
SOIL CONSERVATION.

9° and 10° Geo. VI., No. XV.

No. 15 of 1945.¹

[Amended by Act No. 32 of 1955.² Reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the Conservation of Soil Resources, and to the mitigation of Erosion.

[Assented to 9th January, 1946.]

BE it enacted by the King'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:—

1. This Act may be cited as the *Soil Conservation Act, 1945-1955*, and shall come into operation on a day to be fixed by Proclamation.¹

Short title.
Amended by
No. 32 of
1955, s. 1.
N.S.W., s. 1.³
Vic., s. 1.
S.A., s. 1.
N.Z., s. 1.

2. This Act is divided into Parts as follows:—

PART I., ss. 3 and 4—PRELIMINARY.

PART II., ss. 5 to 12—ADMINISTRATION.

PART III., ss. 13 to 25—SOIL CONSERVATION SERVICE.

Act divided
into Parts.
N.S.W., s. 2.
Amended
by No. 32 of
1955, s. 2.

¹ Came into operation on 1st July, 1946, see *Gazette* of 28/6/46.

² Assented to 24th November, 1955.

³ The abbreviations used in the marginal references to other Acts in the margin of this Act have the following meanings:—N.S.W. = New South Wales No. 10 of 1938; Vic. = Victoria No. 4786 of 1940 as amended by No. 4937 of 1942; S.A. = South Australia No. 25 of 1939; N.Z. = New Zealand No. 12 of 1941.

PART IV., ss. 26 to 30—SOIL CONSERVATION RESERVES.

PART V., ss. 31 to 38—SOIL CONSERVATION ORDERS.

PART VI., ss. 40 to 48—MISCELLANEOUS.

SCHEDULE—ACTS TO WHICH THIS ACT IS SUPPLEMENTARY.

PART I.—PRELIMINARY.

This Act to be supplementary to other Acts, Schedule.

3. 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.

Interpretation. Amended by No. 32 of 1955, s. 3. N.S.W., s. 2. Vic. s. 2. S.A., s. 2. N.Z., s. 2.

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

“Commissioner” means the Commissioner of Soil Conservation appointed under this Act.

“Committee” means the Soil Conservation Advisory Committee appointed by the Governor under this Act.

“Crown Lands” includes any lands vested in or controlled by any public authority.

“Minister” means the Minister of the Crown from time to time holding the portfolio of Minister for Agriculture, and includes any other Minister of the Crown temporarily acting in the place of the Minister for Agriculture.

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

(a) is entitled to the land for an estate of freehold in possession; or

- (b) is a person to whom the Crown has lawfully contracted to grant the fee simple under the Land Act, 1933-1939,¹ 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 Act, 1933-1939,¹ or any other Act relating to the disposition of lands of the Crown.

“Proper Officer” means 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.

“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) The Minister for Water Supply Sewerage and Drainage.
- (c) The Minister for Public Works.
- (d) Every board, municipal council or road board established or constituted under any of the Acts mentioned in the Schedule to this Act.
- (e) The Director of Works and Buildings.
- (f) The Conservator of Forests.
- (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.

¹ Now Land Act, 1933-1958.

“Soil Conservation reserve” means a soil conservation reserve created under this Act.

“Soil erosion” means the natural or accelerated removal or deposition of soil which may be detrimental with respect to agricultural, pastoral, or forestry activities, or engineering or other works.

PART II.—ADMINISTRATION.

Act to be administered by the Minister. Vic., s. 3.

5. (1) The Minister administering this Act shall be the Minister for Agriculture.

(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.

Creation of new branch of Department of Agriculture.

6. For the better administration of this Act there shall be created and added to the Department of Agriculture a new branch, which shall be known as the “Soil Conservation Service” branch, and which, subject to the directions of the Minister shall have and may exercise such powers, functions and authorities and shall perform and carry out such duties as are or may be prescribed by or under this Act.

Commissioner of Soil Conservation to be appointed. Amended by No. 32 of 1955, s. 4. N.S.W., s. 4 (1) and (2).

7. (1) The Governor shall, under and subject to the provisions of the Public Service Act, 1904-1935,¹ appoint an officer, to be designated “The Commissioner of Soil Conservation.”

