

SOIL CONSERVATION.

4° Elizabeth II., No. XXXII.

No. 32 of 1955.

AN ACT to amend the Soil Conservation Act, 1945.*[Assented to 24th November, 1955.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Soil Conservation Act Amendment Act, 1955.*

(2) In this Act the Soil Conservation Act, 1945, Act No. 15 of 1945,

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the *Soil Conservation Act, 1945-1955.*

2. Section two of the principal Act is amended by substituting for the Part heading, "PART V., ss. 31 to 39—AREAS OF EROSION HAZARD." in line eight, the Part heading, "PART V., ss. 31 to 38—SOIL CONSERVATION ORDERS." S. 2 amended.

3. Section four of the principal Act is amended by deleting the interpretation, "Project". S. 4 amended.

4. Section seven of the principal Act is amended by substituting for the words, "Under Secretary for Agriculture" in lines four and five of subsection (2) the words, "Director of Agriculture". S. 7 amended.

5. Section twenty of the principal Act is amended— S. 20 amended.

(a) by deleting the words, "whether or not such work is for the purpose of giving effect to a project" in lines five and six of subsection (1); and

(b) by repealing subsection (2).

6. The principal Act is amended by adding after section twenty the following section:— S. 20A added.

20A. The Minister may, out of moneys provided by Parliament Minister may make certain advances and payments.

(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 soil erosion; and Cf. s. 34 of No. 15 of 1945.

(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 soil erosion; 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.

S. 21A
added.

7. The principal Act is amended by adding after section twenty-one the following section:—

Saving
provision
in relation to
State forests
and timber
reserves.
Cf. s. 36 of
No. 15 of
1945.

21A. 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.

Part V.
repealed and
new Part V.
substituted.

8. The principal Act is amended by repealing Part V. and substituting in its place the following Part:—

PART V.—SOIL CONSERVATION ORDERS.

Issue of soil
conservation
orders.
Cf. 15 Geo.
VI., No. 24,
s. 15, Q; and
s. 13b of the
Soil Conser-
vation Act,
1939-1947,
S.A., added
by No. 44 of
1945, s. 10,
S.A.

31. The Commissioner may, with the approval of the Committee, make a soil conservation order relating to any tract of land which is subject to erosion or is liable or likely to become liable to erosion as a result of—

- (a) any agricultural or pastoral practices or methods, which have been or are likely to be adopted on that land, or on any other land;
- (b) the clearing or intended clearing of that land or of any other land; or
- (c) failure on the part of any person to take reasonable precautions to prevent or control soil erosion on that land or any other land;

but the Committee shall not approve the making of a soil conservation order until it is satisfied that the Commissioner has made, or by his officers has caused to be made, reasonable efforts to achieve the purpose of the proposed order, by negotiation with the owner or occupier of the land or both of them.

32. (1) The Commissioner may cause notice of a soil conservation order to be served on the owner or the occupier of the land, or on both of them, and by the order may order all or any of the following things—

- (a) that the owner or occupier or both adopt or refrain from adopting any agricultural or pastoral methods specified in the order;
- (b) that the owner or occupier or both refrain from clearing any land specified in the order;
- (c) that the owner or occupier or both take such action as is specified in the order for preventing the erosion drift or movement of sand, soil or water on or from any land specified in the order;
- (d) any other matter incidental to the foregoing.

(2) A soil conservation order is, subject to the decision of the Minister on appeal, if any, binding upon persons on whom notice of it is so served.

33. (1) Where the Commissioner has submitted, or is about to submit,

a proposal for a soil conservation order in respect of land for consideration by the Committee,

the Commissioner,

of his own motion and without reference to the Committee,

Contents of orders.

As to service see No. 30 of 1918, s. 31. Cf. s. 13e (3) of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

Cf. s. 34 post as to appeal.

Interim orders. Cf. s. 13f of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

may,

if he has made, or by his officers caused to be made, reasonable efforts to achieve the purposes of the proposal by negotiations with the owner or occupier of the land or both,

issue an interim soil conservation order in respect of the land,

ordering all or any of the things mentioned in paragraphs (a), (b), (c), and (d) of section thirty-two of this Act, but to such an extent only as is necessary to mitigate soil erosion pending the decision of the Committee on the proposal,

and may cause notice of the interim soil conservation order to be served on the owner or occupier of the land, or both.

