



Western Australia

Soil and Land Conservation Amendment Act 2022

As at 24 Jun 2022

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Soil and Land Conservation Amendment Act 2022

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Western Australia

Soil and Land Conservation Amendment Act 2022

No. 19 of 2022

**An Act to amend the *Soil and Land Conservation Act 1945* and to
make consequential amendments to various Acts.**

[Assented to 24 June 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Soil and Land Conservation Amendment Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**Part 2 — *Soil and Land Conservation Act 1945*
amended**

3. Act amended

This Part amends the *Soil and Land Conservation Act 1945*.

4. Section 4 amended

- (1) In section 4 delete the definitions of:

Trust

Trust Account

- (2) In section 4 insert in alphabetical order:

appointed Council member means a Council member appointed under section 9A(3);

Department means the department of the Public Service principally assisting in the administration of this Act;

unable to act, in relation to an office holder, includes being unable to act because the office holder is on leave, whether extended or not and whether for illness or not.

- (3) In section 4 in the definition of *Council* delete “appointed by the Governor under this Act;” and insert:

established by section 9;

5. Part II Division 1 heading inserted

At the beginning of Part II insert:

Division 1 — General

6. Section 7A amended

In section 7A(2) delete “absent or is temporarily incapable of fulfilling his duties,” and insert:

unable to act,

7. Part II Division 2 heading and Part II Division 2 Subdivision 1 heading inserted

After section 8 insert:

Division 2 — Soil and Land Conservation Council

Subdivision 1 — Council constituted

8. Sections 9, 9A and 10 replaced

Delete sections 9, 9A and 10 and insert:

9. Council established

A body called the Soil and Land Conservation Council is established.

9A. Membership of Council

- (1) The Council consists of up to 10 members.
- (2) The Commissioner is a member of the Council.
- (3) The Minister may appoint up to 9 members.
- (4) The Minister must ensure that the Council members have, between them, expertise or experience in the following —
 - (a) agricultural production;
 - (b) environmental conservation;
 - (c) land management;
 - (d) local government and planning;
 - (e) management of pastoral land;
 - (f) soil conservation;
 - (g) soil science.

9B. Chairperson and deputy chairperson

- (1) The Minister must designate a Council member to be the chairperson of the Council and another to be the deputy chairperson of the Council.
- (2) If the chairperson is unable to act or the position of chairperson is vacant, the deputy chairperson must act in the chairperson's place.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion for acting had not arisen or had ceased.

9C. Terms and conditions of appointment

- (1) An appointed Council member —
 - (a) holds office for the period, not exceeding 3 years, specified in the member's instrument of appointment; and
 - (b) is eligible for reappointment.
- (2) Subject to this Division, an appointed Council member holds office on the terms and conditions of appointment determined by the Minister.

9D. Casual vacancies

- (1) The office of an appointed Council member becomes vacant if the member —
 - (a) dies, resigns or is removed from office under this section; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence under section 11A(1).
- (2) An appointed Council member may at any time resign from office by writing signed and given to the Minister.
- (3) The Minister may remove an appointed Council member from office —
 - (a) on the grounds of —
 - (i) neglect of duty; or
 - (ii) misconduct or incompetence; or

(iii) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties;

or

(b) for any other reasonable cause.

(4) In subsection (3)(a)(ii) —

misconduct includes conduct that renders the appointed Council member unfit to hold office as a member even though the conduct does not relate to a duty of the office.

9E. Extension of term of office

(1) If the office of an appointed Council member becomes vacant because the member's term of office expires by effluxion of time, the member continues to be a Council member during that vacancy until the earlier of —

(a) the end of the period of 6 months immediately following the expiry of the term of office;

(b) the vacancy being filled.

(2) This section is subject to section 9D.

9F. Alternate members

(1) If a Council member other than the Commissioner or the chairperson is unable to act, the Minister may appoint another person as an alternate member to act temporarily in the member's place.

(2) If the deputy chairperson is acting in the chairperson's place, the Minister may, under subsection (1), appoint another person as an alternate member to act temporarily in the deputy chairperson's place.

s. 9

- (3) While acting in accordance with their appointment, an alternate member is taken to be a Council member and to have the equivalent entitlements (if any) of the Council member in whose place they are acting.
- (4) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

10. Remuneration of members

- (1) A Council member is entitled to the remuneration and allowances determined by the Minister from time to time, on the recommendation of the Public Sector Commissioner, for that member.
- (2) Despite subsection (1), a Council member is not entitled to remuneration if the member holds a full-time office or position that is remunerated out of money appropriated by Parliament.

9. Part II Division 2 Subdivision 2 heading inserted

Before section 11 insert:

Subdivision 2 — Council procedures

10. Section 11 amended

- (1) In section 11(1) delete “Chairperson” and insert:

chairperson

(2) Delete section 11(2) and insert:

- (2) The quorum for a meeting of the Council is one half of the number of Council members.
- (2A) The presence of a Council member at a meeting of the Council need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

11. Part II Division 2 Subdivision 3 inserted

After section 11 insert:

Subdivision 3 — Disclosure of material personal interests

11A. Disclosure of material personal interests

- (1) A Council member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts become known to the member, disclose the nature and extent of the interest at a meeting of the Council.
Penalty for this subsection: a fine of \$5 000.
- (2) If a Council member has, in the opinion of the person presiding at a meeting of the Council, a material personal interest in a matter being considered or about to be considered by the Council, the person presiding —
 - (a) may call on the member to disclose the nature and extent of the interest; and

s. 11

- (b) if the member does not do so — may determine that the member has the interest.
- (3) A disclosure under subsection (1) or a determination under subsection (2) must be recorded in the minutes of the meeting.

