



ANNO NONO

**GEORGII VI REGIS.**

A.D. 1945.

\*\*\*\*\*

**No. 44 of 1945.**

An Act to amend the Soil Conservation Act, 1939-1943, and the Crown Lands Act, 1929-1944.

[Assented to 24th January, 1946.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Soil Conservation Act Amendment Act, 1945". Short titles.

(2) The Soil Conservation Act, 1939-1943, as amended by this Act, may be cited as the "Soil Conservation Act, 1939-1945".

(3) The Soil Conservation Act, 1939-1943, is hereinafter called "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act: Provided that section 12 of this Act shall be incorporated and read as one Act with the Crown Lands Act, 1929-1944. Incorporation.

3. Section 2 of the principal Act is amended by inserting after the definition of "Committee" therein the following definitions:— Amendment of s. 2 of principal Act— Interpretation.

"applicant" means a person who has applied for, or obtained a soil conservation order, and, where necessary to give effect to this Act, includes the successors in title of an applicant;

"board" means district soil conservation board appointed under this Act;

"damage" includes harm whether actionable apart from this Act or not;

“district” means soil conservation district constituted under this Act ;

“occupier” includes a public authority in occupation of land ;

“owner” means person (including a public authority) in whom any land is vested for an estate of freehold or who is a mortgagee in possession ;

“public authority” means a Minister of the Crown, or any statutory authority representing or acting on behalf of the Crown, any municipal or district council, or any other local authority ;

“respondent” means person against whom a soil conservation order has been made or sought and, where necessary to give effect to this Act, includes the successors in title of a respondent ;

“Soil Conservator” means the officer of the Department of Agriculture for the time being in charge of the Soil Conservation Branch thereof.

Enactment of  
s. 2a of  
principal Act—

4. The following section is enacted and inserted in the principal Act after section 2 thereof :—

Act to apply  
notwith-  
standing the  
Real Property  
Act.

2a. This Act shall take effect notwithstanding the provisions of the Real Property Act, 1886-1945.

Amendment of  
s. 4 of the  
principal Act—

5. Section 4 of the principal Act is amended by inserting therein after subsection (4) the following subsection :—

The Advisory  
Committee.

(4a) The members of the Committee holding office at the time of the passing of the Soil Conservation Act Amendment Act, 1945, shall be deemed to have been lawfully appointed to their respective offices as members on the fifteenth day of February, nineteen hundred and forty-three, and shall, subject to this Act, continue in office until the thirtieth day of June, nineteen hundred and forty-six.

Enactment of  
ss. 6a-6i of  
principal Act—

6. The following heading and sections are enacted and inserted in the principal Act after section 6 thereof :—

*Soil Conservation Districts and Boards.*

Soil  
conservation  
districts.

6a. (1) At least three-fifths of the occupiers of land in any area may present a petition to the Minister praying that that area shall be constituted a soil conservation district.

(2) The area shall be defined in the petition and may consist of one or more separate tracts of land.

(3) The Minister shall ascertain whether the petition is duly signed by the prescribed number of occupiers and if it is so signed shall refer it to the Committee.

(4) The Committee shall make a recommendation to the Minister whether it is desirable that the area defined in the petition, or some other area comprising at least half of the area defined in the petition, with or without other land, shall be constituted a soil conservation district.

(5) If the Committee recommends that an area which is not identical with that mentioned in the petition shall be constituted a soil conservation district—

(a) the Minister shall ascertain whether at least three-fifths of the occupiers of land within the area recommended by the Committee consent to the constitution of that district; and

(b) the area shall not be constituted a soil conservation district unless three-fifths of those occupiers consent thereto.

(6) Subject to subsection (5) of this section the Governor may, by proclamation, declare that any area recommended by the Committee shall be a soil conservation district.

6b. The Governor on the recommendation of the Committee, may, without any petition, declare that the whole or any part of any area within which Part IV. of the Sand Drift Act, 1923-1935, applies, shall be a soil conservation district.

