



Western Australia

Soil and Land Conservation Act 1945

Compare between:

[01 Oct 2010, 08-e0-01] and [05 Nov 2010, 08-f0-01]

Western Australia

Soil and Land Conservation Act 1945

An Act relating to the conservation of soil and land resources, and to the mitigation of the effects of erosion, salinity and flooding.

[Long title amended by No. 42 of 1982 s. 4.]

Part I — Preliminary

[Heading inserted by No. 19 of 2010 s. 43(3)(a).]

1. Short title

This Act may be cited as the *Soil and Land Conservation Act 1945*, and shall come into operation on a day to be fixed by Proclamation ¹.

[Section 1 amended by No. 42 of 1982 s. 5.]

[2. Deleted by No. 42 of 1982 s. 6.]

[Heading deleted by No. 19 of 2010 s. 43(3)(b).]

3. This Act to be supplementary to other Acts

This Act shall be read in conjunction with and as being supplementary to the Acts mentioned in the Schedule to this Act, and the provisions of those Acts shall, so far as may be possible consistently with the objects and intentions thereof, be construed and applied with due regard to the objects and intentions of this Act and so that where effect can be given to the provisions of this Act without substantial interference with the operation of any of the provisions of any other of the said Acts, the provisions of this Act shall be deemed to be paramount and the provisions of such other Act shall be construed, take effect and be applied accordingly.

4. Terms used in this Act

In this Act, unless the context or subject matter otherwise indicates or requires —

appropriate officer means the officer of a Government department or public authority authorised by such department or authority in respect of any acts, matters or things in connection with which the expression is used;

chief executive officer means chief executive officer of the Department of Agriculture²;

Commissioner means the person for the time being holding or acting in the office of the Commissioner of Soil and Land Conservation under this Act;

Council means the Soil and Land Conservation Council appointed by the Governor under this Act;

Crown lands includes any lands vested in or controlled by any public authority;

district means a land conservation district constituted under section 22(1);

district committee means land conservation district committee established under section 23(2);

eutrophication means the deterioration of water quality resulting from the accumulation of nutrients in the water;

financial year means the period beginning on and including 1 July in any calendar year and ending on and including 30 June in the next following calendar year;

land conservation district means land conservation district constituted under section 22(1);

land degradation includes —

- (a) soil erosion, salinity, eutrophication and flooding; and
- (b) the removal or deterioration of natural or introduced vegetation,

that may be detrimental to the present or future use of land;

occupier, in relation to land, means the person by whom or on whose behalf the land is actually occupied, or, if there is no such person, the person entitled to possession, and includes a person who, under a licence or concession relating to specified land vested in the Crown, has the right to take a *profit à prendre* in respect of the land;

owner, in relation to land, includes every person who jointly or severally whether at law or in equity —

s. 4

- (a) is entitled to the land for an estate of freehold in possession; or
- (b) is a person to whom the Crown has lawfully contracted to transfer the fee simple under the *Land Administration Act 1997*, 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, or mortgagee; or
- (d) is the holder of any lease granted under the *Land Administration Act 1997*, or any other Act relating to the disposition of lands of the Crown;

public authority includes —

- (a) the Ministers of the Crown charged respectively with the administration of the Acts mentioned in the Schedule to this Act;
- (b) any Minister of the Crown charged with the administration of any Act relating to water supply, sewerage or drainage;
- (c) any Minister of the Crown charged with the administration of the *Public Works Act 1902*, or responsible for any works which are by virtue of any other Act deemed to be public works for the purposes of that Act;
- (ca) the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003* section 5;
- (d) every board or local government established or constituted under any of the Acts mentioned in the Schedule to this Act;
- [(e) deleted]*
- (f) the CEO as defined in section 3 of the *Conservation and Land Management Act 1984*;

- (g) the Commissioner of Main Roads; and
- (h) any other person or body declared by the Governor by Order in Council to be a public authority for the purposes of this Act;

Registrar of Deeds and Transfers has the meaning given to that expression by the *Registration of Deeds Act 1856*;

Registrar of Titles has the meaning given to that expression by the *Transfer of Land Act 1893*;

relevant land registration officer, when used in Part IVA or section 34A in relation to land, means —

- (a) where the land is under the operation of the *Transfer of Land Act 1893* or *Land Administration Act 1997*, the Registrar of Titles; and
- (b) where the land is alienated from the Crown but is not under the operation of the *Transfer of Land Act 1893*, the Registrar of Deeds and Transfers;

salinity means deterioration in soil quality or water quality resulting from the accumulation of, or a variation in the amount of, any salt in soil or water;

service charge means a charge imposed under section 25A(1a);

soil conservation means the application to land of cultural, vegetational and land management measures, either singly or in combination, to attain and maintain an appropriate level of land use and stability of that land in perpetuity and includes the use of measures to prevent or mitigate the effects of land degradation;

soil conservation reserve means a soil conservation reserve created under this Act;

the Trust means the Landcare Trust established by section 40;

the Trust Account means the Landcare Trust Account established under section 41B;

Treasurer means the Treasurer of the State.

s. 4A

[Section 4 amended by No. 32 of 1955 s. 3; No. 40 of 1974 s. 3; No. 63 of 1981 s. 4; No. 42 of 1982 s. 7; No. 98 of 1985 s. 3; No. 46 of 1988 s. 4; No. 91 of 1990 s. 4; No. 47 of 1994 s. 3; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 57 of 1997 s. 111; No. 31 of 1997 s. 81(1)-(3) and 141; No. 4 of 1999 s. 4; No. 31 of 2003 s. 168; No. 28 of 2006 s. 26; No. 77 of 2006 s. 17; No. 38 of 2007 s. 200.]

4A. Regulations and soil conservation notices do not apply to prevent commercial harvest of plantation products

- (1) In subsection (2) —

code of practice means a code of practice approved by the Commissioner and published in the *Gazette*;

commercial purpose means the purpose of sale or any other purpose that is directed to financial gain or reward;

notice means a soil conservation notice as defined in section 31;

plantation means one or more groups of planted trees;

product, in relation to a tree, includes the whole tree, a part of the tree or a thing produced by the tree whether or not the part of the tree or the thing produced by the tree is above or below the ground or has become separated from the tree before being harvested;

regulation means a regulation made under section 22(2) or 48;

tree means a perennial plant having one or more woody, self-supporting trunks and includes a tree seedling and a sapling.

- (2) A regulation or notice is of no effect to the extent to which it purports to prevent the harvest for a commercial purpose of a product of a tree in a plantation if the harvest is being done, or is intended to be done, in accordance with a code of practice that applies at the time the harvest is being done, or is intended to be done.

[Section 4A inserted by No. 56 of 2003 s. 7.]

Part II — Administration

5. Administration of Act

- (1) The Minister administering this Act shall be the Minister for Agriculture³.
- (2) The expenses of the administration of this Act (including any grants made thereunder) shall be paid out of moneys provided by Parliament for the purpose.

[6. Deleted by No. 42 of 1982 s. 8.]

7. Commissioner

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* an officer to be designated “The Commissioner of Soil and Land Conservation”.
- (2) The Commissioner shall give effect to such directions as the Minister or the chief executive officer gives to him from time to time with respect to his functions, powers or duties under this Act, either generally or with respect to a particular matter.
- (3) The Commissioner shall have and exercise such powers, functions and authorities and shall perform and carry out such duties as are or may be conferred or imposed upon him by or under this Act.
- (4) The Commissioner may, with the approval of the chief executive officer, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers or duties under this Act, other than this power of delegation.
- (5) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Commissioner.

s. 7A

- (6) A delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.
- (7) A delegation under this section may —
- (a) be made subject to such conditions, qualifications and exceptions as are set out in the instrument of delegation;
 - (b) be revoked or varied by instrument in writing signed by the Commissioner.
- (8) The Commissioner may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

[Section 7 amended by No. 32 of 1955 s. 4; No. 42 of 1982 s. 9; No. 46 of 1988 s. 19; No. 91 of 1990 s. 5; No. 32 of 1994 s. 3(2).]

7A. Deputy Commissioner

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* an officer to be designated “The Deputy Commissioner of Soil and Land Conservation”.
- (2) Where the Commissioner is absent or is temporarily incapable of fulfilling his duties, or where the office of Commissioner is vacant, the Deputy Commissioner of Soil and Land Conservation shall act in the office of the Commissioner during that absence or incapacity or until the vacancy is filled, as the case requires, and while so acting shall —
- (a) have all the powers, functions and authorities; and
 - (b) perform and carry out the duties,
- of the Commissioner under this Act.

[Section 7A inserted by No. 40 of 1974 s. 4; amended by No. 42 of 1982 s. 10; No. 91 of 1990 s. 6; No. 32 of 1994 s. 3(2).]

8. Officers and employees

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers and employees as may be necessary for the due administration of this Act.
- (2) For the purposes of this Act the Minister may —
 - (a) with the approval of the Minister of the department concerned and on such terms as may be arranged, make use of the services of any of the officers or employees of any Government department; and
 - (b) with the approval of the public authority concerned and on such terms as may be arranged, make use of the services of any of the officers, employees, or servants of any public authority.

[Section 8 amended by No. 42 of 1982 s. 11; No. 32 of 1994 s. 3(2).]

9. Soil and Land Conservation Council

- (1) There shall be a Council to be known as the “Soil and Land Conservation Council” consisting of 11 members appointed by the Governor on the nomination of the Minister.
- (2) Of such members —
 - (a) one shall be the Commissioner *ex officio*;
 - (b) one shall be a person who is an officer of the Public Service of the State and is employed in the Department of Agriculture²;
 - (c) 3, not including the member mentioned in paragraph (b), shall be persons each of whom is an officer of the Public Service of the State or an officer of the Commissioner of Main Roads appointed under the *Main Roads Act 1930*;

s. 9

- (d) one shall be a person nominated on the recommendation of the Western Australian Local Government Association or, in default of any such recommendation, by the Minister personally as a representative of the interests of local governments;
 - (e) subject to subsection (2b)(b), one shall be a person nominated by the Minister from a panel of the names of persons eligible and willing to act as members, submitted to the Minister for the purpose by the body known as the Western Australian Farmers Federation (Inc.) in accordance with a request made pursuant to subsection (2a);
 - (f) subject to subsection (2b)(b), one shall be a person nominated by the Minister from a panel of names of persons eligible and willing to act as members, submitted to the Minister for the purpose by the body known as the Pastoralists and Graziers Association of Western Australia in accordance with a request made pursuant to subsection (2a);
 - (fa) one shall be a person nominated by the Minister after consultation with such voluntary conservation organizations as he thinks fit;
 - (g) 2 shall be persons actively engaged in agricultural, horticultural or pastoral pursuits.
- (2a) Not earlier than 90 days before the expiration of the term of office of a member referred to in subsection (2)(e) or (f) the Minister shall, in writing, request the body referred to in the appropriate paragraph to submit to him, in writing, a panel containing the names of not fewer than 3 persons willing to act as members of the Council.
- (2b) Where a body has been requested, pursuant to subsection (2a), to submit a panel of not fewer than 3 names to the Minister, the Minister —

