

FIRST PRINT

## SOIL CONSERVATION (AMENDMENT) BILL 1985

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Soil Conservation Act 1938 so as—

- (a) to make provision with respect to requiring persons to abstain from doing, or to do or permit to be done, specified acts or things for the purpose of mitigating or preventing soil erosion and land degradation;
- (b) to delete the requirement that Assessment Boards be constituted to determine the numbers of livestock that may be carried on land within areas of erosion hazard and to authorise the Commissioner of the Soil Conservation Service to make those determinations;
- (c) to provide for the notification of catchment areas over the catchments of dams, ports, harbours, bays, lagoons, creeks, swamps and marshes, as well as over the catchments of rivers and lakes, and to clarify, in relation to catchment areas, the lands and works in respect of which notices may be served under section 22 of the Principal Act;
- (d) to provide that certain appeals shall go direct to the Land and Environment Court instead of first going to the Catchment Areas Protection Board;
- (e) to require persons intending to clear small areas of "protected land" for the purpose of banana plantations, horticulture or the growing of crops to apply for an authority from the Catchment Areas Protection Board;
- (f) to constitute a Soil Conservation Advisory Council and repeal provisions for the constitution of advisory committees;
- (g) to increase penalties for offences against the Principal Act and the regulations;
- (h) to define and clarify the powers, authorities, duties and functions of the Commissioner;
- (i) to formalise the means of terminating agreements entered into by the Minister for the purposes of projects under the Principal Act; and

- (j) to require the inclusion, in any lease of land in respect of which an advance is made under the Principal Act, of a condition requiring the lessee to comply with conditions to which the advance is subject.

Clause 1 specifies the short title of the proposed Act.

Clause 2 defines the Principal Act.

Clause 3 lists the Schedules to the proposed Act.

Clause 4 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

#### SCHEDULE 1—AMENDMENT TO THE PRINCIPAL ACT RELATING TO PREVENTION OF SOIL EROSION

Schedule 1 inserts into the Principal Act a new Part containing the following provisions:

- (a) Proposed section 15A empowers the Commissioner of the Soil Conservation Service to serve a notice on a person who is an owner or occupier of, or the holder or grantee of timber rights over, any land (other than a lease under the Western Lands Act 1901—see proposed section 15H) requiring the person to abstain from doing, or to do or permit to be done, specified acts or things for the purpose of mitigating or preventing soil erosion and land degradation.

Similar notices can already be served in respect of lands within areas of erosion hazard (section 18 of the Principal Act) and catchment areas (section 22 of the Principal Act). A notice under proposed section 15A shall not have any effect while a notice under either of those sections is in force in respect of the land.

- (b) Proposed section 15B provides a right of objection to the Minister against the requirements of a notice.
- (c) Proposed section 15C provides a right of appeal to the Land and Environment Court against the Minister's determination of an objection.
- (d) Proposed section 15D requires a person, where the person is required by a notice to abstain from doing an act or thing, to comply with the notice notwithstanding that an objection or appeal is lodged, unless the Minister or the Court dispenses with the requirement. In other cases the requirement is suspended until the objection or appeal is determined.
- (e) Proposed section 15E provides a penalty not exceeding \$2,000 for failure to comply with a notice.
- (f) Proposed section 15F authorises the Commissioner to enter land and carry out works and recover the cost thereof where a notice is not complied with.

- (g) Proposed section 15G provides that, where damage is caused to other land through non-compliance with a notice, the owner or occupier of that land has a right of action against the person on whom the notice was served. The section also bars claims against the Minister, the Commissioner and officers, etc., of the Service for compensation arising from the service of a notice.
- (h) Proposed section 15H authorises the Western Lands Commissioner, by or under conditions attached to leases under the Western Lands Act 1901, to achieve compliance with requirements similar to the "notice" requirements mentioned above where those requirements are notified to the Western Lands Commissioner by the Commissioner of the Soil Conservation Service.

#### SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AREAS OF EROSION HAZARD

Schedule 2 deletes the requirement for the constitution of Assessment Boards to determine the numbers of livestock that may be carried on land within areas of erosion hazard and authorises the Commissioner to make those determinations (subject to rights of objection to the Minister and appeal to the Land and Environment Court).

#### SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CATCHMENT AREAS

Schedule 3 (1) and (2) are consequential on the amendment of section 20 and the substitution of section 21 of the Principal Act (Schedule 3 (3) and (4)).

Schedule 3 (3) allows the Minister to notify catchment areas over the catchments of dams, ports, harbours, bays, lagoons, creeks, swamps and marshes, as well as over the catchments of rivers and lakes, and deems certain catchment areas formerly notified under, or constituted by, the Principal Act to be "notified" catchment areas under the Principal Act as to be amended, thus enabling their modification or substitution by further notifications under the Principal Act. Provision is also made for the continuity of schemes of operations affecting, and areas of "protected land" within, catchment areas as at the time of the proposed amendments or subsequent re-notifications of the catchment areas.

Schedule 3 (4) and (9) repeal the provisions constituting the Burrinjuck Dam, Hume Reservoir and Wyangala Dam catchment areas (which areas are to be deemed to be "notified" catchment areas—see Schedule 3 (3)).

Schedule 3 (5) requires persons to obtain an authority from the Catchment Areas Protection Board in order to clear small areas of "protected land" (that is, steep land within catchment areas) for the purpose of establishing banana plantations, horticulture or the growing of crops.

Schedule 3 (6) amends a heading so as to describe more accurately the contents of a Division of the Principal Act.

Schedule 3 (7) (a) and (b) are consequential on the amendment of section 20 and the substitution of section 21 of the Principal Act and clarify, in relation to catchment areas, the lands and proclaimed works in respect of which notices may be served under section 22 of the Principal Act.

Schedule 3 (7) (c) provides that appeals against the requirements of notices served in respect of lands within catchment areas shall go direct to the Land and Environment Court instead of first going to the Catchment Areas Protection Board by way of objection.

#### **SCHEDULE 4—AMENDMENT TO THE PRINCIPAL ACT TO REPLACE ADVISORY COMMITTEES WITH AN ADVISORY COUNCIL**

Schedule 4 substitutes section 23 of the Principal Act (constitution of advisory committees) with a new section providing for the constitution of a Soil Conservation Advisory Council to advise the Minister on such matters relating to soil conservation, soil erosion and land degradation as are referred to the Council by the Minister or the Commissioner.

The Council shall consist of the Commissioner, who shall be chairperson, and 7 other members appointed by the Minister.

#### **SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES**

Schedule 5 (1)–(7), (8) (a) and (9) increase the maximum penalties for offences against the Principal Act and the regulations.

Schedule 5 (8) (b) updates a provision relating to proceedings for offences.

#### **SCHEDULE 6—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT**

Schedule 6 (1) amends a heading so as to describe more accurately the contents of Part II of the Principal Act.

Schedule 6 (2) inserts a new section 4C into the Principal Act which defines and clarifies the powers, authorities, duties and functions of the Commissioner for the purposes of the Principal Act.

Schedule 6 (3) empowers the Commissioner to employ casual and general employees for the purposes of the Principal Act and provides that the Public Service Act 1979 does not apply to those employees.

Schedule 6 (4) and (5) repeal certain provisions as a consequence of the defining of the Commissioner's powers, etc., under proposed section 4C of the Principal Act (see Schedule 6 (2)).

Schedule 6 (6) makes it clear that the Minister may terminate agreements entered into for the purposes of soil conservation projects under the Principal Act.

Schedule 6 (7) inserts a new section 22P into the Principal Act which requires an owner or occupier of land to whom an advance is made under the Principal Act to include in any lease of the land a condition requiring the lessee to comply with any conditions to which the advance is subject, being conditions which require the carrying out or maintenance of works.

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