

SOUTH AUSTRALIA

SOIL CONSERVATION AND LAND CARE ACT 1989

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 2 July 1997.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Soil Conservation and Land Care Act 1989 No. 67 of 1989
[Assented to 29 October 1989]¹

as amended by

Soil Conservation and Land Care Act Amendment Act 1990 No. 53 of 1990 [Assented to 22 November 1990]
Statutes Amendment (Water Resources) Act 1997 No. 35 of 1997 [Assented to 19 June 1997]²

¹ Came into operation 15 March 1990: *Gaz.* 2 November 1989, p. 1349.

² **Part 6 (ss. 25-29) came into operation 2 July 1997: *Gaz.* 26 June 1997, p. 3052.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix 1.*

An Act to provide for the conservation and rehabilitation of the land of this State; to repeal the Soil Conservation Act 1939; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Soil Conservation and Land Care Act 1989*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary opinion appears—

"**authorised officer**" means a person appointed by the Minister as an authorised officer under this Act;

"**board**" means a soil conservation board established under this Act;

"**capability**", in relation to land, means the ability of the land to sustain particular uses without suffering permanent damage or a reduction in future productivity;

"**the Conservator**" means the person for the time being holding or acting in the position of Soil Conservator under this Act;

"**the Council**" means the Soil Conservation Council established under this Act;

"**degradation**" of land means a decline in the quality of the soil, vegetation, water and other natural resources of the land, resulting from over-grazing, excessive tillage, over-clearing, mineral extraction, development of towns, disposal of wastes, road construction, failure to control plant and animal pests or any other human activity on the land, and "**degraded**" has a corresponding meaning;

"**district**" means a soil conservation district established under this Act;

"**the Fund**" means the Soil Conservation and Land Care Fund established pursuant to this Act;

"**occupier**" of land means a person who has, or is entitled to, possession or control of the land;

"**owner**" of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;
- (b) in relation to land held under Crown lease or licence—the lessee or licensee;
- (c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;

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(d) in relation to any other land—the Crown,

and includes an occupier of the land;

"**pastoral land**" means land of the Crown that is subject to a pastoral lease;

"**rehabilitation**" of degraded land means to bring the land back to at least the condition it was in before its degradation;

"**the repealed Act**" means the *Soil Conservation Act 1939* repealed by this Act.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Act binds Crown

4. This Act binds the Crown.

Act does not derogate from Mining Act or Petroleum Act

5. Nothing in this Act derogates from the operation of the *Mining Act 1971* or the *Petroleum Act 1940* or of a tenement granted under either of those Acts.

**PART 2
OBJECTS AND DUTIES**

Objects of this Act

6. The objects of this Act are as follows:

- (a) to recognise that the land and its soil, vegetation and water constitute the most important natural resource of the State and that conservation of that resource is crucial to the welfare of the people of this State;
- (b) to recognise that degradation of the land has occurred to a significant extent and that some degradation is still occurring, and that Government, industry and the community at large must work together to prevent or minimise further degradation and rehabilitate degraded land;
- (c) to ensure that conservation of land becomes an integral part of land management practice, and that land is used within its capability;
- (d) to establish a system ensuring—
 - (i) the regular and effective monitoring and evaluation of the condition of the land;
 - (ii) the early identification of degradation of the land and the causes of that degradation;
 - (iii) the development, implementation and enforcement of plans for preventing or minimising further degradation and for rehabilitating degraded land;
- (e) to involve the community as widely as possible in the administration of this Act and in programmes designed to conserve or rehabilitate land.

Duty of Minister and others in administering this Act

7. The Minister, the Council, the boards, the Conservator and all other bodies and persons involved in the administration of this Act must, in carrying out that administration, act consistently with and seek to further the objects of this Act.

Duty of owners of land

8. It is the duty of an owner of land to take all reasonable steps to prevent degradation of the land.

The Soil Conservation and Land Care Fund

9. (1) The Minister must establish a fund to be entitled the *Soil Conservation and Land Care Fund*.

(2) The Fund will consist of—

- (a) grants, gifts and loans made to the Minister for payment into the Fund; and
- (b) any money provided by Parliament for the purposes of the Fund; and
- (c) any money paid into the Fund pursuant to any other Act; and
- (d) any accretions arising out of investment of the money in the Fund.

(3) The money in the Fund may be invested in such manner as the Minister thinks fit.

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(4) The Fund must be applied in such manner as the Minister, on the recommendation of the Council, thinks fit for the purposes of projects and programmes related to the conservation and rehabilitation of land.

**PART 3
ADMINISTRATION**

DIVISION 1—THE MINISTER

Power of Minister to delegate

10. (1) The Minister may delegate any of the Minister's powers or functions under this Act (except for this Part and section 35)—

- (a) to the Council; or
- (b) to any particular person or body; or
- (c) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to act in any matter; and
- (d) is revocable at will by the Minister.

Appointment of authorised officers

11. (1) The Minister may appoint such persons to be authorised officers for the purposes of this Act as the Minister thinks fit.

(2) An appointment under this section—

- (a) will be for a period stated in the instrument of appointment; and
- (b) may be made subject to conditions limiting the area within which or the purposes for which the appointee may exercise the powers of an authorised officer.