- (a) shall, if such a panel is submitted to him within 60 days of the body receiving the request, nominate one of the persons whose names appear on the panel for appointment to the office of member; and
 - (b) may, if default is made within that time in submitting such a panel to him, nominate for appointment to the office of member such person as he thinks fit, and any person so nominated may be appointed as if he had been nominated in accordance with paragraph (a).
- (3) As far as may be practicable the persons nominated for appointment shall be persons who have a general or special knowledge of soil conservation problems.
- (4) The Governor shall appoint one of the members of the Council (other than the Commissioner) to be the Chairperson thereof and one other of such members to be the Deputy Chairperson.
- (5) Subject to this Act, every member of the Council (other than the *ex officio* member) shall hold office for a term not exceeding 5 years, and subject to the terms and conditions determined by the Governor at the time of the appointment of such member.
- (6) Every member of the Council at the expiration of his term of office shall be eligible for re-appointment.
- (7) The Governor may dismiss any member of the Council from his office if he has been guilty of any act or conduct which in the opinion of the Governor renders him unfit to be a member of the Council.
- (8) The office of a member of the Council shall become vacant if —
 - (a) he dies;
 - (b) he resigns by writing addressed to the Minister;
 - (c) he is dismissed from office by the Governor.
- (9) In the case of vacancy arising in the office of any member of the Council the Governor may, on the nomination of the Minister, appoint some eligible person to fill such vacancy, and the

s. 9A

person so appointed shall subject to this Act hold office for the remainder of the term of office of the member in whose place he is appointed.

[Section 9 amended by No. 67 of 1967 s. 3; No. 94 of 1972 s. 4 (as amended by No. 19 of 1973 s. 4); No. 40 of 1974 s. 5; No. 42 of 1982 s. 12; No. 46 of 1988 s. 5; No. 91 of 1990 s. 7 and 16; No. 47 of 1994 s. 4; No. 14 of 1996 s. 4; No. 46 of 2009 s. 17.]

9A. Deputy members

- (1) For each member of the Council appointed under section 9 other than —
 - (a) the Commissioner;
 - (b) the Chairperson; and
 - (c) the Deputy Chairperson,

there may be appointed, in the same manner as that member, a deputy member.

- (2) A deputy member is entitled, in the absence of the member for whom he is a deputy from a meeting of the Council, to attend that meeting, and when so attending a deputy member has all the powers, functions, entitlements and protection as the member for whom he is deputy.

[Section 9A inserted by No. 47 of 1994 s. 5.]

10. Remuneration of Council

- (1) The Chairperson and every other member of the Council shall receive such remuneration (if any) and such travelling allowances as may be prescribed by regulations.
- (2) For the purposes of subsection (1), regulations made under section 48 may adopt in whole or in part any award made under the *Industrial Relations Act 1979* (either as it is at the time of the making of those regulations or as varied from time to time)

as being the level of remuneration and the travelling allowances to be received under subsection (1).

[Section 10 amended by No. 91 of 1990 s. 16; No. 47 of 1994 s. 6.]

11. Proceedings of Council

- (1) Meetings of the Council shall be held at such times and places as the Council or the Chairperson from time to time appoints.
- (2) At any meeting of the Council 6 shall be a quorum.
- (3) Subject to this Act and the regulations the Council may regulate its own proceedings.
- (4) The Council may invite any member of a district committee or any other person to attend at any meeting of the Council and take part in any discussion on any matter being dealt with by the Council, but that member or other person is not entitled to vote on any such matter.

[Section 11 amended by No. 67 of 1967 s. 4; No. 40 of 1974 s. 6; No. 42 of 1982 s. 13; No. 46 of 1988 s. 20; No. 91 of 1990 s. 16; No. 47 of 1994 s. 7.]

12. Secretary to Council

The chief executive officer shall arrange for the Council to be provided with such secretarial personnel, facilities and services as may be needed in order for it to carry out its functions.

[Section 12 inserted by No. 42 of 1982 s. 14; amended by No. 46 of 1988 s. 19; No. 91 of 1990 s. 16.]

Part III — Functions and powers

[Heading inserted by No. 42 of 1982 s. 15.]

13. Functions of Commissioner

The general functions of the Commissioner shall include —

- (a) the prevention and mitigation of land degradation;
- (b) the promotion of soil conservation;
- (c) the encouragement of landholders and the public generally to utilise land in such a manner as will tend towards the prevention and mitigation of land degradation and the promotion of soil conservation; and
- (d) the education of landholders and the public generally in the objects and practice of soil conservation.

[Section 13 inserted by No. 42 of 1982 s. 16.]

14. Duties of Commissioner

The duties of the Commissioner shall include —

- (a) the carrying out of surveys and investigations to ascertain the nature and extent of land degradation throughout the State;
- (b) the investigation and design of preventive and remedial measures in respect of land degradation;
- (c) the carrying out of experiments and demonstrations in soil conservation and reclamation;
- (d) the recording and publishing of the results of such surveys, investigations, designs, experiments and demonstrations;
- (e) the dissemination of information with regard to land degradation and soil conservation and reclamation;
- (f) the instruction and supervision of landholders in matters pertaining to soil conservation and reclamation;

- (g) the advising and assistance of landholders whose land has been affected by land degradation;
- (h) the coordination, having regard to the purposes of this Act, of the policies and activities of Government departments and public authorities in relation to any of the foregoing matters, and in regard to the alienation, occupation and utilisation of Crown lands or other lands vested in public authorities;
- (ha) the collection of rates and service charges imposed under section 25A;
- (i) the carrying out of works authorised by this Act.

[Section 14 amended by No. 42 of 1982 s. 17 and 42; No. 47 of 1994 s. 8; No. 4 of 1999 s. 5.]

15. Special powers of Commissioner

With the approval of the Minister, the Commissioner may —

- (a) by agreement with the appropriate authorities, bodies or owners conduct experiments and demonstrations pertaining to soil conservation and reclamation on any lands;
- (b) employ such workmen and other persons as he may require from time to time for the conduct of such experiments and demonstrations;
- (c) supervise the use and application by any authority, body or person of grants of money made to such authority, body or person for the carrying out of specific projects in furtherance of the objects of this Act.

16. Functions of Council

The functions of the Council are —

- (a) to advise the Minister as to the condition of soil and land resources;

s. 17

- (b) to make recommendations to the Minister as to land use, soil and land conservation policy, and programmes for the implementation of that policy;
- (c) to coordinate, monitor, and review soil and land conservation programmes and activities;
- (d) to coordinate and advise on the implementation in the State of soil and land conservation programmes funded by the Government of the Commonwealth;
- (e) to supervise soil and land conservation programmes undertaken by the Government of the State;
- (f) to promote awareness of land degradation and conservation;
- (g) to coordinate the establishment of, and activities within, land conservation districts;
- (h) generally to assist the Commissioner in the carrying out of his functions under this Act and to carry out such functions under this Act as the Commissioner or the Minister, respectively, may refer to the Council.

[Section 16 inserted by No. 91 of 1990 s. 8.]

17. Coordination of works of Government departments in respect of land degradation and soil conservation and reclamation

- (1) The Minister may arrange with the Minister of any other Government department or with any public authority for the carrying out by such department or public authority of any work required or authorised by or under this Act to be carried out by the Minister or the Commissioner.
- (2) The Commissioner shall endeavour to coordinate the services available in Government departments and public authorities for the carrying out of works relating to soil conservation or reclamation or mitigation of land degradation.

[(3) deleted]

- (4) The Commissioner shall consult with any Government department or public authority undertaking any work likely to cause land degradation or to prejudice any project being undertaken under the authority of this Act, and where agreement cannot be reached between the Commissioner and a Government department or a public authority, the Commissioner shall submit to the Minister a full report of the circumstances.

[Section 17 amended by No. 42 of 1982 s. 18 and 42.]

18. Powers to Government departments and public authorities

Every Government department and every public authority is hereby authorised —

- (a) upon receipt of a request in writing from the Commissioner to carry out or take part in any survey, experiment or demonstration and to do all such acts and things as are directed or otherwise by or under this Act in all respects; and
- (b) generally to cooperate with the Commissioner to carry out the purposes of this Act.

[Section 18 amended by No. 42 of 1982 s. 19.]

19. Commissioner may advise as to dealing with Crown land

- (1) The Commissioner may by writing addressed to the appropriate officer advise any Government department or public authority as to the alienation, disposal, occupation, care or use of any Crown lands in any case where the Commissioner considers that the matter of land degradation or soil conservation is relevant in respect of such alienation, disposal, occupation, care or use.
- (2) Copies of such advice shall be forwarded to the appropriate officer of any Government department which the Commissioner considers should be informed of such advice and may be published by the Commissioner.

s. 19A

- (3) Any Government department or public authority may refer to the Commissioner for investigation and report any question as to the appropriate use of any Crown land having regard to considerations of land degradation and soil conservation.
- (4) Every Government department shall upon a request by the Commissioner in writing addressed to the appropriate officer make available to the Commissioner any records of measures or operations for the prevention or mitigation of land degradation or any reports as to land degradation, soil conservation or the utilisation of land whether undertaken, made or received before or after the commencement of this Act.

[Section 19 amended by No. 42 of 1982 s. 20 and 42; No. 47 of 1994 s. 9.]

19A. Alteration of covenants etc. of certain leases etc.

- (1) Where the Commissioner is satisfied that compliance with any covenant, condition, term or provision of any lease granted under the *Land Administration Act 1997* or any mining tenement granted under the *Mining Act 1978* would tend to cause land degradation on any land he may so advise the Minister responsible for the particular Act.
- (2) Where the responsible Minister has been so advised he may, notwithstanding anything to the contrary contained in the *Land Administration Act 1997* or the *Mining Act 1978*, as the case requires, vary, modify, revoke or add to the covenants, conditions, terms or provisions of the lease or mining tenement as the circumstances require.

[Section 19A inserted by No. 42 of 1982 s. 21; amended by No. 31 of 1997 s. 141.]

20. Carrying out of works by Minister or Commissioner

- (1) The Minister may carry out or authorise the Commissioner to carry out any work in connection with soil conservation or

mitigation of land degradation or in connection with any other purpose contemplated by this Act.

[(2) deleted]

[Section 20 amended by No. 32 of 1955 s. 5; No. 42 of 1982 s. 42.]

20A. Minister may make certain advances and payments

The Minister may, out of moneys provided by Parliament —

- (a) make any advance upon such security and at such rate of interest and subject to such covenants, conditions and provisions as he may think fit to any owner or occupier of land on which the Commissioner has proposed the expenditure of money for works or practices for soil conservation or mitigation of land degradation; and
- (b) pay any costs or expenses incurred —
 - (i) in carrying out any works or practices proposed by the Commissioner for soil conservation or mitigation of land degradation; or
 - (ii) under any arrangement made with any Government department or public authority for the carrying out of works authorised by it under this Act.

