

SOIL CONSERVATION AND RIVERS CONTROL AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Soil Conservation and Rivers Control Act 1941.

Clause 1 relates to the Short Title and date of commencement.

Clauses 2 to 7 of the Bill are to come into force on 1 April 1984. The remainder of the Bill is to come into force on the date on which the Bill receives the Governor-General's assent.

Clauses 2 to 7 provide for the dissolution of the Soil Conservation and Rivers Control Council and for the assumption of its functions by the National Water and Soil Conservation Authority.

Clause 8 repeals section 12 of the principal Act, which provides that the Soil Conservation and Rivers Control Council has the same powers as a Commission of Inquiry, and substitutes a new section.

The new section rewrites that provision to take into account amendments to the Commissions of Inquiry Act 1908.

Clause 9 amends section 15 of the principal Act and increases the penalties for offences against regulations made under section 14.

The maximum fine is increased from \$200 to \$1,000.

The maximum daily fine for a continuing offence is increased from \$10 to \$100.

Clause 10 amends section 17 of the principal Act by altering the penalty for offences committed on soil conservation reserves.

The present maximum penalty is imprisonment for 3 months or a fine of \$200, or both.

The new maximum penalty is a fine of \$1,000.

Clause 11 repeals section 21 of the principal Act, relating to surveys and inspections, and substitutes a new section.

The new section updates the references to Part V of the Public Works Act 1928. Sections 110, 111, and 112 of the Public Works Act 1981 are now applied.

Clause 12 repeals subsection (2) of section 33A of the principal Act, which provides that a Tribunal appointed by the Soil Conservation and Rivers Control Council to conduct an inquiry has the same powers as a Commission of Inquiry, and substitutes a new section.

The new section rewrites that provision to take into account amendments to the Commissions of Inquiry Act 1908.

Clause 13 inserts new sections 33B to 33J in the principal Act.

The new provisions provide for rights of appeal on questions of law from decisions of the Council or a Tribunal under section 33A of the principal Act, and are in accordance with a recommendation of the Public and Administrative Law Reform Committee.

Clause 14 repeals section 132 of the principal Act, relating to surveys and inspections, and substitutes a new section.

The new section updates the references to Part V of the Public Works Act 1928. Sections 110, 111, and 112 of the Public Works Act 1981 are now applied.

Clause 15 amends section 151 of the principal Act by increasing the maximum fines which may be prescribed for breaches of bylaws.

The maximum fine is increased from \$100 to \$1,000.

The maximum daily fine for a continuing offence is increased from \$10 to \$100.

Clause 16 amends section 153 of the principal Act by increasing the maximum fines for obstruction and wilful damage.

The maximum fine for obstruction is increased from \$20 to \$100.

The maximum fine for wilful damage is increased from \$10 to \$100.

Clause 17 amends section 154 of the principal Act by altering the penalty for damaging watercourses and works.

The present maximum penalty is imprisonment for 3 years or a fine of \$1,000.

The new maximum penalty is a fine of \$10,000.

Clause 18 amends section 155 of the principal Act by increasing the maximum fine for interfering with watercourses from \$200 to \$2,000.

Clause 19 increases the penalty under section 38 of the Soil Conservation and Rivers Control Amendment Act 1959 from \$200 to \$2,000 and also provides that in the case of a continuing offence a convicted person is liable to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued.

Hon. A. P. D. Friedlander

SOIL CONSERVATION AND RIVERS CONTROL AMENDMENT

ANALYSIS

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1. Short Title and commencement	33B. Appeal on a question of law
2. Soil Conservation and Rivers Control Council dissolved	33C. Notice of appeal
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5. Objects of Authority under principal Act	33F. Dismissal of appeal
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10. Offences in relation to soil conservation reserves	14. Powers of Boards to enter for survey and investigation
11. Powers of Council to enter for survey and investigation	15. Increasing penalties for breach of bylaws
12. Council or Tribunal to hear disputes, etc.	16. Increasing penalties for obstruction, etc.
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A BILL INTITULED

An Act to amend the Soil Conservation and Rivers Control Act 1941

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Soil Conservation and Rivers Control Amendment

No. 93—1

Act 1983, and shall be read together with and deemed part of the Soil Conservation and Rivers Control Act 1941* (hereinafter referred to as the principal Act).

