

**WATER (SOIL CONSERVATION) AMENDMENT
ACT, 1978, No. 129**

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 129, 1978.

An Act to amend the Water Act, 1912, to make further provision in relation to the preservation of trees within, or within 20 metres of, rivers or lakes and in relation to the prevention of soil erosion. [Assented to, 21st December, 1978.]

Water (Soil Conservation) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title. **1.** This Act may be cited as the "Water (Soil Conservation) Amendment Act, 1978".

Amendment of Act No. 44, 1912. **2.** The Water Act, 1912, is amended in the manner set forth in Schedule 1.

Sec. 2.

SCHEDULE 1.

AMENDMENTS TO THE WATER ACT, 1912.

(1) (a) Section 26D (2)—

Omit the subsection, insert instead :—

(2) A person shall not, except with the permission of the Catchment Areas Protection Board—

(a) ringbark, cut down, fell, poison or otherwise destroy, or cause to be ringbarked, cut down, felled, poisoned or otherwise destroyed; or

(b) top, lop, remove or injure, or cause to be topped, lopped, removed or injured,

any tree situated within, or within 20 metres of, the bed or bank of any river or lake or section of a river to which this section applies.

Penalty : \$500.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(b) Section 26D (3A)—

After “occupier of”, insert “, or to any holder or grantee of timber rights over,”.

(c) Section 26D (3D)—

After “relates”, insert “or to the holder or grantee of timber rights over the land to which the permit relates”.

(d) Section 26D (3E)—

Omit the subsection, insert instead :—

(3E) Any owner or occupier of land or holder or grantee of timber rights over land who succeeds a person to whom a permit has been issued under this section shall, while he remains the owner, occupier, holder or grantee, be deemed to have been issued with that permit.

(e) Section 26D (4)—

Omit the subsection.

(f) Section 26D (5)—

Omit the subsection, insert instead :—

(5) An information in respect of an offence under this section committed after the date of assent to the Water (Soil Conservation) Amendment Act, 1978, may be laid at any time within 2 years after the commission of the offence.

(g) Section 26D (6)—

After “section”, insert “and section 26DA”.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(h) Section 26D (6), definition of “Owner”—

Before “includes”, insert “, in relation to land,”.

(i) Section 26D (6), definition of “Owner”—

From paragraph (c), omit “or mortgagee in possession”, insert instead “, mortgagee in possession or otherwise”.

(2) Section 26DA—

After section 26D, insert :—

26DA. (1) Where the Catchment Areas Protection Board is satisfied that any thing prohibited by section 26D (2) done or proposed to be done by any person on any land is causing or is likely to cause soil erosion on the land or any adjacent land (whether, in respect of the thing done, any person has been convicted of an offence under section 26D (2) or not), it may, by notice in writing served personally or by post on that person, require that person within the time specified in the notice to abstain from doing or to do or permit to be done such things as the Catchment Areas Protection Board considers necessary to mitigate or avoid, or repair the damage caused by, the erosion.

(2) The time referred to in subsection (1) shall commence—

(a) where no objection has been lodged under subsection (5) in respect of the notice or any copy thereof—upon the expiration of the period of 30 days after—

(i) the date of service of the notice; or

(ii) the date of service of a copy of the notice, whichever is the later or latest; or

Prevention
of soil
erosion and
repair of
damage.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(b) where an objection is lodged under subsection (5) in respect of the notice or any copy thereof—upon the date of service of the notice of the Minister's direction under subsection (11) in respect of the notice.

(3) A copy of a notice under subsection (1) shall be served personally or by post on any person who appears to the Catchment Areas Protection Board to be the owner, occupier or mortgagee of the land in respect of which the notice was given (not being the person on whom the original notice is or is to be served) and, where the notice requires the doing of things on any adjacent land, on any person who appears to the Catchment Areas Protection Board to be the owner, occupier or mortgagee of that adjacent land.

(4) A notice under subsection (1) may be revoked, varied or amended by a like notice.

(5) Any person upon whom a notice has been served under subsection (1) or upon whom a copy of a notice has been served under subsection (3) may, within 30 days after service of the notice or copy, as the case may be, lodge with the Catchment Areas Protection Board an objection in writing to the requirements of the notice.