[Section 20A inserted by No. 32 of 1955 s. 6; amended by No. 42 of 1982 s. 42.]

21. Power of entry

- (1) The Commissioner or any officer or employee may, in the exercise or performance of any power, authority, duty or function conferred or imposed upon him by or under this Act, enter any land and make such surveys, place such marks and carry out such investigations thereon (including the taking of specimens of soil) as he may deem necessary. It shall be the duty of the Commissioner or officer or employee to make such

s. 21

survey, place such marks, or carry out such investigations only after at least 7 days' notice in writing has been given to the owner of such land or the actual occupier of the land at the time and with the minimum of interference with the lawful activities upon the land which are being carried on by such owner or occupier.

- (1a) Notwithstanding subsection (1) the notice referred to in that subsection —
- (a) may be of less than 7 days; or
 - (b) may be given otherwise than in writing,
- or both, so long as the notice is reasonable in the circumstances.
- (2) Where the exercise or performance of any power, authority, duty or function, conferred or imposed upon the Commissioner or any officer or employee by or under this Act requires the making of an entry upon any land by the Commissioner or by any officer or employee, the Commissioner or such officer or employee shall be furnished with an authority card in the prescribed form.
- (3) Any such authority card may be general or may be limited to specified land or to land in any specified part of the State.
- (4) 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.
- (5) Any person who —
- (a) obstructs or hinders the Commissioner or any officer or employee 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 guilty of an offence.

Penalty — \$1 000.

[Section 21 amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 22; No. 20 of 1989 s. 3.]

21A. Work in relation to State forests and timber reserves

Notwithstanding anything to the contrary contained elsewhere in this Act, where any works proposed to be carried out under the authority of this Act are likely to affect, whether injuriously or otherwise, any State forest or timber reserve, such works shall be carried out only by or with the concurrence of the Minister charged with the administration of the *Forests Act 1918*⁴.

[Section 21A inserted by No. 32 of 1955 s. 7.]

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 1 Constitution of land conservation districts and appointment and functions of district committees

s. 22

Part IIIA — Land conservation districts

[Heading inserted by No. 42 of 1982 s. 23; amended by No. 46 of 1988 s. 6.]

Division 1 — Constitution of land conservation districts and appointment and functions of district committees

[Heading inserted by No. 42 of 1982 s. 23; amended by No. 46 of 1988 s. 7.]

22. Soil conservation districts

- (1) The Governor may by Order in Council made on the recommendation of the Minister —
 - (a) constitute any portion of the State defined in the Order a conservation district for the purposes of this Act;
 - (b) assign a name to any such district;
 - (c) alter the boundaries of any such district;
 - (d) abolish any such district.
- (1aa) The portion of the State constituted as a land conservation district under subsection (1) may be defined by reference to a map showing, where practicable by using geographical or other known features, the locality in such a way as to enable the boundaries of the land conservation district to be readily identified.
- (1a) Before recommending that an Order be made under subsection (1) the Minister shall consult with the local government of each district that is wholly or in part comprised within the proposed land conservation district.
- (2) In respect of any districts constituted under this section the Governor may make regulations for all or any of the following purposes —
 - (a) prohibiting the lighting of fires except under such circumstances, and subject to such limitations,

- conditions and restrictions as may be prescribed by the regulations or pursuant thereto;
- (b) regulating or prohibiting the clearing or destruction of, or interference with trees, shrubs, plants or grasses;
 - (c) prohibiting or regulating any change in the use of any land;
 - (d) restricting or regulating the use of any land for agricultural or pastoral purposes;
 - (e) generally for requiring the doing on or in respect of any land of any act or thing which may be likely to prevent or mitigate land degradation or promote soil conservation and for prohibiting the doing on or in respect of any such land of any act or thing which may be likely to facilitate land degradation.
- (3) Any regulation made under subsection (2) —
- (a) may be made to apply to all land conservation districts, whether constituted before or after the regulations come into force or to any specified land conservation district;
 - (b) may be made to apply to any class or classes of land, or to all land, or to all land other than land of any specified class or classes within the area to which the regulation applies;
 - (c) may authorise any matter or thing to be determined, applied or regulated from time to time by the Minister or the Commissioner.
- (4) Every person who without lawful excuse acts in contravention of or fails to comply in any respect with any regulations made under subsection (2) or any direction, requirement, prohibition, condition, limitation or restriction given or imposed under any such regulations shall be guilty of an offence against this Act.
- Penalty — \$2 500.

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 1 Constitution of land conservation districts and appointment and functions of district committees

s. 23

[Section 22 amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 24 and 42; No. 46 of 1988 s. 21; No. 20 of 1989 s. 3; No. 47 of 1994 s. 10; No. 14 of 1996 s. 4.]

23. Constitution and membership of district committees

- (1) In this section *the producer organizations* means the bodies known, respectively, as the Western Australian Farmers Federation (Inc.) and the Pastoralists and Graziers Association of Western Australia.
- (2) On or after the constitution of a land conservation district the Governor may by Order in Council, establish a land conservation district committee for that land conservation district.
 - (2a) In an Order establishing a district committee the Governor shall —
 - (a) in accordance with subsection (2b); and
 - (b) on the recommendation of the Minister made after consultation by the Minister with the local government of each district that is wholly or in part comprised within the conservation district and with the producer organizations,
determine —
 - (c) the number of members who shall constitute the committee being not less than 5; and
 - (d) the manner in which the committee shall be constituted.
 - (2b) The constitution of a district committee shall be determined under subsection (2a)(d) so as to provide for the following persons to be members of the committee —
 - (a) the Commissioner, *ex officio* or his nominee;
 - (b) one or more persons appointed by the Commissioner on the nomination of the local government of each district

- that is wholly or in part comprised within the land conservation district;
- (c) if, in the opinion of the Minister, agricultural or pastoral activities, or both, are a major land use within the land conservation district, 3 persons appointed by the Commissioner to represent one of the producer organizations or 2 persons to represent one of the producer organizations and one person representing the other producer organization; and
- (d) such number of other persons appointed by the Commissioner as is necessary to complete the membership of the committee as determined under subsection (2a)(c), being persons actively engaged in, or affected by or associated with, land use, or representing organizations, or Government departments, instrumentalities or agencies actively engaged in, or affected by or associated with, land use, in the land conservation district.
- (2c) Where an Order made under this section provides for a person or persons to be appointed as a member or members of a district committee to represent one of the producer organizations the Order shall make provision for the producer organization to submit to the Commissioner a panel containing the names of persons willing to be so appointed and shall provide that where such a panel is submitted in accordance with the Order one or more, as the case requires, of the persons whose names appear on the panel shall be appointed.
- (2d) The Governor may make an Order in Council amending, varying or revoking, or in substitution, for, any previous Order made under this section.
- (3) Members of a district committee (other than the Commissioner or his nominee) shall hold office for a period not exceeding 3 years, and shall be eligible for re-appointment.

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 1 Constitution of land conservation districts and appointment and functions of district committees

s. 24

- (4) The members of the committee shall elect one of their number (other than the Commissioner or his nominee) to be the chairperson thereof.

[Section 23 amended by No. 42 of 1982 s. 25; No. 46 of 1988 s. 8, 20 and 21; No. 47 of 1994 s. 11; No. 14 of 1996 s. 4.]

24. Functions of district committees

- (1) The functions of a district committee are —
- (a) on behalf of, and in accordance with any direction, approval or authorisation given by, the Commissioner —
 - (i) to manage projects; and
 - (ii) to carry out or cause to be carried out works or practices,
for preventing, remedying or mitigating land degradation and for promoting soil conservation and reclamation;
 - (b) to review, assess and report to the Commissioner on the effects of land use or land management on the condition of the land within its land conservation district;
 - (c) to develop, promote and, in accordance with any direction, approval or authorisation given by the Commissioner, implement programmes of soil and land conservation within its land conservation district;
 - (d) if any matter relating to land use, land degradation or soil conservation is referred to it by the Minister or the Commissioner, to consider and report on that matter to the Commissioner or the Minister, as the case requires;
 - (e) to make recommendations to, and to consult with, the Commissioner concerning any works, research, experimental or educational programmes which may be necessary or desirable within its land conservation district;

- (f) to make recommendations to the Minister for the purposes of section 25A(1) or (1a);
 - (g) to make recommendations to the Minister or the Commissioner, as the case requires, for the purposes of section 25C(4); and
 - (h) to perform such functions relating to land degradation and soil conservation as may be agreed between the Council and the Commissioner.
- (2) A district committee has all such powers as are reasonably necessary to enable it to perform the functions set out in subsection (1) including the power to employ persons to assist in the performance by that committee of those functions.

[Section 24 inserted by No. 46 of 1988 s. 9; amended by No. 91 of 1990 s. 16; No. 47 of 1994 s. 12; No. 4 of 1999 s. 6.]

25. Power to co-opt certain persons

The Minister may, whenever he deems it necessary or expedient, invite any member of a district committee or any officer in any Government department or any other person to attend at any meeting of the Council and take part in any discussion on any particular matter before the Council.

[Section 25 amended by No. 42 of 1982 s. 27; No. 46 of 1988 s. 10 and 20; No. 91 of 1990 s. 16.]

Division 2 — Rating and finance

[Heading inserted by No. 42 of 1982 s. 28.]

25A. Imposition of rate or service charge

- (1) Subject to subsections (6) and (7) the Minister acting on the recommendation of the district committee for a land conservation district may, by notice published in the *Gazette*, impose a rate in respect of that district or such part of that district as is specified in the notice, and where a rate is so

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 2 Rating and finance

s. 25A

imposed rates shall be assessed, collected and paid on land in accordance with this Division at the rate so imposed.

