

SOIL CONSERVATION (FINANCIAL ASSISTANCE) ACT 1985

No. 19 of 1985 -

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LONG TITLE

An Act to grant financial assistance in connection with projects relating to soil conservation and to establish a National Soil Conservation Program Fund, and for related purposes

PART I-PRELIMINARY

Short title

(Assented to 7 May 1985)

1. This Act may be cited as the Soil Conservation (Financial Assistance) Act 1985.
(Minister's second reading speech made in-
House of Representatives on 20 March 1985;
Senate on 18 April 1985)

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears-
"agreement" means an agreement under section 4 or 6;
"appoint" includes re-appoint;
"Committee" means the Soil Conservation Advisory Committee established by section 10;
"deputy member" means a person appointed under section 13 as the deputy of a member;
"Fund" means the National Soil Conservation Program Fund established by section 8;
"member" means a member of the Committee;
"officer" means an officer of the Department;
"Presiding Member" means the Presiding Member of the Committee;
"project" means a project relating to soil conservation;
"State" includes the Northern Territory.

(2) A reference in a provision of this Act to an authorized officer is a reference to an officer, or an officer included in a class of officers, authorized in writing by the Minister for the purposes of the provision.

PART II-FINANCIAL ASSISTANCE

The States

4. (1) The Minister may, from time to time, on behalf of the Commonwealth, agree, in writing, with a State upon financial assistance to be provided by the Commonwealth to the State under this Act in respect of amounts expended by the State in respect of-
 - (a) a project or projects approved, or to be approved, by the Minister and the appropriate Minister of the State, acting jointly; or
 - (b) a project or projects specified in the agreement.

(2) Subject to this Act, financial assistance is payable to a State in accordance with an agreement under this section.

(3) The Minister shall cause a copy of every agreement under this section, and any agreement amending such an agreement, to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the agreement is made.

(4) The Minister may, at such times as the Minister thinks fit, make advances to a State of such amounts as the Minister thinks fit on account of an amount that may become payable to a State under this section.

(5) Payments (including advances) under this section shall be paid out of moneys appropriated by the Parliament for the purpose.

Commonwealth Departments

5. (1) A Department may incur expenditure for the carrying out of projects in accordance with an arrangement approved in writing by the Minister, but nothing in this section shall be taken to preclude the incurring of expenditure otherwise than in accordance with this section.

(2) Expenditure incurred under this section shall be paid out of moneys appropriated by the Parliament for the purpose.

Other persons

6. (1) An authorized officer may, on behalf of the Commonwealth, with the approval of the Minister, agree, in writing, with a person for the carrying out by that person of a project.

(2) Where an agreement under this section provides for the payment of advances, the Minister may, at such times as the Minister thinks fit, make advances of such amounts as the Minister thinks fit on account of an amount that may become payable under the agreement.

(3) In this section, "person" includes an association, authority, body, institution or other organization, whether incorporated or unincorporated.

Conditions, &c.

7. (1) Without in any way limiting the matters that may be provided for in an agreement, an agreement may include provision for and in relation to-

- (a) the conditions subject to which payments under the agreement are to be made;
- (b) the manner of carrying out the project or projects to which the agreement relates; and
- (c) the review of the operation of the agreement and amendment of the agreement by a further agreement in consequence of such a review.

(2) Without in any way limiting the conditions to which a payment under an agreement may be made subject, a payment under an agreement is subject to the following conditions:

(a) if the Minister or an authorized officer informs the payee that the Minister or the authorized officer, as the case may be, is satisfied that-

- (i) the payee has refused or failed to fulfil a condition to which the agreement is subject; or
- (ii) a project or any part of a project to which the agreement relates has not been undertaken in accordance with the agreement,

the payee shall repay to the Commonwealth the whole or such part as the Minister specifies of the payments made to the payee under this Act pursuant to the agreement;

(b) the Minister or an authorized officer may deduct any amount repayable by the payee in accordance with the condition specified in paragraph (a) from any amount payable by the Commonwealth to the payee under this Act;

(c) the payee will repay to the Commonwealth, on demand by the Minister or an authorized officer, the amount by which, at the time of the demand, the total of the payments made to the payee under this Act exceeds the total of the amounts that have become payable to the payee under this Act;

(d) the Minister or an authorized officer may deduct any amount repayable by the payee in accordance with the condition specified in paragraph (c) from any amount payable by the Commonwealth to the payee under this Act.