Constitution  
of district  
without  
petition.

6c. (1) If the Committee recommends that any additional area be included in a district, and the Minister is satisfied that at least three-fifths of the occupiers of land within the additional area consent to the inclusion of that area in the district the Governor may, by proclamation, declare that the additional area shall be included in the district.

Enlargement  
of districts.

(2) Any such proclamation may, if the Committee so recommends, also declare—

(a) that all seats on the board for the district shall become vacant on a day specified in the proclamation;

(b) the number of members of which the board shall after that day be constituted.

(3) The Governor, on the nomination provided for in section 6d of this Act, shall appoint to the board the number of members fixed in the proclamation.

District  
boards.

6d. (1) The Governor shall appoint a district soil conservation board for every district.

(2) Every board shall consist of such number of members, not less than three, and not more than seven, as the Governor determines.

One member of every board shall be nominated by the members of the councils of every municipality and district council district which is wholly or partly within the soil conservation district. Whenever it is necessary to appoint a member on a nomination as above mentioned an election shall be held in accordance with the regulations to determine the person to be so nominated. At every such election each member of a council shall have one vote.

The remaining members of every board shall be nominated by the Committee.

(3) The Governor, on the nomination of the Committee, shall appoint one of the members of a board to be its chairman.

(4) Subject to this Act, every member of a board shall hold office for three years: Provided that a member appointed to a casual vacancy shall hold office for the balance of the term of the member in whose place he was appointed.

(5) The Governor may dismiss a member of a board from his office, if he has been guilty of any act or conduct which, in the Governor's opinion, shows him to be unfit to be a member of the board.

(6) The office of a member of a board shall become vacant if—

- (a) he dies;
- (b) he resigns by writing addressed to the Minister;
- (c) he is dismissed from office by the Governor under this section.

(7) A member of a board shall not be a public servant within the meaning of the Public Service Act, 1936-1942, by reason only of his office as such member.

(8) Subject to this section, the members of a board shall hold office on such terms and conditions as are determined by the Governor.

(9) The members of a board shall be entitled to such allowances as the Governor may approve. Such allowances shall be paid out of moneys appropriated by Parliament for the purpose.

6e. The duties of a board shall be—

Duties of  
boards.

- (a) to foster local interest in soil conservation by lectures, demonstrations, conferences and discussions ;
- (b) to collect information as to soil erosion and soil conservation within its district ;
- (c) to make any investigations requested by the Minister or the Committee :
- (d) to make reports and recommendations on soil erosion and soil conservation ;
- (e) to make orders under this Act.

6f. (1) A board may—

Local  
committees.

- (a) appoint local committees, each consisting of not more than five persons, to conduct inquiries, investigations and negotiations connected with the work of the board ;
  - (b) assign to any local committee an area within which it shall operate ;
  - (c) remove any member of any local committee and appoint another member in his stead ;
  - (d) by resolution refer matters to any local committee for inquiry, investigation, and report.
- (2) A member of a board shall not be appointed as a member of a local committee.
- (3) A local committee may submit reports to the board on any matter relating to soil conservation.

6g. Every member or officer of a board or local committee shall have the same powers as are conferred on a member of the Committee by section 7 of this Act ; and that section shall be construed as if it expressly applied to the members and officers of a board or local committee.

Powers of  
entry of  
boards.

6h. (1) For the purpose of obtaining information required for purposes of this Act a board may—

Powers of  
boards to  
secure  
evidence.

- (a) by summons signed on behalf of the board by a member or officer of the board require any person to attend before the board and, if the summons so requires, to produce to the board any books, papers or documents ;
- (b) inspect any books, papers or documents produced before it and retain them for reasonable periods and make copies of them or any of their contents ;

(c) examine witnesses on oath or affirmation, which may be administered by any member of the board.

