the immunities and may exercise or discharge all the powers, authorities, duties and functions of the Commissioner, and

- (c) shall exercise or discharge such other powers, authorities, duties and functions as are conferred or imposed upon a Deputy Commissioner by or under this or any other Act.
- (4) An approval under subsection (3) (b), in relation to a Deputy Commissioner acting in the place of the Commissioner, shall not have effect while a person is acting in the place of the Commissioner under section 4 (6).
- (5) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a Deputy Commissioner to act in the place of the

Commissioner, or as to the necessity or propriety of any approval for a Deputy Commissioner so to act and all things done or omitted by a Deputy Commissioner while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the Commissioner.

#### **4B Commissioner to be corporation sole for certain purposes**

- (1) The Commissioner is, for the purpose of exercising or performing those powers, authorities, duties or functions expressed to be conferred or imposed on the Corporation by or under this Act, hereby incorporated as a corporation sole with the corporate name "Soil Conservation Commission of New South Wales".
- (2) The Corporation:
  - (a) has perpetual succession,
  - (b) shall have an official seal,
  - (c) may take proceedings, and be proceeded against, in its corporate name,
  - (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Corporation is constituted, and
  - (e) is, for the purposes of any Act, a statutory body representing the Crown.
- (3) The seal of the Corporation shall be kept by the Commissioner and shall be affixed to an instrument or document only in the presence of the Commissioner, or a person for the time being authorised by the Commissioner for the purpose, who shall attest by his or her signature the fact and date of the affixing of the seal.
- (4) All courts and persons acting judicially:
  - (a) shall take judicial notice of the seal of the Corporation that has been affixed to any instrument or document, and
  - (b) shall, until the contrary is proved, presume that the seal was properly affixed.

#### **4C Powers, authorities, duties and functions of Commissioner**

With the aim of ensuring the conservation of the soil resources of the State, the mitigation of soil erosion and land degradation and the conservation of water resources, 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:

- (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 and the estimation of the costs of any works proposed to be carried out on any lands,
  - (k1) the supervision of the carrying out of any works,
  - (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,
  - (o) the provision of advice and assistance in connection with any works 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.

## **5 Officers and employees**

- (1) The Governor may, under and subject to the *Public Service Act 1979*, appoint and employ such officers and employees as may be necessary for the execution of this Act.
- (2) For the purpose of this Act the Minister may, with the approval of the Minister of the department concerned, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government department.
- (3) For the purposes of this Act the Minister may, with the approval of the statutory corporation concerned, on such terms as may be arranged, make use of the services of any of the officers, employees or servants of any statutory corporation.
- (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.

## **6 Experimental and research work**

- (1) With a view to conserving the soil resources and water resources of the State and protecting catchment areas and proclaimed works the Commissioner may of the Commissioner's own motion, and shall, if so directed by the Minister, conduct experimental and research work in connection with soil conservation and erosion mitigation, in connection with the conservation of water resources and in connection with any other purpose contemplated by this Act.
- (2) (Repealed)

## **7 Power of Minister to direct special investigations**

The Commissioner shall conduct such investigations relative to any special aspect of erosion or conservation of water resources as may be required by the Minister.

## 8 Power of Minister to direct or authorise the making of surveys etc

The Minister may authorise or direct the making of any survey or the carrying out of any investigation or other operations which the Minister considers necessary or desirable for giving effect to any of the purposes of this Act.

## 9 (Repealed)

## 10 Projects

- (1) The Commissioner shall prepare and forward to the Minister a scheme or schemes of operations for the purpose of soil conservation or erosion mitigation, for the purpose of the conservation of water resources or for any other purpose contemplated by this Act:
  - (a) (Repealed)
  - (b) in respect of any catchment area notified under this Act—as soon as practicable after the notification of such catchment area,
  - (c) in respect of the area of erosion hazard constituted under this Act—as soon as practicable after the commencement of this Act,
  - (d) in respect of any area of erosion hazard notified under this Act—as soon as practicable after the notification of such area of erosion hazard.
- (2) The Commissioner may prepare and forward to the Minister a scheme or schemes of operations for the purpose of soil conservation or erosion mitigation, for the purpose of the conservation of water resources or for any other purpose contemplated by this Act in respect of any land not being an area mentioned in subsection (1).
- (3) Each scheme of operations shall:
  - (a) indicate the lands proposed to be dealt with under the scheme,
  - (b) indicate generally the nature and class of operations to be carried out on those lands.
- (4) The Minister may submit a scheme of operations to the Governor for the Governor's approval.
- (5) A scheme of operations which has been approved by the Governor in accordance with this section is in this Act referred to as a **project**.
- (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.

## **11 Agreements relative to projects**

- (1) Where a project has been instituted the Minister may, on behalf of the Crown, enter into such agreements with all or any of the respective owners, occupiers or mortgagees of the lands proposed to be dealt with under the project as may be necessary to ensure the carrying into effect of the project.
- (1A) The covenants, conditions and provisions of any agreement entered into under subsection (1) may include covenants, conditions and provisions relating to:
  - (a) the limitation of the total number of livestock or the numbers of livestock of specified classes which may from time to time be carried on the land which is the subject of the agreement,
  - (b) the methods and practices of land utilisation or land management to be adopted on such land,
  - (c) the assistance the Minister will provide towards the execution of any works or measures required to be undertaken upon such land.
- (2) The instrument evidencing any such agreement may be executed by the Commissioner for the Minister.
- (3) Where an owner who has entered into an agreement under this section is the holder of land of any tenure under any Act relating to the disposition of lands of the Crown, no act, matter or thing which such owner, under or in conformity with such agreement, does or abstains from doing upon or in relation to the land, shall render the land liable to forfeiture under any such Act merely by reason of the fact that the doing or abstaining from the doing of such act, matter or thing constitutes a breach or non-performance of any covenant, condition or provision applicable to the land under any such Act.
- (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.

## **12 Advances and payments**

The Minister may, out of moneys provided by Parliament:

- (a) make an advance, upon such security and at such rate of interest and subject to such covenants, conditions and provisions as the Minister may think fit, to any owner or occupier of land proposed to be dealt with under a project who has, pursuant to this Act, entered into an agreement, for the purpose of enabling such owner or occupier to carry out his or her obligations under such agreement,
- (b) pay any costs or expenses incurred:

- (i) in carrying any project into effect,
- (ii) under any arrangement made pursuant to section 13,
- (iii) in carrying out any works under section 14 (1) or 18 or under Part 4A.

Any advance to an owner or occupier under the provisions of this section shall be made only upon the application of the owner or occupier under and in accordance with the provisions of Part 4A and the provisions of the said Part shall apply, mutatis mutandis, to and in respect of any such advance.

### **13 Carrying out of works by Government departments and statutory bodies**

The Minister may arrange with the Minister of any Government department or with any statutory corporation for the carrying out by such department or statutory corporation of any works required or authorised by or under this Act to be carried out by the Minister or the Commissioner.

### **14 Carrying out of works by Minister or Commissioner**

- (1) The Minister may carry out or authorise the Commissioner to carry out any works, whether or not the works are for the purpose of giving effect to a project.
- (2) The Minister shall be deemed to have authorised the carrying out of any works required or authorised to be done by an owner, occupier or mortgagee of any land under any agreement made pursuant to this Act.
- (3) Where any works referred to in this section or in section 13 or section 18 or Part 4A are constructed or used or are proposed to be constructed or used for the purpose of:
  - (a) water conservation, irrigation, water supply or drainage, or
  - (b) the prevention of inundation of land and overflow of water thereon, or
  - (c) changing the course of a river,

such works shall be carried out under the authority of an approval under the [Water Management Act 2000](#):

Provided that the Water Administration Ministerial Corporation may, in any case where, in its opinion, the circumstances so warrant, authorise the carrying out of such works without any such approval.

Where any such authority is given the provisions of the [Water Management Act 2000](#) relating to approvals, shall not apply to or in respect of the construction or use of the works referred to in any such authority.