(2) The Commissioner shall have the immediate control and supervision of the Soil Conservation Service Branch, as the Head thereof but in all matters appertaining thereto shall be directly responsible to the Director of Agriculture.

(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.

¹ Now Public Service Act, 1904-1956.

8. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1904-1935,¹ appoint and employ such officers and employees as may be necessary for the execution of this Act.

Officers and
Employees.
N.S.W., s. 3.

(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.

9. (1) There shall be a Committee to be known as the "Soil Conservation Advisory Committee" consisting of eight members appointed by the Governor on the nomination of the Minister.

Soil
Conservation
Advisory
Committee
established.
N.S.W., s. 23.
Vic., s. 4.
S.A., s. 4.
N.Z., s. 3.

(2) of such members—

- (a) one shall be the Commissioner ex officio;
- (b) one shall be an officer on the staff of the Department of Agriculture;
- (c) one shall be an officer on the staff of the Department of Lands and Surveys;
- (d) one shall be an officer on the staff of the Department of Public Works;
- (e) one shall be an officer on the staff of the Forests Department;
- (f) one shall be a person as the representative of persons engaged in Agricultural pursuits in the State where the average annual rainfall as recorded at the time of the proclamation of this Act is not more than twenty inches per annum, and one shall be another such representative from those areas of the State where the average annual rainfall so recorded is more than twenty inches; and

¹ Now Public Service Act, 1904-1956.

(g) one shall be a person as the representative of persons engaged in pastoral pursuits in the State.

(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 Committee (other than the Commissioner) to be the Chairman thereof.

(5) Subject to this Act, every member of the Committee (other than the ex officio member) shall hold office for a term not exceeding five 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 Committee at the expiration of his term of office shall be eligible for re-appointment.

(7) The Governor may dismiss any member of the Committee 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 Committee.

(8) The office of a member of the Committee 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 a vacancy arising in the office of any member of the Committee the Governor may, on the nomination of the Minister, appoint some eligible person to fill such vacancy, and the 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.

10. The Chairman and every other member of the Committee shall receive such remuneration (if any) and such travelling allowances as may be prescribed by regulations.

11. (1) Meetings of the Committee shall be held at such times and places as the Committee or the Chairman from time to time appoints.

Proceedings
of
Committee.
Vic., s. 4 (6).
N.Z., s. 6.

(2) At any meeting of the Committee five shall be a quorum.

(3) Subject to this Act and the regulations the Committee may regulate its own proceedings.

12. The Governor may appoint any person to be the Secretary to the Committee.

Secretary
to the
Committee.
Vic., s. 7.

PART III.—SOIL CONSERVATION SERVICE.

13. The objects of the Soil Conservation Service created under this Act are—

Objects.
Vic., s. 8 (1).
N.Z., s. 10.

- (a) the prevention and mitigation of soil erosion;
- (b) the promotion of soil conservation;
- (c) the utilisation of lands in such a manner as will tend towards the attainment of the objects aforesaid;
- (d) the education of landholders and the public generally in the objects and practice of soil conservation.

14. The general functions of the Commissioner shall be—

General
functions of
Commis-
sioner.
N.S.W., ss.
6, 7, 8, 9.
Vic., s. 8 (2).
N.Z., s. 11.

- (a) the carrying out of surveys and investigations to ascertain the nature and extent of soil erosion throughout the State;
- (b) the investigation and design of preventive and remedial measures in respect of soil erosion;
- (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 soil erosion and soil conservation and reclamation;
- (f) the instruction and supervision of landholders in matters pertaining to soil conservation and reclamation;
- (g) the assistance of landholders whose land has been affected by erosion;
- (h) the co-ordination, 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;
- (i) the carrying out of works authorised by this Act;
- (j) such other matters as may be authorised by the Governor by order in council.

Special powers of Commissioner.
Vic., s. 8 (3).

15. 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.

Functions of Committee.
N.S.W., s. 23 (4).