(3) A person appointed as an authorised officer will be issued with an identity card in a form approved by the Minister.

Compulsory acquisition of land

12. The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, and on the recommendation of the Council, acquire land for the purposes of this Act.

Minister may carry out certain works or give financial assistance

13. The Minister may enter into an agreement with the owner of land—

- (a) for the carrying out by the Minister, jointly with the owner or otherwise, of works for the conservation or rehabilitation of the land; or
- (b) for the giving of financial assistance by the Minister to the owner, by way of grant or loan, for the carrying out of works for the conservation or rehabilitation of the land.

DIVISION 2—THE COUNCIL

Establishment of the Council

14. (1) The *Soil Conservation Council* is established.

(2) The Council consists of 12 members, appointed by the Governor, of whom—

- (a) one (who will preside at meetings of the Council) will be a person who has, in the opinion of the Minister, wide knowledge of and experience in soil conservation and land management, nominated by the Minister;
- (b) one will be a person who has, in the opinion of the Minister, wide experience in the management of a pastoral lease, selected by the Minister from a panel of three made up of names submitted at the invitation of the Minister by the United Farmers and Stockowners Association of S.A. Incorporated;
- (c) one will be a person who has, in the opinion of the Minister, wide experience in horticulture, selected by the Minister from a panel of three made up of names submitted at the invitation of the Minister by the United Farmers and Stockowners Association of S.A. Incorporated;
- (d) two will be persons who have, in the opinion of the Minister—
 - (i) as to one of them—wide experience in dryland cropping and grazing of livestock; and
 - (ii) as to the other—wide experience in intensive agriculture in high rainfall country, selected by the Minister from a panel of three made up of names submitted at the invitation of the Minister by the United Farmers and Stockowners Association of S.A. Incorporated;
- (e) one will be a person who has, in the opinion of the Minister, wide experience in the provision of education relating to land management or soil sciences, selected by the Minister from a panel of three made up of names submitted at the invitation of the Minister by one or more tertiary education institutions;
- (f) one will be a person who has, in the opinion of the Minister, wide knowledge in the field of environmental conservation, selected by the Minister from a panel of three made up of names submitted at the invitation of the Minister by the Conservation Council of South Australia Incorporated;
- (g) one will be a person who is, or has been, an active member of a soil conservation board, nominated by the presiding members of the boards;
- (h) one will be a person who is a member of the Pastoral Board who has, in the opinion of the Minister of Lands, wide experience in public administration of pastoral land, nominated by that Minister;
- (i) one will be a person who is an employee in the Department of Agriculture who has, in the opinion of the Minister, wide experience in the implementation of soil conservation and land management strategies, nominated by the Minister;

(j) one will be a person who is a Public Service employee who has, in the opinion of the Minister of Environment and Planning, wide experience in public administration in environmental matters, nominated by that Minister;

(k) one will be a person who is a Public Service employee who has, in the opinion of the Minister of Water Resources, wide experience in public administration of water resources, nominated by that Minister.

(3) A Public Service employee cannot be appointed under subsection (2)(a).

(4) At least two members of the Council must be women and two must be men.

(5) The Governor may appoint persons to be deputies to the members of the Council.

(6) A person who is to be the deputy of a particular member must be appointed in the same manner as the member was appointed to the Council.

(7) A deputy may, in the absence of the member, act as a member of the Council.

Conditions of office

15. (1) A member of the Council will be appointed for a term not exceeding three years and will, on the expiration of a term of office, be eligible for reappointment.

(2) The Governor may remove a member of the Council from office—

(a) for misconduct; or

(b) for neglect of duty; or

(c) for incompetence; or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Allowances and expenses

16. A member of the Council is entitled to such allowances and expenses as the Governor may determine.

Procedure at meetings

17. (1) In the absence of the person appointed to preside at meetings of the Council, the members present at a meeting must choose one of their number to preside at that meeting.

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(2) Subject to subsection (3), the Council may act notwithstanding vacancies in its membership.

(3) Seven members constitute a quorum of the Council and no business may be transacted at a meeting of the Council unless a quorum is present.

(4) Each member present at a meeting of the Council is entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Council.

(6) Meetings of the Council must, subject to subsection (7), be held in a place that is open to the public.

(7) The Council may order that the public be excluded from a meeting in order to enable the Council to consider in confidence any matter that it considers to be confidential.

(8) Subject to this Act, the proceedings of the Council may be conducted as it thinks fit.

Conflict of interest

18. (1) A member of the Council has an interest in a matter before the Council if—

- (a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
- (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

not being a benefit or detriment that would be enjoyed or suffered by the member in common with a substantial class or group within the community.

(2) A person is closely associated with a member of the Council if that person is—

- (a) a body corporate of which the member is a director or a member of the governing body; or
- (b) a proprietary company in which the member is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
- (d) a partner of the member; or
- (e) an employer or an employee of the member; or
- (f) the spouse, parent or child of the member.

(3) A member of the Council who has an interest in a matter before the Council must disclose the existence of that interest to the Council.

Penalty: Division 6 fine or division 6 imprisonment.