#### **14A Minister may let machinery etc**

The Minister may:

- (a) let on hire any machinery, plant or equipment, or
- (b) provide labour, materials or services,

to any person for the purpose of the carrying out of works, subject to payment of such charge or cost as may be agreed upon.

#### **15 Power of entry**

- (1) The Commissioner 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 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 or the officer or employee may deem necessary.
- (2) Where the exercise or performance of any power, authority, duty or function conferred or imposed upon the Commissioner or any officer or employee of the Service by or under this Act requires the making of an entry upon any land by the Commissioner or by that officer or employee, the Commissioner or that officer or employee shall be furnished with an authority card in a form approved by the Minister.

Any such authority card may be general or may be limited to specified land or to land in any specified part of the State.

Production of any such authority card shall be evidence of the authority of the bearer thereof to enter any land to which such authority card relates and to make surveys, place marks and carry out investigations thereon.

(2A) Any such authority card must contain the following information:

- a statement to the effect that the authority has been granted under this Act
- the name of the person to whom the authority has been granted
- the nature of the powers that the authority confers
- the period for which the authority has effect.

(3) Any person who:

- (a) obstructs or hinders the Commissioner or any officer or employee of the Service from making any survey, placing any mark, or carrying out any investigation authorised by this section, or
- (b) removes or interferes with any mark placed on land under the authority of this section,



shall be liable to a penalty not exceeding 50 penalty units.

## **Part 2A Soil conservation notices**

### **15A Issue of notices**

(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,

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.

### **15B Objections**

- (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.

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

### **15C Appeals**

- (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.

### **15D Compliance with notices**

- (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.

### **15E Prosecution**

- (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 500 penalty units.
- (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.

### **15F Commissioner may carry out work**

- (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 50 penalty units.

### **15G Civil actions**

- (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.

### **15H Leases under the Western Lands Act**

- (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.

## **Part 3 Areas of erosion hazard**

### **16 Snowy River catchment to be an area of erosion hazard**

That part of the State of New South Wales which forms the catchment area of the Snowy River and its tributaries shall be an area of erosion hazard.

The area referred to in this section is in this Act referred to as the ***area of erosion hazard constituted under this Act***.

### **17 Areas of erosion hazard**

- (1) Where the Minister is of the opinion that any tract of land is subject to erosion or is

liable or likely to become liable to erosion and that such tract of land should be notified as an area of erosion hazard the Minister may, by notification published in the Gazette, and in a newspaper circulating in the locality in which such tract of land is situated give notice of a proposal that such tract of land should be notified as an area of erosion hazard.

- (2) Every notification under subsection (1) shall:
- (a) define by reference to a map or plan the tract of land to which the proposal relates,
  - (b) appoint a date, not being earlier than thirty days after the publication of the notification in the Gazette, on or before which objections may be lodged against the proposal,
  - (c) contain such other particulars as may be approved by the Minister.
- (3) A copy of or a reference to the map or plan shall be served personally or by post upon every owner and occupier of land which is wholly or partly within the boundaries of the tract of land to which the proposal relates and, where such land is subject to mortgage, upon the mortgagee.
- (4) Any owner, occupier or mortgagee of land which is wholly or partly within the boundaries of the tract of land to which the proposal relates may, not later than the date appointed therefor, lodge an objection in writing to the proposal.
- Any such objection shall state the ground upon which the same is based, and shall be lodged in a manner approved by the Minister.
- (5) The Minister shall give consideration to all objections against the proposal which may have been lodged within the time appointed therefor, and may, in order to meet any such objection, make such alteration of the proposals as the Minister may think fit.
- The Minister shall notify this decision in respect of each such objection to the owner, occupier or mortgagee who lodged the same.
- (6) (Repealed)
- (7)
- (a) If no objection against the proposal is lodged within the time appointed therefor the Minister may, upon the expiration of that time, submit the proposal to the Governor.
  - (b) If any objection against the proposal is lodged within the time appointed therefor the Minister may, when all such objections have been disposed of, submit the proposal to the Governor with such alterations (if any) as may be necessary to give effect to the Minister's decisions.

(c) The Governor may notify in the Gazette as an area of erosion hazard, the tract of land defined in the proposal or in the altered proposal (as the case may be) submitted to the Governor.

(8) No Crown lands shall be included in any area of erosion hazard except with the concurrence of the Minister for Lands.

(9) No land in a State forest shall be included in an area of erosion hazard except with the concurrence of the Minister administering the *Forestry Act 1916*.

## **18 Direction to carry out works or measures**

(1) Where the owner, occupier or mortgagee of any land within an area of erosion hazard:

(a) has neglected or refused to enter into any agreement under this Act to ensure the carrying into effect of a project instituted in respect of that area in so far as such project relates to that land, or

(b) has failed to carry out any covenant, condition or provision of any agreement entered into by the owner, occupier or mortgagee as aforesaid,

the Minister may authorise the Commissioner to give to such owner, occupier or mortgagee a notice under this section.

(2) A notice given under subsection (1) may direct the person to whom it is given to do any one or more of the following, that is to say:

(a) to carry out on the land to which the notice relates the remedial works or measures which the Commissioner considers should be carried out upon such land and to complete such works or measures to the satisfaction of the Commissioner within the time specified in the notice,

(b) to adopt in respect of the land to which the notice relates during the period specified in the notice the methods and practices of land utilisation or land management specified therein,

(c) to limit during the period specified in the notice the livestock which the person shall from time to time carry on the land to which the notice relates or any specified part thereof to such total number of livestock or the numbers of livestock of specified classes as shall be specified in the notice.

(3) (Repealed)

(4) Any period specified in a notice given under subsection (1) shall not exceed ten years.

(5) The requirements of any such notice in relation to the matters referred to in subsection (2) (b) and (c) may vary according to different times of the year.

(6) Any notice given under subsection (1) may be revoked, varied or amended by like

notice.

- (7) Any owner, occupier or mortgagee to whom notice has been given under this section may within twenty-eight days after service upon the owner, occupier or mortgagee of such notice lodge with the Minister an objection in writing thereto specifying the grounds of objection.
- (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.
- (10) Any notice given under this section, or if such notice is varied by the Minister or the Court, the notice as so varied, shall be published in the Gazette and upon publication shall take effect and shall during the currency thereof bind the owners, occupiers or mortgagees of the land to which it relates.
- (11) Any direction in respect of any matter referred to in subsection (2) (b) and (c) may be renewed by the Commissioner from time to time. Notice in writing of such renewal shall be given to the owner, occupier or mortgagee of the land to which the direction relates within a reasonable time before the expiration of the period for which such direction applies.

The provisions of subsections (6), (7), (8), (9) and (10) shall apply, mutatis mutandis, to and in respect of any notice given under this subsection.

Where a direction is proposed to be renewed such direction shall, notwithstanding any provisions of this section, remain in force until the notice renewing such direction is published in the Gazette or otherwise disposed of.

- (12) Any person who during the currency of any notice published in the Gazette under subsection (10) or (11) fails to comply with any direction contained in such notice shall be guilty of an offence and shall be liable to a penalty not exceeding 500 penalty units.
- (13) If any owner, occupier or mortgagee of land to which a notice published in the Gazette under subsection (10) or (11) applies fails to carry out on such land the remedial works or measures specified in such notice in accordance with the requirements thereof the Minister may authorise the Commissioner to enter upon such

land and execute such works and measures and the Minister may recover the costs incurred from the owner, occupier or mortgagee of such land in any court of competent jurisdiction as a debt due to the Crown and until such repayment such cost shall be a charge on the land.

- (14) No person shall be entitled to claim or be paid any compensation whatsoever by reason of or in any way arising out of a direction given or of powers exercised in pursuance of this section.