(2) If a person—

(a) who has been personally served with a summons under this section, does not comply therewith ;  
or

(b) being called as a witness before the board, refuses to take an oath or affirmation ; or

(c) being before the board refuses to answer any relevant question put to him by the board,

he shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(3) A summons under this section may be served in any manner prescribed in section 17 of this Act.

Procedure of  
board and  
majority  
decisions.

6i. Subject to this Act, the business of a board shall be conducted in such manner and at such times and places as the board may determine ; but no decision of the board on or in relation to any application for a soil conservation order shall be valid unless concurred in by a majority of the whole number of members of the board.

Repeal of  
s. 10a of  
principal Act.

7. Section 10a of the principal Act is repealed.

Enactment of  
s. 12a of  
principal Act—

8. The following section is enacted and inserted in the principal Act after section 12 thereof :—

Notice of  
intention to  
clear.

12a. (1) After the first day of March, 1946, a person shall not commence to clear, or clear any scrub land unless he has first given to the Soil Conservator at least three months' notice in writing of his intention to do so.

(2) A person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(3) In this section "scrub land" means land on which the whole or substantially the whole of the natural vegetation remains.

(4) This section shall not apply to the clearing of land—

(a) for fire-breaks ;

(b) for afforestation ;

(c) for the construction of public works and roads ;

(d) in any area declared by proclamation to be exempt from this section.

- (5) The Governor may by proclamation—
- (a) declare that any area defined or described in the proclamation shall be exempt from this section ;
  - (b) vary or revoke any proclamation for the time being in force under this sub-section.

9. Section 13a of the principal Act is amended by adding at the end of subsection (4) thereof the words "or town, or to any dead tree but shall apply to trees, other than dead trees, on every other street or road including trees on any parts of a street or road which is fenced or enclosed, or subject to any lease or licence, or for the time being not in use by the public".

Amendment of  
s. 13a of  
principal Act—  
Protection of  
trees on roads.

10. The following heading and sections are enacted and inserted in the principal Act after section 13a thereof:—

Enactment of  
ss. 13b-13c—

*Soil Conservation Orders.*

13b. (1) A board shall have jurisdiction to make a soil conservation order in any case where land within the district of that board is likely to be damaged by, or as a result of—

Applications  
for soil  
conservation  
orders.

- (a) any agricultural or pastoral practices or methods, which have been or are likely to be adopted on that land, or on any other land whether within the district of the board or not ;
  - (b) the clearing or intended clearing of that land or of any other land, whether within the district of the board or not ;
  - (c) failure on the part of any person to take reasonable precautions to prevent erosion or drift of soil or sand on that land or any other land whether within the district of the board or not.
- (2) Any of the following persons may apply for a soil conservation order, namely :—
- (a) any owner or occupier or mortgagee of land likely to be damaged as mentioned in subsection (1) of this section ;
  - (b) the Minister or a local committee, whether he or it is the owner or occupier of any such land or not.
- (3) A local committee appointed under section 6f of this Act may with the written approval of any owner or occupier in its own name make and conduct an application on behalf of that owner or occupier, if the local committee

considers it in the public interest to do so. In any such case the owner or occupier on behalf of whom the application is made shall be subject to any soil conservation order made by the board as if he had made the application in his own name.

(4) Any owner or occupier of land on which acts or omissions likely to cause damage to land of which the applicant is the owner, occupier or mortgagee may be made a respondent to any application.

(5) Every application shall be in writing and shall contain—

- (a) the name and address of the applicant ;
- (b) a description of the land which is alleged to be likely to be damaged ;
- (c) the nature of the estate or interest of the applicant in the land mentioned in paragraph (b) ;
- (d) the name and address of the respondent ;
- (e) a description of the land on which acts or omissions likely to cause damage to the land specified in paragraph (b) of this subsection, have been done or have taken place, or are likely to be done or take place ;
- (f) the nature of the estate or interest of the respondent in the land mentioned in paragraph (e) ;
- (g) particulars of the order asked for, or a request that the board shall make such order as it deems proper in the circumstances.

