

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

No. 37 of 1986

An Act to consolidate and amend the law relating to the conservation of soil resources and to facilitate the implementation of soil conservation measures by landholders for the mitigation of soil erosion

[ASSENTED TO 5TH SEPTEMBER, 1986]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Soil Conservation Act 1986*.

2. **Arrangement.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-6);

PART II—ADMINISTRATION (ss. 7-9);

PART III—APPROVED PROPERTY PLANS (ss. 10-13);

PART IV—PROJECT AREAS (ss. 14-20);

PART V—OBJECTIONS and APPEALS (ss. 21-23);

PART VI—FINANCIAL ASSISTANCE (ss. 24-25);

PART VII—GENERAL PROVISIONS (ss. 26-41).

3. **Repeals.** *The Soil Conservation Act of 1965* and the *Soil Conservation Act Amendment Act 1980* are repealed.

The Acts so repealed are in this Act referred to as “the repealed Act.”

4. **Savings and transitional.** (1) A soil conservation project plan approved under the repealed Act and subsisting immediately before the commencement of this Act shall be deemed to have been approved under this Act and shall continue to be of full force and effect until it is cancelled, suspended or revoked in accordance with this Act.

(2) An area covered by a plan referred to in subsection (1) which is within the boundaries of an area of soil erosion hazard shall be deemed to have been constituted a project area under this Act called by the same name as that of the plan.

(3) A soil conservation plan prepared in conjunction with a soil conservation order issued by The Soil Conservation Authority under the repealed Act and subsisting immediately before the commencement of this Act shall be deemed to have been approved under this Act and shall continue to be of force and effect until it is cancelled, suspended or revoked in accordance with this Act.

(4) Any Order in Council or notification (other than one that established the Advisory and Co-ordinating Committee on Soil Conservation or declared areas of soil erosion hazard) made under the repealed Act and subsisting immediately before the commencement of this Act shall be deemed to have been made under this Act and shall continue to be of force and effect until it is cancelled, suspended or revoked in accordance with this Act.

(5) Any agreement, contract or arrangement entered into or made with The Soil Conservation Authority under the repealed Act and

subsisting immediately before the commencement of this Act shall be deemed to have been entered into or made with the Director-General under this Act and shall continue to be of force and effect until it is cancelled, suspended or revoked in accordance with this Act.

(6) Any determination, notice, order or other matter or thing issued, made, given or done under the authority of the repealed Act and subsisting immediately before the commencement of this Act shall be deemed to have been issued, made, given or done under this Act and shall continue to be of force and effect until it is cancelled, suspended or revoked in accordance with this Act.

5. Interaction with Local Government Act. (1) The Governor in Council shall not apply section 47 (24) of the *Local Government Act 1936-1986* to a part of an Area when that part is included in an approved plan.

(2) Where, prior to the approval of a property or project plan, the Governor in Council has applied section 47 (24) of the *Local Government Act 1936-1986* to part of an Area then, upon the approval of a property or project plan for that part of that Area, that subsection shall, until that approval is revoked, cease to apply to that part of that Area.

(3) Where the Director-General is of the opinion that the subdivision of land which is subject to an approved plan is likely to hinder or prevent the effective implementation or functioning of that plan in an Area, then the Governor in Council may by Order in Council require that the Local Authority shall not, without the prior consent of the Director-General, approve a plan of subdivision of land where that land is subject to an approved plan.

6. Interpretation. In this Act, except where a contrary intention appears—

“approved plan” means an approved property or project plan;

“approved project plan” means a soil conservation project plan, and amendments thereof, approved under Part IV;

“approved property plan” means a soil conservation property plan, and amendments thereof, approved under Part III;

“Area” means, in relation to a Local Authority, its Area within the meaning of the *Local Government Act 1936-1986*;

“contiguous”, with reference to land, includes land which is separated only by a gazetted road, stock route, drainage easement or similar reserve or easement;

“Director-General” means the Director-General of Primary Industries;

“farm land” means land used or about to be used for agricultural, pastoral or forestry production;

“Local Authority” means a Local Authority or Joint Local Authority within the meaning of the *Local Government Act 1936-1986*;