**18A (Repealed)**

**18B Powers of Commissioner etc**

- (1) (Repealed)
- (2) 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:
- (a) enter at all reasonable times and inspect the land,
  - (b) require any owner or occupier of the land to furnish such information relative to the number or numbers of each class of livestock usually carried on the land within the preceding five years and purchases or sales of that livestock made by the owner or occupier during that period as the Commissioner, officer or employee may require and to verify such information to the satisfaction of the Commissioner, officer or employee,
  - (c) require the Pastures Protection Board constituted under the [Pastures Protection Act 1934](#) for the pastures protection district within which is situated the land to produce for the inspection of the Commissioner, officer or employee all or any returns made by any owner or occupier of the land pursuant to the provisions of that Act and, where an assessment of carrying capacity has been made by the Pastures Protection Board in respect of the land, that assessment.
- (3) In making a determination the Commissioner shall have regard to:
- (a) the condition of the land in respect of soil erosion,
  - (b) the classes of soils included in the land and the slopes of the surface thereof,
  - (c) the kinds of grasses and pastures growing on the land,
  - (d) the provision (if any) made on the land for reserve fodder,

- (e) the area (if any) of the land cultivated or usually cultivated for fodder production,
- (f) the works or measures (if any) undertaken on the land for pasture improvement,
- (g) the works or measures (if any) undertaken on the land for the prevention or mitigation of soil erosion,
- (h) the provision for stock water supplies on the land,
- (i) any other matters which, in the opinion of the Commissioner, affect the livestock carrying capacity of the land.

## **Part 4 Proclaimed works and catchment areas**

### **Division 1 Declaration of proclaimed works and constitution of catchment areas**

#### **19 Proclaimed works**

- (1) The Governor may, by proclamation published in the Gazette, declare:
  - (a) any work or proposed work for the storage, regulation or conservation of water, or
  - (b) any work or proposed work for or in connection with any one or more of the following:
    - (i) preventing or mitigating the inundation of land or the overflow of water thereon,
    - (ii) defining or changing the course of a stream or river,
    - (iii) maintaining or improving the banks or foreshores of a stream, river or harbour, or
    - (iv) deepening or maintaining the depth of a stream or river,

to be a work to which this Part applies.

- (2) Any work or proposed work proclaimed in pursuance of subsection (1) is in this Act referred to as a **proclaimed work**.

#### **20 Catchment area**

- (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.

(1A) (Repealed)

(2) The Minister may modify or revoke any notification under this section by a further notification published in the Gazette.

(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) of this section, or

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

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.

## **21 Certain proclaimed works**

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.

## **Division 2**

### **21A-21E (Repealed)**

## **Division 3 Protection of catchment areas and proclaimed works**

### **22 Preservation of proclaimed works**

(1) Where the Minister is satisfied:

(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,

the Minister may by notice in writing served personally or by post on the owner and the occupier of, and on the holder or grantee of any timber rights over, such land require such owner, occupier, holder or grantee to abstain from doing or to do or permit to be done such acts and things as may be specified in the notice.

The acts and things to be specified in the notice shall be such acts and things as the Minister considers necessary to mitigate or avoid damage to, or interference with the utility of, the proclaimed work or to mitigate or avoid soil erosion, siltation or land degradation.

A copy of the notice served on the owner and the occupier of, and on the holder or grantee of any timber rights over, any such land shall be served personally or by post on the mortgagee (if any) of such land.

(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.

(3) Where the doing of any act or thing specified in a notice under subsection (1) or an amended notice as the case may be involves the expenditure of money, such act or thing may be done by the Minister and the cost thereof met out of moneys provided

by Parliament.

- (4) Where the Minister is of opinion that, having regard to all the circumstances, it is just and equitable that the owner of any land upon which any act or thing has been done pursuant to subsection (3), should pay or contribute towards the cost of doing such act or thing the Minister may notify the owner accordingly and shall in such notification, specify the amount of the payment or contribution to be made by such owner and the manner in which and time within which the same is to be made.

A copy of the notification given to such owner shall be given personally or by post to the mortgagee (if any) of the land upon which such act or thing has been done.

Such owner or mortgagee may appeal to the Land and Environment Court in accordance with rules of court of that Court against the amount specified in the notification.

The Land and Environment Court shall have jurisdiction to hear and determine the appeal.

The Land and Environment Court in making a determination on any such appeal shall have regard to:

- (a) the cost of the work and the area affected by the work,
- (b) the present and prospective amounts by which the value of the land of which the appellant is the owner or mortgagee will be enhanced by reason of the work,
- (c) the extent to which the value of the land of which the appellant is the owner or mortgagee will be maintained by the work, and
- (d) the depreciation of the present value of the land of which the appellant is the owner or mortgagee which would be likely to occur had the work not been executed.

In any proceedings before the Land and Environment Court no order shall be made against the appellant in respect of costs unless the court decides that the appeal is either frivolous or vexatious.

Unless the appellant and the Minister otherwise agree any appeal under this section shall (subject to the concurrence of the Land and Environment Court) be heard at such venue as in the opinion of that Court is as near as conveniently may be to the land on which the act or thing has been done.

The amount specified in the notification or determined by the Land and Environment Court, as the case may be, as the amount of the payment or contribution to be made by any owner shall be paid in the manner and within the time mentioned in the notification by the owner to the Minister and, if not so paid, may be recovered by the

Minister from such owner as a debt due to the Crown.

The notification shall confer on the owner a right to elect, within a period of three months from the date thereof, to make the payment or contribution:

- (e) in any case where the amount of the payment or contribution does not exceed \$1,000—by equal annual instalments over such period, not being more than ten years, as may be specified in the notification together with interest at a rate to be determined by the Minister,
- (f) in any case where the amount of the payment or contribution exceeds \$1,000—by equal annual instalments over such period, not being more than 15 years, as may be specified in the notification together with interest at a rate to be determined by the Minister.

The notification shall specify the date upon which the amount, or the first and subsequent instalments, as the case may be, shall be paid.

(5)

- (a) Every amount which becomes payable by an owner under subsection (4), and any costs awarded to the Minister in proceedings for the recovery of that amount, shall be a charge on the land upon which the act or thing has been done pursuant to subsection (3) in priority to all sales, conveyances, transfers, mortgages, charges, liens and incumbrances whatsoever made or given after the date of registration of such charge.

Every such charge shall be registered in the Register of Causes, Writs and Orders affecting land kept in accordance with the provisions of the [Conveyancing Act 1919](#).

Where any such charge is so registered any person dealing or proposing to deal with the owner, occupier or mortgagee of the land subject to the charge may obtain, on application made in a manner approved by the Minister, a certificate as to the sum (if any) then due (whether or not being presently payable) in respect of the amount charged on the land.

Such certificate shall, in favour of any such person, be conclusive evidence of the sum due at the date of the certificate, or, as the case may be, that no sum is due, in respect of the amount charged on the land.

- (b) The charge under this subsection shall rank *pari passu* with any charge on land under section 18.
- (6) Any person who fails to comply with any of the requirements of a notice under subsection (1) or an amended notice as the case may be shall be guilty of an offence and shall be liable for each such offence to a penalty of not more than 500 penalty

units.

- (7) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

## **Part 4A Advances for works of soil conservation, erosion mitigation and farm water supply and conservation**

### **22A Definition**

In this Part, **Authority** means the New South Wales Rural Assistance Authority constituted under the *Rural Assistance Act 1989*.

### **22B Application for an advance**

- (1) Any owner of land who desires an advance for the purpose of the carrying out of works, whether such works are included in a project or otherwise, may make an application to the Minister for an advance.
- (1A) An occupier of land may, with the written consent of the owner of the land, make an application pursuant to subsection (1).
- (1B) For the purposes of this Part, where an occupier of land has made, or is entitled to make, an application pursuant to subsection (1), a reference in this Part to the owner, in relation to an application in respect of the land, shall be deemed to be a reference to the occupier of the land.
- (2) Such application shall be in or to the effect of a form approved by the Minister.
- (3) Where this Part provides for the doing of a thing by an owner of land, that thing may be done by an agent of that owner authorised for that purpose.