(6) The applicant shall serve on the respondent a copy of his application and shall give notice to the board that he has done so.

Notice to  
persons  
interested.

13c. (1) The board may order that any owner or occupier of the land on which acts or omissions likely to cause damage, are alleged to have been done or taken place, or to be likely to be done or take place, and who is not named in the application as a respondent, shall be served with notice of the application and shall be a respondent to the application.

(2) The board shall serve notice of the application on every mortgagee of the said land and shall give every such mortgagee an opportunity to be heard by the board concerning the order to be made ; but an order shall not be made against a mortgagee unless he is in possession of the said land by himself or his tenant.



13d. The board may refuse to consider any application unless it is satisfied that the applicant has made reasonable efforts to settle the matter in dispute between himself and the respondent by negotiations. The board may postpone the consideration of any application to enable the applicant to conduct such negotiations.

Preliminary negotiations.

13e. (1) Subject to section 13d of this Act, upon receipt of the application the board shall—

Procedure on applications.

(a) fix a time and place for hearing the applicant and the respondent and their witnesses and give notice thereof to the parties ;

(b) obtain a report on the application from an officer of the Soil Conservation Branch of the Department of Agriculture.

(2) After considering all matters submitted to it by the parties and the report of the said officer, the board in its discretion may—

(a) if it finds that just cause exists for so doing, make a provisional soil conservation order ; or

(b) make a provisional order dismissing the application.

(3) A provisional soil conservation order may order all or any of the following things :—

(a) that the respondent adopt or refrain from adopting any agricultural or pastoral methods or practices specified in the order ;

(b) that the respondent refrain from clearing any land specified in the order ;

(c) that the respondent take such action as is specified in the order, for preventing the erosion, drift, or movement of soil, sand, or water on or from any land specified in the order ;

(d) if there are two or more respondents in respect of the same land, that the cost of complying with the order or any losses arising from such compliance be apportioned between the respondents, or that one or more respondents shall contribute to the other or others a specified share of that cost or those losses ;

(e) that the obligations placed on the respondent by the order shall be subject to a condition that the applicant will bear some part of the costs of complying with the order or of the losses arising from such compliance ;

(f) any other matter incidental to the foregoing.

**Interim orders.**

13f. (1) When an application for a soil conservation order has been made to a board, the chairman of the board may after making such inquiries as he thinks necessary, make an interim soil conservation order which may contain any such provisions as the board could include in an order pursuant to this Act.

(2) Any such interim order shall remain in force until the application has been finally dealt with, or for any shorter period specified in the order, and shall contain only such provisions as are necessary for preventing damage to land during the hearing of the application.

(3) The provisions of section 13j of this Act shall apply to interim orders made under this section.

**Confirmation of orders.**

13g. (1) A provisional order shall have no force or effect until confirmed by the Committee or by the Chairman of the Committee on behalf of the Committee.

(2) Upon the making of a provisional order the board shall forthwith send copies thereof to the parties and to the Chairman of the Committee.

(3) Every provisional order shall contain a statement that the order is subject to confirmation by the Committee and that the parties have the right to make representations to the Committee objecting to the confirmation of the order, at any time before a date to be specified therein, being at least fourteen days after the making of the order.

(4) As soon as practicable after the expiration of the period specified in the provisional order, and after considering any representations made to it during that period the Committee shall confirm, vary, or quash the order or make any order which the Committee considers should have been made by the board.

Provided that if no representations are so made during that period the chairman of the Committee may confirm the order on behalf of the Committee.

(5) An order confirmed, varied or made by the Committee or the Chairman of the Committee shall not be subject to any appeal.

**Devolution of liabilities of respondents under orders.**

13h. (1) Except as provided in this section a soil conservation order shall be binding on the respondent only and not on his successors in title.