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- “Minister” means the Minister for Primary Industries or other Minister of the Crown for the time being charged with the administration of this Act and includes a Minister of the Crown for the time being performing the duties of the Minister;
- “occupier” means the person in actual occupation of land or if there is no person in actual occupation the person entitled to possession of the land;
- “owner” means the person other than the Crown or a person representing the Crown who for the time being is entitled to receive the rents or profits of the land in connection with which the word is used, and includes a statutory authority and a person who is the holder of a lease, licence or permit from the Crown or a person deriving title thereunder;
- “project area” means a soil conservation project area constituted in accordance with Part IV;
- “QIDC” means the Queensland Industry Development Corporation constituted under the *Queensland Industry Development Corporation Act 1985*;
- “runoff water” means water which accumulates on the soil surface as a result of rainfall and flows over the soil surface from higher to lower land;
- “soil conservation” means the prevention or mitigation of soil erosion;
- “soil conservation measures” means works, land management practices, undertakings, acts, proposals, prohibitions and things designed, carried out, enforced or proposed to be carried out or enforced pursuant to this Act for the purpose of soil conservation or controlling or directing runoff water flow or for another purpose within the scope of this Act;
- “soil erosion” means the natural or accelerated removal or deposition of soil which may be detrimental to agricultural, pastoral, or forestry activities, or engineering works of a public utility;
- “statutory authority” means a Local Authority, The Commissioner for Railways, The Commissioner of Main Roads, The Commissioner of Water Resources, a River Improvement Trust or any other person or body declared under an Act to be a body corporate or corporation sole;
- “works” means structures necessary for soil conservation and operations incidental thereto and includes works required to be done by or pursuant to this Act.

PART II—ADMINISTRATION

7. Functions and duties of the Director-General with respect to soil conservation. The functions and duties of the Director-General with respect to matters pertaining to soil conservation shall be—

- (a) the dissemination of information with regard to soil conservation;
- (b) instruction concerning and assistance in matters pertaining to soil conservation;
- (c) the carrying out of investigations to ascertain the nature and extent of soil erosion throughout the State;
- (d) the investigation and design of soil conservation measures, and the planning of the utilization of land to give effect to those measures;
- (e) the carrying out of experiments in soil conservation and the establishment of soil conservation demonstration areas;
- (f) the recording and publishing of the results of those investigations, designs, experiments, and demonstration areas;
- (g) such other functions and duties as are by Order in Council published in the Gazette.

8. Powers and duties incidental to administration of Act. (1) The Director-General may—

- (a) by agreement with an occupier or owner, conduct or cause to be conducted experiments and demonstrations pertaining to soil conservation on any land;
- (b) employ as many persons as may be required for the conduct of those experiments and demonstrations;
- (c) appoint such committees as he considers necessary or desirable to assist him in carrying this Act into effect.

(2) (a) A committee appointed under subsection (1) may exercise the powers and perform the functions and duties as are conferred or imposed upon it by the Director-General and are consistent with the provisions of this Act.

(b) A person appointed to a committee under this section may be paid expenses necessarily and reasonably incurred by him in attending meetings of the committee or in connexion with the discharge of his functions or duties under this Act and approved by the Director-General.

(3) For a purpose of or connected with the exercise or performance of a power, function or duty conferred or imposed by or pursuant to this Act the Director-General may enter upon land to—

- (a) make a plan or survey, or take levels;
- (b) place, make, affix or set-up survey pegs, marks or poles and alter, remove, inspect, reinstate or repair the same;
- (c) dig or bore for the purpose of works thereon or to ascertain the nature of the soil therein;
- (d) make an inspection or examination including examining whether a provision of this Act or any requisition, notice

or order issued pursuant to this Act is being complied with or contravened;

(e) do all other acts as are reasonably necessary for a purpose referred to in this Act.

(4) The power to enter upon land includes power to re-enter and to remain upon that land for such time as is necessary to achieve the purpose of entry, and to take such assistants, vehicles, materials, equipment or things as are necessary to achieve the purpose of entry.

(5) When the purpose of entry on land is to carry out works to effect compliance with a requisition, notice or order issued pursuant to this Act, the occupier of the land shall be given at least 7 days notice of intention to enter upon his land.

9. Delegation. (1) The Director-General may by instrument in writing delegate all or any of his powers, functions and duties under this Act, except this power of delegation, to another person and may make such number of delegations of the same power, function or duty concurrently as he thinks fit.

(2) A power, function or duty so delegated may be exercised or discharged by the delegate in accordance with the instrument of delegation and when so exercised or discharged shall be deemed, for the purposes of this Act, to have been exercised or discharged by the Director-General.

(3) A delegation under this section is revocable at the Director-General's will and does not derogate from the Director-General's power to act personally in a matter.

(4) A person purporting to exercise a power or to discharge a function pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the instrument of delegation.

PART III—APPROVED PROPERTY PLANS

10. Preparation and approval of property plan.—(1) An owner may make application to the Director-General for approval of a property plan for soil conservation for an area of land, in this Part referred to as "the subject land", owned by him.

(2) A property plan shall delineate the boundaries of the subject land and comprise a map and specifications which describe all soil conservation measures, undertakings, acts, proposals, prohibitions and things designed, carried out, enforced or proposed to be carried out or enforced pursuant to this Act for the purpose of soil conservation or of controlling or directing runoff water flow or for any other purpose within the scope of this Act.