### **22C Minister may grant or refuse application**

- (1) Upon receipt of an application the Minister shall decide whether or not an advance shall be made.
- (2) In the event of the Minister deciding that an advance shall be made, the Minister shall furnish to the applicant a statement, setting out a description of the works the Minister has approved should be carried out, the conditions as to the land use or otherwise which the owner shall be required to observe during the currency of the advance, the amount of the advance which the Minister has tentatively approved should be made and, where the Minister so determines, the cost of the works as estimated by the Minister.

Where the applicant desires the Minister to carry out the works and the Minister is prepared to carry out the works, the Minister shall set out in such statement the terms and conditions under which the Minister is prepared to carry out the works, including

the charge to be paid therefor or the manner in which such charge shall be assessed and the amount, if any, but not more than ten per centum of the cost of the works as estimated by the Minister, to be paid to the Minister in accordance with subsection (3).

- (3) If, on receipt of the statement referred to in subsection (2), the applicant is desirous of obtaining the advance, the applicant shall notify the Minister to that effect in a form approved by the Minister, and where the applicant desires the works to be carried out by the Minister, the notification shall be accompanied by the amount (if any) set out in the statement referred to in subsection (2) to be paid to the Minister.

#### **22D Authority to make advances**

- (1) In any case where the applicant notifies the Minister under section 22C (3) that the applicant desires the advance such advance shall, subject to the provisions of this Act, be made by the Authority by way of loan bearing interest at such rate as may be fixed by the Treasurer.
- (2), (3) (Repealed)

#### **22E Conditions precedent to advances**

No advance shall be made under this Act unless the Minister is satisfied:

- (a) that agricultural, grazing or similar operations will be carried out efficiently on the lands on which the works are to be effected, with a reasonable prospect of success and in accordance with the conditions as to land use or otherwise specified in the statement furnished to the applicant in pursuance of section 22C, and
- (b) that the carrying out of the works on those lands is necessary to ensure the conservation of the soil of those lands, the mitigation of erosion on those lands or the conservation of water resources on those lands.

#### **22F Provision of money to meet costs and expenses**

The Authority shall, at the request of the Treasurer, provide money to the Minister as working capital for the purposes of this Part to meet the costs and expenses incurred, or to be incurred, by any person or body, including the Minister, in carrying out works under this Part.

#### **22G Payment of advances**

- (1) Where any works in respect of which an advance is to be made under this Part have been, or are to be, carried out by any person or body, including the Minister, the advance shall be paid by the Authority at such time and in such manner and to such persons as the Minister directs or, if the Minister so directs, to the Minister to recoup costs and expenses incurred by the Minister.
- (2) Without limiting the generality of subsection (1), an advance referred to in that

subsection may be paid in the form of progress payments at such times and in such manner as the Minister directs.

- (3) For the purposes of this section, the Minister may authorise the Commissioner or any officer or employee of the Service to enter the lands of an owner and inspect works or sites of works.

## **22H Minister may carry out work where advance is made**

- (1) In any case where the owner desires the Minister so to do the Minister may for or on behalf of and at the cost of the owner carry out or have carried out in pursuance of section 13 works in respect of which an advance is to be made under this Act.
- (2) Any works carried out under this section shall be carried out on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner and the Minister.
- (3) Where the charge to be paid by the owner for any works carried out under this section is the actual cost incurred in carrying out the works, the amount of the actual cost may include all proper supervision costs and a certificate under the hand of the Minister or a person authorised by the Minister shall be accepted as final and conclusive evidence of such actual cost.
- (4), (5) (Repealed)

## **22HA Determination of amount of advance**

The amount of any advance to be made to an owner in respect of works carried out under this Part shall be as finally determined by the Minister.

## **22I Advances when machinery let etc**

Where the Minister has, pursuant to this section, as in force before the date of assent to the *Soil Conservation (Amendment) Act 1978*, or section 14A, let on hire any machinery, plant or equipment or provided labour, materials or services to any owner for the purpose of carrying out any works in respect of which an advance is to be made under this Part, the Authority shall, at the request of the Minister, pay to the Minister the amount of the charge therefor or the cost thereof and thereupon that amount shall, for the purposes of this Part, be deemed to have been advanced to the owner.

## **22J Joint works**

- (1) The owners of two or more separate parcels of land who are desirous of carrying out or having carried out joint works on their lands may, whether or not the whole of the works are to be constructed on the land of one owner, make an application for an advance for the carrying out of works for that purpose. The provisions of section 22B (2) and of section 22C shall apply, mutatis mutandis, to and in respect of an application under this section.

- (2) The amount of every advance made in pursuance of an application lodged under this section shall be repaid by all or any of the owners in such proportions as may be agreed upon between them. Notification of such proportions shall be given to the Minister when giving notification in accordance with section 22C (3).

**22K Repayment of advance secured by deed of charge**

- (1) Subject to subsection (5), the repayment of every advance made under this Part, together with interest, shall be secured by a deed of charge over:
- (a) the lands of the owner, or
  - (b) where the advance is repayable by 2 or more owners, the lands of each of those owners,
- or over such of those lands as the Minister considers sufficient, whether those lands are the lands in respect of which the advance was made or not.
- (2) Such deed of charge shall, where the works are to be carried out by any person or body, including the owner, other than the Minister, be expressed to be made between the owner of the lands and the Authority, and where the works are to be carried out by or on behalf of the Minister, be expressed to be made between the owner of the lands, the Minister and the Authority, and shall provide for the repayment of the amount advanced to such owner by consecutive half-yearly instalments within a period, not exceeding fifteen years, determined by the Minister, together with interest as aforesaid on the amount owing from time to time, and shall contain:
- (a) a condition to the effect that in the event of the owner failing to maintain the works in respect of which the advance is made to the satisfaction of the Minister or failing to observe the conditions as to land use or otherwise specified in the statement furnished to the owner in pursuance of section 22C, the whole of the principal and interest secured by the charge shall at the option of the Authority become immediately due and payable, and
  - (b) such other powers, covenants, provisions, conditions and clauses as the Authority determines.
- (3) Where any works are to be carried out by or on behalf of the Minister such deed of charge shall be executed by the owner before the commencement of the construction of the works and where any works are to be carried out by any person or body, including the owner, other than the Minister, such deed of charge shall be executed by the owner before any advance is made to the owner.
- (4) Any sum payable under a deed of charge under this section shall be paid to the Authority and shall, until so paid, be and remain a charge in its favour on the land mentioned in the deed, and shall be recoverable by the Authority in any court of competent jurisdiction from the owner of the land for the time being.



- (5) If the Minister so approves, the repayment of an advance made under this Act, together with interest, may be secured partly by a deed of charge and partly in some other manner approved by the Minister or wholly in some other manner approved by the Minister.
- (6) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

**22L Minister may carry out work where advance is not made**

- (1) Where the owner or occupier of any lands desires the Minister to carry out works and is prepared to pay in cash for the carrying out of such works, the Minister may carry out or have carried out in pursuance of section 13, the works on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner or occupier and the Minister.
- (2) A certificate under the hand of the Minister or such person as may be authorised by the Minister in that behalf, of the amount payable by the owner or occupier for any such works shall be forwarded to the owner or occupier, which certificate shall, where the charge to be paid for the works is the actual cost incurred by the Minister in carrying out the works, be accepted as final and conclusive evidence of the charge payable by the owner or occupier.

Such amount until paid shall be and remain a debt due to the Minister and if not paid in accordance with the terms and conditions agreed upon shall be recoverable by the Minister in any court of competent jurisdiction.

**22M Minister may carry out investigations, prepare estimates etc**

- (1) The Minister may:
  - (a) supervise, on behalf of any owner or occupier, the carrying out of any works on any lands, and
  - (b) carry out surveys and investigations and prepare designs for and estimates of cost of any works proposed to be carried out on any lands.
- (2) The charge, if any, to be paid to the Minister for any supervision or technical work carried out by the Minister pursuant to the provisions of subsection (1) may:
  - (a) where so agreed between the owner or occupier and the Minister be paid for in cash,
  - (b) be the subject of an advance under and in accordance with the provisions of this Act, or
  - (c) be included in the amount of any advance which is made under and in accordance

with the provisions of this Act for the carrying out of any works.

