



# Soil Conservation Act 1986

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Queensland

# Soil Conservation Act 1986

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# Soil Conservation Act 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**

## Part 1 Preliminary

### 1 Short title

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

### 5 Restriction on subdivision

- (1) A regulation may provide that a local government must not, without the chief executive's consent, approve a plan of subdivision of land specified in the regulation, if the land is the subject of an approved plan.
- (2) If a regulation mentioned in subsection (1) is made, the chief executive may withhold consent to a subdivision if the chief executive considers the subdivision would hinder or prevent the effective operation of an approved plan.

### 6 Definitions

In this Act—

*approved form* see section 40A.

*approved plan* means an approved property or project plan.

*approved project plan* means a soil conservation project plan, and amendments thereof, approved under part 4.

***approved property plan*** means a soil conservation property plan, and amendments thereof, approved under part 3.

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

***farm land*** means land used or about to be used for agricultural, pastoral or forestry production.

***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 4.

***run-off 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 run-off 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) a local government; or

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- (b) the chief executive of the department in which the *Transport Infrastructure Act 1994* is administered; or
  - (d) a river improvement trust; or
  - (e) another entity that is a corporation under an Act.

**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 2 Administration

### 7 Functions and duties of the chief executive with respect to soil conservation

The functions and duties of the chief executive 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 utilisation 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 prescribed by regulation.

## **8 Powers and duties incidental to administration of Act**

- (1) The chief executive 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 the chief executive considers necessary or desirable to assist the chief executive in carrying this Act into effect.
- (2) 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 chief executive and are consistent with the provisions of this Act.
- (2A) A person appointed to a committee under this section may be paid expenses necessarily and reasonably incurred by the person in attending meetings of the committee or in connection with the discharge of the person's functions or duties under this Act and approved by the chief executive.
- (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 chief executive 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 the occupier's land.

## **Part 3**                      **Approved property plans**

### **10**        **Preparation and approval of property plan**

- (1) An owner may make application to the chief executive 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 the owner.
- (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 run-off 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; and
  - (b) is contiguous to the subject land; and

- (c) discharges run-off water from a catchment area greater than 2 ha, under natural or controlled flow conditions, directly or indirectly onto the subject land or receives run-off 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 run-off water to a point on the contiguous boundary with the lower land by more than 10%; or
  - (ii) change the location of receipt of run-off 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 chief executive 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 chief executive 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 the chief executive may approve the plan.
- (6) Where the chief executive intends to approve a property plan and can not obtain written advice that all the owners of affected land and the subject land have no objection to the plan, the chief executive 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 1 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's office serving the subject land for a period determined by the chief executive, being not less than 21 days from the date of first

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publication of the notice and that objections to the plan may be lodged in accordance with the provisions of part 5; 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 chief executive may approve the property plan.
  - (8) Where an objection to the proposed property plan is lodged but there is no appeal against the chief executive's determination of that objection, or an appeal is lodged but withdrawn, the chief executive may approve the plan, modified where applicable to incorporate those determinations.
  - (9) Where an appeal is determined by the Land Court the chief executive may approve the property plan, modified where applicable to incorporate the determinations of the Land Court and those of the chief executive not appealed against.
  - (10) Where a property plan is approved, the chief executive 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 government for the area in which the subject land and any affected land is situated.

## **11 Run-off coordination notice**

- (1) Where the chief executive is of the opinion that the discharge or receipt of run-off water onto or across a property boundary is not in accordance with an approved property plan, the chief executive may give a run-off coordination notice to the owner, or where the owner is not in occupation then the occupier, of

the land from or on which the run-off water is being discharged or received, as the case may be.

- (2) A run-off coordination notice may require the person to whom it is given to do any of the following, to discharge or receive run-off 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 humans 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 run-off coordination 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 chief executive.
- (4) Notwithstanding section 38, where a person fails to comply with a run-off coordination notice the chief executive 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 chief executive 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 chief executive 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

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subsection (1) as if that application were an application under section 10.

### **13 Revocation of an approved property plan**

- (1) The chief executive may revoke the approval of a property plan or part of it, if the chief executive considers that circumstances no longer require or justify the continuance of the approved property plan or that part of it.
- (2) The chief executive may, where land other than the subject land would not be affected by the proposed revocation of the approval of an approved property plan, with the agreement of the owner of the subject land, revoke the approval of the plan.
- (3) Where land other than the subject land would be affected by the revocation of the chief executive's approval of a property plan, the chief executive 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 the chief executive may revoke the approval of the plan.
- (4) Where the chief executive intends to revoke the approval of a property plan and can not obtain written advice that all the owners of affected land and the subject land have no objection to the proposed revocation, the chief executive 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 1 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's office serving the subject land for a period determined by the chief executive, 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 5.