(3) An agreement is, except so far as otherwise provided in the agreement, subject to the following conditions:

(a) the payee is not entitled to a payment under the agreement with respect to any expenditure by the payee for the purposes of carrying out a project to which the agreement relates unless the payee has furnished to an authorized officer-

(i) in the case of an agreement under section 4 with a State-a statement in respect of that expenditure, in accordance with a form approved in writing by an authorized officer, accompanied by a certificate of the Auditor-General of the State or the head of the Department or authority of the State responsible for that expenditure (in this sub-paragraph referred to as the "responsible chief executive"), certifying, in relation to each amount shown in the statement as having been expended-

(A) that the Auditor-General of the State or the responsible chief executive, as the case may be, is of the opinion that the amount was expended in accordance with the agreement; or

(B) that the Auditor-General of the State or the responsible chief executive, as the case may be, has received a certificate from a qualified accountant stating that the qualified accountant is of the opinion that the amount was expended in accordance with the agreement;

(ii) in the case of an agreement under section 6-a statement in respect of that expenditure, in accordance with a form approved in writing by an authorized officer, accompanied by a certificate of-

(A) a qualified accountant; or

(B) if the payee is an association, authority, body, institution or other organization whose accounts are required by law to be audited by the Auditor-General of the Commonwealth or the Auditor-General of a State-the head of the association, authority, body, institution or other organization (in this sub-paragraph referred to as the "responsible chief executive"),

certifying, in relation to each amount shown in the statement as having been expended, that, in the opinion of the qualified accountant or the responsible chief executive, as the case may be, the amount was expended in accordance with the agreement; and

(iii) such further information, if any, as an authorized officer requires in respect of that expenditure;

(b) the payee will, at all reasonable times, permit a person authorized in writing by the Minister or by an authorized officer to inspect and take copies of, or extracts from, any plans, designs, tenders, records or other documents relating to the project to which the agreement relates;

(c) the payee will, if an authorized officer, from time to time, so requests, furnish to the authorized officer, as soon as practicable after such date as the authorized officer specifies, a report on the payee's activities in connection with the project to which the agreement relates, being a report containing such particulars as are specified by the authorized officer;

(d) the payee will furnish to an authorized officer, as soon as practicable after completion of the project to which the agreement relates, a final report on the project.

(4) Without limiting in any way the matters that may be provided for in an agreement, an agreement may-

(a) provide for the payment by the payee to the Commonwealth of an amount equal to the whole, or such part as the Minister or an authorized officer determines, of any net income derived by the payee from-

(i) property acquired or produced in the course of carrying out the project to which the agreement relates; or

(ii) patents for inventions made in the course of carrying out the project to which the agreement relates;

(b) provide for the assignment by the payee to the Commonwealth of any property referred to in sub-paragraph (a) (i), of any patents for inventions referred to in sub-paragraph (a) (ii) or of any such invention or of any interest that the payee may have in any such invention; or

(c) provide for the payment by the payee to the Commonwealth, in the event of the disposal otherwise than to the Commonwealth of any property or interest of a kind referred to in paragraph (b), of an amount equal to the whole, or such part as the Minister or an authorized officer determines-

(i) in the case of a disposal by way of sale or assignment for value-of the net proceeds of the sale or assignment; and

(ii) in any other case-of the value of the property or interest as determined by the Minister or an authorized officer.

(5) In this section-

"payee", in relation to an agreement, means the party to which amounts are payable by the Commonwealth under the agreement;

"payment" includes an advance;

"qualified accountant" means-

(a) a person who is registered as a company auditor or a public accountant under a law in force in a State or Territory; or

(b) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Accountants.

PART III-NATIONAL SOIL CONSERVATION PROGRAM FUND

National Soil Conservation Program Fund

8. (1) There is established a fund, to be known as the National Soil Conservation Program Fund.

(2) Income received from the investment of moneys standing to the credit of the Fund forms part of the Fund.

(3) The Fund is a Trust Account for the purposes of section 62A of the Audit Act 1901.

(4) There shall be paid into the Fund-

(a) such amounts as are appropriated from time to time by the Parliament;

(b) such amounts, being gifts or bequests, as are given or made for the purposes of the Fund;

(c) such amounts as are paid or repaid to the Commonwealth in accordance with an agreement under section 6; and

(d) such amounts as are received by the Commonwealth from the disposal of property or interests acquired by the Commonwealth in accordance with an agreement under section 6.

(5) There shall be paid out of the Fund-

(a) payments (including advances) made in accordance with an agreement under section 6;

(b) the expenses incurred by the Committee in the performance of its functions;

(c) fees, expenses and allowances payable to persons engaged under section 18; and

(d) such of the other costs of administration of this Act as the Minister considers appropriate to be paid out of the Fund.

Application of gifts or bequests

9. (1) Notwithstanding anything in this Act (other than sub-section (2) of this section) or the Audit Act 1901 (other than section 62B of that Act), any moneys held by the Minister for Finance upon trust for the purposes of the Fund, or accepted by the Minister for Finance for the purposes of the Fund subject to a condition, shall not be dealt with except in accordance with the obligations of the Minister for Finance as trustee of the trust or as the person who has accepted the money subject to the condition, as the case may be.

(2) Separate accounts shall be kept of moneys standing to the credit of the Fund representing amounts to which sub-section (1) applies.

PART IV-SOIL CONSERVATION ADVISORY COMMITTEE

Soil Conservation Advisory Committee

10. (1) For the purposes of this Act, there shall be a Soil Conservation Advisory Committee.