- (1a) Subject to subsections (7) and (8) and to section 25AA the Minister, acting on the recommendation of the district committee for a land conservation district may, by notice published in the *Gazette*, impose a charge to meet the cost of a soil conservation service specified in the notice in respect of that district or such part of that district as is specified in the notice, and where a charge is so imposed the charge shall be collected and paid on land in accordance with this Division.
- (2) Different rates or service charges may be imposed under subsection (1) or (1a) in respect of different parts of a district.
- (3) Subject to subsection (5) a rate imposed under subsection (1) applies to all land within the land conservation district or part of a land conservation district, as the case may be, that is at the time of the imposition of the rate rateable land in a local government district for the purposes of Part 6 of the *Local Government Act 1995* and the amount payable by way of rates on any land —
- (a) shall be assessed on the gross rental value of that land or unimproved value of that land, as the case may be, shown at that time in the rate record of the local government of that district; and
 - (b) is payable by the owner of that land as shown at that time in the rate record of the local government of that district.
- (3a) Subject to subsection (5), a service charge imposed under subsection (1a) —
- (a) applies to all land within the land conservation district or part of a land conservation district, as the case may be, that is at the time of the imposition of the service charge rateable land in a local government district for the purposes of Part 6 of the *Local Government Act 1995*; and

- (b) is payable by the owner of that land as shown at that time in the rate record of the local government of that district.
- (4) Subject to subsection (7) the Minister acting on the recommendation of the district committee for a land conservation district may, by notice published in the *Gazette* classify land within the district or a part of the district for the purposes of this Division and may, by notice so published, alter, vary, revoke or substitute any such notice.
- (5) Subject to subsection (7) where a classification has been made under subsection (4) the Minister acting on the recommendation of the district committee may, in the exercise of his powers under subsection (1) or (1a) —
- (a) impose different rates or service charges in respect of different classes of land;
 - (b) exempt a class of land from the application of a rate or a service charge.
- (6) A rate imposed in respect of land under subsection (1) shall not itself exceed and shall not when aggregated with any other rate or rates imposed under that subsection in respect of the same land in the same financial year exceed —
- (a) 6 cents in the dollar of the value of the land as referred to in subsection (3)(a) where that value is the gross rental value of the land;
 - (b) 2 cents in the dollar of the value of the land as referred to in subsection (3)(a) where that value is the unimproved value of the land.
- (7) Before exercising any power conferred on him by this section the Minister shall consult with the local government of each district that is wholly or in part comprised within the land conservation district, or part of a land conservation district, in respect of which the power is proposed to be exercised.

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 2 Rating and finance

s. 25AA

- (8) Before imposing a service charge the Minister is to ensure that the prescribed steps have been taken or will be taken by the district committee for the land conservation district in which it is proposed to impose the service charge.
- (9) The steps that are prescribed for the purposes of subsection (8) in relation to a proposed service charge are to include —
- (a) the holding of one or more public meetings for the consideration of the service charge by persons who would be required to pay it and who attend such a meeting;
 - (b) the placing of prescribed information before any such public meeting; and
 - (c) the giving of an opportunity to persons referred to in paragraph (a) to vote at a public meeting for or against the service charge or otherwise to express their views.
- (10) Regulations made as mentioned in subsection (9)(a) in relation to public meetings are to include —
- (a) requirements to be observed in connection with the calling of any public meeting, including a requirement to give public notice of the meeting;
 - (b) provision as to the chairperson; and
 - (c) provision for the procedures to be followed, including provisions for a quorum and in respect of voting.
- (11) The imposition of a service charge is of no effect if any prescribed step is not taken or is not taken in accordance with the regulations.

[Section 25A inserted by No. 42 of 1982 s. 28; amended by No. 46 of 1988 s. 20 and 21; No. 14 of 1996 s. 4; No. 4 of 1999 s. 7.]

25AA. Use of money raised by service charge

- (1) A service charge is only to be imposed for a soil conservation purpose specified in the notice under section 25A(1a) (*the specified service*).
- (2) Subject to section 25B(8), a district committee may only use the money raised from a service charge to meet the cost of providing the specified service.
- (3) If a district committee raises more money from a service charge than it requires for the specified service it shall refund to the owner of land on which the charge was imposed an amount that bears to the service charge paid the same proportion as the amount expended on the specified service bears to the total of the moneys raised by the district committee from the service charge.

[Section 25AA inserted by No. 4 of 1999 s. 8.]

25B. Assessment, collection and payment of rate or service charge

- (1) Where a rate imposed under section 25A(1) applies to any land the Minister shall cause the amount payable by way of rates under that section on and in relation to that land (in this section called *soil conservation rates*) to be assessed and, following that assessment, the chief executive officer shall —
 - (a) cause a notice of assessment of the soil conservation rates to be served on the person liable to pay the rates; or
 - (b) make arrangements with the local government of the district in which the land is situated for a notice of assessment of the soil conservation rates to be served by the local government.
- (1a) Where a service charge applies to any land the chief executive officer shall —
 - (a) cause a notice of assessment of the service charge to be served on the person liable to pay the charge; or

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 2 Rating and finance

s. 25B

- (b) make arrangements with the local government of the district in which the land is situated for a notice of assessment of the service charge to be served by the local government.
- (2) Soil conservation rates shall, subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, be due and payable 30 days after the notice of assessment thereof is served.
- (2a) Service charges —
 - (a) shall be due and payable 30 days after the notice of assessment of the service charge is served; and
 - (b) when payable are a debt due to the Crown payable —
 - (i) to the chief executive officer; or
 - (ii) where pursuant to arrangements made under this section notice of assessment of the service charge is served by a local government, to the local government.
- (3) When soil conservation rates are due and payable —
 - (a) they are a debt due to the Crown payable —
 - (i) to the chief executive officer; or
 - (ii) where pursuant to arrangements made under this section notice of assessment thereof is served by a local government, to the local government;
 - (b) Part 6 Division 2 of the *Taxation Administration Act 2003* applies to them as if —
 - (i) they were land tax imposed by the *Land Tax Act 2002*; and
 - (ii) references in that Division to the Commissioner of State Revenue were references to the chief executive officer.
- (4) The chief executive officer shall, as the case may require —
 - (a) cause soil conservation rates to be reassessed;

- (b) cause an amended notice of assessment of soil conservation rates to be served or make arrangements with the local government of the district in which the land is situated for an amended notice of assessment of soil conservation rates to be served by the local government;
- (c) refund, wholly or in part, any amount paid by way of soil conservation rates,

when, in consequence of an objection under the *Local Government Act 1995* or the *Valuation of Land Act 1978* or a review by the State Administrative Tribunal, such action is appropriate.

- (5) In this section ***notice of assessment*** includes an amended notice of assessment.
- (6) A local government is hereby authorised to enter into arrangements with the chief executive officer under this section and, where such an arrangement has been entered into —
 - (a) notices of assessment of soil conservation rates or service charges may be served by the local government; and
 - (b) the local government, on behalf of the chief executive officer, may receive moneys paid by way of soil conservation rates or service charges and moneys so received shall be held in a trust fund of the local government kept under section 6.9 of the *Local Government Act 1995* until such time as they are remitted to or to the order of the chief executive officer.
- (7) Where the district of a local government is wholly or partly comprised in a land conservation district —
 - (a) the Minister and any person authorised by him in writing;
 - (ab) the chief executive officer; and

s. 25C

- (b) any member of the district advisory committee for that district,

may, for the purposes of this section or section 25A of this Act, inspect the rate record kept by the local government of the district under Part 6 of the *Local Government Act 1995*.

- (8) The administrative costs of imposing and collecting rates or service charges in a land conservation district are to be met from the rates or service charges imposed and collected in that district.

[Section 25B inserted by No. 42 of 1982 s. 28; amended by No. 46 of 1988 s. 21; No. 31 of 1992 s. 52(2); No. 27 of 1994 s. 42; No. 47 of 1994 s. 13; No. 14 of 1996 s. 4; No. 4 of 1999 s. 9; No. 45 of 2002 s. 22; No. 55 of 2004 s. 1096.]

25C. Land Conservation Districts Account

- (1) An account called the Land Conservation Districts Account is established under section 16 of the *Financial Management Act 2006*.

[(2) deleted]

- (3) The following moneys shall be credited to the account maintained under subsection (1) —
- (a) any moneys appropriated by Parliament for the purposes of a soil conservation programme in a district;
 - (b) subject to section 25B(8), any rates or service charges collected under section 25B in respect of land in a district;
 - (c) any moneys advanced by the Treasurer under section 25D to meet expenditure in a district; and
 - (d) any other moneys received pursuant to this Act in respect of land or works in a district.
- (3a) Any moneys for service charges credited to the Land Conservation Districts Account under subsection (3)(b) shall be

separately accounted for according to the land conservation district to which they relate and the purpose for which the service charge was imposed.

- (4) Subject to subsection (4a), moneys standing to the credit of the account maintained under subsection (1) may be allocated by the chief executive officer, either at the direction of the Minister, on the recommendation of a district committee or on the chief executive officer's own initiative, to a district committee to be used for the purposes of this Act, including —
- (a) the construction of soil conservation works to benefit the district;
 - (b) the payment to an owner or occupier of land in the district of a proportion of the cost of soil conservation works constructed by the owner or occupier on the land, having regard to the extent to which those works benefit the district generally rather than the land on which they are constructed;
 - (c) the promotion of soil conservation in the district;
 - (d) research into soil conservation measures and practices relevant to the district;
 - (e) the demonstration in the district of soil conservation techniques;
 - (f) the payment of interest on moneys advanced by the Treasurer under section 25D to meet expenditure in the district;
 - (g) any remuneration payable as a consequence of employment of persons under section 24(2).
- (4a) Moneys for service charges standing to the credit of the account maintained under subsection (1) may be allocated by the chief executive officer, on the recommendation of a district committee, for the purpose for which the charge was imposed.
- (5) The chief executive officer may, at any time —

Soil and Land Conservation Act 1945

Part IIIA Land conservation districts

Division 2 Rating and finance

s. 25D

- (a) require a district committee to prepare a report showing the manner in which moneys allocated to it have been applied;
- (b) appoint an auditor to examine the records of a district committee to ensure that funds have been properly expended; or
- (c) generally, attach conditions with respect to the allocations made to a district committee.

[Section 25C inserted by No. 42 of 1982 s. 28; amended by No. 98 of 1985 s. 3; No. 46 of 1988 s. 11, 20 and 21; No. 47 of 1994 s. 14; No. 49 of 1996 s. 64; No. 4 of 1999 s. 10; No. 28 of 2006 s. 27; No. 77 of 2006 s. 17.]

25D. Advances by Treasurer

- (1) Where at any time the moneys standing to the credit of the account maintained under section 25C(1) are not sufficient to meet allocations made or to be made under section 25C(4) the chief executive officer may borrow from the Treasurer to enable those allocations to be met.
- (2) Interest in respect of moneys advanced under subsection (1) shall be paid at such rate and at such times as the Treasurer determines.
- (3) Moneys advanced under subsection (1) and interest payable in respect thereof are charges upon the Land Conservation Districts Account.

[Section 25D inserted by No. 42 of 1982 s. 28; amended by No. 98 of 1985 s. 3; No. 46 of 1988 s. 12 and 19; No. 47 of 1994 s. 15; No. 77 of 2006 s. 17.]

25E. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and

in respect of the Department of Agriculture² and its operations under this Act.

- (2) The Department of Agriculture² shall —
- (a) include in its annual report the report required to be made to the accountable authority of that department by the Commissioner under section 25F;
 - (ab) include in its annual report the text of any direction given by the Minister under section 25C(4); and
 - (b) include in its annual estimates the estimates required to be made to the accountable authority of that department by the Commissioner under section 25G.

[Section 25E inserted by No. 98 of 1985 s. 3; amended by No. 47 of 1994 s. 16; No. 77 of 2006 s. 6 and 17.]