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- (5) Where no objection is lodged within the period referred to in subsection (4), the chief executive may revoke the approval of the property plan.
- (6) Where an objection to the proposed revocation is lodged but there is no appeal against the chief executive's determination to proceed with the revocation or an appeal is lodged but withdrawn or dismissed by the Land Court, the chief executive may revoke the approval of the property plan.
- (7) Where an appeal is upheld by the Land Court, the chief executive's approval of the property plan shall not be revoked.
- (8) Where the approval of a property plan is revoked, the chief executive 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 government for the area in which the subject land and any affected land is situated; and
  - (b) at least once in at least 1 newspaper circulating in the locality of the subject land.

## **Part 4                      Project areas**

### **14              Preparation of project plan**

- (1) Before an area is constituted a project area the chief executive 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 run-off water flow or for any other purpose within the scope of this Act.

- (3) The chief executive 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 chief executive 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 chief executive 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 chief executive shall, where possible during the preparation of a project plan, consult with all persons who in the chief executive's 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 chief executive shall—
  - (a) by notice published at least once in at least 1 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's office serving the project area for a period determined by the chief executive 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 5; 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 chief executive'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 chief executive's determination of that objection, or an appeal is lodged but withdrawn and the chief executive 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 chief executive received and the chief executive's determination on each;
  - (c) a list of modifications (if any) to the proposed project plan which give effect to the chief executive's determinations;and the Governor in Council may approve the proposed project plan, modified where applicable to give effect to the chief executive's determinations.
- (3) Where an appeal is determined by the Land Court and the chief executive 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 chief executive received and the chief executive's determination on each;



- (c) a list of appeals to the Land Court against the chief executive's determination and the Land Court's determination on each;
- (d) a copy of a plan, modified where applicable, which incorporates those determinations of the chief executive 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 chief executive not appealed against and the determinations of the Land Court.

- (4) Where a project plan is approved, the chief executive 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 government for the area in which the land included in the plan is situated; and
  - (b) at least once in at least 1 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 regulation.
- (2) On the approval of 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 regulation.
- (3) If the Governor in Council does not approve the proposed project plan, the Governor in Council's decision shall be notified by publication in the gazette.
- (4) A regulation may—

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- (a) unite 2 or more project areas as 1 project area under such name as may be specified in the regulation;
  - (b) divide a project area into 2 or more project areas under such names as may be specified in the regulation.
- (5) A notification under subsection (3) is not subordinate legislation.

## **17 Implementation of approved project plan**

- (1) The chief executive 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 the person's 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 humans 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 chief executive 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 the person 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 chief executive.

- (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 or she 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 chief executive may do or cause to be done such acts as, in the chief executive's opinion are necessary to fully comply with the order and, if the chief executive does so, the person who failed to comply with the order shall be liable (and in the case of more than 1 person, jointly and severally liable) to pay to the chief executive the expenses incurred by the chief executive 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 chief executive in a court of competent jurisdiction or by way of complaint under the *Justices Act 1886*.
- (5A) The fact that the chief executive 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 subsections (5) and (5A), where a person fails to comply with a soil conservation order the chief executive 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 chief executive 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 chief executive 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 chief executive to enter into an agreement pursuant to subsection (1), the Governor in Council may, by regulation, direct the statutory authority and the chief executive to do all matters and things as are specified in that direction which shall specify the apportionment of the costs involved between the chief executive 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 chief executive may, upon the written request of an owner of land within an approved project area or of the chief executive's own motion, determine that the approved project plan for that area should be amended.

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- (1A) The recommendation of the chief executive with respect to the amendment of an approved project plan shall be submitted to the Governor in Council.
  - (2) The provisions of sections 14 to 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 chief executive may, upon the written request of an owner of land within an approved project area or of the chief executive's own motion, determine that the approved project plan for that area should be revoked.
- (2) The chief executive 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 chief executive intends to recommend that the chief executive's determination pursuant to subsection (1) be given effect, the chief executive shall, by notice published at least once in at least 1 newspaper circulating in the locality of the project area to which the project plan relates, give notice that the chief executive 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's office serving that project area for a period determined by the chief executive, 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 5.
- (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

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the chief executive's determination to proceed with recommending the revocation or an appeal is lodged but is withdrawn or is dismissed by the Land Court, the chief executive may recommend the revocation of the Governor in Council's approval of the project plan and the Governor in Council may, by regulation, revoke the chief executive's approval of the project plan.