- (4) A disclosure under subsection (3) must be recorded in the minutes of the Council.
- (5) A member of the Council who has an interest in a matter before the Council—
 - (a) must not, except on the request of the Council, take part in any discussion by the Council relating to that matter; and
 - (b) must not vote in relation to that matter; and
 - (c) must, unless the Council permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 6 fine or division 6 imprisonment.

(6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

(7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Council, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

Functions of the Council

19. (1) The functions of the Council are as follows:

- (a) to advise the Minister on the administration of this Act and the policies that should govern that administration; and
- (b) to monitor and evaluate the condition of the land of the State and advise the Minister on the extent of land degradation and the economic and environmental implications of that degradation; and
- (c) to advise the Minister on the priorities to be accorded to land degradation research programmes, land care programmes and other projects or programmes for the conservation or rehabilitation of land; and
- (d) to develop sound strategies for the conservation and rehabilitation of land; and
- (e) to disseminate information on and promote community awareness of issues relating to conservation and rehabilitation of land and, in particular, to promote the principles that land must be used within its capability and forward planning on that basis must become standard land management practice; and
- (f) to monitor the operation of this Act and report to the Minister on any problems identified by the Council with the Act or its administration; and

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- (g) to perform the other functions (including the approval of district plans and three year board programmes) assigned to the Council by or under this Act or by the Minister.

(2) The Council may require a board to investigate and report to the Council on any matters relating to the administration of this Act within the board's district.

Delegation by the Council

20. (1) Subject to this section, the Council may, with the consent of the Minister, delegate any of its powers or functions (other than its functions under sections 12, 19(2), 35(1) and 36(4) and the function of advising the Minister on the policies that should govern the administration of this Act)—

- (a) to a member of the Council; or
- (b) to a committee (which may, but need not, consist of or include members of the Council); or
- (c) to a particular person or body; or
- (d) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing;
- (b) may be absolute or conditional;
- (c) does not derogate from the power of the Council to act in any matter;
- (d) and is revocable at will by the Council.

Reporting obligations of Council

21. (1) The Council must, not later than 30 September in each year, submit to the Minister a report on the work of the Council during the previous financial year in carrying out its functions and achieving the objects of this Act.

(2) The Council must, within six months after the end of the year 1995, submit to the Minister a report on—

- (a) the operation of this Act during the period from the commencement of the Act until the end of that year; and
- (b) the effectiveness, in the Council's opinion, of the Act in furthering the objects of the Act; and
- (c) the shortcomings (if any) that have been identified by the Council in the provisions of the Act or in the administration of the Act and the measures that should be taken to overcome those problems; and
- (d) such other matters related to the conservation and rehabilitation of the land of the State as the Council thinks fit to include in the report.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

DIVISION 3—SOIL CONSERVATION DISTRICTS AND BOARDS

Establishment of soil conservation districts and boards

22. (1) The Minister may, by notice in the *Gazette*, on the recommendation of the Council—

- (a) declare a defined area of land to be a soil conservation district; and
- (b) establish a soil conservation board for the district; and
- (c) designate the board by a distinctive name.

(2) The Minister may, by notice in the *Gazette*, on the recommendation of the Council—

- (a) vary or revoke a notice under this section; or
- (b) dissolve a board with effect from a date specified in the notice and make any consequential provision necessary for winding up the affairs of the board and disposing of its property.

(3) Before making any recommendation to the Minister under this section, the Council must consult with and give due consideration to the representations of—

- (a) owners of land within the district, or proposed district; and
- (b) any council, or councils, the areas of which fall wholly or partly within the boundaries of the district or proposed district.

Boards to be bodies corporate

23. (1) A board—

- (a) is a body corporate; and
- (b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate; and
- (c) holds its property on behalf of the Crown.

(2) Where a document purports to bear the common seal of a board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the board has been duly affixed to that document.

Membership of boards

24. (1) The membership of a board will consist of not more than seven members, of whom—

- (a) one will be—
 - (i) a person appointed by the local government council, or councils, the area or areas of which fall wholly or partly within the boundaries of the district; or
 - (ii) if no council area falls within the boundaries of the district—a person appointed by the Minister; and
- (b) the others will be appointed by the Minister on the recommendation of the Council, being persons who are resident in the district and who have, in the opinion of the Council, suitable knowledge and experience in land management or soil conservation.

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- (2) In appointing members to a board, the Minister must ensure—
- (a) that the membership represents, as far as practicable, the diversity of major land uses within the district; and
 - (b) that at least three members are owners of land used for agricultural, pastoral, horticultural or other similar purposes; and
 - (c) that at least one member is a woman and one a man.
- (3) The Minister must appoint a member of a board to preside at meetings of the board.

Conditions of office

25. (1) A member of a board will be appointed for a term not exceeding three years and will, on the expiration of a term of office, be eligible for reappointment.

- (2) The Minister may remove a member of a board from office—
- (a) for misconduct; or
 - (b) for neglect of duty; or
 - (c) for incompetence; or
 - (d) for mental or physical incapacity to carry out the duties of office satisfactorily.
- (3) The office of a member of a board becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office by the Minister under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Allowances and expenses

26. A member of a board is entitled to such allowances and expenses as the Governor may determine.

Procedure at meetings

27. (1) In the absence of the person appointed to preside at meetings of a board, the members present at a meeting must choose one of their number to preside at that meeting.