25F. Commissioner's report

The Commissioner shall, by 15 August, prepare and forward to the accountable authority of the Department of Agriculture² a report on his operations during the preceding financial year.

[Section 25F inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 s. 6.]

25G. Commissioner's annual estimates

The Commissioner shall prepare and forward to the accountable authority of the Department of Agriculture², by a date not later than a date specified by that authority, annual estimates of the proposed financial operations to be undertaken by the Commissioner under this Act.

[Section 25G inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 s. 6 and 17.]

Part IV — Soil conservation reserves

26. Soil conservation reserves

- (1) The Commissioner may from time to time recommend to the Minister what lands (whether Crown or private), in the opinion of the Commissioner should be reserved as soil conservation reserves.
- (2) Where the land so recommended to be reserved is Crown land, the Governor may by Proclamation declare the same to be a soil conservation reserve under this Act.
- (3) Where the land is private land it may be taken as for a public work under Part 9 of the *Land Administration Act 1997*, and the provisions of that Act shall apply accordingly, and the land so taken shall be a soil conservation reserve under this Act.
- (4) The Governor may, on the recommendation of the Minister, by a subsequent Proclamation revoke any prior Proclamation whereby any land has been declared to be a soil conservation reserve, and thereupon such soil conservation reserve shall be abolished.
- (5) Where a soil conservation reserve is abolished as provided for in subsection (4) the lands comprised therein shall forthwith become Crown land within the meaning and for the purposes of the *Land Administration Act 1997*, and may be dealt with under that Act accordingly.
- (6) The expression ***Crown land*** as used in subsection (2) has the same meaning as in the *Land Administration Act 1997*, and the expression ***private land*** as used in subsection (3) means any land other than Crown land.

[Section 26 amended by No. 31 of 1997 s. 81(4), (5), 141 and 142.]

27. Minister to manage soil conservation reserves

Every soil conservation reserve shall be under the control and management of the Minister, and the Minister shall manage and control the reserve in such manner as in his opinion will best conserve the soil and land of the reserve and prevent injury to other land.

[Section 27 amended by No. 42 of 1982 s. 29.]

28. Offences in relation to soil conservation reserves

- (1) Any person who, without the consent of the Minister —
- (a) lights any fire within a soil conservation reserve; or
 - (b) removes from any soil conservation reserve the whole or any part of any tree, shrub, grass or other plant whatever; or
 - (c) injures or destroys any tree, shrub, grass or other plant on any soil conservation reserve; or
 - (d) places any cattle, horses or other animals or causes or permits any cattle, horses or other animals to be on any soil conservation reserve, or permits any cattle, horses or other animals to trespass upon any soil conservation reserve; or
 - (e) in any way injuriously interferes with the land in any soil conservation reserve,

shall be guilty of an offence against this Act.

Penalty — \$2 000.

- (2) In addition to any penalty imposed under the last preceding subsection, there may be imposed a further penalty equal to the value of all damage done together with twice the full market value of any timber unlawfully cut and removed; and every such further penalty shall be recoverable as a fine.

[Section 28 amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 30; No. 20 of 1989 s. 3.]

s. 29

29. Execution of works for land degradation

- (1) The Minister may, on the recommendation of the Commissioner on any land comprised in a soil conservation reserve cause to be constructed or executed any fences, contour banks, channels or other works or any act or thing to be done which the Minister is satisfied it is necessary or expedient to construct, execute or do for the purpose of conserving the soil of such land or for the purpose of conducting research into the causes and modes of prevention of land degradation.
- (2) All works undertaken or proposed to be undertaken under this section shall be deemed to be public works within the meaning of the *Public Works Act 1902*, and the provisions of that Act shall apply thereto accordingly.

[Section 29 amended by No. 42 of 1982 s. 42.]

29A. Vesting of works in public authority

- (1) On the completion of any work carried out in pursuance of this Act within a soil conservation reserve, the Governor, on the recommendation of the Minister, may by Order in Council vest in a public authority any work constructed for the purpose of soil conservation or land degradation mitigation.
- (2) The care, control and maintenance of such work shall then devolve on the public authority.
- (3) The Governor may, by the same or a subsequent Order in Council vest in the public authority the whole or any part of any land comprised in the soil conservation reserve which is the property of the Crown and is required for the purposes of the work so vested in the public authority.

[Section 29A inserted by No. 42 of 1982 s. 31.]

30. Leasing of land in soil conservation reserves

- (1) The Minister may grant leases of or licences to occupy any land comprised in any soil conservation reserve to any person for such terms, at such rents and subject to such covenants, conditions and agreements as the Minister may determine.
- (2) All revenue derived under any such leases or licences shall be credited to the Consolidated Account.

[Section 30 amended by No. 98 of 1985 s. 3; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]

**Part IVA — Conservation covenants and agreements
to reserve**

[Heading inserted by No. 91 of 1990 s. 9.]

30A. Term used in this Part

In this Part ***covenant or agreement*** means a conservation covenant or an agreement to reserve, as referred to in section 30B(2).

[Section 30A inserted by No. 91 of 1990 s. 9.]

30B. Registration and form of covenant or agreement

- (1) Where, in accordance with this section, the owner of any land covenants with the Commissioner by instrument in writing to set that land aside for the protection and management of vegetation, the Commissioner may deliver a memorial of the instrument, in a form approved by the relevant land registration officer, to the relevant land registration officer who shall thereupon register the memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the instrument relates.
- (2) An instrument under subsection (1) —
 - (a) may be expressed to have effect for a period of time specified in the covenant or in perpetuity;
 - (b) may be expressed to be irrevocable, in which case it shall be known as a ***conservation covenant***, and if it is not expressed to be irrevocable shall be known as an ***agreement to reserve***.
- (3) A covenant or agreement —
 - (a) is required to be in a form approved by the Commissioner, identifying the land to which the covenant or agreement relates and each person who is an owner or occupier of that land; and

- (b) requires the consent in writing of each person who is an owner or occupier of the land to which the covenant or agreement relates.

[Section 30B inserted by No. 91 of 1990 s. 9; amended by No. 47 of 1994 s. 17; No. 81 of 1996 s. 153(1).]

30C. Effect of covenant or agreement

- (1) A covenant or agreement in relation to land —
 - (a) binds the person by whom it was given and each person who consented in writing to the covenant or agreement for so long as the covenant or agreement subsists and that person continues to be an owner or occupier of the land; and
 - (b) while a memorial of the covenant or agreement remains registered under section 30B, binds each person successively becoming an owner or occupier of the land.
- (2) Sections 35, 36 and 37 apply in relation to a covenant or agreement as if references in those sections to a soil conservation notice were references to a covenant or agreement.

[Section 30C inserted by No. 91 of 1990 s. 9.]

30D. Duties upon passing interests in affected land

While a memorial of a covenant or agreement remains registered under section 30B, each owner and occupier of the land to which the covenant or agreement relates shall —

- (a) before agreeing with another person in writing that the other person will succeed him in the ownership or occupation or both, as the case requires, of that land notify the other person in writing of the content of the covenant or agreement and of the fact that the covenant or agreement will be binding on the other person if the other person succeeds him in that ownership or occupation or both; and

s. 30E

- (b) within a period of 14 days after the day on which he ceases to be such an owner or occupier, notify the Commissioner in writing of that cessation and of the name and address of each person who succeeds him in the ownership or occupation or both, as the case requires, of that land.

Penalty — \$2 000.

[Section 30D inserted by No. 91 of 1990 s. 9.]

30E. Discharge of agreement to reserve

- (1) A notice discharging an agreement to reserve may be served by the Commissioner under this section if the agreement to reserve is no longer necessary or any other just cause exists for discharging it.
- (2) A person who is bound by an agreement to reserve may from time to time apply in writing to the Commissioner to have the agreement to reserve discharged under subsection (1).
- (3) The Commissioner shall consider an application made under subsection (2) and notify the applicant of his decision.
- (4) Section 39 applies in relation to a refusal of the Commissioner to discharge an agreement to reserve under this section as if —
 - (a) a reference in that section to a soil conservation notice were a reference to an agreement to reserve; and
 - (b) a reference in that section to the discharge of a soil conservation notice pursuant to section 38 were a reference to the discharge of an agreement to reserve pursuant to this section.

[Section 30E inserted by No. 91 of 1990 s. 9.]

30F. Cancelling registration of memorial

- (1) Where an agreement to reserve of which a memorial is registered under section 30B is discharged under section 30E, or

section 39 as applied by section 30E, the Commissioner shall deliver to the relevant land registration officer a certificate in a form approved by the relevant land registration officer and signed by the Commissioner certifying that the agreement to reserve was discharged on the date specified in the certificate.

- (2) The relevant land registration officer —
- (a) shall, on receiving a certificate delivered under subsection (1);
 - (b) may, in any other case where a covenant or agreement has ceased to have effect,

cancel the registration of the memorial of the relevant covenant or agreement and accordingly endorse or note the appropriate register or record in respect of the land concerned.

[Section 30F inserted by No. 91 of 1990 s. 9; amended by No. 81 of 1996 s. 153(1).]

Part V — Soil conservation notices

[Heading amended by No. 42 of 1982 s. 32.]

31. Term used in this Part

In this Part **soil conservation notice** means a notice served in accordance with section 32(1) and in sections 35 and 39 includes a notice so served as varied by the Minister under this Part.

[Section 31 inserted by No. 42 of 1982 s. 33.]

32. Service, content and effect of notice

- (1) Whenever the Commissioner is of the opinion that as a result of —
- (a) any agricultural or pastoral practices or methods, which have been or are likely to be adopted;
 - (b) clearing or intended clearing;
 - (c) failure on the part of any person to take adequate precautions to prevent or control soil erosion, salinity or flooding; or
 - (d) the destruction, cutting down or injuring of any tree, shrub, grass or any other plant,

on any land, land degradation is occurring or is liable or likely to become liable to occur on that land or elsewhere the Commissioner may —

- (e) by notice in writing served on each owner, and each occupier, of that land, or on any other person who, in the opinion of the Commissioner, is acting in a manner described in paragraph (a), (b), (c) or (d) which is directly associated with the actual or potential land degradation, direct that any or all of the things mentioned in subsection (2) be done on or in relation to that land;

- (f) by notice in writing served on each owner, and each occupier, of any land on which that land degradation is so occurring or is liable or likely to become liable to so occur direct that any or all of the things mentioned in subsection (2) be done on or in relation to such land.
- (1a) In any proceedings, evidence proving that a notice was served in accordance with subsection (1) is sufficient evidence that the Commissioner was of an opinion required by subsection (1) for the serving of the notice.
- (2) A soil conservation notice may —
 - (a) direct each or any one or more of the persons bound by the soil conservation notice to do all or any of the following things —
 - (i) adopt or refrain from adopting any agricultural or pastoral methods specified in the notice;
 - (ii) refrain from clearing any land specified in the notice;
 - (iii) refrain from destroying, cutting down or injuring any tree, shrub, grass or other plant on any land specified in the notice;
 - (iv) take such action as is specified in the notice for preventing the erosion, drift or movement of sand, soil, dust or water on or from any land specified in the notice;
 - (v) any other matter incidental to the foregoing;
 - and
 - (b) specify a period within which or for the duration of which such things shall be done.
- (3) A soil conservation notice —
 - (a) while it subsists, binds each person on whom it is served; and

s. 34

(b) while a memorial of the soil conservation notice remains registered under section 34A, binds each successive owner, and each successive occupier, of the land to which the soil conservation notice relates.