(3) For the purpose of this Part, land shall be deemed to be affected by the implementation, amendment or revocation of a property plan where it—

- (a) is owned by a person other than the owner of the subject land;
- (b) is contiguous to the subject land;
- and
- (c) discharges runoff water from a catchment area greater than 2 hectares, under natural or controlled flow conditions, directly or indirectly onto the subject land or receives runoff water directly or indirectly from the subject land, and where the implementation, amendment or revocation of a property plan on the subject land would—
 - (i) change the area contributing runoff water to a point on the contiguous boundary with the lower land by more than 10 per cent;
 - (ii) change the location of receipt of runoff water from the subject land;
 - or
 - (iii) increase the risk of damage to the lower land in the event of failure of the proposed works.

(4) Where land other than the subject land would not be affected by the implementation of a property plan, the Director-General may, with the agreement of the owner of the subject land, approve the plan.

(5) Where land other than the subject land would be affected by the implementation of a property plan, the Director-General shall ensure that all reasonable efforts are made to discuss the plan with all the owners of affected land and the subject land, and on receipt of written advice that all those owners have no objection to the plan he may approve the plan.

(6) Where the Director-General intends to approve a property plan and cannot obtain written advice that all the owners of affected land and the subject land have no objection to the plan, he shall—

- (a) by notice specifying the name of the registered owner of the subject land and providing a property description of the subject land sufficient to enable its identification, published at least once in at least one newspaper circulating in the locality of the subject land, give notice that the plan and all matters relevant to it are open for inspection at the Department of Primary Industries' office serving the subject land for a period determined by him, being not less than 21 days from the date of first publication of the notice and that objections to the plan may be lodged in accordance with the provisions of Part V;
- and
- (b) serve on, or by post forward to, all the owners, or where an owner is not in occupation, the occupier, of affected land a

copy of the notice referred to in paragraph (a) and a copy of the plan.

(7) Where no objection is lodged within the period referred to in subsection (6), the Director-General may approve the property plan.

(8) Where an objection to the proposed property plan is lodged but there is no appeal against the Director-General's determination of that objection, or an appeal is lodged but withdrawn, the Director-General may approve the plan, modified where applicable to incorporate those determinations.

(9) Where an appeal is determined by the Land Court the Director-General may approve the property plan, modified where applicable to incorporate the determinations of the Land Court and those of the Director-General not appealed against.

(10) Where a property plan is approved, the Director-General shall give written notice of that approval together with a copy of the approved plan to—

- (a) the owner, or where the owner is not in occupation, the occupier, of the subject land and any affected land;
and
- (b) the Local Authority for the Area in which the subject land and any affected land is situated.

11. Runoff co-ordination notice. (1) Where the Director-General is of the opinion that the discharge or receipt of runoff water onto or across a property boundary is not in accordance with an approved property plan, he may give a runoff co-ordination notice to the owner, or where the owner is not in occupation then the occupier, of the land from or on which the runoff water is being discharged or received, as the case may be.

(2) A runoff co-ordination notice may require the person to whom it is given to do any of the following, to discharge or receive runoff water onto or across a property boundary in accordance with an approved property plan—

- (a) to remove, alter or repair a bank, channel, ditch, vegetation or thing whether constructed, excavated or accumulated by nature or by the act of man or to refrain from construction, excavation or accumulation of the bank, channel, ditch, vegetation or thing as aforesaid;
- (b) to undertake, construct, excavate or maintain such soil conservation measures as are specified in the plan.

(3) A runoff co-ordination notice shall specify the period of time within which all the matters specified in the notice shall be completed and may require any of those matters to be done under the supervision of a delegate of the Director-General.

(4) Notwithstanding section 38, where a person fails to comply with a runoff co-ordination notice the Director-General may apply to

the Supreme Court for an order or an injunction directing that person to comply with or, as the case may be, to refrain from contravening the notice.

(5) For the purposes of an application made pursuant to subsection (4) the Director-General shall be deemed to possess a sufficient interest or right in law to support the granting of such a remedy.

12. Amendment of approved property plans. (1) An owner of subject or affected land may make application in writing to the Director-General for amendment to an approved property plan.

(2) The provisions of section 10, with and subject to all necessary adaptations, shall apply to an application made pursuant to subsection (1) as if that application were an application under section 10.

13. Revocation of an approved property plan. (1) The Director-General may revoke his approval of a property plan or part of it, if he considers that circumstances no longer require or justify the continuance of the approved property plan or that part of it.

(2) The Director-General may, where land other than the subject land would not be affected by the proposed revocation of his approval of an approved property plan, with the agreement of the owner of the subject land, revoke his approval of the plan.

(3) Where land other than the subject land would be affected by the revocation of the Director-General's approval of a property plan, the Director-General shall ensure that all reasonable efforts are made to discuss the proposed revocation with all the owners of affected land and the subject land, and on receipt of written advice that all those owners have no objection to the proposed revocation of the plan he may revoke his approval of the plan.