(2) Subject to subsection (3), a board may act notwithstanding vacancies in its membership.

(3) A number of members of a board equal to half the total number of members for the time being appointed to the board, plus one, constitutes a quorum of the board, and no business may be transacted at a meeting of a board unless a quorum is present.

(4) Each member present at a meeting of a board is entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the members present at a meeting of a board is a decision of the board.

(6) Subject to this Act, the proceedings of a board may be conducted as it thinks fit.

Conflict of interest

28. (1) A member of a board has an interest in a matter before the board if—

- (a) the member or a person closely associated with the member would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
- (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

not being a benefit or detriment that would be enjoyed or suffered by the member in common with a substantial class or group within the community.

(2) A person is closely associated with a member of a board if that person is—

- (a) a body corporate of which the member is a director or a member of the governing body; or
- (b) a proprietary company in which the member is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
- (d) a partner of the member; or
- (e) an employer or an employee of the member; or
- (f) the spouse, parent or child of the member.

(3) A member of a board who has an interest in a matter before the board must disclose the existence of that interest to the board.

Penalty: Division 6 fine or division 6 imprisonment.

(4) A disclosure made under subsection (3) must be recorded in the minutes of the board.

(5) A member of a board who has an interest in a matter before the board—

- (a) must not, except on the request of the board, take part in any discussion by the board relating to that matter; and
- (b) must not vote in relation to that matter; and

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- (c) must, unless the board permits otherwise, be absent from the meeting room when any such discussion or voting takes place.

Penalty: Division 6 fine or division 6 imprisonment.

(6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.

(7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the board, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

Functions of boards

29. (1) The functions of a board are as follows:

- (a) to develop within its district a community awareness and understanding of land conservation issues and, in particular, to promote the principles that land must be used within its capability and forward planning on that basis must become standard land management practice; and
- (b) to develop or support programmes for carrying out measures for land conservation and rehabilitation in which members of the community may participate; and
- (c) to implement and enforce this Act (including the making of soil conservation orders) within its district and to endeavour to do so as far as possible on the basis of first seeking the co-operation of owners of land within the district; and
- (d) to investigate and report on such matters related to the administration of this Act within its district as the Council or the Minister may request; and
- (e) give advice and assistance on land conservation and rehabilitation to other persons and bodies; and
- (f) to perform the other functions (including the preparation of district plans and three year programmes and the approval of property plans) assigned to a board by or under this Act or by the Minister.

(1a) A board has the functions for the time being delegated to the board under another Act.

(2) For the purposes of carrying out its functions, a board—

- (a) may, with the approval of the Minister—
 - (i) appoint such employees as the board thinks necessary or expedient;
 - (ii) acquire, hold, deal with and dispose of real and personal property;
- (b) may enter into contracts or arrangements of any kind;
- (c) may exercise any other power that is reasonably necessary for or incidental to the performance of those functions.

(3) An employee of a board is not a Public Service employee.

Delegation

30. (1) A board may, with the approval of the Minister, delegate any of its powers and functions (other than its functions under sections 36, 38, 39 and 42)—

- (a) to a member of the board; or
- (b) to a committee appointed by the board (which may, but need not, consist of or include members of the board); or
- (c) to any particular person or body; or
- (d) to the person for the time being occupying a particular office or position.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the board to act in any matter; and
- (d) is revocable at will by the board.

Annual reports by boards

31. (1) A board must, not later than 31 October in each year, submit to the Minister a report on the work of the board during the previous financial year in carrying out its functions and achieving the objects of this Act.

(2) The Minister—

- (a) must, on receipt of a report under subsection (1), furnish the Council with a copy of the report; and
- (b) must, within 12 sitting days after receipt of the report, cause copies of the report to be laid before each House of Parliament.

DIVISION 4—THE SOIL CONSERVATOR

Soil Conservator

32. (1) The position of Soil Conservator established under the repealed Act continues in existence.

(2) The Conservator is a Public Service employee.

(3) It is an essential requirement for appointment to the position of Soil Conservator that the appointee has had experience in the field of soil conservation or land management.

Powers and functions of Conservator

33. (1) The functions of the Conservator are as follows:

- (a) to implement this Act in those parts of the State that fall outside of districts; and
- (b) to perform the other functions assigned to the Conservator by or under this Act.

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(2) The Conservator has, for the purposes of subsection (1)(a), all the powers, duties and functions of a board under this Act.

**PART 4
CONSERVATION AND REHABILITATION OF LAND**

DIVISION 1—APPLICATION OF THIS PART TO PASTORAL LAND

Application of this Part to pastoral land

34. (1) Nothing in this Part derogates from the *Pastoral Act 1936* or prevents the Pastoral Board from exercising its powers under that Act in relation to pastoral land within a district.

(2) In the event of a conflict between the terms of a notice issued by the Pastoral Board and the terms of a soil conservation order made by a board, the notice of the Pastoral Board will prevail.