16. The functions of the Committee shall be—

- (a) to consider the general aspects of soil conservation and erosion mitigation as they affect the State;

- (b) to make recommendations for the consideration of the Commissioner, who if he does not adopt them and is requested by the Committee, shall refer such recommendations to the Minister with a report stating his reasons why he considers they should not be adopted so as to enable the Minister to decide and direct what action (if any) shall be taken;
- (c) to conduct such investigations relative to any special aspect of soil erosion as may be required by the Minister;
- (d) to assist the Commissioner in such matters as he may refer to the Committee for advice or information.

17. (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.

Co-ordination of works of Government Departments in respect of soil erosion and soil conservation and reclamation. N.S.W., s. 13. Vic., s. 9. N.Z., s. 11 (2).

(2) So far as practicable the Commissioner shall carry out his functions through the Government departments represented on the Committee, and shall endeavour to co-ordinate the services available in Government departments and public authorities for the carrying out of works relating to soil conservation or reclamation or mitigation of soil erosion.

(3) Where in the opinion of the Minister it is expedient so to do, the Commissioner may exercise his functions under this Act independently of any government department or public authority.

(4) The Commissioner shall consult with any government department or public authority undertaking any work likely to cause soil erosion 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.

Powers to Government Departments and Public Authorities. Vic., s. 9 (2).

18. Every Government department represented on the Committee 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 co-operate with the Commissioner to carry out the purposes of this Act.

Commissioner may advise as to alienation of Crown Land. Vic., s. 9 (3).

19. (1) The Commissioner may by writing addressed to the proper 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 soil erosion or conservation is relevant in respect of such alienation, disposal, occupation, care or use.

(2) Copies of such advice shall be forwarded to the proper officer of each Government department represented on the Committee and may be published by the Commissioner.

(3) Where any Government department represented on the Committee cannot reach agreement as to the appropriate use having regard to questions of soil erosion or conservation of any Crown land the matter shall be referred to the Commissioner for investigation and report.

(4) Every Government department shall upon a request by the Commissioner in writing addressed to the proper officer make available to the Commissioner any records of measures or operations for the prevention or mitigation of soil erosion or any reports as to soil erosion, soil conservation or the utilisation of land whether undertaken, made or received before or after the commencement of this Act.

20. (1) The Minister may carry out or authorise the Commissioner to carry out any work in connection with soil conservation or mitigation of soil erosion or in connection with any other purpose contemplated by this Act.

Carrying out of works by Minister or Commissioner. Amended by No. 32 of 1955, s. 5. N.S.W., s. 14.

[Subsection (2) repealed by No. 32 of 1955, s. 5.]

20A. The Minister may, out of moneys provided by Parliament

Minister may make certain advances and payments. S. 20A added by No. 32 of 1955, s. 6. Cf. s. 34 of No. 15 of 1945.

- (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
- (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.

21. (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 survey, place such marks, or carry out such investigations only after reasonable notice 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.

Power of Entry. N.S.W., s. 15. Vic., s. 12. S.A., s. 7. N.Z., s. 21.

(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—Ten pounds.

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, 1918.¹

Saving
Provision in
relation to
State forests
and timber
reserves.
S. 21A added
by No. 32 of
1955, s. 7.
Cf. s. 36 of
No. 15 of
1945.

¹ Now Forests Act, 1918-1954.

22. (1) The Governor may by Proclamation—

Soil
conservation
districts.
N.Z., s. 13
(1).

- (a) Constitute any portion of the State defined in the Proclamation a soil 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.

(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 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 soil erosion 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 soil erosion.

(3) Any regulation made under subsection (2) of this section—

- (a) may be made to apply to all soil conservation districts, whether constituted before or after the regulations come into force or to any specified soil 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) of this section 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—Fifty pounds.

(5) It shall be deemed to be a lawful excuse within the meaning of subsection (4) of this section if the defendant proves to the satisfaction of the Court hearing the complaint that he committed the act alleged in such complaint in the belief that such act was not unlawful, or for the reason that he did not possess and was unable to obtain the money necessary to enable him to carry out his obligations as required by or under the said regulations.

Regional
Advisory
Committees.
Vic., s. 14.

23. (1) The Governor may on the recommendation of the Minister appoint a regional advisory committee for any soil conservation district constituted under this Act.

(2) Such committee shall consist of five persons, one of whom shall be the Commissioner, and one of whom shall be a representative of any road board or road boards whose district or districts are wholly or in part comprised within the soil conservation district.