- (3) Where the charge for any supervision or technical work carried out by the Minister under the provisions of subsection (1) is the subject of an advance under and in accordance with the provisions of this Act, or where any such charge is included in the amount of any advance being made under and in accordance with the provisions of this Act, the Authority shall pay to the Minister the amount of such charge and any such amount paid by the Authority to the Minister shall, for the purposes of this Act, be deemed to have been advanced to the owner or occupier, as the case may be.

## **22N Entry on land and use of materials**

Where any works are to be carried out by or on behalf of the Minister under this Act the owner and the occupier of the lands on which the works are to be carried out shall for the purpose of enabling the said works to be carried out grant to the Minister, the Minister's officers, workmen, servants, contractors or agents at all reasonable times, full and free right of ingress, egress and regress in, over or upon all or any of such lands and the right to the use of earth, stone, timber, gravel or sand or other materials or things dug, raised or obtained on such lands.

## **22O Offences**

Any person:

- (a) who receives any advance from the Authority under this Act and in any manner directly or indirectly uses the same or permits the same to be used for any purpose other than the purpose for which the advance was made, or
- (b) who, while any money is owing to the Authority in respect of any advance under this Act, without the consent of the Authority removes, sells or otherwise disposes of any machinery, plant or other thing forming part of any works for the carrying out of which such advance was made,

shall be liable to a penalty not exceeding 10 penalty units.

## **22P Obligations of lessees**

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,
- (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.

## **Part 5 General**

### **23-23C (Repealed)**

### **24 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in relation to works constructed under this Act.

### **25 Leases**

The Minister may lease any land acquired by the Minister for the purposes of this Act to any person at such rent, and subject to such covenants and conditions as the Minister may determine.

The term of any such lease shall not exceed five years.

### **25A Sale of land not required for purposes of Act**

Where any land purchased or acquired by compulsory process for the purposes of this Act is not required for such purposes the Minister may absolutely sell and dispose of such land.

### **25B Easements etc**

The Minister may grant any easement, right or privilege of any kind over or in relation to any land acquired by the Minister for the purposes of this Act.

### **25C Powers of Corporation with respect to land and contracts**

- (1) The Corporation may, for the purposes of this Act, with the approval of the Minister:
  - (a) purchase, exchange, take on lease, hold, dispose of by way of lease or sale, and otherwise deal with, property, or
  - (b) make and enter into contracts with any person for the carrying out of works or the performance of services or the supply of goods or materials (whether at a place within or outside Australia) in connection with the exercise or performance by the Minister, Commissioner or Corporation of his, hers or its powers, authorities, duties or functions.

- (2) The powers conferred by subsection (1) are in addition to and not in derogation of any other powers conferred by or under this Act or by or under any other law.
- (3) If the Corporation enters into a contract under subsection (1) involving the performance of services by a public servant or other employee referred to in section 5:
  - (a) outside Australia, or
  - (b) within Australia but outside New South Wales,the Corporation may (with the consent of that public servant or other employee) vary the conditions of employment (including rates of remuneration) of that public servant or other employee in connection with the performance of those services as the Corporation thinks fit.
- (4) Subsection (3) has effect despite anything to the contrary in the *Public Sector Management Act 1988* or in any award or industrial agreement.

## **26 Vesting of works in statutory body**

- (1) On completion of any works carried out in pursuance of this Act, the Governor, on the recommendation of the Minister, may, by proclamation published in the Gazette, vest in a statutory corporation any works constructed for the purpose of soil conservation, erosion mitigation or water resources conservation, or for purposes incidental thereto.

The care, control and maintenance of such works shall thereupon devolve upon the statutory corporation.
- (2) The Governor may, by the same or a subsequent proclamation, vest in the statutory corporation the whole or any part of any land acquired under this Act for the purposes of the works so vested in the statutory corporation.

## **26A Temporary accommodation**

- (1) For the temporary accommodation of the Corporation, it may, for any purpose referred to in section 26C (1), obtain advances by overdraft of current account in any one or more banks, building societies or credit unions upon the credit of the Corporation's funds to such extent as may, from time to time, be approved by the Governor.
- (2) The Treasurer may advance such money to the Corporation, upon such terms and conditions as to repayment and interest, as may be agreed upon.

## **26B Other financial accommodation**

- (1) Without affecting section 26A, the Corporation may, for any purpose referred to in section 26C (1), enter into arrangements to borrow money from, or obtain advances from, or obtain other financial accommodation from, an approved person or body,

whether in New South Wales or elsewhere, to such extent and secured and arranged in such manner and for such period as may be approved.

- (2) The due payment of any amounts payable by the Corporation pursuant to any arrangements entered into under this section, and any interest or other charges in relation thereto, is hereby guaranteed by the government, and any liability arising from the guarantee shall be payable out of money provided by Parliament.
- (3) Where the approval of the Governor in relation to any arrangements is expressed to be given under this section, the provisions of section 26C and the Fourth Schedule do not apply to or in respect of the arrangements, but this subsection does not prevent the borrowing of money under section 26C (1) for the discharge or partial discharge of any indebtedness to any person or body referred to in subsection (1).
- (4) In this section:

**approved** means approved from time to time by the Governor on the recommendation of the Minister and with the concurrence of the Treasurer.

**financial accommodation** includes financial accommodation by way of credit arrangements, including arrangements for the deferred payment by the Corporation of amounts payable by it under any contract or agreement entered into by it, but not including any arrangements that provide for the payment of instalments where the extension of credit to the Corporation is not involved.

#### **26C Purposes for which money may be borrowed**

- (1) The Corporation may from time to time, with the approval of the Governor given on the recommendation of the Minister and with the concurrence of the Treasurer, borrow money for:
  - (a) the purpose of the exercise or performance of any of the powers, authorities, duties or functions of the Minister, Commissioner or Corporation conferred or imposed by or under this Act,
  - (b) the renewal of loans,
  - (c) the discharge or partial discharge of any loan or any indebtedness to the Treasurer or to any bank, building society or credit union or to any person or body referred to in section 26B (1), or
  - (d) any other purpose of this Act.
- (2) The Fourth Schedule has effect with respect to loans.

#### **26D Corporation Account**

- (1) There shall be established in the Special Deposits Account in the Treasury a Soil

Conservation Commission of New South Wales Account into which shall be deposited:

- (a) all money borrowed by the Corporation under section 26C, and
- (b) all other money that the Treasurer directs is to be so deposited.

(2) The Soil Conservation Commission of New South Wales Account may be applied to any of the purposes for which money may be borrowed under section 26C (1).

## **27 Interference with or damage to works etc**

Any person who, except under the authority of the Commissioner, interferes with or does any act which damages or tends to damage any structure, plantation, breakwind or vegetative cover placed or planted on any land as part of or in connection with any works which are being or have been carried out in pursuance of this Act, shall be liable to a penalty not exceeding 500 penalty units and in addition shall be liable for any loss or damage caused by the offence.

Such loss or damage may be awarded by the Court imposing the penalty and may be recovered in the same manner as the penalty.

## **28 Alteration of covenants etc of certain leases**

- (1) Where the Minister is satisfied that compliance with any covenant, condition or provision of a homestead selection or lease referred to in section 182 of the [Crown Lands Consolidation Act 1913](#) would tend to cause erosion on any land, the Minister may so advise the Minister for Lands.
- (2) Where the Minister for Lands has been so advised the Minister may vary, modify, revoke or add to the covenants, conditions or provisions of the homestead selection or lease under and in accordance with section 182 of the [Crown Lands Consolidation Act 1913](#).

