

SOIL AND LAND CONSERVATION AMENDMENT ACT

No. 91 of 1990

AN ACT to amend the *Soil and Land Conservation Act 1945*
and for related purposes.

[Assented to 17 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Soil and Land Conservation Amendment Act 1990*.

Commencement

2. This Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Soil and Land Conservation Act 1945** is referred to as the principal Act.

[*Reprinted as approved on 13 December 1982 and amended by Acts Nos. 98 of 1985, 46 of 1988 and 20 of 1989.]

Section 4 amended

4. Section 4 of the principal Act is amended—

(a) in the definition of “Commissioner”, by inserting before “Conservation” the following—

“ and Land ”;

(b) by deleting the definition of “Committee” and substituting the following definition—

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

(c) by inserting in their appropriate alphabetical positions the following definitions—

“ “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*, the Registrar of Titles;

(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; and

(c) where the land is under the operation of the *Land Act 1933*, the chief executive officer, Land Administration. ”;

“ “the Trust” means the Landcare Trust established by section 40. ”;

“ “the Trust Fund” means the Landcare Trust Fund established under section 41B. ”.

Section 7 amended

5. Section 7 of the principal Act is amended in subsection (1) by inserting before “Conservation” the following—

“ and Land ”.

Section 7A amended

6. Section 7A of the principal Act is amended in each of subsections (1) and (2) by inserting before “Conservation” the following—

“ and Land ”.

Section 9 amended

7. Section 9 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (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. ”; and

- (b) in subsection (2), by inserting after paragraph (f) the following paragraph—

“ (fa) one shall be a person nominated by the Minister after consultation with such voluntary conservation organizations as he thinks fit; ”.

Section 16 repealed and a section substituted

8. Section 16 of the principal Act is repealed and the following section is substituted—

Functions of the Council

“ 16. The functions of the Council are—

- (a) to advise the Minister as to the condition of soil and land resources;
- (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 co-ordinate, monitor, and review soil and land conservation programmes and activities;
- (d) to co-ordinate 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 co-ordinate 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. ”.

Part IVA inserted

9. After Part IV of the principal Act the following Part is inserted—

**“ PART IVA—CONSERVATION COVENANTS AND AGREEMENTS
TO RESERVE**

Interpretation

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

Registration of conservation covenants

30B. (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 natural 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 Book or 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.

Effect of covenant or agreement

30C. (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.

Duties upon passing interests in affected land

30D. 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
- (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.

Discharge of agreement to reserve

30E. (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.

Cancelling registration of memorial

30F. (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 Book or register or record in respect of the land concerned. ”.

Section 32 amended

10. Section 32 of the principal Act is amended by inserting after subsection (1) the following subsection—

“ (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. ”.

Section 34A repealed and a section substituted

11. Section 34A of the principal Act is repealed and the following section is substituted—

Registration of memorial of soil conservation notice

“ 34A. (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 Book or 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 quashed under section 33 or 34; or

(b) is discharged under section 38 or 39,

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 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 Book or register or record in respect of the land concerned. ”.

Part VA inserted

12. After Part V of the principal Act the following Part is inserted—

“ PART VA—LANDCARE TRUST

Landcare Trust established

40. (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.

Membership of the Trust

41. (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) three 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 Public Service Commissioner.

(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.

(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.

Functions of the Trust

41A. (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 Fund 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.

Trust Fund

41B. (1) Moneys received by the Trust for the purposes referred to in section 41A (1) (a) shall be paid into, and placed to the credit of, an account at the Treasury to be called the Landcare Trust Fund.

(2) All expenditure incurred by the Trust for the purpose of performing its functions shall be paid from the Trust Fund.

(3) Moneys standing to the credit of the Trust Fund 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 sections 40 and 41 of the *Financial Administration and Audit Act 1985*, all interest or other revenue derived from the investment of moneys standing to the credit of the Trust Fund shall be paid to the credit of the Trust Fund.

Ministerial directions

41C. (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 authority of the Trust under section 66 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

41D. (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.

Staff and support

41E. 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.

Execution of documents by Trust

41F. (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 authorized 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.

Application of Financial Administration and Audit Act 1985

41G. Subject to this Act, the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Trust and its operations.

Review

41H. (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 44 amended

13. Section 44 of the principal Act is amended by inserting after subsection (2) the following subsection—

- “ (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.

Section 45 amended

14. Section 45 of the principal Act is amended in subsections (1) and (2) by deleting “authorized by the Minister” in each case and substituting the following—

- “ authorized by the Commissioner ”.

Transitional

15. (1) The amendments made by sections 5 and 6 of this Act to sections 7 and 7A, respectively, of the principal Act do not affect the continuity or tenure of the offices referred to in sections 7 and 7A of the principal Act.

(2) The amendments made by section 7 of this Act to section 9 of the principal Act do not affect the continuity of the body formerly known as the Soil Conservation Advisory Committee and now to be known as the Soil and Land Conservation Council, and the tenure of

office of those persons who are members of that body immediately before those amendments come into operation shall cease upon the coming into operation of those amendments, but without affecting their eligibility to be re-appointed.

References to Committee amended

16. (1) The principal Act is amended by deleting “the Committee” wherever it occurs in the provisions referred to in the Table to this subsection and substituting in each case the following—

“ the Council ”.

TABLE

section 9 (2a), (4), (5), (6), (7), (8) and (9)

section 10

section 11 (1), (2), (3) and (4)

section 12

section 24 (1) (h)

section 25

section 32 (4)

section 39A (2)

section 46.

(2) Section 11 of the principal Act is amended in subsection (4) by deleting “The Committee” and substituting the following—

“ The Council ”.

Certain other Acts amended

17. The Acts referred to in column 1 of the Schedule are amended as set out in column 2 of the Schedule.

SCHEDULE

(section 17)

<i>column 1</i> <i>Short title of Act</i>	<i>column 2</i> <i>Amendment</i>
1. <i>Constitution Acts Amendment Act 1899</i>	<p>In Schedule V, in Part 3—</p> <p>(a) the item relating to the Soil Conservation Advisory Committee is deleted and the following item is substituted—</p> <p>“ The Soil and Land Conservation Council constituted under the <i>Soil and Land Conservation Act 1945</i>. ”; and</p> <p>(b) the following item is inserted in the appropriate alphabetical position—</p> <p>“ The Landcare Trust established under Part VA of the <i>Soil and Land Conservation Act 1945</i>. ”.</p>
2. <i>Financial Administration and Audit Act 1985</i>	<p>In Schedule 1, the following item is inserted in the appropriate alphabetical position—</p> <p>“ Landcare Trust ”</p>
3. <i>Parliamentary Commissioner Act 1971</i>	<p>In the Schedule, after the item relating to the Settlement Agents Supervisory Board, the following item is inserted—</p> <p>“ Landcare Trust established under Part VA of the <i>Soil and Land Conservation Act 1945</i>. ”.</p>