(6) An objection under subsection (5) shall specify the grounds of objection.

(7) The Catchment Areas Protection Board shall refer any objection lodged under subsection (5) to the local land board for inquiry.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(8) Upon receipt of an objection referred to in subsection (7), the local land board shall—

- (a) notify the objector and the Catchment Areas Protection Board of the holding of the inquiry;
- (b) hold an inquiry into the matters raised by the objection;
- (c) recommend in writing to the Minister that—
 - (i) the notice be complied with;
 - (ii) the notice be revoked; or
 - (iii) the notice, varied or amended as recommended by the local land board, be complied with; and
- (d) announce the terms of its recommendation in open court.

(9) There shall be no right of appeal against a recommendation made under subsection (8) (c).

(10) The objector and the Catchment Areas Protection Board shall be entitled to attend, or be represented at, an inquiry referred to in subsection (8) and be heard.

(11) After considering a recommendation referred to in subsection (8), the Minister may, whether in accordance with that recommendation or not, direct that—

- (a) the notice be complied with;
- (b) the notice be revoked; or

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

- (c) the notice as varied or amended by the Minister be complied with,

and shall—

- (d) in the case of a direction under paragraph (a) or (c), serve, either personally or by post, notice of the direction upon the person served with the notice under subsection (1); and
- (e) where the person referred to in paragraph (d) is not the objector, advise the objector of the decision.

(12) Subject to subsection (2)—

- (a) if any person wilfully fails to comply with the requirements of a notice under subsection (1) within the time specified in the notice he is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000; and
- (b) if any person does not comply with the requirements of a notice under subsection (1) within the time specified in the notice (whether that person has been convicted of an offence under paragraph (a) in respect of the notice or not) the Minister may, where the notice required the doing of a thing on any land, authorise the Commissioner of the Soil Conservation Service appointed under the Soil Conservation Act, 1938, to enter upon the land and do the thing.

(13) Any costs incurred by the Commissioner of the Soil Conservation Service under subsection (12) (b) may be recovered from the person served with the notice in a court of competent jurisdiction as a debt due to the Crown.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(14) Where the person referred to in subsection (13) is the owner of the land on which the thing is done, the costs incurred shall, until paid, be a charge on the land.

(15) Where a person has been prosecuted under subsection (12) (a), it is a defence to that prosecution if the court is satisfied that that person had no legal right to enter the land in respect of which the notice was given and comply with the requirements of the notice.

(16) For the purposes of this section, the definition of "Local land board" in section 5 (1) shall be construed as if—

- (a) the words "a work" and "the work" were omitted therefrom and in each case the words "the land in respect of which the reference to a local land board is made" were inserted instead; and
- (b) the word "Commission" was omitted therefrom and the words "Catchment Areas Protection Board constituted under the Soil Conservation Act, 1938," were inserted instead.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 21st December, 1978.*

WATER (SOIL CONSERVATION) AMENDMENT BILL, 1978

EXPLANATORY NOTE

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

This Bill is cognate with the Soil Conservation (Amendment) Bill, 1978.

The objects of this Bill are—

- (a) to prohibit topping, lopping, removing or injuring trees situated within, or within 20 metres of, the bed or bank of any river or lake to which section 26D of the Water Act, 1912, applies, unless with the permission of the Catchment Areas Protection Board (in addition to the present prohibition against ringbarking, cutting down, felling or destroying such trees without permission) (Schedule 1 (1) (a));
- (b) to provide that a permit to do the acts or things prohibited as referred to in paragraph (a) may be issued to the holder or grantee of timber rights over land in addition to the owner or occupier of the land (Schedule 1 (1) (b));
- (c) to provide that proceedings for the offence of felling, destroying, etc., trees in contravention of section 26D of the Water Act, 1912, can be taken within 2 years after the commission of the offence, instead of within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the Commissioner of the Soil Conservation Service (Schedule 1 (1) (f));
- (d) to permit the Catchment Areas Protection Board—
 - (i) to require a person to repair soil erosion caused by felling, destroying, etc., trees in contravention of section 26D of the Water Act, 1912; and
 - (ii) to prevent a person from felling, destroying, etc., trees in contravention of that section where the felling, destroying, etc., is likely to cause soil erosion,

whether the person has been convicted of an offence or not, but subject to the hearing by the local land board of any objections by the persons affected and a final determination by the Minister (Schedule 1 (2)—proposed section 26DA (1)–(11));