(2) **Sections 2 to 7** of this Act shall come into force on the 1st day of April 1984. 5

(3) Except as provided in **subsection (2)** of this section, this Act shall come into force on the day on which it receives the Governor-General's assent.

2. Soil Conservation and Rivers Control Council dissolved—(1) The Soil Conservation and Rivers Control Council is hereby dissolved. 10

(2) The First Schedule to the Fees and Travelling Allowances Act 1951 is hereby amended by omitting the item relating to the Soil Conservation and Rivers Control Council.

(3) Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended by omitting the words "The Soil Conservation and Rivers Control Council". 15

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, before the definition of the term "Catchment Board", the following definition: 20

“ ‘Authority’ means the National Water and Soil Conservation Authority established under the Water and Soil Conservation Act 1967.”

(2) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term "Council". 25

4. Repealing provisions relating to membership, etc., of Council—(1) Sections 3, 4, and 4A to 9 of the principal Act are hereby repealed.

(2) The following enactments are hereby consequentially repealed: 30

(a) Section 3 of the Soil Conservation and Rivers Control Amendment Act 1946:

(b) Section 3 of the Soil Conservation and Rivers Control Amendment Act 1948:

(c) Section 2 of the Soil Conservation and Rivers Control Amendment Act 1952: 35

(d) Section 3 of the Soil Conservation and Rivers Control Amendment Act 1958:

(e) Section 3 of the Soil Conservation and Rivers Control Amendment Act 1959: 40

*Reprinted 1969, Vol. 4, p. 3063

Amendments: 1970, No. 43; 1971, No. 129; 1972, No. 96; 1973, No. 91; 1977, No. 64; 1979, No. 110; 1980, No. 141; 1982, No. 100

(f) Section 2 of the Soil Conservation and Rivers Control Amendment Act 1964:

(g) Section 6 of the Water and Soil Conservation Act 1967:

5 (h) So much of Part III of the Third Schedule to the Local Government Amendment Act 1979 as relates to section 3 of the principal Act.

5. Objects of Authority under principal Act—Section 10 of the principal Act is hereby amended by omitting the words “for which the Council is established are”, and substituting the 10 words “of the Authority under this Act shall be”.

6. Functions of Authority under principal Act—

(1) Section 11 (1) of the principal Act is hereby amended by omitting the words “The general functions of the Council”, and substituting the words “The general functions of the 15 Authority under this Act”.

(2) Section 11 (1) of the principal Act is hereby amended by omitting the words “for which the Council is established”, and substituting the words “of the Authority under this Act”.

7. References to Soil Conservation and Rivers Control

20 **Council to be read as references to National Water and Soil Conservation Authority, etc.**—(1) The principal Act (other than sections 2 to 4, 4A to 10, and 11 (1)) is hereby amended by omitting the word “Council” wherever it occurs as a reference to the Soil Conservation and Rivers Control 25 Council, and substituting in each case the word “Authority”.

(2) After the commencement of this section, every reference to the Soil Conservation and Rivers Control Council in any enactment or regulations or in any document whatever, unless the context otherwise requires, shall be read as a reference to 30 the National Water and Soil Conservation Authority.

8. Council to have powers of Commission of Inquiry—

The principal Act is hereby amended by repealing section 12, and substituting the following section:

35 “12. (1) For the purposes of enabling it to carry out its objects and functions, the Council shall have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908.

40 “(2) Section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908 shall apply to all persons involved in any capacity in any exercise by the Council of its powers under **subsection (1)** of this section as if the exercise of those powers were an inquiry conducted by a Commission under that Act.

“(3) The Council shall have, in relation to the exercise of its powers under **subsection (1)** of this section, the same immunities and privileges as are possessed by a District Court Judge in the exercise of his civil jurisdiction.”

9. Increasing penalty for offences against regulations— 5

Section 15 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

- (a) By omitting the words “of \$200”, and substituting the words “not exceeding \$1,000”;
- (b) By omitting the words “of \$10”, and substituting the 10 words “not exceeding \$100”.