(3) A board the district of which includes any pastoral land must—

(a) in developing or revising a district plan (but before making it available for public inspection and comment); or

(b) before taking any action under Division 3 in relation to any such pastoral land,

consult with the Pastoral Board and give due consideration to the Board's views on the matter.

(4) Before the Council approves any such district plan or revised district plan, it must consult with the Pastoral Board and give due consideration to the Board's views on the matter.

DIVISION 2—LAND ASSESSMENT AND PLANS

Assessment of land

35. (1) The Minister will cause such land (not being pastoral land) as may be recommended by the Council to be assessed on a regular basis for the purposes of determining—

(a) the classes into which the land falls; and

(b) the capability and preferred uses of the land; and

(c) the condition of the land.

(2) The information resulting from the assessment of land under subsection (1) must be furnished to the Council and the boards.

(3) The information resulting from the assessment of pastoral land by the Minister of Lands must be furnished by that Minister to the Council and to each relevant board.

District plans

36. (1) A board must, within five years from the commencement of this Act or the establishment of the board (whichever is the later), develop—

(a) a plan (a "district plan") of all land within its district, identifying—

(i) the classes into which the land falls; and

(ii) the capability and preferred uses of the land; and

(iii) the uses to which the land is being put; and

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- (iv) degraded areas of land; and
 - (v) the nature, causes, extent and severity of that degradation; and
 - (vi) the measures that should be taken for rehabilitation of each particular type of degradation; and
 - (vii) the land management practices best suited to preventing degradation of the various classes of land; and
 - (viii) such other matters as the board thinks fit; and
- (b) a programme outlining the board's proposed aims and undertakings over the ensuing three years for the conservation of land within the district, for the rehabilitation of degraded land and for all other activities proposed by the board in implementing this Act during that period.

(2) A board must give the community within its district a period of at least 90 days within which to inspect and comment on a district plan and three year programme, and must give due consideration to modifying the plan or programme in light of those comments.

(3) On completion of the process referred to in subsection (2), the board must forward the plan and programme to the Council.

(4) The Council may—

- (a) approve, by endorsement, a district plan and three year programme; or
- (b) refer the plan or programme back to the board for modification.

(4a) An approved district plan and three year programme must, as far as practicable, be consistent with a water plan under the *Water Resources Act 1997* that applies in relation to the district or a part of the district to which the district plan and three year programme applies.

(5) A board must review its district plan every three years and must, at the same time, prepare a new programme outlining its proposed undertakings and activities for the next three years.

(6) A board must comply with the processes under subsections (2) and (3) in relation to each revised district plan and new three year programme.

(7) A board must keep its current approved district plan and three year programme available for inspection by members of the public during normal office hours at the office of the Conservator.

Voluntary property plans

37. (1) A board must, subject to its approved three year programme, encourage and assist each owner of land within the district to develop and submit to the board a plan (a "property plan") detailing the proposed management of the land over a specified period.

(2) Subsection (1) does not apply in relation to land that is within a township except where the board is of the opinion that the extent or likelihood of degradation of any such land warrants the development and implementation of a property plan.

(3) A board to which a property plan is submitted may—

- (a) approve the plan by endorsement on the plan; or
- (b) reject the plan; or
- (c) refer the plan back to the landowner for modification.

(4) A board must not approve a property plan unless the plan conforms with its district plan.

(4a) Where a property plan includes an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not approve the plan or approve the variation of the plan without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

(5) An approved property plan may, with the approval of the board, be varied by the landowner.

(6) A board may, by notice in writing to the landowner, revoke an approved property plan if of the opinion that the plan is no longer appropriate for the land.

DIVISION 3—LAND CONSERVATION AND REHABILITATION MEASURES

Soil conservation orders

38. (1) If, as a result of its own investigations or on information given by some other person, a board is of the opinion—

- (a) that land within its district is degraded or is likely to suffer degradation; or
- (b) that land management practices adopted in relation to land within its district have caused or are likely to cause degradation of other land (whether inside or outside the district); or
- (c) that the taking of particular action in relation to land within its district would prevent or minimise degradation of other land (whether inside or outside the district); or
- (d) that the owner of land within its district has, without reasonable excuse, failed to implement an approved property plan and that failure has caused, or is likely to cause, degradation of that land or any other land (whether inside or outside the district),

the board may, by notice in writing to the owner of that land within its district, make an order (a "soil conservation order") requiring the landowner to take such action, or to desist or refrain from taking such action, in relation to the land or any other land as may be specified in the notice.