Cf. s. 34 post
as to appeal.

(2) An interim soil conservation order is, subject to the decision of the Minister on appeal, if any, binding on the persons on whom notice of it is so served until the Committee makes a decision on the proposal for the soil conservation order, or until the expiration of three months from the day of the service of the notice, whichever occurs first.

Owner or
occupier
may appeal.
Cf. s. 31,
subsecs. (4)
and (5) of
No. 15 of
1945.

34. (1) An owner or occupier of land who objects to a soil conservation order, or an interim soil conservation order notice of which is so served upon him, may within two weeks of service of notice of the order, appeal against the order to the Minister by causing written grounds of his objection to be served on the Minister, who shall consider the objections and notify the appellant of his decision confirming, varying, or quashing the order.

(2) The decision of the Minister is final.

35. (1) In this section—

“order” means a soil conservation order or an interim soil conservation order, as the case requires.

Enforcement of orders.

Cf. s. 13 (j) of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

(2) If a person bound by an order contravenes or fails to comply with the order he commits an offence.

Cf. No. 30 of 1918, s. 29 as to penalty.

Penalty: Minimum penalty irreducible in mitigation, notwithstanding the provisions of any other Act: Fifty pounds.

Maximum penalty: One hundred pounds.

(3) If a person bound by an order fails to do any thing which the order 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 an order obstructs or hinders the Commissioner or his assistants in exercising the powers conferred by subsection (2) of this section, he commits an offence.

Penalty: Twenty pounds.

(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 order 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 an order fails to comply therewith, and damage is caused to the land of any other person which would not have been caused if the order had been complied with, the owner or occupier of the land so damaged has a right of action against that person for the damage.

Expense to be a charge on land.

Cf. s. 13 (k), Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

Cf. Part IV., Div. 3, of the Transfer of Land Act, 1893.

36. (1) (a) Where land in respect of which expense is incurred under section thirty-five of this Act is under the operation of the Transfer of Land Act, 1893, 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 Book.

(b) Where land in respect of which expense is incurred under section thirty-five 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.

Cf. ss. 143-149 of the Land Act, 1933.

(c) Where land in respect of which expense is incurred under section thirty-five of this Act is the subject of a lease or license under the Land Act, 1933, the Commissioner may give to the Under Secretary for Lands 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 Under Secretary for Lands is authorised to register it by making a memorandum of the notice in the Register Book.

(d) 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 four per centum 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 or The Commissioners of the Rural and Industries Bank of Western Australia 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 license under the Land Act, 1933, the powers conferred by the Land Act, 1933, upon a mortgagee under a mortgage in respect of which default has been made in payment.

Cf. Part IV,
Div. 3, of the
Transfer of
Land Act,
1893.

Cf. s. 147 of
the Land Act,
1933.

(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, 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 Book;
- (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; or
- (c) shall, if the land in respect of which the memorial is registered is the subject of a lease or license under the Land Act, 1933, give notice in writing of the payment in full of the amount to the Under Secretary for Lands who is authorised thereupon to register it in the Register Book,

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 stamp duty and registration fees.

37. (1) If a person who is liable to pay the Commissioner the amount of any expense incurred under section thirty-five of this Act 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.

Right of mortgagee to add expense to mortgage. Cf. s. 131 of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

(2) If a mortgagee incurs expense in complying with any obligations imposed on him by a soil conservation order, 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.

38. An order discharging a soil conservation order or an interim soil conservation order may be made by the Commissioner under this section if the soil conservation order or interim soil conservation order has been fully complied with or is no longer necessary, or any other just cause exists for discharging it.

Discharge of orders.
Cf. s. 13 (m) of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

9. Section forty of the principal Act is amended—

S. 40 amended.

- (a) by deleting the words, "or an area of erosion hazard" in line three of subsection (1); and
- (b) by deleting the passage, "or in the area of erosion hazard, as the case may be," in lines four and five of subsection (3).

10. Section forty-seven of the principal Act is amended by substituting for the words, "Under Secretary for Agriculture" in line three of subsection (1), the words, "Director of Agriculture".

S. 47 amended.

S. 48
amended.

11. Subsection (2) of section forty-eight of the principal Act is amended—

(a) by deleting paragraph (g); and

(b) by deleting paragraph (i).