10. Offences in relation to soil conservation reserves—

Section 17 (1) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting the words “imprisonment for three months or to a 15 fine of \$200 or to both such imprisonment and such fine”, and substituting the words “a fine not exceeding \$1,000”.

11. Powers of Council to enter for survey and investigation—The principal Act is hereby amended by repealing section 21, and substituting the following section: 20

“21. (1) The provisions of sections 110, 111, and 112 of the Public Works Act 1981 shall apply in respect of works which the Council is authorised to undertake and to the carrying out of any of the Council’s functions as if references in those sections to the Minister of Works and Development were 25 references to the Council.

“(2) For the purposes of taking levels or making surveys or inspections, any person authorised under section 110 or section 111 of the Public Works Act 1981 (as applied by **subsection (1)** of this section) may examine any dam, weir, sluice, flood gate, 30 or stopbank, or any other work erected in or upon any watercourse, and open or raise any flood gate or sluice, and make any soundings, or bore the bed or channel of any part of any watercourse.”

12. Council or Tribunal to hear disputes, etc.—Section 35 33A of the principal Act (as inserted by section 2 of the Soil Conservation and Rivers Control Amendment Act 1958) is hereby amended by repealing **subsection (2)**, and substituting the following subsections:

“(2) For the purposes of inquiring into any matter, the 40 Tribunal shall have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908.

“(3) Section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908 shall apply to all persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a Commission under that Act.

5 “(4) The Tribunal shall have, in relation to any such inquiry, and any decision on any such matter, the same immunities and privileges as are possessed by a District Court Judge in the exercise of his civil jurisdiction.”

13. New sections relating to appeals inserted—The
10 principal Act is hereby amended by inserting in Part I, after section 33A (as so inserted), the following sections:

“33B. **Appeal on a question of law**—(1) Where any party to any proceedings before the Council or any Tribunal under section 33A of this Act is dissatisfied with any decision of the
15 Council or Tribunal as being erroneous in point of law, he may appeal to the High Court on that question of law.

“(2) Subject to **sections 33c to 33i** of this Act, every appeal under this section shall be dealt with in accordance with the rules of Court.

20 “33c. **Notice of appeal**—(1) Every appeal under **section 33b** of this Act shall be instituted by the appellant lodging a notice of appeal within 1 month after the date of the decision with—

“(a) The Registrar of the High Court in Wellington; and

“(b) The Secretary of the Council.

25 “(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other party to the inquiry held by the Council or Tribunal.

“(3) Every notice of appeal shall specify—

30 “(a) The decision or the part of the decision appealed from;

“(b) The error of law alleged by the appellant;

“(c) The question of law to be resolved; and

35 “(d) The grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved.

“(4) The Secretary of the Council shall, as soon as is practicable after receiving a copy of the notice of appeal, send a copy of the whole of the decision appealed from to the
40 Registrar of the High Court in Wellington.

“33D. **Right to appear and be heard on appeals**—(1) Any party to the inquiry held by the Council or Tribunal who wishes to appear and be heard on the hearing of the appeal shall, within 10 days after the date of the service on him of a copy of the notice of appeal, give notice of that party’s intention to appear and be heard. 5

“(2) Any party who gives notice of intention to appear and be heard, and the appellant, shall be parties to the appeal and shall be entitled—

“(a) To be served with every document which is thereafter 10 filed or lodged with the Registrar of the High Court in Wellington and which relates to the appeal; and

“(b) To receive a notice of the date set down for the hearing of the appeal.

“33E. **Orders relating to determination of appeals**—(1) 15 Subject to **subsections (2) and (3)** of this section, the High Court may, of its own motion or on the application of any party to the appeal, make all or any of the following orders:

“(a) An order directing the Council or Tribunal to lodge with the Registrar of the High Court in Wellington any 20 document or other written material or any exhibit in the possession or custody of the Council or Tribunal:

“(b) An order directing the Council or Tribunal to lodge with the Registrar a report recording, in respect of any 25 matter or issue which the Court may specify, any of the findings of fact of the Council or Tribunal which are not set out or fully set out in its decision:

“(c) An order directing the Council or Tribunal to lodge with the Registrar a report setting out, in respect of any 30 matter or issue which the Court may specify, any reasons or consideration of the Council or Tribunal to which the Council or Tribunal had regard but which are not set out in its decision.