(4) As soon as practicable after serving a soil conservation notice the Commissioner shall notify each of the other members of the Council, in writing, of the service of the notice and of the directions contained therein.

[Section 32 inserted by No. 42 of 1982 s. 33; amended by No. 46 of 1988 s. 13; No. 91 of 1990 s. 10 and 16; No. 47 of 1994 s. 18.]

[33. Deleted by No. 55 of 2004 s. 1097.]

34. Application to State Administrative Tribunal for review of issue of notice

(1) A person who objects to a soil conservation notice served upon him may apply to the State Administrative Tribunal for a review of the decision of the Commissioner to issue the notice.

[(2), (3) deleted]

(4) Where a person is required by a soil conservation notice to refrain from doing anything upon land, the lodging of an application for review by that person under subsection (1) shall not suspend the obligation of that person to comply with that requirement pending the determination of the application; but in every other case the lodging of an application for review under subsection (1) shall suspend the obligation of the applicant to comply with the requirements of the notice to which the application for review relates.

[Section 34 inserted by No. 42 of 1982 s. 33; amended by No. 47 of 1994 s. 19; No. 55 of 2004 s. 1098.]

34A. Registration of memorial of notice

- (1) Where a soil conservation notice is served under section 32, the Commissioner may, whenever he considers it desirable to do so, deliver a memorial of the soil conservation notice, in a form approved by the relevant land registration officer, to the relevant land registration officer.
- (2) On receiving a memorial of a soil conservation notice delivered under subsection (1), the relevant land registration officer shall register that memorial and accordingly endorse or note the appropriate register or record in respect of the land to which the soil conservation notice relates.
- (3) Where a soil conservation notice of which a memorial is registered under this section —
 - (a) is withdrawn as a result of an application under section 34; or
 - (b) is discharged under section 38,

the Commissioner shall deliver to the relevant land registration officer a certificate in a form approved by the relevant land registration officer and signed by the Commissioner certifying that the soil conservation notice was quashed, withdrawn or discharged, as the case requires, on the date specified in the certificate.

- (4) On receiving a certificate delivered under subsection (3) the relevant land registration officer shall cancel the registration of the memorial of the relevant soil conservation notice and accordingly endorse or note the appropriate register or record in respect of the land concerned.

[Section 34A inserted by No. 91 of 1990 s. 11; amended by No. 81 of 1996 s. 153(1); No. 55 of 2004 s. 1099.]

s. 34B

34B. Duties upon passing interests in affected land

While a memorial of a soil conservation notice remains registered under section 34A, each owner and each occupier of the land to which the soil conservation notice relates shall —

- (a) before agreeing with another person in writing that the other person will succeed him in the ownership or occupation or both, as the case requires, of that land notify in writing the other person of the content of the soil conservation notice and of the fact that the soil conservation notice will be binding on the other person if the other person succeeds him in that ownership or occupation or both; and
- (b) within a period of 14 days after the day on which he ceases to be such an owner or occupier, notify in writing the Commissioner of that cessation and of the name and address of each person who succeeds him in the ownership or occupation or both, as the case requires, of that land.

Penalty — \$2 000.

[Section 34B inserted by No. 46 of 1988 s. 14.]

35. Enforcement of notice

- (1) A reference in this section to the clearing of land includes a reference to the destruction, cutting down or injuring of any tree, shrub, grass or other plant on the land.
- (2) If a person bound by a soil conservation notice contravenes or fails to comply with the notice he commits an offence.
- (2a) A person who commits an offence against subsection (2) is liable to a penalty not exceeding \$3 000; and if the offence of which he is convicted is continued after the conviction he commits a further offence against that subsection.

- (2b) Where, in proceedings for an offence against subsection (2), it is proved that land has been cleared, the person who was, at the time the land was cleared —
- (a) the occupier of the land is, in the absence of evidence to the contrary, deemed to have so cleared the land; and
 - (b) the owner of the land is unless the contrary is proved, deemed to have permitted the land to be so cleared.
- (3) If a person bound by a soil conservation notice fails to do any thing which the notice requires him to do, any person authorised by the Commissioner, with or without assistants —
- (a) may do that thing and all things incidental thereto;
 - (b) for the purpose of doing those things may, with or without plant and equipment, enter, remain upon, and pass and repass over, any land.
- (4) If a person bound by a soil conservation notice obstructs or hinders the Commissioner or his assistants in exercising the powers conferred by subsection (3), he commits an offence.
Penalty — \$2 000.
- (5) Expense incurred by the Commissioner in exercising his powers under this section —
- (a) is a debt due to the Crown by any person required by the notice to do anything done by the Commissioner, and may be recovered by the Attorney General by action in any Court of competent jurisdiction; and
 - (b) shall be deemed to be incurred in respect of the whole of the farm, pastoral holding, or other area of land, on which the thing in respect of which the expense is incurred, is done.
- (6) If a person bound by a soil conservation notice fails to comply therewith, and damage is caused to the land of any other person which would not have been caused if the notice had been

complied with, the owner or occupier of the land so damaged has a right of action against that person for the damage.

- (7) In any proceedings in which a question arises as to whether or not a person has contravened or failed to comply with a soil conservation notice, a document purporting to be —
- (a) a true copy of an aerial photograph marked so as to identify, and show the boundaries of, land according to official survey; and
 - (b) signed and certified by an authorised land officer within the meaning of the *Land Administration Act 1997* as being a true copy of a photograph taken under the authority of an authorised land officer within the meaning of the *Land Administration Act 1997* on the date specified in the certificate and as correctly identifying, and showing the boundaries of, the land according to official survey,

is, without proof of the signature of the authorised land officer first mentioned in paragraph (b), admissible as evidence of the matters so certified and of the condition, on the date so specified, of the land and the vegetation on the land so identified.

- (8) A document shall not be admitted pursuant to subsection (7) as evidence that the land has been cleared contrary to a soil conservation notice unless the court is satisfied that the Commissioner or a person acting with his authority has entered upon and inspected the land for the purpose of ascertaining whether the land has been so cleared.
- (9) In any proceedings for an offence under subsection (2), a document purporting to be signed and certified by an authorised land officer within the meaning of the *Land Administration Act 1997* stating that a particular geographic location is the area to which the notice relates is, without proof of the signature of that officer, admissible as evidence of the matter so certified.

[Section 35 inserted by No. 32 of 1955 s. 8; amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 34; No. 46 of 1988 s. 15; No. 20 of 1989 s. 3; No. 47 of 1994 s. 20; No. 31 of 1997 s. 141.]

36. Expense to be charge on land

- (1A) Where land in respect of which expense is incurred under section 35 of this Act is under the operation of the *Transfer of Land Act 1893* or is the subject of a lease or licence under the *Land Administration Act 1997*, the Commissioner may give to the Registrar of Titles notice that expense has been so incurred and that so much of the expense as is specified in the notice is owing in respect of the land, specifying it, and upon receipt of the notice the Registrar of Titles is authorised to register it by making a memorandum of the notice in the Register.
- (1B) Where land in respect of which expense is incurred under section 35 of this Act is alienated from the Crown but is not under the *Transfer of Land Act 1893*, the Commissioner may register under the *Registration of Deeds Act 1856*, a memorial that expense has been so incurred and that so much of the expense as is specified in the memorial is owing in respect of the land, specifying it.
- (1D) Where a notice or memorial is so registered, the amount of the expense specified in the notice or memorial together with interest on that amount or the balance thereof owing for the time being at such rate not exceeding 4% per annum, as the Commissioner fixes with the approval of the Minister, becomes on registration a first charge on the land mentioned therein and ranks in priority to all other mortgages, charges and encumbrances on that land except mortgages and charges created in favour of the Crown before the registration of the notice or memorial.
- (2) Where default is made in the payment of any amount in respect of which a notice or memorial is so registered or the interest on that amount, the Commissioner —

- (a) has and may exercise in respect of the land specified in the notice if it is land under the operation of the *Transfer of Land Act 1893*, the powers conferred by that Act upon a mortgagee under a mortgage in respect of which default has been made in payment;
 - (b) has and may exercise in respect of land specified in the memorial if it is land alienated from the Crown but not under the operation of that Act, those powers but with such adaptations and modifications as are necessary because the land is not under the operation of that Act; and
 - (c) has and may exercise in respect of land specified in the memorial if it is land the subject of a lease or licence under the *Land Administration Act 1997*, the powers conferred by the *Land Administration Act 1997*, upon a mortgagee under a mortgage in respect of which default has been made in payment.
- (3) When the amount for which a notice or memorial is so registered is fully paid the Commissioner —
- (a) shall, if the land in respect of which the notice is registered is under the operation of the *Transfer of Land Act 1893* or is the subject of a lease or licence under the *Land Administration Act 1997*, give notice in writing of the payment in full of the amount to the Registrar of Titles who is authorised thereupon to register it in the Register; or
 - (b) shall, if the land in respect of which the memorial is registered is alienated from the Crown, but is not under the operation of that Act, register a memorial under the *Registration of Deeds Act 1856*, of the payment in full of the amount,

and upon registration of the notice or the memorial, as the case may be, the land ceases to be subject to the charge.

- (4) Notices, memorials, and registrations under this section are exempt from duty under the *Duties Act 2008* and registration fees.

[Section 36 inserted by No. 32 of 1958 s. 8; amended by No. 46 of 1988 s. 16; No. 6 of 1994 s. 13; No. 14 of 1995 s. 44; No. 81 of 1996 s. 153(1); No. 31 of 1997 s. 81(6), (7) and 141; No. 12 of 2008 s. 52; No. 19 of 2010 s. 51.]

37. Right of mortgagee to add expense to mortgage

- (1) If a person who is liable to pay the Commissioner the amount of any expense incurred under section 35 fails to pay that amount upon demand made by or on behalf of the Commissioner, any mortgagee of the land in respect of which the expense was incurred, may pay to the Commissioner the amount of that expense and thereupon that amount is by operation of this section added to and forms part of the principal sum secured by the mortgage of that mortgagee.
- (2) If a mortgagee incurs expense in complying with any obligations imposed on him by a soil conservation notice, the amount of that expense is by operation of this section added to and forms part of the principal sum secured by the mortgage.
- (3) Where the whole of the principal sum secured by a mortgage is payable on a fixed date any amount added to that sum by this section is payable on that date; and where a principal sum is payable by instalments each instalment is by operation of this section increased by such amount as the mortgagee determines so as to spread the payment of the amount added over the outstanding term of the mortgage.
- (4) Where an amount is added to a principal sum by this section that amount, by operation of this section, bears interest at the same rate as that principal sum.