(2) A soil conservation order may contain a provision that upon registration it shall be binding on the successors in title of the respondent.

(3) Where a soil conservation order relates to land which is subject to the provisions of the Real Property Act 1886-1945, and contains a provision that upon registration it shall be binding on the successors in title of the respondent—

- (a) the Minister may serve on the Registrar-General a copy of the order accompanied by a statement signed by the Minister describing the land to which the order relates ; and
- (b) the Registrar-General shall thereupon enter a memorial of the order on the original certificate of title to that land and on the duplicate certificate if it is at any time produced to him.

(4) Where a soil conservation order relates to land which is not subject to the provisions of the Real Property Act, 1886-1945, and contains a provision that upon registration it shall be binding on the successors in title of the respondent, the Minister may produce the order for registration under Part II. of the Registration of Deeds Act, 1935, together with a memorial of the order prescribed by that Part, and the Registrar-General of Deeds shall register the order accordingly.

(5) The liabilities and rights (if any) of a respondent under a soil conservation order registered under this section, shall pass to and may be enforced against or by the successors in title of the respondent, and all such persons shall be deemed to have notice of the order.

13i. The rights and liabilities (if any) of an applicant under a soil conservation order shall pass to and may be enforced by or against his successors in title.

Devolution of applicants' rights under orders.

13j. (1) If a person bound by an order contravenes or fails to comply with the order he shall be guilty of an offence and liable to a fine of not more than one hundred pounds.

Enforcement of orders.

(2) If a person bound by an order fails to do any act or work which the order requires him to do, any person authorized by the Committee, with or without assistants—

- (a) may do that act or work and all acts and work incidental thereto ;
- (b) for the purpose of doing such acts or work may, with or without plant and equipment, enter, remain upon, and pass and repass over, any land.

(3) Any expense incurred by the Committee in exercising its powers under this section shall be a debt due to the Crown by any person who was liable under the order to do the act or work done by the Committee, and may be recovered by the Attorney-General by action in any court of competent jurisdiction.

(4) If a person bound by a soil conservation order fails to comply therewith, and damage is caused to the land of the applicant which would not have been caused if the order had been complied with, the applicant shall have a right of action against that person for damages.

Expense to be  
a charge on  
land.

13k. (1) The committee may give notice to the Registrar-General that any amount is owing to the committee pursuant to section 13j of this Act, in respect of any land specified in the notice, and upon receipt of such a notice the Registrar-General shall register it by making a memorandum of charge in the register book or register of Crown leases. Thereupon the amount specified in the notice together with interest on that amount or the balance thereof owing for the time being at such rate not exceeding four per centum per annum, as the committee fixes with the approval of the Minister, shall become a first charge on the land mentioned therein and shall rank in priority to all other mortgages, charges and encumbrances on that land except mortgages and charges created in favour of the Crown before the notice was registered.

(2) If default is made in the payment of any amount in respect of which a notice is registered under this section or the interest on that amount, the committee shall have in respect of the land referred to in the memorandum of charge the same powers as are given by the Real Property Act, 1886-1945, to a mortgagee under a mortgage in respect of which default has been made in the payment of principal.

(3) When the amount for which a notice is registered under this section has been fully paid the committee shall give notice in writing of that fact to the Registrar-General who shall thereupon enter in the register book or the register of Crown leases a memorandum of removal of the charge.

(4) If the land in respect of which any expense was incurred under section 13j of this Act is not under the Real Property Act, 1886-1945, the committee may register in the General Registry Office a memorial of the amount of such expense due and owing to the committee and thereupon the expense shall become a first charge on the land

ranking in the order of priority mentioned in subsection (1) of this section.

(5) Any notice under this section may be signed on behalf of the committee by the chairman or secretary thereof.

(6) Expense incurred under section 13j of this Act shall be deemed to have been incurred in respect of the whole of the farm, pastoral holding, or other area of land, on which the acts or work for which the expense was incurred, was done.