(4) Where the Director-General intends to revoke his approval of a property plan and cannot obtain written advice that all the owners of affected land and the subject land have no objection to the proposed revocation, he shall, by notice specifying the name of the registered owner of the subject land and providing a property description of the subject land sufficient to enable its identification, published at least once in at least one newspaper circulating in the locality of the subject land, give notice of the proposed revocation and that all matters relevant to it are open for inspection at the Department of Primary Industries' office serving the subject land for a period determined by him, being not less than 21 days from the date of first publication of the notice and that objections to the proposed revocation may be lodged in accordance with the provisions of Part V.

(5) Where no objection is lodged within the period referred to in subsection (4), the Director-General may revoke his approval of the property plan.

(6) Where an objection to the proposed revocation is lodged but there is no appeal against the Director-General's determination to

proceed with the revocation or an appeal is lodged but withdrawn or dismissed by the Land Court, the Director-General may revoke his approval of the property plan.

(7) Where an appeal is upheld by the Land Court, the Director-General's approval of the property plan shall not be revoked.

(8) Where the approval of a property plan is revoked, the Director-General shall give notice of the revocation—

(a) in writing, to—

(i) the owner, or where the owner is not in occupation, the occupier of the subject land and any affected land;

and

(ii) the Local Authority for the Area in which the subject land and any affected land is situated;

and

(b) at least once in at least one newspaper circulating in the locality of the subject land.

PART IV—PROJECT AREAS

14. Preparation of project plan. (1) Before an area is constituted a project area the Director-General shall prepare, and there shall be, an approved project plan for that area.

(2) A project plan shall delineate the boundaries of the proposed project area and comprise a map and specifications which describe all soil conservation measures, undertakings, acts, proposals, prohibitions and things designed, carried out, enforced or proposed to be carried out or enforced pursuant to this Act for the purpose of soil conservation or of controlling or directing runoff water flow or for any other purpose within the scope of this Act.

(3) The Director-General shall in the preparation of a project plan classify all works for the implementation of that plan into either community works or owner works.

(4) For the purposes of this Part—

(a) community works are those works that in the opinion of the Director-General are for the general benefit of the community affected by a proposed project plan or for the particular benefit of a group of owners whose land comprises part or all of a proposed project area;

(b) owner works are works other than community works.

(5) A preliminary estimate showing the capital cost of works necessary to implement a project plan shall be prepared by the Director-General showing separately the estimated costs of community works and owner works both in the aggregate and in respect of each parcel of land.

(6) The Director-General shall, where possible during the preparation of a project plan, consult with all persons who in his opinion will be or are likely to be affected by the implementation of the project plan.

(7) When a project plan has been prepared the Director-General shall—

- (a) by notice published at least once in at least one newspaper circulating in the proposed project area, give notice that the plan and all matters relevant to it are open for inspection at the Department of Primary Industries' office serving the project area for a period determined by him being not less than 21 days from the date of first publication of the notice and that objections to the plan may be lodged in accordance with the provisions of Part V;
and
- (b) serve on, or by post forward to, all the owners, or where an owner is not in occupation, the occupier, of land which will be or is likely to be affected by the implementation of the plan a copy of the notice referred to in paragraph (a) and a copy of the plan.

15. Approval of project plan. (1) Where no objection is lodged within the period determined pursuant to section 14 (7), the proposed project plan together with the Director-General's recommendation shall be submitted to the Governor in Council who may approve the plan.

(2) Where an objection to the proposed project plan is lodged, but there is no appeal against the Director-General's determination of that objection, or an appeal is lodged but withdrawn and the Director-General elects to proceed with the proposal, the following shall be submitted to the Governor in Council—

- (a) a copy of the proposed project plan which was available for inspection pursuant to section 14 (7);
- (b) a list of the objections to the proposed project plan which the Director-General received and his determination on each;
and
- (c) a list of modifications, if any, to the proposed project plan which give effect to the Director-General's determinations, and the Governor in Council may approve the proposed project plan, modified where applicable to give effect to the Director-General's determinations.

(3) Where an appeal is determined by the Land Court and the Director-General elects to proceed with the proposal, the following shall be submitted to the Governor in Council—

- (a) a copy of the proposed project plan which was available for inspection pursuant to section 14 (7);
- (b) a list of the objections to the proposed project plan which the Director-General received and his determination on each;
- (c) a list of appeals to the Land Court against the Director-General's determination and the Land Court's determination on each;

and

- (d) a copy of a plan, modified where applicable, which incorporates those determinations of the Director-General not appealed against and the determinations of the Land Court,

and the Governor in Council may approve the proposed project plan modified where applicable, to give effect to the determinations of the Director-General not appealed against and the determinations of the Land Court.