- (e) to allow the Minister to authorise the Commissioner of the Soil Conservation Service to enter upon land and do the required work where a requirement referred to in paragraph (d) (i) has not been complied with, and to recover the cost from the person of whom the requirement was made (Schedule 1 (2)—proposed section 26DA (12)–(15)); and
- (f) to make other provisions of a minor, consequential or ancillary nature.

**WATER (SOIL CONSERVATION) AMENDMENT
BILL, 1978**

No. , 1978.

A BILL FOR

An Act to amend the Water Act, 1912, to make further provision in relation to the preservation of trees within, or within 20 metres of, rivers or lakes and in relation to the prevention of soil erosion.

[MR GORDON—22 November, 1978.]

Water (Soil Conservation) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Water (Soil Conservation) Amendment Act, 1978". Short title.

2. The Water Act, 1912, is amended in the manner set forth in Schedule 1. Amendment of Act No. 44, 1912.

SCHEDULE 1.

Sec. 2.

10 **AMENDMENTS TO THE WATER ACT, 1912.**

(1) (a) Section 26D (2)—

Omit the subsection, insert instead :—

(2) A person shall not, except with the permission of the Catchment Areas Protection Board—

15 (a) ringbark, cut down, fell, poison or otherwise destroy, or cause to be ringbarked, cut down, felled, poisoned or otherwise destroyed; or

20 (b) top, lop, remove or injure, or cause to be topped, lopped, removed or injured,

any tree situated within, or within 20 metres of, the bed or bank of any river or lake or section of a river to which this section applies.

Penalty : \$500.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(b) Section 26D (3A)—

5 After “occupier of”, insert “, or to any holder or grantee of timber rights over,”.

(c) Section 26D (3D)—

After “relates”, insert “or to the holder or grantee of timber rights over the land to which the permit relates”.

10 (d) Section 26D (3E)—

Omit the subsection, insert instead :—

15 (3E) Any owner or occupier of land or holder or grantee of timber rights over land who succeeds a person to whom a permit has been issued under this section shall, while he remains the owner, occupier, holder or grantee, be deemed to have been issued with that permit.

(e) Section 26D (4)—

Omit the subsection.

20 (f) Section 26D (5)—

Omit the subsection, insert instead :—

25 (5) An information in respect of an offence under this section committed after the date of assent to the Water (Soil Conservation) Amendment Act, 1978, may be laid at any time within 2 years after the commission of the offence.

(g) Section 26D (6)—

After “section”, insert “and section 26DA”.

*Water (Soil Conservation) Amendment.*SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(h) Section 26D (6), definition of "Owner"—

Before "includes", insert ", in relation to land,".

5 (i) Section 26D (6), definition of "Owner"—

From paragraph (c), omit "or mortgagee in possession", insert instead ", mortgagee in possession or otherwise".

(2) Section 26DA—

10 After section 26D, insert :—

26DA. (1) Where the Catchment Areas Protection Board is satisfied that any thing prohibited by section 26D (2) done or proposed to be done by any person on any land is causing or is likely to cause soil erosion on the land or any adjacent land (whether, in respect of the thing done, any person has been convicted of an offence under section 26D (2) or not), it may, by notice in writing served personally or by post on that person, require that person within the time specified in the notice to abstain from doing or to do or permit to be done such things as the Catchment Areas Protection Board considers necessary to mitigate or avoid, or repair the damage caused by, the erosion.

Prevention of soil erosion and repair of damage.

(2) The time referred to in subsection (1) shall commence—

25 (a) where no objection has been lodged under subsection (5) in respect of the notice or any copy thereof—upon the expiration of the period of 30 days after—

30 (i) the date of service of the notice; or
 (ii) the date of service of a copy of the notice, whichever is the later or latest; or

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

5 (b) where an objection is lodged under subsection (5) in respect of the notice or any copy thereof—upon the date of service of the notice of the Minister's direction under subsection (11) in respect of the notice.