[Section 37 inserted by No. 32 of 1958 s. 8; amended by No. 42 of 1982 s. 35.]

s. 38

38. Discharge of notice

- (1) A notice discharging a soil conservation notice may be served by the Commissioner under this section if the soil conservation notice has been fully complied with or is no longer necessary, or any other just cause exists for discharging it.
- (2) A person who is bound by a soil conservation notice may from time to time apply in writing to the Commissioner to have the notice discharged pursuant to subsection (1).
- (3) The Commissioner shall consider an application made under subsection (2) and notify the applicant of his decision.

[Section 38 inserted by No. 42 of 1982 s. 36; amended by No. 47 of 1994 s. 21.]

39. Application to State Administrative Tribunal for review of refusal to discharge notices

- (1) A person who is aggrieved by the refusal of the Commissioner to discharge a soil conservation notice pursuant to section 38 may apply to the State Administrative Tribunal for a review of the refusal.

[(2) deleted]

[Section 39 inserted by No. 42 of 1982 s. 36; amended by No. 46 of 1988 s. 17; No. 47 of 1994 s. 22; No. 55 of 2004 s. 1100.]

[39A. Deleted by No. 55 of 2004 s. 1101.]

Part VA — Landcare Trust

[Heading inserted by No. 91 of 1990 s. 12.]

40. Landcare Trust established

- (1) There is established a body corporate to be called the Landcare Trust.
- (2) The Trust —
 - (a) has perpetual succession and a common seal; and
 - (b) is capable of suing and being sued and doing and suffering such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Trust is an agent of the Crown in right of the State.

[Section 40 inserted by No. 91 of 1990 s. 12.]

41. Membership of Trust

- (1) The Trust shall have 5 members of whom —
 - (a) one shall be a member of the Council appointed by the Minister;
 - (b) one shall be the Commissioner; and
 - (c) 3 shall be persons appointed by the Minister, at least one of whom shall have experience in accounting.
- (2) The Minister shall appoint a member of the Trust to be chairman and another to be deputy chairman of the Trust.
- (3) A member of the Trust shall be paid from moneys appropriated by Parliament such remuneration and travelling and other allowances as are determined in his case by the Minister on the recommendation of the Minister for Public Sector Management.
- (4) A member of the Trust is not personally liable for any act done or omitted to be done in good faith by the Trust or by him in the performance of any function under this Part.

s. 41A

- (5) An appointed member of the Trust holds office for such term not exceeding 3 years as is specified in the instrument of the member's appointment, but may from time to time be re-appointed.
- (6) Except as provided in this section —
- (a) the constitution and proceedings of the Trust;
 - (b) the terms and conditions of appointment of members of the Trust; and
 - (c) the grounds on which an appointed member may be removed from office,
- are as prescribed by regulations and, subject to this Part and any such regulations, the Trust may regulate its own procedure.
- (7) At any meeting of the Trust at which the Commissioner is not present, the Deputy Commissioner of Soil and Land Conservation may attend in place of the Commissioner and —
- (a) when so attending, has the same functions; and
 - (b) in respect of such attendance, has the same entitlements and protection,
- as if he were the Commissioner.

[Section 41 inserted by No. 91 of 1990 s. 12.]

41A. Functions of Trust

- (1) The functions of the Trust are —
- (a) to seek and encourage the making of donations and testamentary gifts to the Trust for the purposes of funding soil and land conservation projects of a public scientific or public educational nature in the State, or for promoting soil and land conservation in the State, or for either of those purposes; and
 - (b) to control, manage and apply the Trust Account for the purposes referred to in paragraph (a).

- (2) The Trust may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

[Section 41A inserted by No. 91 of 1990 s. 12; amended by No. 77 of 2006 s. 17.]

41B. Trust Account

- (1) An agency special purpose account called the Landcare Trust Account is established under section 16 of the *Financial Management Act 2006* to which the moneys received by the Trust for the purposes referred to in section 41A(1)(a) are to be credited.
- (2) All expenditure incurred by the Trust for the purpose of performing its functions shall be paid from the Trust Account.
- (3) Moneys standing to the credit of the Trust Account are subject to the directions of the Trust and may be transferred to the Trust for the purposes of carrying this Part into effect or otherwise applied for the purposes of the Trust.
- (4) Notwithstanding section 39 of the *Financial Management Act 2006*, all interest or other revenue derived from the investment of moneys standing to the credit of the Trust Account shall be paid to the credit of the Trust Account.

[Section 41B inserted by No. 91 of 1990 s. 12; amended by No. 77 of 2006 s. 17.]

41C. Ministerial directions

- (1) The Minister may give directions in writing to the Trust with respect to the performance of its functions, either generally or in relation to a particular matter, and the Trust shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable

s. 41D

authority of the Trust under Part 5 of the *Financial Management Act 2006*.

[Section 41C inserted by No. 91 of 1990 s. 12; amended by No. 77 of 2006 s. 17.]

41D. Minister to have access to information

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Trust and to have and retain copies of documents.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Trust to furnish information to the Minister;
 - (b) request the Trust to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff available to the Trust to obtain the information and furnish it to the Minister.
- (3) The Trust shall comply with a request under subsection (2) and make the necessary staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —

document includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

information means documents or other information relating to the functions of the Trust being information, as so defined, specified, or of a description specified, by the Minister;

parliamentary purposes means the purpose of —

 - (a) answering a question asked in a House of Parliament; or

- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

[Section 41D inserted by No. 91 of 1990 s. 12.]

41E. Staff and support

The chief executive officer shall provide the Trust with the services of such officers and with such facilities and support as the Trust may reasonably require to perform its functions.

[Section 41E inserted by No. 91 of 1990 s. 12.]

41F. Execution of documents by Trust

- (1) A document is duly executed by the Trust if —
 - (a) the common seal of the Trust is affixed to it in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the Trust by the member or members or officer or officers of the Trust authorised by the Trust to do so.
- (2) The common seal of the Trust shall not be affixed to any document except by resolution of the Trust.
- (3) The common seal of the Trust shall be affixed to a document in the presence of not less than 2 members.
- (4) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Trust, it shall be presumed that that seal is the common seal of the Trust until the contrary is shown.
- (6) All courts and persons acting judicially shall take notice of the common seal of the Trust.

[Section 41F inserted by No. 91 of 1990 s. 12.]

s. 41G

41G. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

Subject to this Act, the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Trust and its operations.

[Section 41G inserted by No. 91 of 1990 s. 12; amended by No. 77 of 2006 s. 17.]

41H. Review

- (1) The Minister shall carry out a review of the operations and the effectiveness of the Trust as soon as is practicable after the expiry of 5 years from its establishment and in the course of that review the Minister shall consider and have regard to —
 - (a) the desirability of the continuation of the functions of the Trust; and
 - (b) such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Trust.
- (2) The Minister shall prepare a report based on the review carried out under subsection (1) and shall, as soon as practicable, cause that report to be laid before each House of Parliament.

[Section 41H inserted by No. 91 of 1990 s. 12.]

Part VI — Miscellaneous

42. Interferences with or damage to works etc.

- (1) 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 vegetable cover placed or planted on any land as part of or in connection with any work which is being or has been carried out in pursuance of this Act shall be guilty of an offence.

Penalty — \$1 000.

- (2) In addition the offender shall be liable for any loss or damage caused by the offence.
- (3) Such loss or damage may be awarded by the Court imposing the penalty and may be recovered in the same manner as the penalty.

[Section 42 amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 38; No. 2 of 1989 s. 3; No. 73 of 1994 s. 4.]

[43. Deleted by No. 42 of 1982 s. 39.]

44. Penalties and proceedings for offences

- (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 \$2 000.

[(2) deleted]

- (3) Proceedings for an offence against this Act or the regulations may be commenced at any time within 2 years after the offence was committed but not afterwards.
- (4) In any proceedings for offences against this Act or the regulations in which a question arises as to whether land degradation was liable or likely to become liable to occur, or did

s. 45

occur, as a result of the actions of the owner or occupier of any land —

- (a) the occupier of the land is, in the absence of evidence to the contrary, deemed to have taken the action; and
- (b) the owner of the land is, unless the contrary is proved, deemed to have permitted the action to be taken.

[Section 44 amended by No. 113 of 1965 s. 8; No. 42 of 1982 s. 40; No. 20 of 1989 s. 3; No. 91 of 1990 s. 13; No. 47 of 1994 s. 24; No. 59 of 2004 s. 141.]

45. Commencing proceedings

- (1) Any prosecution or other proceeding under this Act or the regulations may be commenced either by the Minister or by the Commissioner, or by any officer under the Commissioner duly authorised by the Commissioner in that behalf either generally or in any particular case.
- (2) The production of a certificate that the person named therein is an officer authorised by the Commissioner 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 he acts.

[Section 45 amended by No. 91 of 1990 s. 14; No. 84 of 2004 s. 80.]

46. Protection of Minister, Commissioner, 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 or authority of the Minister or the Commissioner, and no decision, determination, recommendation, advice or report of the Council shall, if the act, matter or thing was done, or the decision, determination, recommendation, advice or report was made or given *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.

[Section 46 amended by No. 91 of 1990 s. 16; No. 47 of 1994 s. 25.]

[47. Deleted by No. 98 of 1985 s. 3.]