- (5) Where an appeal is upheld by the Land Court the chief executive 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 chief executive 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 government for the area in which the land included in the plan is situated; and
  - (b) at least once in at least 1 newspaper circulating in the locality of the land included in the plan.

## **Part 5                      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 the person's reasons for objecting, with the chief executive 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) 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 chief executive for an extension of time in which to lodge an alternative plan or suggest an alternative course of action and the chief executive may either grant or refuse the application.
- (3A) Where the chief executive grants an extension requested in subsection (3) the chief executive shall specify the length of the extension granted.
- (3B) An alternative plan or suggested course of action lodged within the time specified pursuant to subsection (3A) shall be deemed to have been lodged in compliance with subsection (1).
- (4) Upon receipt of all objections lodged in compliance with subsection (1), the chief executive shall consider and make a determination on each objection.
- (5) The chief executive shall notify each objector in writing of the determination so made.

## **22 Appeal against chief executive's determination**

- (1) An objector may, within 42 days of the issue of a notification pursuant to section 21(5), appeal to the Land Court and the Land Court shall hear and determine the matter and may confirm or vary the chief executive's determination.
- (2) An appeal under subsection (1) shall be instituted by filing in the Land Court registry a notice of appeal.
- (3) The notice of appeal shall state the grounds of appeal and the appeal shall be limited to the grounds stated.
- (4) The burden of proving any ground stated in an appeal shall be upon the appellants.

- (5) After filing the notice of appeal, the appellant shall, within 7 days, serve a copy of it on the chief executive.

### **23 Court's determination**

The Land Court shall cause its determination upon an appeal to be certified in writing by the registrar of the Land Court to the chief executive and the appellant.

## **Part 6 Financial assistance**

### **24 Cost-sharing with owners**

The chief executive 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.

## **Part 7 General provisions**

### **26 Acquisition of land by the chief executive**

For the purpose of taking land granted in fee simple required by the chief executive 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 the chief executive under this Act, the chief executive shall be a constructing authority under the *Acquisition of Land Act 1967*.



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## **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 chief executive, 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 chief executive.
- (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; or
- (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; or
- (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 the claimant 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 the claimant holds his or her estate or interest for the benefit of that land.

### **30 Claim for compensation**

- (1) A person desiring to claim compensation shall apply to the chief executive 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 chief executive of a claim for compensation the chief executive 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 chief executive upon the claim, the chief executive 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* and the provisions of sections 24 to 30 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 paragraphs (b) to (d), 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 chief executive 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 chief executive may, at the chief executive's 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 chief executive 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's 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 1994* causes or would tend to cause soil erosion on land, the Minister 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 1994*, 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 chief executive pursuant to this Act is in the chief executive's opinion likely to affect the value of land, the chief executive shall furnish to the valuer-general or, where the land in question is a holding within the meaning of the *Land Act 1994*, to the chief executive of the department in which that Act is administered a copy of that notice, direction, order, condition or requirement and all particulars relating thereto as they may require.

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**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 run-off coordination 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; or
  - (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 authorised by or pursuant to this Act in the exercise or performance of powers, authorities, functions or duties under this Act or a person assisting that authorised person;
- commits an offence against this Act.
- (2) A person who fails to comply with a run-off coordination notice or a soil conservation order commits an offence against this Act.
- Maximum penalty—20 penalty units.
- (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 of not more than 10 penalty units.

### **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* upon complaint of a person authorised in writing in that behalf by the chief executive, made within 1 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 chief executive or a delegate of the chief executive to do an act or take a proceeding;
- (b) a signature purporting to be that of the Minister, the chief executive or a delegate of the chief executive 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.

#### **40A Approval of forms**

The chief executive may approve forms for use under this Act.

#### **41 Regulations**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
  - (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 authorised by the regulations;
  - (b) fees for services provided by the chief executive under this Act.
- (3) A regulation may prescribe a penalty of not more than 10 penalty units for a contravention or failure to comply with a provision of a regulation.