(4) Where a project plan is approved, the Director-General shall give notice of the approval—

- (a) in writing, together with a copy of the approved plan, to—

- (i) all the owners, or where an owner is not in occupation, the occupier, of land included in the plan;

and

- (ii) the Local Authority for the Area in which the land included in the plan is situated;

and

- (b) at least once in at least one newspaper circulating in the locality of the land included in the plan.

16. Constitution of Area. (1) The approval of the Governor in Council pursuant to section 15 shall be by Order in Council.

(2) On and from the date of an Order in Council approving a project plan that part of the State over which the plan subsists shall, until the plan is revoked, be constituted a project area under such name as may be specified in the Order in Council.

(3) If the Governor in Council does not approve the proposed project plan, his decision shall be notified by publication in the Gazette.

(4) The Governor in Council may, upon the recommendation of the Minister, by Order in Council—

- (a) unite two or more project areas as one project area under such name as may be specified in the Order in Council;

- (b) divide a project area into two or more project areas under such names as may be specified in the Order in Council.

17. Implementation of approved project plan. (1) The Director-General may, in accordance with an approved project plan, give a soil conservation order to an owner, or where the owner is not in occupation then the occupier, within the project area requiring that person to undertake, construct and maintain in or on his land the soil conservation measures specified in the order.

(2) Without limiting the generality of the provision of subsection (1) a soil conservation order may require the person to whom it is given to take action—

- (a) to prevent or mitigate the erosion, drift or movement of soil or water on or from land specified in the order;
- (b) to remove, alter or repair a bank, channel, ditch, vegetation or other thing whether constructed, excavated or accumulated by nature or by the act of man or to refrain from the construction, excavation or accumulation of the bank, channel, ditch, vegetation or other thing;
- (c) to undertake, construct, excavate, or maintain soil conservation measures which in the opinion of the Director-General are necessary for the effective implementation of soil conservation;
- (d) to do or take any other step which is required to be done or taken by him to comply with the approved project plan.

(3) A soil conservation order shall specify the period of time within which all the matters specified in the order shall be completed and may require any of those matters to be done under the supervision of a delegate of the Director-General.

(4) A soil conservation order binds not only the owner, or where the owner is not in occupation the occupier, to whom it is given but also every other person who subsequently becomes the owner, or where the owner is not in occupation the occupier, of the land in question whether or not he had or would be deemed in law to have had notice of the existence of the order.

(5) Where a person fails to comply with a soil conservation order the Director-General may do or cause to be done such acts as, in his opinion are necessary to fully comply with the order and, if he does so, the person who failed to comply with the order shall be liable (and in the case of more than one person, jointly and severally liable) to pay to the Director-General the expenses incurred by the Director-General in effecting compliance with the order and those expenses together with the legal costs of recovering those expenses may be recovered as a debt at the suit of the Director-General in a court of competent jurisdiction or by way of complaint under the *Justices Act 1886-1985*.

The fact that the Director-General undertook or constructed or, on occasion, maintained works shall not absolve the person to whom a soil conservation order is given of the duty, imposed by this section, to maintain those works.

(6) Notwithstanding subsection (5), where a person fails to comply with a soil conservation order the Director-General may apply to the Supreme Court for an order or an injunction directing that person to comply with or, as the case may be, to refrain from contravening the order.

(7) For the purposes of an application made pursuant to subsection (6) the Director-General shall be deemed to possess a sufficient interest or right in law to support the granting of such a remedy.

18. Implementation of community works. (1) Where the successful implementation of an approved project plan depends on the construction or maintenance of works the responsibility for which is or is to be entrusted to a statutory authority, the statutory authority and the Director-General may, notwithstanding another Act or law, enter into an agreement for—

- (a) the sharing of the cost of construction or maintenance of the works;
- and
- (b) the acceptance by the statutory authority of the responsibility for the construction or maintenance of the works.

(2) Where a statutory authority fails or refuses within a reasonable time after a request by the Director-General to enter into an agreement pursuant to subsection (1), the Governor in Council may, by Order in Council, direct the statutory authority and the Director-General to do all matters and things as are specified in that direction which shall specify the apportionment of the costs involved between the Director-General and the statutory authority.

(3) A direction given pursuant to subsection (2) shall be binding upon the parties involved, and shall have the same force and effect as if the parties had entered into an agreement pursuant to subsection (1).

(4) Notwithstanding another Act or law, upon the making of an agreement pursuant to subsection (1) or where a direction is given pursuant to subsection (2), community works may be undertaken as a function of that statutory authority.

19. Amendment of approved project plan. (1) The Director-General may, upon the written request of an owner of land within an approved project area or of his own motion, determine that the approved project plan for that area should be amended.

The recommendation of the Director-General with respect to the amendment of an approved project plan shall be submitted to the Governor in Council.