(3) Members of a regional advisory committee (other than the ex officio member) shall hold office for a period not exceeding three years, and shall be eligible for re-appointment.

(4) The members of the committee shall elect one of their number to be the chairman thereof.

24. The functions of every regional advisory committee shall include—

Functions of regional advisory committee. Vic., s. 14 (3).

- (a) the consideration of and reporting upon methods of land utilisation within its district;
- (b) the consideration of and reporting upon any matters relating to land utilisation or soil erosion or soil conservation referred to it by the Minister or the Commissioner; and
- (c) the carrying out of such functions of an advisory nature relating to soil erosion and soil conservation as may be prescribed by regulations.

25. The Minister may, whenever he deems it necessary or expedient, invite any member of a regional advisory committee appointed under this Act or any officer in any Government department or any other person to attend at any meeting of the Committee and take part in any discussion on any particular matter before the committee.

Power to co-opt certain persons. Vic., s. 13.

PART IV.—SOIL CONSERVATION RESERVES.

26. (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.

Soil conservation reserves. S.A., s. 9. N.Z., ss. 16 and 20 (4).

(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 or otherwise acquired as for a public work under the Public Works Act, 1902-1933,¹ and the provisions of that Act shall apply accordingly, and the land so taken or otherwise acquired shall be a soil conservation reserve under this Act.

¹ Now Public Works Act, 1902-1956.

(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) of this section the lands comprised therein shall forthwith become Crown land within the meaning and for the purposes of the Land Act, 1933-1939,¹ and may be dealt with under that Act accordingly.

(6) The expression "Crown land" as used in subsection (2) of this section has the same meaning as in the Public Works Act, 1902-1933,² and the expression "Private land" as used in subsection (3) of this section means any land other than Crown land.

Minister to manage soil conservation reserves.
S.A., s. 9 (2).
N.Z., s. 16 (4).

27. 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 of the reserve and prevent injury to other land.

Offences in relation to soil conservation reserves.
S.A., s. 9 (3).
N.Z., s. 17.

28. (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

¹ Now Land Act, 1933-1958.

² Now Public Works Act, 1902-1956.

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—Fifty pounds.

(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.

29. (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 soil erosion.

(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, 1902-1933,¹ and the provisions of that Act shall apply thereto accordingly.

Execution of works for soil erosion. S.A., s. 10.

30. (1) The Minister may grant leases of or licenses 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 licenses shall be paid to the Treasury as public moneys of the State.

Leasing of land in soil conservation reserves. N.Z., s. 20 (3).

¹ Now Public Works Act, 1902-1956.

PART V.—SOIL CONSERVATION ORDERS.

Part V.
substituted
by No. 32 of
1955, s. 8.
Issue of soil
conservation
orders.
Substituted
by No. 32 of
1955, s. 8.
Cf. 15 Geo.
VI., No. 24,
s. 15, Q; and
s. 13b of the
Soil
Conservation
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.

Contents
of orders.
Substituted
by No. 32 of
1955, s. 8.
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.

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.

Cf. s. 34 post as to appeal.

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,

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.

(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.

Interim orders.
Substituted by No. 32 of 1955, s. 8.
Cf. s. 13f 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.

Owner or occupier may appeal. Substituted by No. 32 of 1955, s. 8. 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.

Enforcement of orders.

Substituted by No. 32 of 1955, s. 8. Cf. s. 13 (j) of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

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

35. (1) In this section—

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

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

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.

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, 1893,¹ 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.

Expense to be a charge on land. Substituted by No. 32 of 1958, s. 8. 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.

(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, 1856,² 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.

¹ Now Transfer of Land Act, 1893-1959.

² Last amended by No. 23 of 1923.

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, 1933,¹ 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—

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

- (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

¹ Now Land Act, 1933-1958.

- (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, 1933,¹ the powers conferred by the Land Act, 1933,¹ upon a mortgagee under a mortgage in respect of which default has been made in payment.

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, 1893,² 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, 1856,³ 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, 1933,¹ 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.

¹ Now Land Act, 1933-1958.

² Now Transfer of Land Act, 1893-1959.