## **29 Penalties**

- (1) Any person who contravenes or fails to comply with any provision of this Act shall, where no other penalty is expressly provided, be liable to a penalty not exceeding 50 penalty units.
- (2) Proceedings for an offence against this Act are to be dealt with in a summary manner before the Local Court or before the Land and Environment Court.
- (3) If proceedings for an offence against this Act are brought in the Local Court, the maximum monetary penalty that the Court may impose in respect of the offence is 100 penalty units or the maximum monetary penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

### **30 Information**

Any information, complaint or other legal proceeding under this Act or the regulations may be laid, made and taken by the Minister or by any officer duly authorised by the Minister in that behalf either generally or in any particular case.

The production of a certificate that the person named therein is an officer authorised by the Minister under this section, either generally or specially, shall be prima facie evidence that the person named therein is an officer and of the extent of the authorisation under which the person acts.

### **30A Delegation**

- (1) The Minister may by instrument in writing delegate to the Commissioner, a Deputy Commissioner or to an officer or employee of the Service the exercise or performance of such of the powers (other than this power of delegation), authorities, duties or functions conferred or imposed on the Minister by or under this Act as may be specified in the instrument of delegation and may in like manner revoke wholly or in part any such delegation.
- (2) The Commissioner may by instrument in writing delegate to a Deputy Commissioner or to an officer or employee of the Service the exercise or performance of such of the powers (other than this power of delegation), authorities, duties or functions conferred or imposed on the Commissioner by or under this or any other Act as may be specified in the instrument of delegation and may in like manner revoke wholly or in part any such delegation.
- (3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation made under this section, the Minister or the Commissioner, as the case may be, may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated by the Minister or the Commissioner.
- (5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force or effect as if the act or thing done had been done or suffered by the Minister or the Commissioner, as the case may be.

### **31 Protection of Minister, Commissioner and officers etc**

No act, matter or thing done by the Minister or the Commissioner or by any officer, employee or person acting under the direction of the Minister or the Commissioner, shall, if the act, matter or thing was done bona fide for the purpose of carrying out or giving

effect to this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

### **31A Act binds Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

### **32 (Repealed)**

### **32A Savings, transitional and other provisions**

The First Schedule has effect.

## **Part 6 Regulations**

### **33 (Repealed)**

### **34 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2)
  - (a) Without prejudice to the generality of the power conferred by subsection (1) the Governor may make regulations prohibiting the lighting of fires in the area of erosion hazard constituted under this Act or in any area of erosion hazard notified under this Act or in any catchment area notified under this Act except under such circumstances and subject to such limitations, conditions and restrictions as may be prescribed.
  - (b) Any regulation made under this subsection may be made to apply to all such areas of erosion hazard and catchment areas or to any specified area of erosion hazard or catchment area or to any specified part of any specified area of erosion hazard or catchment area.
- (3) Any regulation made under this section may authorise any matter or thing to be from time to time determined, applied or regulated by the Minister or by the Commissioner.

### **35 Penalty for breach of regulations**

Any regulation made under this Act may impose a penalty not exceeding 50 penalty units for any breach thereof.

### **36 (Repealed)**



## Part 7 Amendment of various Acts

### 37 Amendments to Acts

#### Editorial note—

The amending provisions relating to the *Crown Lands Consolidation Act 1913*, *Closer Settlement Act 1904*, *Closer Settlement (Amendment) Act 1909*, *Closer Settlement (Amendment) Act 1914*, *Returned Soldiers Settlement Act 1916*, *Forestry Act 1916* and *Crown Lands, Closer Settlement and Returned Soldiers Settlement (Amendment) Act 1935* are not reprinted: *Reprints Act 1972*, section 6.

## First Schedule Savings, transitional and other provisions

(Section 32A)

## Part 1 Provisions consequent on enactment of **Statute Law (Miscellaneous Provisions) Act (No 2) 1987**

### 1 References to Assistant Commissioner

- (1) On and from the commencement of the amendments made to this Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 1987*, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the Assistant Commissioner of the Service shall be read as a reference to the Deputy Commissioner.
- (2) The person holding office as Assistant Commissioner of the Service immediately before the commencement of Schedule 32 of the *Statute Law (Miscellaneous Provisions) Act (No 2) 1987* shall be deemed to have been appointed as Deputy Commissioner.

## Part 2 Savings and transitional regulations

### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - Soil Conservation (Amendment) Act 1989*.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 3 Provisions consequent on enactment of [Soil Conservation \(Amendment\) Act 1989](#)**

#### **3 Abolition of Catchment Areas Protection Board**

On the repeal of section 32, the Catchment Areas Protection Board is abolished.

#### **4 Members of Catchment Areas Protection Board**

A person who, immediately before the abolition of the Catchment Areas Protection Board, was a member of that Board ceases to hold that office on the abolition of that Board and is not entitled to any remuneration or compensation because of the loss of that office.

#### **5 Construction of references**

After the abolition of the Catchment Areas Protection Board, a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to the Catchment Areas Protection Board is to be read as a reference to the Commissioner of the Soil Conservation Service of New South Wales.

#### **6 Transfer of assets, liabilities etc of Board**

On the abolition of the Catchment Areas Protection Board, any assets, rights, liabilities or obligations of the Board become assets, rights, liabilities or obligations of the Crown.

#### **7 Existing authorities, notices, maps, orders etc concerning protected lands**

Any notice, authority or certificate issued, any map prepared or any order published in the Gazette by the Catchment Areas Protection Board continues to apply in respect of protected land as if that Board had not been abolished.

### **Part 4 Provisions consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2008](#)**

#### **8 Deputy Commissioners**

- (1) On and from the commencement of the amendments made to this Act by the [Statute Law \(Miscellaneous Provisions\) Act 2008](#) (the **relevant commencement**), a reference in any other Act, in any instrument made under any Act or in any other instrument of any kind (including any instrument of appointment) to the Deputy Commissioner of the Soil Conservation Service is to be construed as a reference to a Deputy Soil Conservation Commissioner.

- (2) Without limiting the operation of subclause (1), any person appointed (or purported to

have been appointed) as Deputy Commissioner of the Soil Conservation Service and holding office as such immediately before the relevant commencement is taken to have been appointed as a Deputy Soil Conservation Commissioner holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

## **Second, Third Schedules (Repealed)**

### **Fourth Schedule Loans**

(Section 26C)

#### **1 Reserves for repayments of loans**

- (1) The Corporation shall establish with the Treasurer a reserve for loan repayment fund in respect of each loan or renewal loan raised by the Corporation.
- (2) The Corporation shall, during each year, transfer from the revenue of the Corporation to each fund referred to in subclause (1) of this clause a sum of not less than the sum that the Corporation, in its application for approval of the loan, specified that it proposed to transfer to that fund.
- (3) Where any land or property of any kind which has been provided out of loan money is sold before the loan has been wholly repaid, the net proceeds of the sale shall be added to the reserve for loan repayment in the appropriate fund or paid directly to the lender, unless the Minister with the concurrence of the Treasurer directs otherwise.
- (4) Money held as a reserve for loan repayment may be invested in Government securities of the Commonwealth or the State of New South Wales or in debentures, bonds, inscribed stock or other prescribed securities in any loan of the Corporation or in any securities guaranteed by the Government of that State or in such other securities as the Governor may approve or as may be prescribed, in each case at their current market price.
- (5) Any interest or profits realised on investments made under subclause (4) of this clause shall be added to and form part of the reserve for loan repayment fund from which the investments were made.
- (6) All money paid into the reserve for loan repayment fund in respect of any loan or renewal loan may be applied in or towards repayment of any other loan or renewal loan but may not be applied for any other purpose until the loan or renewal loan in respect of which the fund has been established has been repaid.
- (7) Where the Corporation decides to cancel debentures, bonds, inscribed stock or other prescribed securities purchased from the reserve for repayment of the loan for which they were issued, the Corporation shall, in addition to the sum otherwise payable to the reserve for repayment of that loan and subject to any agreement to which it is a party whereby it undertakes to pay interest at a higher rate to that reserve, pay to

that reserve interest at the rate of 4.5 per cent per annum on the face value of the cancelled securities from the date of their cancellation until the maturity of the loan.