(2) The provisions of sections 14, 15 and 16, with and subject to all necessary adaptations, shall apply to the preparation and the recommendation of the approval of an amendment to an approved project plan and to the constitution of an amended project area as if that amendment and recommendation were a plan and recommendation under sections 14 and 15 respectively.

20. Revocation of an approved project plan. (1) The Director-General may, upon the written request of an owner of land within an approved project area or of his own motion, determine that the approved project plan for that area should be revoked.

(2) The Director-General shall, upon making a determination pursuant to subsection (1), ensure that all reasonable efforts are made to discuss the effects of the revocation with all the owners, or where an owner is not in occupation, the occupier, of land within the project area.

(3) Where the Director-General intends to recommend that his determination pursuant to subsection (1) be given effect, he shall, by notice published at least once in at least one newspaper circulating in the locality of the project area to which the project plan relates, give notice that he proposes to recommend the revocation of the approval of the project plan and that particulars of the proposed revocation will be available for inspection at the Department of Primary Industries' office serving that project area for a period determined by the Director-General, being not less than 21 days from the date of first publication of the notice and that objections to the proposed revocation may be lodged in accordance with the provisions of Part V.

(4) Where no objection is lodged within the period determined pursuant to subsection (3) or where an objection to the proposed revocation is lodged but no appeal is lodged against the Director-General's determination to proceed with recommending the revocation or an appeal is lodged but is withdrawn or is dismissed by the Land Court, the Director-General may recommend the revocation of the Governor in Council's approval of the project plan and the Governor in Council may, by Order in Council, revoke his approval of the project plan.

(5) Where an appeal is upheld by the Land Court the Director-General shall not recommend the revocation of the Governor in Council's approval of the project plan.

(6) Where the approval of a project plan is revoked, the Director-General shall give notice of the revocation—

(a) in writing, to—

(i) all the owners, or where an owner is not in occupation, the occupier, of land included in the plan;

and

(ii) the Local Authority for the Area in which the land included in the plan is situated;

and

(b) at least once in at least one newspaper circulating in the locality of the land included in the plan.

PART V—OBJECTIONS AND APPEALS

21. Objections. (1) A person who wishes to lodge an objection pursuant to the provisions of this Act may do so by lodging it in writing, together with his reasons for objecting, with the Director-General within the time specified for the lodging of that objection.

(2) Where an objector is a statutory authority or a government department it shall, at the time of lodging the objection, lodge an alternative plan or suggest an alternative course of action, which shall be deemed to form part of the objection, to the matter objected to, which in the opinion of that objector would remove its objection.

(3) (a) Where an objector is a statutory authority or government department it may prior to the expiration of the period within which it may object, apply to the Director-General for an extension of time in which to lodge an alternative plan or suggest an alternative course of action and the Director-General may either grant or refuse the application.

(b) Where the Director-General grants an extension requested in paragraph (a) he shall specify the length of the extension granted.

(c) An alternative plan or suggested course of action lodged within the time specified pursuant to paragraph (b) shall be deemed to have been lodged in compliance with subsection (1).

(4) (a) Upon receipt of all objections lodged in compliance with subsection (1), the Director-General shall consider and make a determination on each objection.

(b) The Director-General shall notify each objector in writing of the determination so made.

22. Appeal against Director-General's determination. (1) An objector may, within a period of 21 days of the issue of a notification pursuant to section 21 (4) (b), appeal to the Land Court and the Land Court shall hear and determine the matter and may confirm or vary the Director-General's determination.

(2) An appeal under subsection (1) shall be instituted by filing in the Land Court registry a notice of appeal.

(3) (a) The notice of appeal shall state the grounds of appeal and the appeal shall be limited to the grounds stated.

(b) The burden of proving any ground stated in an appeal shall be upon the appellant.

(c) After filing the notice of appeal, the appellant shall, within 7 days, serve a copy of it on the Director-General.

23. Court's determination final. (1) The jurisdiction of the Land Court to hear and determine an appeal under section 22 shall be and is hereby vested in one member only whose determination shall be final and without appeal.

(2) The Land Court shall cause its determination upon an appeal to be certified in writing by the Registrar of the Land Court to the Director-General and the appellant.

PART VI—FINANCIAL ASSISTANCE

24. Cost-sharing with owners. The Director-General may enter into a cost-sharing arrangement with an owner with respect to the cost of works to be undertaken to ensure the successful implementation of an approved plan.

25. Application for loan. (1) An owner of farm land who desires a loan from the QIDC for the purpose of carrying out works may lodge an application for that loan through the Director-General.

(2) The Director-General shall forward the application, together with his recommendation thereon, to the QIDC for decision by the QIDC whether or not a loan should be made.

(3) An application lodged pursuant to subsection (1) shall be accompanied by an approved plan.