(2) Without limiting the generality of subsection (1), a soil conservation order may require the landowner—

- (a) to plant specified vegetation or refrain from destroying specified vegetation;
- (b) to adopt, refrain from adopting or desist from specified land management practices;
- (c) to carry out specified works on the land;

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- (d) to take specified action to make good any damage caused to any other land specified in the order;
 - (e) to remove a specified number of stock from the land or a particular part of the land;
 - (f) to keep the number of stock on the land or a particular part of the land to a specified level, or to keep no stock at all on that land;
 - (g) where the board thinks that longer term action is required, to submit to the board a property plan (if no such plan has been approved in relation to the land) detailing the proposed management of the land over a specified period.
- (3) A soil conservation order may provide—
- (a) that it is to have effect for a specified period; or
 - (b) that it is to have effect until the board, on the application of the landowner, directs that the order cease to operate.
- (4) A board may, by notice in writing to the landowner, vary or revoke a soil conservation order.
- (4a) Where a board proposes to make or vary a soil conservation order that would require a landowner to undertake an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not make or vary the order without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.
- (5) Before making or varying a soil conservation order, the board must endeavour to negotiate with the landowner with a view to the contemplated action being undertaken by the landowner on a voluntary basis.
- (6) If a board is satisfied on the written application of the landowner the subject of a soil conservation order that the order has been complied with or is otherwise exhausted, the board must revoke the order.
- (7) A board must, on making, varying or revoking a soil conservation order, forward a copy of the order or the variation or revocation to the Conservator.

Provisions relating to compulsory property plans

39. (1) A board to which a property plan is submitted pursuant to a soil conservation order may—

- (a) approve the plan by endorsement on the plan; or
- (b) reject the plan; or
- (c) refer the plan back to the landowner for modification.

(2) A board must not approve a property plan unless the plan conforms with its district plan.

(2a) Where a property plan includes an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not approve the plan or approve the variation of the plan without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

(3) An approved property plan may, with the approval of the board, be varied by the landowner.

(4) A board may, by notice in writing to the landowner, revoke an approved property plan if of the opinion that the plan is no longer appropriate for the land.

Power of Conservator to make soil conservation orders

40. (1) If the Conservator is of the opinion that there are good grounds for a board to make a particular soil conservation order against a landowner (not being a pastoral lessee) and that no such order has been made but should be made, the Conservator may, with the approval of the Minister—

- (a) by notice in writing, direct the board to exercise its powers in the manner specified in the notice and within the time specified; or
- (b) if of the opinion that urgent action is required, exercise the powers of a board in relation to the matter in such manner as the Conservator thinks fit.

(2) If a board fails to comply with a notice under subsection (1)(a), the Conservator may exercise the powers of the board to the extent necessary for the purpose of carrying out the action specified in the notice.

(3) For the purposes of this section, the Conservator has all the powers vested in a board by this Part (including the powers of enforcement of a soil conservation order).

(4) In the event of conflict between the terms of a soil conservation order made by a board and one made by the Conservator pursuant to this section, the order of the Conservator will prevail.

Register of soil conservation orders

41. (1) The Conservator will cause a register of soil conservation orders made under this Act to be established and maintained.

(2) The register must include the particulars of each soil conservation order and of any variation to the order and a note of any appeal against or revocation of the order.

(3) The register must be made available for inspection by members of the public at a government office during normal office hours and copies of any item in the register may be taken.

(4) The Minister may fix fees for the inspection of the register and the taking of copies.

Enforcement of soil conservation orders

42. (1) A person who contravenes or fails to comply with a soil conservation order is guilty of an offence.

Penalty: Division 4 fine.

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(2) If a board is satisfied that a person has contravened or failed to comply with a soil conservation order, the board may cause such work to be carried out on the land referred to in the order as full compliance with the order may require.

(3) The costs incurred by a board in exercising its powers pursuant to subsection (2)—

(a) may be recovered as a debt from the landowner in default; and

(b) are a charge on the land of the landowner in default, ranking in priority before all other charges and mortgages (other than a charge in favour of the Crown or a Crown instrumentality).

Registration of soil conservation orders

43. (1) A soil conservation order made against the owner of land is, while it remains in force, binding on all successors in title to that land.

(2) The Conservator will, on receiving a copy of a soil conservation order or on making a soil conservation order, cause the order to be noted on such certificates of title, Crown leases or other documents of title to the land to which the order relates as may be relevant.

(3) The Conservator will, on receiving a copy of the variation or revocation of a soil conservation order, or on varying or revoking a soil conservation order, cause the variation or revocation to be noted on all relevant certificates of title, Crown leases or other documents of title.

(4) Fees fixed by the Minister are payable by and recoverable by the Conservator as a debt from a landowner for the registration of a soil conservation order or the noting of revocation of an order.

Damage caused by non-compliance with soil conservation order

44. (1) If a person fails to comply with a soil conservation order and damage is caused to the land of another person as a result of that non-compliance, that other person may recover damages from the person against whom the order was made.

(2) If a person fails to comply with a soil conservation order requiring the person to make good damage caused to the land of another person, that other person may recover the cost of making good the damage as a debt from the person against whom the order was made.

Registration of approved property plans

45. (1) The owner of land in relation to which a property plan has been approved may apply in writing to the Conservator for the plan to be noted on such certificates of title, Crown leases or other documents of title as may be relevant, including any duplicates produced by or on behalf of the landowner.

(2) On receiving an application under subsection (1), and payment by the applicant of the appropriate fee fixed by the Minister, the Conservator will cause the plan to be noted in accordance with the application.

(3) A property plan noted on a title pursuant to subsection (2) is binding on all successors in title to the land.

(4) On written application by a landowner and payment of the appropriate fee fixed by the Minister, the Conservator will cause the property plan referred to in the application to be discharged from all relevant certificates of title, Crown leases or other documents of title.