13l. (1) If a person liable to pay the committee the amount of any expense incurred under section 13j of this Act fails to pay that amount upon demand made by or on behalf of the committee, any mortgagee of the land in respect of which the expense was incurred, may pay to the committee the amount of that expense and thereupon that amount shall be added to and form part of the principal sum secured by the mortgage of that mortgagee.

Right of mortgagee to add expense mortgage.

(2) If a mortgagee incurs expense in complying with any obligations imposed on him by a soil conservation order, the amount of that expense shall be added to and form part of the principal sum secured by the mortgage.

(3) Where the whole of the principal sum secured by a mortgage is payable on a fixed date any amount added to that sum under this section shall be payable on that date; and where a principal sum is payable by instalments each instalment shall be increased by such amount as the mortgagee determines so as to spread the payment of the amount added over the outstanding term of the mortgage.

(4) Any amount added to a principal sum pursuant to this section shall bear interest at the same rate as that principal sum.

13m. (1) An order discharging any soil conservation order may be made under this section if the soil conservation order has been fully complied with or is no longer necessary, or any other just cause exists for discharging it.

Discharge of orders.

(2) Any person interested may apply to the board which made the soil conservation order, for an order discharging that order. If the board which made a soil conservation order has ceased to exist, or if the order was made by the Soil Conservator under section 13n of this Act the application may be made to the Soil Conservator.

(3) The board or the Soil Conservator, after inquiring into the application, may make an order discharging the soil conservation order, or dismissing the application. An order so made shall not be subject to appeal.

(4) An order discharging a soil conservation order may be registered in the same manner as a soil conservation order may be registered under section 13h of this Act.

Soil conservation orders where applicant's land is outside districts.

13n. (1) As regards any land which is not within a soil conservation district any person may apply to the Soil Conservator for a soil conservation order, in any case where if the land were within a soil conservation district he could apply to a board for such an order: Provided that no such application shall be made or entertained if the remedy sought can be obtained under the Sand Drift Act, 1923-1935.

(2) Upon any such application the Soil Conservator shall have the same jurisdiction and powers to hear and determine the application and make a provisional order as a board would have if the land were within its district; and the provisions of sections 13b to 13m inclusive shall apply with the necessary modifications to every such application and to proceedings thereon and any provisional or other order made thereon.

Sand drift Act not to apply within districts.

13o. The Sand Drift Act, 1923-1935, shall not apply within any soil conservation district.

Amendment of s. 18 of the principal Act— Regulations.

11. Section 18 of the principal Act is amended by striking out paragraph (b1) thereof.

*Amendment of the Crown Lands Act, 1929-1944.*

Enactment of s. 263b of Crown Lands Act—

12. The following section is enacted and inserted in the Crown Lands Act, 1929-1944, after section 263a thereof :—

Overstocking.

263b. (1) Every agreement and every lease granted after the enactment of this section shall contain such terms, covenants and conditions (if any) as are recommended by the board and approved by the Commissioner for restricting the number of stock to be depastured on the land comprised in the lease or agreement.

(2) Every agreement and every lease whether granted before or after the enactment of this section shall be deemed to contain a covenant that the purchaser or lessee will comply with any notice given under subsection (3) of this section.

(3) If the board is of opinion that the purchaser or lessee of the land comprised in any such agreement or lease is depasturing on that land such a number of stock that the land is likely to be permanently injured thereby, the Commissioner may by notice in writing require the purchaser or lessee within the time specified in the notice to reduce the number of stock so depastured to the number specified in the notice and to comply with any other restrictions specified in the notice as to the stocking of such land, and if the purchaser or lessee fails to comply with the terms of the notice the Commissioner may forfeit the agreement or lease as if the purchaser or lessee had been guilty of a breach of a covenant contained therein.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. W. M. NORRIE, Governor.