³ Last amended by No. 23 of 1923.

Right of mortgagee to add expense to mortgage. Substituted by No. 32 of 1958, s. 8. Cf. s. 131 of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

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.

(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.

Discharge of orders. Substituted by No. 32 of 1955, s. 8. Cf. s. 13 (m) of the Soil Conservation Act, 1939-1947, S.A., added by No. 44 of 1945, s. 10, S.A.

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.

39. [*Section 39 repealed, as part of original Part V., by No. 32 of 1955, s. 8.*]

PART VI.—MISCELLANEOUS

40. (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 erosion mitigation.

Vesting of works in a public authority. Amended by No. 32 of 1955, s. 9. N.S.W., s. 26.

(2) The care, control and maintenance of such work shall thereupon 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.

[Amended by No. 32 of 1955, s. 9.]

41. (1) If the Minister is of opinion that for the purpose of soil conservation or erosion mitigation it is desirable that the trees upon any land should not be cut down or otherwise destroyed or injured he may serve a notice upon the owner of that land, and if the owner is not the occupier, upon the occupier also—

Protection of trees. S.A., s. 13.

- (a) setting out his said opinion; and
- (b) inviting the person upon whom the notice is served to make representations to him, not later than a day specified in the notice, for the purpose of showing cause why an order should not be made forbidding the cutting down or other destruction or injury of trees on land specified in the notice, without the consent of the Minister.

(2) A person on whom a notice is served under subsection (1) of this section, shall not, during the period between the service of the notice and the service upon him of an order or notice under subsection (4) of this section, cut down, destroy or injure any trees upon the land specified in the first mentioned notice, and if he does so he shall be guilty of an offence.

Penalty—One hundred pounds.

(3) After service of a notice or notices as mentioned in subsection (1) of this section in relation to any land and after hearing and considering any representations made pursuant to the notice or notices the Minister may make an order that trees upon the said land shall not be cut down or otherwise destroyed or injured during the period specified in the order except in such circumstances or with such consents (if any) as may be specified in the order.

(4) The order shall be served upon the owner of the land to which it relates, and, if the owner is not the occupier, upon the occupier also. If the Minister decides not to make an order he shall forthwith after making that decision serve notice thereof on the owner of the land to which the decision relates, and if the owner is not the occupier, upon the occupier also.

(5) If any person upon whom an order is served under this section contravenes the order in any way, he shall be guilty of an offence.

Penalty—One hundred pounds.

(6) (a) The Minister may give his consent to the cutting down or other destruction of or injury to any trees upon condition that the person to whom the consent is given will within a time specified by the Minister plant other trees to the number and of the kind required by the Minister in replacement of any trees cut, destroyed, or injured pursuant to the consent.

(b) If any person who has cut down, destroyed or injured any tree pursuant to a consent given upon condition as mentioned in this subsection, fails to comply with that condition, he shall be guilty of an offence.

Penalty—One hundred pounds.

(7) The Minister may give notices and make orders under this section in relation to shrubs, plants or grasses or any class of any of them either in substitution for or in addition to trees, and in any such case this section shall apply to such shrubs, plants and grasses, and the term "trees" as used in this section shall be deemed to include such shrubs, plants and grasses.

42. (a) 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.

Inter-
ferences
with or
damage to
works, etc.
N.S.W., s. 27.
N.Z., ss. 153,
154.

Penalty—Twenty pounds.

(b) In addition the offender shall be liable for any loss or damage caused by the offence.

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

43. (1) Where the Commissioner is satisfied that compliance with any covenant, condition or provision of any lease granted under the Land Act, 1933-1939,¹ would tend to cause erosion on any land, he may so advise the Minister for Lands.

Alteration of
covenants,
etc., of
certain
leases.
N.S.W., s. 28.

(2) Where the Minister for Lands has been so advised he may, notwithstanding anything to the contrary contained in the Land Act, 1933-1939,¹ vary, modify, revoke or add to the covenants, conditions or provisions of the lease according as the circumstances require.

¹ Now Land Act, 1933-1958.

Penalties.
N.S.W., s. 29.
S.A., s. 15.
N.Z., s. 156.

44. (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 twenty pounds.