48. Regulations

- (1) The Governor may, in addition to the regulations provided for in section 22, make regulations for or with respect to any matters or things which are by this Act authorised or permitted to be prescribed or which are necessary or expedient to be prescribed in order to carry the objects and purposes of this Act into effect.
- (2) Without in any way affecting or limiting the generality of subsection (1) the Governor may make regulations particularly in relation to any of the following matters —
 - (a) the qualifications and duties of officers appointed under or for the purposes of this Act;
 - (b) the carrying out of surveys and investigations to ascertain the nature and extent of land degradation;
 - (c) the carrying out of experiments and demonstrations in soil conservation and reclamation, and for the recording and publication of information resulting therefrom;
 - (d) the measures to be taken for preventing and mitigating land degradation;
 - (e) the instruction and supervision of land holders in matters pertaining to soil conservation and reclamation;
 - (f) the procedure for obtaining assistance by persons whose land has been affected by erosion, eutrophication, salinity or flooding, and the terms and conditions under which such assistance shall be given;

s. 48

- (g) subject to section 25A(9) and (10), the procedure to be followed before recommending that a service charge be imposed, including —
 - (i) the forward planning, costing and consultation to be undertaken;
 - (ii) the public meetings to be held;
 - (iii) the notifications to be given; and
 - (iv) the reports to be given to the Minister;
- (ga) the practices to be applied in the control and management of, and accounting for, service charges;
- (h) the form of notices, orders, certificates, authorities and other documents;
- [(i), (j) deleted]*
- (k) appointing times and places for the doing of acts, matters and things;
- (l) the management and control of soil conservation reserves;
- (m) the leasing of land vested in Her Majesty under this Act, and the rents or fees, the terms, and covenants and conditions to be reserved by or fixed and included in any such leases;
- (n) subject to the provisions of the *Forests Act 1918*⁴, the regulation or prohibition of the destruction of or interference with timber or scrub on land held under any form of lease or licence from the Crown;
- (o) the prohibition of the lighting of fires in the open air in any area of land degradation hazard except under such circumstances and subject to such limitations, conditions and restrictions as may be prescribed;
- (p) the prohibition or regulation of depasturing of livestock on a soil conservation reserve or on an area of land degradation hazard or on any specified portion of such reserve or hazard;

- (q) requiring the owner or occupier of land to give prior notification to the Commissioner of his intent to cut down, clear, destroy or otherwise damage trees, shrubs, grass or any other plants on any land.
- (3) Any regulation made under this section may —
- (a) authorise any matter or thing to be from time to time determined, applied or regulated by the Minister or the Commissioner;
 - (b) impose a penalty not exceeding \$2 000 for a breach of any regulation.
- (4) Regulations may be made under this section —
- (a) so as to apply —
 - (i) generally or in a particular class of case or in particular classes of cases;
 - (ii) at all times or at a specified time or at specified times; and
 - (iii) throughout the State or in a specified part or specified parts of the State;and
 - (b) so as to provide for the exemption of persons or things from the provisions of the regulations, or any of them, and for the imposition of conditions on any such exemption.
- (5) In subsection (4)(a) *specified* means specified in the regulations.

[Section 48 amended by No. 32 of 1955 s. 11; No. 113 of 1965 s. 8; No. 42 of 1982 s. 41 and 42; No. 20 of 1989 s. 3; No. 47 of 1994 s. 26; No. 4 of 1999 s. 11; No. 55 of 2004 s. 1102.]

Schedule — Acts to which this Act is supplementary

[s. 3]

[Heading amended by No. 19 of 2010 s. 4.]

Bush Fires Act 1954

*Closer Settlement Act 1927*⁵

Country Areas Water Supply Act 1947

*Environmental Protection Act 1971*⁶

*Forests Act 1918*⁴

Land Administration Act 1997

Land Drainage Act 1925

Local Government Act 1995

Local Government (Miscellaneous Provisions) Act 1960

Main Roads Act 1930

Mining Act 1978

Petroleum and Geothermal Energy Resources Act 1967

Planning and Development Act 2005

Rights in Water and Irrigation Act 1914

Sandalwood Act 1929

Stock (Identification and Movement) Act 1970

[Schedule inserted by No. 42 of 1982 s. 43; amended by No. 46 of 1994 s. 40; No. 14 of 1996 s. 4; No. 31 of 1997 s. 141; No. 38 of 2005 s. 15; No. 35 of 2007 s. 105.]

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Notes

- ¹ This is a compilation of the *Soil and Land Conservation Act 1945* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Soil Conservation Act 1945</i> ⁷	15 of 1945 (9 and 10 Geo. VI No. 15)	9 Jan 1946	1 Jul 1946 (see s. 1 and <i>Gazette</i> 28 Jun 1946 p. 789)
<i>Soil Conservation Act Amendment Act 1955</i>	32 of 1955 (4 Eliz. II No. 32)	24 Nov 1955	24 Nov 1955
Reprint of the <i>Soil Conservation Act 1945</i> approved 22 Oct 1959 in Vol. 14 of Reprinted Acts (includes amendments listed above)			
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Soil Conservation Act Amendment Act 1967</i>	67 of 1967	5 Dec 1967	17 Nov 1972 (see s. 2 and <i>Gazette</i> 17 Nov 1972 p. 4382-3)
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973)	4 Dec 1972	Relevant amendments (see Second Sch. ⁸) took effect on 1 Jan 1974 (see s. 4(2) and <i>Gazette</i> 26 Oct 1973 p. 4087)
<i>Soil Conservation Act Amendment Act 1974</i>	40 of 1974	15 Nov 1974	28 Feb 1975 (see s. 2 and <i>Gazette</i> 28 Feb 1975 p. 721)
Reprint of the <i>Soil Conservation Act 1945</i> approved 9 Sep 1975 (includes amendments listed above)			
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> s. 4	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Acts Amendment (Soil Conservation) Act 1982</i> Pt. II	42 of 1982	27 May 1982	1 Oct 1982 (see s. 2 and <i>Gazette</i> 1 Oct 1982 p. 3886)
Reprint of the <i>Soil and Land Conservation Act 1945</i> approved 13 Dec 1982 (includes amendments listed above)			

Soil and Land Conservation Act 1945

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i> ⁹	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Soil and Land Conservation Amendment Act 1988</i>	46 of 1988	30 Nov 1988	s. 16(b): 1 Apr 1988 (see s. 2(3)); s. 15 and 16(a): 16 Sep 1988 (see s. 2(2) and <i>Gazette</i> 16 Sep 1988 p. 3637); s. 1 and 2: 30 Nov 1988; Act other than s. 1, 2, 15 and 16: 20 Jan 1989 (see s. 2(1) and <i>Gazette</i> 20 Jan 1989 p. 110)
<i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i>	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Soil and Land Conservation Amendment Act 1990</i>	91 of 1990	17 Dec 1990	s. 1 and 2: 17 Dec 1990; Act other than s. 1 and 2, the definitions of “the trust” and “the Trust Fund” in s. 4(c), s. 12 and Sch. it. 1(b), 2 and 3: 3 May 1991 (see s. 2 and <i>Gazette</i> 3 May 1991 p. 1936); balance: 28 Oct 1995 (see s. 2 and <i>Gazette</i> 27 Oct 1995 p. 4937)
<i>Rates and Charges (Rebates and Deferments) Act 1992 s. 52(2)</i>	31 of 1992	19 Jun 1992	1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2643)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>R & I Bank Amendment Act 1994 s. 13</i>	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2 and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Local Government Amendment Act 1994 s. 42</i>	27 of 1994	23 Jun 1994	1 Jul 1994 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Stock (Brands and Movement) Amendment</i>	46 of 1994	27 Sep 1994	17 May 1995 (see s. 2 and <i>Gazette</i> 16 May 1995 p. 1839)

Short title	Number and year	Assent	Commencement
<i>Act 1994 s. 40</i>			
<i>Soil and Land Conservation Amendment Act 1994</i>	47 of 1994	27 Sep 1994	25 Oct 1994
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Bank of Western Australia Act 1995 s. 44</i>	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and 9(1) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
Reprint of the Soil and Land Conservation Act 1945 as at 30 Jan 1996 (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996 s. 153(1)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
Reprint of the Soil and Land Conservation Act 1945 as at 12 Aug 1997 (includes amendments listed above)			
<i>Acts Amendment (Land Administration) Act 1997 Pt. 54 and s. 141 and 142</i>	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 111</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Soil and Land Conservation Amendment Act 1999</i>	4 of 1999	25 Mar 1999	s. 1 and 2: 25 Mar 1999; Act other than s. 1 and 2: 12 Jun 1999 (see s. 2 and <i>Gazette</i> 11 Jun 1999 p. 2533-4)
<i>Taxation Administration (Consequential Provisions) Act 2002 s. 22</i>	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Public Transport Authority</i>	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and

Soil and Land Conservation Act 1945

Short title	Number and year	Assent	Commencement
<i>Act 2003 s. 168</i>			<i>Gazette 27 Jun 2003 p. 2384</i>
Reprint 6: The Soil and Land Conservation Act 1945 as at 3 Oct 2003 (includes amendments listed above)			
<i>Acts Amendment (Carbon Rights and Tree Plantation Agreements) Act 2003 Pt. 3</i>	56 of 2003	29 Oct 2003	24 Mar 2004 (see s. 2 and <i>Gazette 23 Mar 2004 p. 975</i>)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette 31 Dec 2004 p. 7128</i>)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 119¹⁰</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette 31 Dec 2004 p. 7130</i>)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette 31 Dec 2004 p. 7129</i> (correction in <i>Gazette 7 Jan 2005 p. 53</i>))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette 21 Mar 2006 p. 1078</i>)
Reprint 7: The Soil and Land Conservation Act 1945 as at 19 May 2006 (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 2 Div. 7</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette 27 Jun 2006 p. 2347</i>)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 6 and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette 19 Jan 2007 p. 137</i>)
<i>Petroleum Amendment Act 2007 s. 105</i>	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette 18 Jan 2008 p. 147</i>)
<i>Water Resources Legislation Amendment Act 2007 s. 200</i>	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette 31 Jan 2008 p. 251</i>)
<i>Duties Legislation Amendment Act 2008 s. 52</i>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))

Short title	Number and year	Assent	Commencement
Reprint 8: The Soil and Land Conservation Act 1945 as at 17 Oct 2008 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2009</i> s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4, 43(3) and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

^{1a} On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 80 ¹¹	24 of 2007	12 Oct 2007	To be proclaimed (see s. 2(1))
<i>Public Sector Reform Act 2010</i> s. 89 ¹²	39 of 2010	1 Oct 2010	To be proclaimed 1 Dec 2010 (see s. 2(b)) and Gazette 5 Nov 2010 p. 5563

² Under the *Alteration of Statutory Designations Order 2006* a reference in any law to the Department of Agriculture is read and construed as a reference to the Department of Agriculture and Food.

³ The designation of Ministers may be altered by the Governor under the *Alterations of Statutory Designations Act 1974*. As at the date of this reprint the former Minister for Agriculture is known as the Minister for Agriculture and Food.

⁴ Repealed by the *Conservation and Land Management Act 1984* s. 147.

⁵ Repealed by the *Acts Amendment and Repeal (Statutory Bodies) Act 1985*.

⁶ Repealed by the *Acts Amendment and Repeal (Environmental Protection) Act 1986*.

⁷ Now known as the *Soil and Land Conservation Act 1945*; short title changed (see note under s. 1).

⁸ The Second Schedule was inserted by the *Metric Conversion Act Amendment Act 1973*.

⁹ The *Acts Amendment (Financial Administration and Audit) Act 1985* s. 4 was a transitional provision that is of no further effect.

¹⁰ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

¹¹ On the date as at which this reprint was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 80 had not come into operation. It reads as follows:

“

80. Soil and Land Conservation Act 1945 amended

- (1) The amendment in this section is to the *Soil and Land Conservation Act 1945*.
- (2) The Schedule is amended by deleting “*Stock (Identification and Movement) Act 1970*”.

”.

¹² On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to “Minister for Public Sector Management” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

Table

<i>Soil and Land Conservation Act 1945</i>	s. 41(3)
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