(2) The function of the Committee is to make recommendations to the Minister with respect to-

(a) priorities and strategies for activities by the Commonwealth relating to soil conservation;

- (b) proposed agreements and arrangements under this Act; and
- (c) the operation of this Act and agreements and arrangements made under this Act.

Constitution of Committee

11. (1) The Committee shall consist of-

- (a) 2 persons nominated by the organization known as the Australian Soil Conservation Council to represent the Council;
- (b) one person to represent the Department; and
- (c) at least 2 and not more than 4 other persons with experience in, special knowledge of, or educational qualifications relevant to, soil conservation.

(2) The members shall be appointed by the Minister and hold office on a part-time basis.

(3) A member referred to in paragraph (1) (a) or (c) holds office, subject to this Act, for such term, not exceeding 3 years, as the Minister specifies in the instrument of appointment.

(4) The member referred to in paragraph (1) (b) holds office during the pleasure of the Minister.

(5) If the office of a member referred to in paragraph (1) (a) or (c) becomes vacant before the end of the term for which the member was appointed, the Minister may appoint a person (being a person, in the case of the office of a member referred to in paragraph (1) (a), nominated by the Australian Soil Conservation Council) to hold that office for the remainder of that term.

(6) The exercise of a power or the performance of a function by the Committee is not invalidated by reason only that-

(a) there is a vacancy for a period of not more than 3 months in an office of a member referred to in paragraph (1) (a) or (b); or

(b) the number of members referred to in paragraph (1) (c) falls below 2 for a period of not more than 3 months.

Presiding Member

12. (1) There shall be a Presiding Member of the Committee, who shall be appointed by the Minister from among the members.

(2) The Minister may terminate a member's appointment as Presiding Member at any time.

Deputy members

13. (1) A member referred to in paragraph 11 (1) (a) or (b) may, with the approval of the Minister, appoint a person to be the deputy of the member.

(2) A member may revoke the appointment of a person as the member's deputy but the revocation is not effective until the member has given notice of the revocation in writing to the Minister.

(3) The deputy of a member is entitled, in the event of the absence of the member from a meeting of the Committee, to attend that meeting and, when so attending, shall be deemed to be a member.

(4) A deputy member is not entitled to preside at a meeting of the Committee.

Removal and resignation

14. (1) The Minister may terminate the appointment of a member or deputy member for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of a member referred to in paragraph 11 (1) (a) on the request of the Australian Soil Conservation Council.

(3) If a member or deputy member fails, without reasonable excuse, to comply with section 16, the Minister shall terminate the appointment of the member or deputy member.

(4) A member may resign the office of member by writing signed by the member and delivered to the Minister.

(5) The deputy of a member may resign the office of deputy member by writing signed by the deputy member and delivered to the member.

(6) A member whose deputy resigns in accordance with sub-section (5) shall forthwith give notice of the resignation, in writing, to the Minister.

Remuneration and allowances

15. (1) Each member or deputy member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination by the Tribunal is in operation, each member or deputy member shall be paid such remuneration as is prescribed.

(2) Each member or deputy member shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) do not apply to a member referred to in paragraph 11 (1) (b) or to the deputy of such a member.

(4) Sub-sections (1) and (2) have effect subject to the Remuneration Tribunals Act 1973.

Disclosure of interests

16. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Committee and the member shall not, unless the Minister or the Committee otherwise determines-

- (a) be present during any deliberation of the Committee with respect to that matter; or
- (b) take part in any decision of the Committee with respect to that matter.

(3) For the purpose of the making of a determination by the Committee under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not-

- (a) be present during any deliberation of the Committee for the purpose of making the determination; or
- (b) take part in the making by the Committee of the determination.

Meetings of Committee

17. (1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.

(2) The Presiding Member may at any time convene a meeting of the Committee.

(3) At a meeting of the Committee, 4 members constitute a quorum.

(4) Subject to sub-section (5), the Presiding Member shall preside at all meetings of the Committee.

(5) In the event of the absence of the Presiding Member from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting.

(6) Questions arising at a meeting of the Committee shall be determined by a majority of the members present and voting.

(7) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

PART V-MISCELLANEOUS

Appointment of consultants

18. (1) The Committee may, on behalf of the Commonwealth, with the approval of the Minister engage persons having suitable qualifications and experience as consultants to the Committee.

(2) The terms and conditions of the engagement of a person under sub-section (1) are such as are determined by the Committee with the approval of the Minister.

Annual report

19. (1) The Committee shall, as soon as practicable after each 30 June, prepare and give to the Minister a report on the operation of this Act and agreements and arrangements made under this Act during the year ending on that date.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

(3) The first report of the Committee under sub-section (1) shall relate to the period commencing on the day on which this Act comes into operation and ending on 30 June 1986.

Transitional

20. If, at a time before the Australian Soil Conservation Council comes into existence, the Australian Agricultural Council purports to do an act or thing pursuant to this Act in the name of the Australian Soil Conservation Council, the act or thing is as valid as it would have been if the Australian Soil Conservation Council had been in existence at that time and had done that act or thing.

Regulations

21. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters-

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.