- (8) If, after a loan has been repaid, there remains in the reserve for loan repayment of that loan any balance, that balance shall form part of the general funds of the Corporation.
- (9) A reserve for loan repayment fund shall not be subject to seizure in satisfaction of any debt other than the loan in respect of which the reserve was created.
- (10) This clause shall not apply to any loan to be repaid by instalments at intervals of 1 year or less.

## **2 Debentures etc**

- (1) For securing repayment of the principal and interest on any money borrowed, the Corporation may, as provided by the regulations, issue debentures, bonds, inscribed stock or other prescribed securities.
- (2) Every such debenture or bond and every coupon originally annexed to the debenture or bond, and whether separated therefrom or not, may be transferred by simple delivery.
- (3) Inscribed stock shall be transferable in the books of the Corporation in accordance with the regulations.
- (4) Debentures, bonds, inscribed stock or prescribed securities issued under this Act shall, as regards both the issue and transfer thereof for full consideration for money or money's worth, be deemed to be included in the general exemptions from stamp duty under Part 3 of the *Stamp Duties Act 1920* contained in the Second Schedule to that Act.

## **3 Payment of debentures and coupons**

- (1) The holder of a coupon originally annexed to a debenture or bond, and whether separated therefrom or not, shall be entitled to receive payment from the Corporation of the interest specified in the coupon on its presentation on or after the date when, and at the place where, the interest is payable.
- (2) The due repayment of any loan in respect of which debentures, bonds, stock or any other prescribed securities have been issued by the Corporation and the interest thereon shall be a charge upon the income and revenue of the Corporation and is hereby guaranteed by the Government.
- (3) Any liability arising under the guarantee given by subclause (2) of this clause shall be discharged out of money provided by Parliament.
- (4) The charge created by subclause (2) of this clause shall not prejudice or affect any

power of the Corporation to sell, convey, lease or otherwise deal with, free of the charge, any property vested in it.

#### **4 Raising loans in any country**

- (1) Notwithstanding any other provision of this Act, any money which the Corporation is authorised to borrow may be borrowed by a loan raised, wholly or in part, in such places outside New South Wales as the Governor on the recommendation of the Minister and with the concurrence of the Treasurer may approve, and may be negotiated and raised in any currency.
- (2) Any such loan may be raised wholly or in part by the issue of debentures, bonds, stock or other securities in any form and contain any term, condition or provision permitted under the law of the place where the loan is raised and the Corporation may establish and conduct in that place registries relating to the securities issued in respect of that loan.
- (3) The Corporation may, in respect of any such loan, agree that a sinking fund shall be established and controlled at such place and in such manner as may be found necessary or expedient in the circumstances of the case and, where any sinking fund is so established, the provisions of clause 1 shall apply with regard to that loan only in respect of the amount, if any, the repayment of which is not provided for by the sinking fund established under the agreement.
- (4) In connection with the raising of any loan under this clause, the Corporation may enter into such agreements as it thinks fit with respect to the form of the debentures, bonds, stock or other securities referred to in subclause (2) of this clause, or for the sale of those debentures, bonds, stock or other securities, or the granting of an option to purchase those debentures, bonds, stock or other securities, or for services to be performed by any person in Australia or in any other part of the world in connection with that loan or with the issue, management and redemption of or otherwise with respect to those debentures, bonds, stock or other securities, and any such agreement may be upon such terms and conditions and may contain such provisions for the giving or receipt of consideration as the Corporation thinks fit.
- (5) Copies of any agreement referred to in subclause (4) of this clause shall be forwarded to the Minister who shall lay them, or cause them to be laid, before both Houses of Parliament as soon as possible after the loan is raised.
- (6) The Governor may, upon the recommendation of the Corporation, by notification published in the Gazette, appoint 2 or more persons to enter into for and on behalf of the Corporation all such agreements as the Corporation is by this clause authorised to enter into and to sign, execute or otherwise perfect all such agreements, debentures, bonds, stock or other securities as are by this clause provided for and to do all such things as may be necessary or convenient to be done for the purpose of raising any loan under this Act and may, upon the like recommendation and by a like notification,

revoke or vary any such appointment and make any fresh appointment.

- (7) The production of a copy of the Gazette containing a notification of any appointment referred to in subclause (6) of this clause or the revocation thereof shall, in favour of a lender or of any holder of a security, be conclusive evidence of the appointment or revocation.
- (8) All debentures, bonds, stock or other securities, bearing the signatures of the persons so appointed in that behalf, shall be deemed to be securities lawfully issued under the seal of the Corporation and the principal money and interest secured thereby shall be a charge upon the income and revenue of the Corporation from whatever source arising, and the due repayment of that principal money and that interest is hereby guaranteed by the Government, and all agreements and any instruments purporting to be made or issued under the authority of this clause and bearing the signatures of those persons shall be deemed to have been lawfully made or issued by the Corporation and, if they purport to have been sealed by those persons, to have been lawfully executed by the Corporation under seal.
- (9) A holder of any such debenture, bond, stock or other security shall not be bound to inquire whether the issue of the debenture, bond, stock or security was, in fact, duly authorised.
- (10) Subject to this clause and the law in force in the place where any loan is raised under this clause and applicable to that loan and the securities issued in connection therewith, the provisions of this Schedule, other than clauses 2 (1), 7 (3) and 7 (4), shall apply to and in respect of that loan and those securities in the same way as they apply to and in respect of any other loan and any other securities.

## **5 Other methods of raising loans**

- (1) This clause applies to and in respect of a loan, wherever raised, where the Governor, on the recommendation of the Minister and with the concurrence of the Treasurer, approves (as referred to in section 26C (1)) of the loan in and by an instrument which specifies that it is a loan to which this clause applies.
- (2) Except as provided in this clause, the provisions of this Schedule do not apply to or in respect of a loan to which this clause applies.
- (3) A loan to which this clause applies may be:
  - (a) raised in such amounts and in such currencies,
  - (b) raised in such manner and on such terms and conditions, and
  - (c) secured by such securities, if any,as the Governor, on the recommendation of the Minister and with the concurrence of

the Treasurer, approves in and by the instrument referred to in subclause (1) of this clause or in that instrument by reference to another instrument.

- (4) Any security or other instrument issued or executed by the Corporation or the government in respect of a loan to which this clause applies shall, both as regards its issue or execution and its transfer or assignment, be deemed to be included in the general exemptions from stamp duty under Part 3 of the *Stamp Duties Act 1920* contained in the Second Schedule to that Act.
- (5) The Governor may, upon the recommendation of the Corporation, appoint 2 or more persons for and on behalf of the Corporation to enter into any securities or other instruments in respect of a loan to which this clause applies and to sign, execute or otherwise perfect all such securities or other instruments, and to do all such things as may be necessary or convenient to be done for the purpose of raising the loan under this Act, and may upon the like recommendation revoke or vary any such appointment and make any fresh appointment.
- (6) The production of a copy of the Gazette containing a notification of any appointment or revocation under subclause (5) of this clause shall in favour of a lender, of the holder of any security or of a person to whom the benefit under any such instrument is assigned be conclusive evidence of the appointment or revocation.
- (7) The due payment of any amounts payable by the Corporation to the lender in respect of any loan to which this clause applies is a charge on the income and revenue of the Corporation, from whatever source arising, and is hereby guaranteed by the Government, and, where any agreement to which the Government is a party specifies any terms or conditions upon or subject to which the due payment of those amounts is so guaranteed, the due payment of those amounts is so guaranteed upon or subject to those terms and conditions.
- (8) An agreement with respect to a loan to which this clause applies and to which the Government and the Corporation are parties may require the Government to make any payment for which the Corporation would, under the agreement, be liable but for its being precluded from making the payment by any law in force in New South Wales.
- (9) The Consolidated Revenue Fund is hereby appropriated for the purpose of meeting any liability in respect of any guarantee referred to in subclause (7) of this clause and any liability of the Government arising under any agreement referred to in subclause (8) of this clause.
- (10) The provisions of:
  - (a) clauses 10, 11, 12 and 13 apply to and in respect of the appointment of a receiver by reason of any default being made by the Corporation in making any payment in respect of a loan to which this clause applies and to and in respect of a receiver appointed by virtue of the application of clause 10 by this subclause in the same

way as those clauses apply to and in respect of the appointment of a receiver by reason of any default being made by the Corporation in making any payment, whether of principal or interest, to the holder of any debenture, or coupon, issued, or stock inscribed, by the Corporation and to and in respect of a receiver appointed under clause 10,