10 (3) A copy of a notice under subsection (1) shall be served personally or by post on any person who appears to the Catchment Areas Protection Board to be the owner, occupier or mortgagee of the land in respect of which the notice was given (not being the person on whom the original notice is or is to be served) and, where the notice requires the doing of things on any adjacent land, on
15 any person who appears to the Catchment Areas Protection Board to be the owner, occupier or mortgagee of that adjacent land.

(4) A notice under subsection (1) may be revoked, varied or amended by a like notice.

20 (5) Any person upon whom a notice has been served under subsection (1) or upon whom a copy of a notice has been served under subsection (3) may, within 30 days after service of the notice or copy, as the case may be, lodge with the Catchment Areas Protection Board
25 an objection in writing to the requirements of the notice.

(6) An objection under subsection (5) shall specify the grounds of objection.

30 (7) The Catchment Areas Protection Board shall refer any objection lodged under subsection (5) to the local land board for inquiry.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

(8) Upon receipt of an objection referred to in subsection (7), the local land board shall—

- 5 (a) notify the objector and the Catchment Areas Protection Board of the holding of the inquiry;
- (b) hold an inquiry into the matters raised by the objection;
- (c) recommend in writing to the Minister that—
- 10 (i) the notice be complied with;
- (ii) the notice be revoked; or
- (iii) the notice, varied or amended as recommended by the local land board, be complied with; and
- 15 (d) announce the terms of its recommendation in open court.

(9) There shall be no right of appeal against a recommendation made under subsection (8) (c).

20 (10) The objector and the Catchment Areas Protection Board shall be entitled to attend, or be represented at, an inquiry referred to in subsection (8) and be heard.

25 (11) After considering a recommendation referred to in subsection (8), the Minister may, whether in accordance with that recommendation or not, direct that—

- (a) the notice be complied with;
- (b) the notice be revoked; or

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WATER ACT, 1912—*continued.*

- (c) the notice as varied or amended by the Minister be complied with,
- 5 and shall—
- (d) in the case of a direction under paragraph (a) or (c), serve, either personally or by post, notice of the direction upon the person served with the notice under subsection (1); and
- 10 (e) where the person referred to in paragraph (d) is not the objector, advise the objector of the decision.
- (12) Subject to subsection (2)—
- 15 (a) if any person wilfully fails to comply with the requirements of a notice under subsection (1) within the time specified in the notice he is guilty of an offence against this Act and liable to a penalty not exceeding \$1,000; and
- 20 (b) if any person does not comply with the requirements of a notice under subsection (1) within the time specified in the notice (whether that person has been convicted of an offence under paragraph (a) in respect of the notice or not) the Minister may, where the notice required the
- 25 doing of a thing on any land, authorise the Commissioner of the Soil Conservation Service appointed under the Soil Conservation Act, 1938, to enter upon the land and do the thing.
- (13) Any costs incurred by the Commissioner
- 30 of the Soil Conservation Service under subsection (12) (b) may be recovered from the person served with the notice in a court of competent jurisdiction as a debt due to the Crown.

Water (Soil Conservation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WATER ACT, 1912—*continued.*

5 (14) Where the person referred to in subsection (13) is the owner of the land on which the thing is done, the costs incurred shall, until paid, be a charge on the land.

10 (15) Where a person has been prosecuted under subsection (12) (a), it is a defence to that prosecution if the court is satisfied that that person had no legal right to enter the land in respect of which the notice was given and comply with the requirements of the notice.

(16) For the purposes of this section, the definition of "Local land board" in section 5 (1) shall be construed as if—

15 (a) the words "a work" and "the work" were omitted therefrom and in each case the words "the land in respect of which the reference to a local land board is made" were inserted instead; and

20 (b) the word "Commission" was omitted therefrom and the words "Catchment Areas Protection Board constituted under the Soil Conservation Act, 1938," were inserted instead.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978