PART VII—GENERAL PROVISIONS

26. Acquisition of land by the Director-General. For the purpose of taking land granted in fee-simple required by him for or in connection with a purpose under this Act, including any works or purpose with respect to or in relation to which any right, power or authority is conferred, or duty or obligation imposed upon him under this Act, the Director-General shall be a constructing authority under the *Acquisition of Land Act 1967-1977*.

27. Declaration as to public purpose. Soil conservation pursuant to this Act is a public purpose within the meaning of and for the purposes of the *Land Act 1962-1986*.

28. Right to compensation. (1) Where, consequent upon the exercise of a power conferred by section 8, loss or damage results to the owner or occupier of land in respect whereof that power is exercised, the Director-General, in the performance of whose duties that power was exercised, shall pay compensation therefor to the person entitled thereto.

(2) A person whose estate or interest in land is injuriously affected by the coming into force, amendment or revocation of the approval of an approved plan or by an act done or omitted to be done under an approved plan shall be entitled to be paid compensation by the Director-General.

(3) A claim for compensation under this Act shall be made within the time specified in section 30.

29. Certain cases deemed not to be injurious affection. For the purposes of this Act, an estate or interest in land shall be deemed not to be injuriously affected—

(a) if the provision of an approved plan is the same or substantially the same as a provision of law applicable in

respect of that land immediately prior to the coming into force of the plan;

- (b) if the act or omission done or made under an approved plan and claimed to have injuriously affected that estate or interest is an act or omission required to be done or made by a provision of law applicable in respect of that land immediately prior to the coming into force of the plan;
- (c) by a prohibition or restriction upon the use to which that land may be put, imposed by or under an approved plan, unless the claimant for compensation establishes that immediately prior to the coming into force of the plan he was lawfully entitled—
 - (i) in the case of a prohibition, to put that land to the use so prohibited;
 - or
 - (ii) in the case of a restriction, to put that land without restriction to the use so restricted;
 - or
- (d) by works required, by or under an approved plan, to be constructed or carried out by the claimant for compensation or by a person from whom he holds his estate or interest for the benefit of that land.

30. Claim for compensation. (1) A person desiring to claim compensation shall apply to the Director-General within 6 months of the occurrence of the event upon which that claim is based.

(2) If within 2 months after the date of receipt by the Director-General of a claim for compensation the Director-General has not admitted liability to pay compensation upon the claim or the claimant has not agreed to the amount of compensation to be paid by the Director-General upon the claim, the Director-General or the claimant may refer the matter to the Land Court and the Land Court shall hear and determine the matter as if it were an application for compensation under the *Acquisition of Land Act 1967-1977* and the provisions of sections 24 to 30 both inclusive of that Act shall, with and subject to all necessary adaptations, apply and extend accordingly.

31. Assessment of compensation. (1) Compensation payable under section 28 may include the costs of and incidental to the investigation of matters giving rise to the claim and the preparation, lodging, hearing and determining of the claim.

(2) Compensation in respect of the injurious affection of an estate or interest in land shall be assessed in accordance with the following provisions—

- (a) subject to the ensuing provisions of this subsection, the amount of compensation shall be a sum equal to the difference between the market value of the estate or interest immediately before the occurrence of the event on which the claim for

- compensation is based and the market value of the estate or interest as affected by that occurrence;
- (b) there shall be taken into account any modification of the injurious affection that may be effected in consonance with the approved plan;
 - (c) there shall be taken into account any benefit which is likely to accrue to land in which the claimant has an estate or interest—
 - (i) by reason of the coming into force of the approved plan or by reason of the occurrence of the event on which the claim for compensation is based;
 - or
 - (ii) by reason of the construction or improvement by the Director-General at any time after the approved plan comes into force, upon land adjacent to the land in respect of which compensation is claimed, of works in implementing the approved plan;
 - (d) the amount of compensation shall not be affected by the fact that since the date on which the approved plan came into force the land in respect of which the claim for compensation is made has been separated from or amalgamated with other land.

(3) When a claim for compensation for injurious affection to an estate or interest in land is made under this Act the Director-General may, at his option, acquire that land or part thereof pursuant to the provisions of sections 26 and 27.

32. Approved plans binding. An approved plan shall be binding on all persons including the Crown.

33. Copies, register and approved plans. The Director-General shall keep a register of all approved plans, and shall keep a true copy of each approved plan and details of all revocations in the Department of Primary Industries' office serving the subject land or the project areas, as the case may be, and shall make the same available for inspection by any person, free of charge.

34. Alterations of covenants, etc., of certain leases. (1) Where the Minister is satisfied that the absence of or compliance with a covenant, condition or provision of a lease granted under the *Land Act 1962-1986* causes or would tend to cause soil erosion on land, he shall advise the Minister for the time being administering that Act accordingly.

(2) Where that Minister has been so advised, the Governor in Council may, notwithstanding anything to the contrary contained in the *Land Act 1962-1986*, vary, modify, revoke, or add to the covenants, conditions or provisions of the lease as the circumstances require.