(5) On revocation of an approved property plan by a board, the Conservator will cause the revocation to be noted on all relevant certificates of title, Crown leases or other documents of title.

Control of driving of stock

46. (1) If of opinion that it is necessary or desirable to do so for the prevention of soil erosion, the Minister may, by notice in the *Gazette*—

- (a) prohibit or restrict the driving of stock along the whole, or a specified portion, of a road, travelling stock reserve or stock route; or
- (b) prohibit or restrict the driving of stock across specified land,

for the period specified in the notice.

(2) The Minister cannot publish a notice under subsection (1)—

- (a) in relation to pastoral land, or to a road, travelling stock reserve or stock route that passes through pastoral land, except upon the recommendation of the Pastoral Board; or
- (b) in relation to any other land, except upon the recommendation of the board, or boards, the districts of which may be affected by the proposal.

(3) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: Division 7 fine.

**PART 5
APPEALS**

DIVISION 1—THE TRIBUNAL

Establishment of the Tribunal

47. (1) The *Soil Conservation Appeal Tribunal* is established.

(2) The Tribunal will be constituted of—

- (a) a District Court Judge nominated by the Senior Judge as a Judge of the Tribunal; and
- (b) two other members appointed by the Governor on the nomination of the Minister, of whom—
 - (i) one will be a person who is an owner of land used for agricultural, pastoral, horticultural or other similar purposes; and
 - (ii) one will be an employee in the Department of Agriculture.

(3) There will be a Registrar of the Tribunal.

Determination of questions

48. Any questions of law or procedure arising before the Tribunal will be determined by the Judge and any other questions by unanimous or majority decision of the members.

Powers and procedures of the Tribunal

49. (1) The Tribunal may, for the purposes of proceedings before the Tribunal—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance of a person before the Tribunal; or
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production before the Tribunal of any relevant books, papers or documents (not being income tax returns); or
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of any of them or any of their contents; or
- (d) require any person to make an oath or affirmation to answer truly all questions put by a member of the Tribunal, or a person appearing before the Tribunal, relating to a matter before the Tribunal; or
- (e) require any person before the Tribunal to answer any relevant questions put by a member of the Tribunal or a person appearing before the Tribunal.

(2) Subject to subsection (5), a person who—

- (a) having been served with a summons to appear before the Tribunal, fails, without reasonable excuse, to attend in obedience to the summons; or
- (b) having been served with a summons to produce books, papers or documents, fails, without reasonable excuse, to comply with the summons; or

- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal,

is guilty of an offence.

Penalty: Division 5 fine.

(3) If the appellant in proceedings before the Tribunal so requests, the Tribunal must direct that no person other than—

- (a) the parties and their counsel or representatives; and
- (b) witnesses; and
- (c) officers of the Tribunal or assisting the Tribunal,

be present in the room while the proceedings are being heard.

(4) The Tribunal is not obliged to entertain proceedings that are, in its opinion, frivolous or vexatious.

(5) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before a District Court.

(6) The Tribunal cannot allow non-party intervention in proceedings before the Tribunal.

(7) The Registrar must give the parties to proceedings reasonable notice of the time and place of the proceedings.

(8) A party is entitled to appear personally or by counsel or other representative.

(9) A party must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

(10) A witness will, unless the Tribunal otherwise determines, be allowed witness fees in accordance with a prescribed scale or, if a scale has not been prescribed, with the scale applicable to civil proceedings in the District Court.

(11) The Tribunal may make a determination in any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear but failed to do so.

(12) The Tribunal may make orders for costs in accordance with a prescribed scale against—

- (a) a board or the Conservator; or
- (b) any other party to proceedings,

but an order cannot be made under paragraph (b) unless the Tribunal is satisfied that the party's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

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(13) At the conclusion of proceedings, the Tribunal must furnish the parties with a written statement of the reasons for its decision.

Principles governing appeal proceedings

50. In determining any proceedings before the Tribunal, the Tribunal—

- (a) must act according to equity, good conscience and the substantial merits of the case; and
- (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
- (c) must have regard to the objects of this Act.

DIVISION 2—RIGHT OF APPEAL TO TRIBUNAL

Right of appeal

51. (1) An owner of land who is dissatisfied with a decision of a board or the Conservator—

- (a) to revoke an approved property plan; or
- (b) to make or vary a soil conservation order against the landowner; or
- (c) to cause work to be carried out on land pursuant to section 42,

may appeal to the Tribunal against the decision.

(2) An appeal under this section must be instituted within one month after notification of the decision to the landowner.

(3) On an appeal, the Tribunal must review the decision that is the subject of the appeal and may—

- (a) confirm the decision; or
- (b) vary or revoke the decision; or
- (c) substitute its own decision.

Operation of decisions pending appeal

52. (1) Subject to subsection (2), a decision against which a right of appeal lies continues to operate notwithstanding that right of appeal or the institution of an appeal.

(2) The operation of a decision against which an appeal has been instituted may, on the application of the appellant, be suspended by the Tribunal pending determination of the appeal.