11B. Participation by interested members

- (1) A Council member (the *interested member*) who has, or has been determined under section 11A(2)(b) to have, a material personal interest in a matter that is being considered by the Council —
 - (a) must not vote (whether at a meeting or otherwise) on the matter; and
 - (b) must not be present (whether in person or remotely) while the matter is being considered at a meeting.
- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under subsection (3) in respect of the matter, whether relating to the interested member or a different member.
- (3) The restrictions in subsection (1) do not apply to the interested member to the extent that the Council has at any time passed a resolution that —
 - (a) specifies the interested member, the interest and the matter; and
 - (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the interested member from considering the matter or considering and voting on the matter.

11C. Quorum where section 11B applies

Despite section 11(2), if a Council member is unable to act in relation to a matter under section 11B, a quorum is present during the consideration of the matter if the number of members present, who are entitled to vote in relation to the matter, is —

- (a) at least the quorum under section 11(2), less 1;
and
- (b) not less than 3.

12. Part II Division 2 Subdivision 4 heading inserted

Before section 12 insert:

Subdivision 4 — Miscellaneous

13. Section 23 amended

In section 23(2b)(a) delete “Commissioner, *ex officio* or his” and insert:

Commissioner or the Commissioner’s

14. Section 35 amended

In section 35(3)(a) delete “thereto;” and insert:

thereto; and

15. Part VA deleted

Delete Part VA.

16. Part 7 inserted

After section 48 insert:

Part 7 — Transitional provisions for *Soil and Land Conservation Amendment Act 2022*

49. Terms used

In this Part —

former Council means the Soil and Land Conservation Council under section 9(1) as in force before transition day;

transition day means the day on which the *Soil and Land Conservation Amendment Act 2022* section 8 comes into operation.

50. Continuation of former Council

The Council established by section 9 is a continuation of the former Council.

51. Members of former Council

- (1) A person, other than the Commissioner, who was, immediately before transition day, a member of the former Council is taken to have been appointed on transition day to be a member of the Council under section 9A(3).
- (2) The person —
 - (a) holds office, under section 9A —
 - (i) on the terms and conditions of their existing appointment; and
 - (ii) for the remainder of the term of their existing appointment;

and

- (b) while the person holds office under this section, is entitled to the same remuneration, if any, and allowances to which they were entitled in respect of the office that they held immediately before transition day.
- (3) Subsection (2) does not prevent —
 - (a) the person from resigning from or being removed from office, or their office becoming vacant, under section 9D; or
 - (b) the remuneration and allowances of the person being determined under section 10.
- (4) Subsections (1) and (2) have effect despite the limit in section 9A(1).

Note for this subsection:

The former Council consisted of 11 members.

- (5) A person who was, immediately before transition day, the Chairperson or Deputy Chairperson of the former Council, is taken to have been designated on transition day to be the chairperson or deputy chairperson, as applicable, of the Council under section 9B(1).

17. Various references to gender removed

Amend the provisions listed in the Table as set out in the Table.

Table

Provision	Delete	Insert
s. 7(2), (3) and (4)	him	the Commissioner
s. 7(2) and (4)	his	the Commissioner's

Soil and Land Conservation Amendment Act 2022**Part 2**

Soil and Land Conservation Act 1945 amended

s. 17

Provision	Delete	Insert
s. 16(h) s. 23(3) and (4) s. 25F s. 30E(3) s. 35(4) and (8) s. 38(3)		
s. 7(8) s. 15(b) s. 19A(1) s. 34A(1)	he	the Commissioner
s. 19A(2)	he	the responsible Minister
s. 20A(a) s. 25	he	the Minister
s. 21(1)	him	the Commissioner or officer or employee
s. 21(1)	he	the Commissioner or officer or employee
s. 25A(5) s. 27	his	the Minister's
s. 25A(7) s. 25B(7)(a)	him	the Minister

Provision	Delete	Insert
s. 30D(a) and (b) s. 34B(a) and (b)	him (each occurrence)	the owner or occupier
s. 30D(b) s. 34B(b)	he	the owner or occupier
s. 34(1) s. 35(3)	him	the person
s. 35(2), (2a) and (4) s. 45(2)	he (each occurrence)	the person
s. 35(5)	exercising his	the exercise of
s. 37(2)	him	the mortgagee
s. 48(2)(q)	his	the owner or occupier's

18. Various penalties amended

- (1) In the provisions listed in the Table delete “Penalty —” and insert:

Penalty for this subsection: a fine of

Table

s. 21(5)	s. 22(4)
s. 28(1)	s. 35(4)

s. 19

s. 42(1)	
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(2) In section 30D in the Penalty delete “Penalty —” and insert:

Penalty: a fine of

(3) In section 34B in the Penalty delete “Penalty —” and insert:

Penalty: a fine of

19. Various references to “Department of Agriculture” amended

In the provisions listed in the Table delete “Department of Agriculture” and insert:

Department

Table

s. 4 def. of <i>chief executive officer</i>	s. 25E(1) and (2)
s. 25F	s. 25G

Part 3 — Consequential amendments and repeal

20. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item relating to the Landcare Trust.

21. *Financial Management Act 2006* amended

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete the item for Landcare Trust.

22. *Soil and Land Conservation Council (Remuneration of Members) Regulations 1991* repealed

The *Soil and Land Conservation Council (Remuneration of Members) Regulations 1991* are repealed.