35. Notice where value of land affected. Where the effect of a notice, direction, order, condition or requirement given, made, issued or enforced

by the Director-General pursuant to this Act is in his opinion likely to affect the value of land, he shall furnish to the Valuer-General or, where the land in question is a holding within the meaning of the *Land Act 1962-1986*, to the Secretary of the Land Administration Commission a copy of that notice, direction, order, condition or requirement and all particulars relating thereto as they may require.

36. Service of notice, orders etc. (1) Any notice, order or other document issued pursuant to this Act shall be properly served upon the person to whom it is directed if it is served in accordance with this section, that is to say—

- (a) by delivering a copy thereof to him personally;
- (b) if he cannot reasonably be found, by leaving a copy thereof with some person for him at his usual place of business or residence or at the place of business or residence last known to the person who serves the order, notice or document;
or
- (c) by posting a copy thereof addressed to him at his place of business or residence last known to the person who issued the notice, order or other document at least 14 days before the date on which the order, notice or document is to take effect.

(2) Where an order, notice or document is served, the person who serves same may attend before a justice and depose on oath and in writing endorse on a copy of the order, notice or document to the manner of service thereof showing therein the date of personal delivery, leaving or posting as the case may be of the order, notice or document.

(3) Every such deposition shall upon production in a court be evidence of the matters contained therein and shall be sufficient proof of the service of the order, notice or document on the person to whom it was directed.

37. Protection of things done under Act. Neither the Crown nor a person shall incur any liability on account of anything done bona fide and without negligence in implementing an approved plan, whether or not approval for the plan is subsequently revoked, or carrying out the requirements of a runoff co-ordination notice or soil conservation order or for any other purpose of this Act for damage or injury alleged to arise by reason thereof.

38. Offences. (1) A person who—

- (a) destroys, mutilates, defaces, removes or alters the position of a survey peg, mark, or pole placed, made, affixed or set-up for the purposes of this Act;
- (b) interferes with works undertaken for the purposes of this Act;
or
- (c) assaults, threatens, intimidates or wilfully obstructs or attempts so to do a person authorized by or pursuant to

this Act in the exercise or performance of his powers, authorities, functions or duties under this Act or a person assisting that authorized person,
 commits an offence against this Act.

(2) A person who fails to comply with a runoff co-ordination notice or a soil conservation order commits an offence against this Act.

Penalty: \$1,000.

(3) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(4) Where no penalty is otherwise expressly provided, a person who commits an offence against this Act is liable to a penalty not exceeding \$500.

39. Proceedings for offences. (1) A prosecution for an offence against this Act shall be by way of summary proceedings under the *Justices Act 1886-1985* upon complaint of a person authorized in writing in that behalf by the Director-General, made within one year from the time when the matter of complaint arose or within 6 months after the offence comes to the knowledge of the complainant, whichever period is later to expire.

(2) In any proceedings it shall not be necessary to prove the authority of a complainant to lay a complaint in respect of an offence against this Act in the absence of evidence that challenges that authority.

(3) The institution of proceedings for a penalty or the conviction of a person in respect of an offence against this Act shall not affect a remedy that a person may have by way of civil action.

40. Evidentiary provision. In proceedings under this Act—

- (a) it shall not be necessary to prove the appointment of the Minister, the Director-General or a delegate of the Director-General to do an act or take a proceeding;
- (b) a signature purporting to be that of the Minister, the Director-General or a delegate of the Director-General shall be taken to be the signature it purports to be until the contrary is proved;
- (c) a document purporting to be a copy of an order, authority or notice under this Act shall upon its production in that proceeding, be evidence of that order, authority or notice and of the terms, conditions and other matters endorsed thereon;
- (d) proof of exemption from a provision of this Act shall be upon the person who relies thereon;
- (e) it shall not be necessary to prove the authority of a person to do an act or take a proceeding in the absence of evidence to the contrary.

41. Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to—

- (a) regulating and controlling the licensing of persons supplying technical services specified in the regulations to owners or others in respect of soil conservation; prescribing the person by whom such licences may be issued, renewed, cancelled or suspended and the fees for such licences and renewals thereof; prescribing the qualifications entitling persons to hold such licences; prohibiting the supply of technical services specified in the regulations by a person not authorized by the regulations;
- (b) fees for services provided by the Director-General under this Act;
- (c) forms to be used and fees to be paid for the purposes of this Act and the purpose for which each form is to be used or fee is to be paid;
- (d) matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed to achieve the objects and purposes of this Act and in respect of which no other means of prescription is provided for.

(2) A regulation may prescribe a penalty not exceeding \$500 for a contravention or failure to comply with a provision of a regulation.

(3) A regulation may be of general operation throughout the State or be limited in its operation to a particular area of the State.