“(2) An application under **subsection (1)** of this section shall 35 be made—

“(a) In the case of the appellant, within 1 month after the date of the lodging of the notice of appeal; or

“(b) In the case of any other party to the appeal, within 1 month after the date of the service on him of a 40 copy of the notice of appeal.

“(3) The High Court may make an order under **subsection (1)** of this section only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the High Court thinks fit.

5 “**33F. Dismissal of appeal**—The High Court may dismiss any appeal under **section 33B** of this Act—

“(a) If the appellant does not appear at the time appointed for the hearing of the appeal; or

10 “(b) If the appellant does not prosecute his appeal with all due diligence and any party applies to the Court for the dismissal of the appeal.

“**33G. Appeal in respect of additional point of law**—

Where any party to an appeal under **section 33B** of this Act, other than the appellant, wishes to contend at the hearing of
15 the appeal that the decision appealed from is erroneous on a point of law other than those set out in the notice of appeal he shall, within 1 month after the date of the service on him of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court in Wellington. The
20 provisions of **sections 33B and 33C (2) and (3), 33E, 33F, 33H, and 33I** of this Act shall, as far as they are applicable and with the necessary modifications, apply to any notice lodged under this section as if it were a notice of appeal.

“**33H. Extension of time**—The High Court or a Judge
25 thereof may, in its or his discretion, on the application of the appellant or intending appellant or any other party, extend any time prescribed or allowed under any of the provisions of **sections 33C to 33G** of this Act for the lodging of any notice, application, or other document.

30 “**33I. Date of hearing**—When any party to the appeal notifies the Registrar of the High Court in Wellington—

“(a) That the notice of appeal has been served on all parties to the proceedings; and

“(b) Either—

35 “(i) That no application has been lodged under **section 33E** of this Act and that no order has been made under that section; or

“(ii) That any application lodged under **section 33E** of this Act has been heard and that any order under
40 that section has been complied with,—

the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date for the hearing as soon as is practicable.

“33j. **Appeals to Court of Appeal**—The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination of the High Court under **section 33B** of this Act as if the determination were made under section 107 of the Summary Proceedings Act 1957.”

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14. Powers of Boards to enter for survey and investigation—The principal Act is hereby amended by repealing section 132, and substituting the following section:

“132. (1) The provisions of sections 110, 111, and 112 of the Public Works Act 1981 shall apply in respect of works which a Board is authorised to undertake and to the carrying out of any of a Board’s functions as if references in those sections to the Minister of Works and Development were references to the Board.

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“(2) For the purposes of taking levels or making surveys or inspections, any person authorised under section 110 or section 111 of the Public Works Act 1981 (as applied by **subsection (1)** of this section) may examine any dam, weir, sluice, flood gate, or stopbank, or any other work erected in or upon any watercourse, and open or raise any flood gate or sluice, and make any soundings, or bore the bed or channel of any part of any watercourse.”

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15. Increasing penalties for breach of bylaws—Section 151 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

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- (a) By omitting the expression “\$100”, and substituting the expression “\$1,000”;
- (b) By omitting the expression “\$10”, and substituting the expression “\$100”.

16. Increasing penalties for obstruction, etc.—Section 153 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended—

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- (a) By omitting from subsection (1) the words “of \$20”, and substituting the words “not exceeding \$100”;
- (b) By omitting from subsection (2) the words “of \$10”, and substituting the words “not exceeding \$100”.

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17. Increasing penalty for damaging watercourses and works—Section 154 (1) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting the words “indictable offence and shall be liable on conviction to imprisonment for a term of three years or to a fine not exceeding \$1,000”, and substituting the words “offence and is liable to a fine not exceeding \$10,000”.

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18. Increasing penalty for interfering with watercourses—Section 155 (2) of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby amended by omitting the words “of \$200”, and substituting
5 the words “not exceeding \$2,000”.

19. Increasing penalties under Soil Conservation and Rivers Control Amendment Act 1959—Section 38 of the Soil Conservation and Rivers Control Amendment Act 1959 (as amended by section 7 (1) of the Decimal Currency Act 1964)
10 is hereby amended by omitting the expression “\$200”, and substituting the words “\$2,000 and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued”.