(2) Proceedings for offences against this Act or the regulations may be taken and disposed of summarily before justices in petty sessions.

Complaints.
N.S.W., s. 30.

45. (1) Any complaint, information or other proceeding under this Act or the regulations may be made, laid and taken either by the Minister or by the Commissioner, or by any officer under the Commissioner duly authorised by the Minister 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 Minister under this section, either generally or specially, shall be *prima facie* evidence that the person named therein is an officer and of the extent of the authorisation under which he acts.

Protection
of Minister,
Commis-
sioner and
officers, etc.
N.S.W., s. 31.
N.Z., s. 5.

46. 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 or report of the Committee shall, if the act, matter or thing was done, or the decision, determination, recommendation or report was made *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.

Annual
report by
Commis-
sioner, etc.
Vic., s. 10.
Amended
by No. 32 of
1955, s. 10.

47. (1) As soon as may be after the thirtieth day of June in each year the Commissioner shall prepare and forward to the Director of Agriculture a report—

- (a) setting forth the activities of the Commissioner under this Act and the results thereof during the period of twelve months ended on such day; and

- (b) containing estimates for the financial year then ensuing of the work proposed to be undertaken by or under the Commissioner and of the moneys likely to be required for carrying into effect the purposes of this Act.

(2) Every such report shall be laid before both Houses of Parliament.

48. (1) The Governor may, in addition to the regulations provided for in section twenty-two of this Act, 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.

Regulations.
N.S.W., s. 33.
Vic., s. 15.
S.A., s. 18.
Amended
by No. 32 of
1955, s. 11.

(2) Without in any way affecting or limiting the generality of subsection (1) of this section 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 soil erosion;
- (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 soil erosion;
- (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, and the terms and conditions under which such assistance shall be given;

- (g) [paragraph (g) deleted by No. 32 of 1955, s. 11.]
 - (h) the form of notices, orders, certificates, authorities and other documents;
 - (i) [paragraph (i) deleted by No. 32 of 1955, s. 11.]
 - (j) practice and procedure in respect of objections and appeals;
 - (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 His 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, 1918-1931,¹ the regulation or prohibition of the destruction of or interference with timber or scrub on land held under any form of lease or license from the Crown;
 - (o) the prohibition of the lighting of fires in the open air in any area of erosion hazard except under such circumstances and subject to such limitations, conditions and restrictions as may be prescribed; and
 - (p) the prohibition or regulation of depasturing of livestock on a soil conservation reserve or on an area of erosion hazard or on any specified portion of such reserve or hazard.
- (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 twenty pounds for a breach of any regulation.

¹ Now Forests Act, 1918-1954.

Sec. 3.

SCHEDULE.

Title of Act.	Number of Act.	Reference.
Bush Fires Act, 1937-1943	65 of 1937	Vol. 2 of the Reprinted Acts of the Parliament of Western Australia.
Closer Settlement Act, 1927	21 of 1927	1927 Statutes.
Droving Act, 1902-1935	30 of 1902	Appendix to 1935 Statutes.
Forests Act, 1918-1931	8 of 1919	1919 and subsequent Statutes.
Land Act, 1933-1939	37 of 1933	1933 and subsequent Statutes.
Land Drainage Act, 1925-1941	43 of 1925	1925 and subsequent Statutes.
Mining Act, 1904-1937	15 of 1904	Reprinted with amendments under the Amendments Incorporation Act, 1938.
Municipal Corporations Act, 1906-1943	32 of 1906	Vol. 1 of the Reprinted Acts of the Parliament of Western Australia and subsequent Statutes.
Petroleum Act, 1936-1940	36 of 1936	1936 and subsequent Statutes.
Rights in Water and Irrigation Act, 1914-1941	19 of 1914	Vol. 2 of the Reprinted Acts of the Parliament of Western Australia.
Road Districts Act, 1919-1943	38 of 1919	Vol. 2 of the Reprinted Acts of the Parliament of Western Australia.
Sand Drift Act, 1919	51 of 1919	1919 Statutes.
Sluicing and Dredging for Gold Act, 1899	63 Vict., 43	1899 Statutes.
Town Planning and Development Act, 1928-1943	39 of 1928	1928 and subsequent Statutes.