**PART 6
MISCELLANEOUS**

Powers of entry

53. (1) Subject to this section, an authorised officer, a member of the Council, the Minister or (but only in relation to land within the board's district) a member of a board may, at any reasonable time, for the purposes of this Act, exercise any of the following powers in relation to land:

- (a) enter the land;
- (b) carry out an inspection of the land;
- (c) take samples from the land;
- (d) take photographs;
- (e) with the consent of the owner of the land, erect markers or photopoints for the purposes of survey or research.

(2) A person authorised by a board to carry out work on land on behalf of the board pursuant to this Act may enter and remain on the land for that purpose.

(3) A person cannot exercise powers under this section in relation to any land unless at least seven days' notice has been given to the owner of the land, but no such notice need be given—

- (a) if it is not practicable to do so; or
- (b) if the person believes on reasonable grounds—
 - (i) that an offence against this Act has been, is being or is about to be committed on the land; or
 - (ii) that the owner of the land has failed to comply with a soil conservation order; or
 - (iii) that the owner of the land has failed to comply with an approved property plan.

(4) A person exercising powers under this section may be accompanied by such assistants as are reasonably necessary in the circumstances.

(5) An authorised officer or other person must at the request of the owner of the land, or an agent of the owner, produce for his or her inspection a certificate or other proof of his or her authority to exercise the powers conferred by this section.

(6) An authorised officer, or person assisting an authorised officer, who, in the course of exercising powers under this section in relation to any land—

- (a) unreasonably hinders or obstructs the landowner in the day-to-day running of his or her business on the land; or
- (b) addresses offensive language to the landowner or to any other person on the land; or

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(c) assaults the landowner or any other person on the land,
is guilty of an offence.

Penalty: (a) for an offence against paragraph (a) or (b)—a division 7 fine;

Penalty: (b) for an offence against paragraph (c)—a division 7 fine or division 7 imprisonment.

Offence of hindering, etc., person exercising powers under this Act

54. (1) A person who intentionally hinders or obstructs a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Penalty: Division 7 fine.

(2) A person who addresses offensive language to a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Penalty: Division 7 fine.

(3) A person who assaults a person acting in the exercise of powers conferred by this Act is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(4) A person who removes or damages a marker or photopoint placed on land pursuant to this Act is guilty of an offence.

Penalty: Division 7 fine.

Confidentiality

55. A person engaged in the administration of this Act who, in the course of carrying out official duties, acquires information on the income, assets, liabilities or other private business affairs of an owner of land must not disclose that information to any other person, except as required by law or by his or her employer.

Penalty: Division 4 fine.

Protection from personal liability

56. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this Act.

(2) A liability that would but for subsection (1) lie against the person, lies instead against the Crown.

Service of notices

57. A written notice required or authorised by this Act to be given to a person may be given as follows:

(a) by personal service on the person or an agent of the person;

(b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;

- (c) by serving it by post on the person or an agent of the person;
- (d) if the whereabouts of the person is unknown—by affixing it in a prominent position on the land to which it relates and publishing a copy of it in a newspaper circulating generally throughout the State.

Summary offences

58. (1) Offences against this Act are summary offences.

(2) In any proceedings for an offence against this Act, it is a defence for the defendant to prove that, in the circumstances of the case, there was no failure on his or her part to take reasonable care to avoid commission of the offence.

Regulations

59. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

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SCHEDULE

DIVISION 1—REPEAL

1. The *Soil Conservation Act 1939* is repealed.

DIVISION 2—TRANSITIONAL PROVISIONS

2. On the commencement of this Act—

- (a) a soil conservation district in existence under the repealed Act immediately prior to that commencement will be taken to be a soil conservation district under this Act;
- (b) a district soil conservation board in existence under the repealed Act immediately prior to that commencement will be taken to be a soil conservation board under this Act and the members of any such board will continue in office as if they had been appointed under this Act;
- (c) the person holding office as Soil Conservator under the repealed Act immediately prior to that commencement will continue in the position of Soil Conservator under this Act without interruption to service;
- (d) a local committee in existence under the repealed Act immediately prior to that commencement will be taken to be a committee appointed by a board under this Act and its powers, duties and functions will be taken to have been delegated to it by the board pursuant to this Act;
- (e) a soil conservation order in force under the repealed Act immediately prior to that commencement remains in force and may, subject to the following provisions, be enforced under the repealed Act as if that Act had not been repealed:
 - (i) a reference to the Advisory Committee on Soil Conservation in the provisions of the repealed Act dealing with enforcement of soil conservation orders will be taken to be a reference to the Council;
 - (ii) a reference to a soil conservation board in those provisions will be taken to be a reference to a board under this Act.

3. A proclamation made by the Governor under the repealed Act constituting a soil conservation district will be taken to be in force and may be varied or revoked by the Minister as if it were a notice published by the Minister under section 22 of this Act.

APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 29(1a):	inserted by 35, 1997, s. 25
Section 36(4a):	inserted by 35, 1997, s. 26
Section 37(4a):	inserted by 35, 1997, s. 27
Section 38(4a):	inserted by 35, 1997, s. 28
Section 39(2a):	inserted by 35, 1997, s. 29
Schedule	
Clause 3:	inserted by 53, 1990, s. 2

Soil Conservation and Land Care Act 1989**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.