- (b) clause 8 (1) apply to and in respect of a person advancing money to the Corporation by way of a loan to which this clause applies in the same way as they apply to and in respect of a person advancing money to the Corporation as referred to in clause 8 (1),
- (c) clause 8 (2) apply to and in respect of a notification in the Gazette of the approval of the Governor having been given to a loan to which this clause applies in the same way as they apply to and in respect of a notification in the Gazette of the approval of the Governor having been given to a borrowing referred to in clause 8 (2),
- (d) clause 9 apply to and in respect of a loan to which this clause applies as if the reference in that clause to other securities which are secured upon the income and revenue of the Corporation included a reference to such a loan, and
- (e) any other clause of this Schedule (being a clause that, in an agreement between the Corporation and the lender with respect to a loan to which this clause applies, is specified as being a clause that applies to and in respect of the loan or as being a clause that, with such modifications or additions as are so specified, applies to and in respect of the loan) apply or apply with those modifications or additions, as the case may be, to and in respect of the loan.

## 6 Trustees

- (1) Any trustee, unless expressly forbidden by any instrument creating the trust, may invest any trust money in the trustee's hands in stock inscribed by the Corporation or in any debentures, bonds or other securities issued in accordance with this Act, and the investment is taken to be an investment made in accordance with the [Trustee Act 1925](#).
- (2) Any debenture or bond issued, stock inscribed, or other security issued, in pursuance of this Act, shall be a lawful investment for any money which any company, council or body corporate, incorporated by any Act, is authorised or directed to invest in addition to any other investment authorised for the investment of that money.
- (3) No notice of any express, implied or constructive trust shall be received by the Corporation or by any officer or employee of the Service in relation to any debenture or coupon issued or stock inscribed by the Corporation.



## **7 Lost debentures**

- (1) If any debenture or bond issued by the Corporation is lost, destroyed or defaced before it has been redeemed, the Corporation may, subject to the provisions of this clause, issue a new debenture or bond in its place.
- (2) A new debenture or bond, issued under subclause (1) of this clause with interest coupon annexed, shall bear the same date, number, principal sum and rate of interest as the lost, destroyed or defaced debenture or bond.
- (3) Where a debenture or bond is lost or destroyed, a new debenture or bond shall not be issued unless:
  - (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before redemption,
  - (b) such advertisements as the Court may direct have been published,
  - (c) 6 months have elapsed since the publication of the last of those advertisements, and
  - (d) sufficient security has been given to the Corporation to indemnify it against any double payment if the missing debenture or bond is at any time thereafter presented for redemption.
- (4) Where a debenture or bond is defaced, a new debenture or bond shall not be issued unless and until the defaced debenture or bond is lodged with the Corporation for cancellation.
- (5) The provisions of this clause shall apply to and in respect of a lost, destroyed or defaced coupon in the same way as they apply to and in respect of a lost, destroyed or defaced debenture or bond.
- (6) Notwithstanding any other provision of this clause, in the case of loss, theft, destruction, mutilation or defacement of any debenture or bond issued under clause 4, a duplicate or new debenture or bond may be issued upon proof to the satisfaction of the Corporation of the loss, theft or destruction, or upon surrender of the mutilated or defaced debenture or bond, as the case may be, and upon the Corporation receiving security or indemnity satisfactory to it against double payment if the missing debenture or bond is at any time thereafter presented for payment.

## **8 Protection of investors**

- (1) A person advancing money to the Corporation shall not be bound to inquire into the application of the money advanced or be in any way responsible for its non-application or misapplication.
- (2) A notification in the Gazette of the approval of the Governor having been given to a

borrowing by the Corporation shall, in favour of a lender and of any holder of any security given by the Corporation, be conclusive evidence that all conditions precedent to the borrowing have been complied with and, where the approval notified is to a borrowing by the Corporation in a place outside New South Wales and in a particular currency, shall also be conclusive evidence in favour of those persons of the approval of the Governor to the borrowing in the place and in the currency specified in the notification.

## **9 Securities rank equally**

All debentures, bonds, stock or other securities which are secured upon the income and revenue of the Corporation shall rank *pari passu* without any preference one above another by reason of priority of date or otherwise.

## **10 Receivers**

- (1) If for 6 months default is made by the Corporation in making any payment, whether of principal or interest, to the holder of any debenture, or coupon, issued or stock inscribed by the Corporation, the holder thereof may apply to the Supreme Court for the appointment of a receiver of the income of the Corporation.
- (2) A receiver may be appointed in respect of the income of the Corporation either generally or as regards specified income.
- (3) The Supreme Court may make such orders and give such directions as it may deem proper for and with respect to all or any of the following matters:
  - (a) the appointment of a receiver,
  - (b) the removal of a receiver,
  - (c) the appointment of a receiver in place of a receiver previously appointed.
- (4) The receiver shall be deemed to be an officer of the Supreme Court, and shall act under its directions.

## **11 Powers and duties of receivers**

- (1) A receiver shall have power to collect all income payable to the Corporation which the receiver has by order of the Supreme Court been so authorised to collect and for the purposes of this subclause the receiver shall be deemed to be the Corporation and may exercise all the powers of the Corporation.
- (2) The receiver shall discharge such duties of the Corporation or of any officers or employees of the Service as may be prescribed.

## **12 Commission to receiver**

The receiver shall be entitled to such commission or remuneration for the receiver's

services as the Supreme Court may order, and the commission or remuneration shall be payable out of the income for and in respect of which the receiver has been appointed receiver.

### **13 Application of money received**

The receiver shall, subject to any order of the Supreme Court, pay and apply all money received by the receiver in the following order, that is to say:

- (a) firstly, in payment of the costs, charges, and expenses of collection, and of the receiver's commission or remuneration,
- (b) secondly, in the payment of the amount due and payable to the holder of the debenture or inscribed stock or coupon, as the case may be, and
- (c) thirdly, in payment of all the residue of the money to the Corporation.

## **Fifth Schedule Provisions relating to the members and procedure of catchment committees**

(Section 23A (5))

### **1 Definition**

In this Schedule:

**committee** means a catchment committee.

### **2 Term of office**

Subject to this Schedule, a member of a committee shall hold office for such period as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Reimbursement of expenses**

A member of a committee may be reimbursed for such reasonable expenses as the Minister may from time to time determine in respect of the member.

### **4 Vacancy in office of member**

- (1) The office of a member of a committee becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause.

(2) The Minister may remove a member from office at any time.

## **5 Effect of certain other Acts**

(1) The *Public Sector Management Act 1988* does not apply to the appointment of a member of a committee and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of a committee or from accepting and retaining any money payable to the person under this Schedule as reimbursement for expenses.

(3) The office of a member of a committee is not, for the purposes of any Act, an office or place of profit under the Crown.

## **6 Liability of members etc**

No matter or thing done by a committee, any member of a committee or any person acting under the direction of a committee shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **7 General procedure**

The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall, subject to any direction by the Minister, be as determined by the committee.

## **8 Presiding member**

(1) At a meeting of a committee, the chairperson of the committee or, in the absence of the chairperson, another member elected to chair the meeting by the members present shall preside.

(2) The person presiding at a meeting of a committee has a deliberative vote only.

## **9 Quorum**

The quorum for a meeting of a committee is a majority of its members for the time being.

## **10 Voting**

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

## **Sixth Schedule (Repealed)**