

1985

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOIL CONSERVATION (FINANCIAL ASSISTANCE) BILL 1985

EXPLANATORY MEMORANDUM

(circulated by authority of the
Minister for Primary Industry,
the Hon John Kerin MP)

OUTLINE

The Soil Conservation (Financial Assistance) Bill 1985 has the following main purposes:

- (1) to provide a statutory basis whereby the Commonwealth can contribute to soil conservation nationally by providing financial assistance to the States, Commonwealth Departments, other institutions and individuals for this purpose.
- (2) to establish a Soil Conservation Advisory Committee comprised of members nominated by the Commonwealth and by the Australian Soil Conservation Council, to recommend priorities, strategies and conditions for expenditure of funds provided under the Bill, and to provide advice on soil conservation in general to the Commonwealth, and to report annually on the operation of the Bill.

The financial impact of the Bill can not be accurately quantified. The Bill does not provide for any fixed or indexed levels of financial assistance, so that expenditure will be determined annually in the annual budget process. Administrative costs are expected to be \$120,000 a year, including the allowances and expenses of the Soil Conservation Advisory Committee. The direct benefits of soil conservation financed under the Bill can not be readily estimated, but are expected to be significant. It is possible that some revenue could be generated by way of patents and inventions.

SOIL CONSERVATION (FINANCIAL ASSISTANCE) BILL 1985

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1: Short Title

1. The nature of financial assistance to be provided is described in Part II.

Clause 2: Commencement

2. The Bill will come into effect when it receives Royal Assent.

Clause 3: Interpretation

Sub-Clause 3(1)

3. An "agreement", described more fully under Clauses 4 and 6 (see items 14 and 20), forms the instrument for providing funds for specified projects undertaken by a State or by institutions or persons that are not Commonwealth Departments.

4. "appoint" is also taken to mean re-appoint.

5. "Committee" is the Soil Conservation Advisory Committee, the nature and functions of which are specified in Clause 10 (see item 28) but which significantly include advice to the Minister on provision of funds for candidate soil conservation projects, and on soil conservation in general.

6. "deputy member" is more fully described in Clause 13 (see item 31 below) and relates to the deputy of a member of the Soil Conservation Advisory Committee (see item 28).

7. "Fund" refers to the National Soil Conservation Program Fund established by Clause 8 (see item 26) which is a trust account and which will be used to fund projects that are undertaken by persons or organisations other than Commonwealth Departments and State Governments, and to meet certain administrative expenses.

8. "member" means a member of the Soil Conservation Advisory Committee (see item 28).

9. "officer" means an officer of the Department administering the Act, presently the Department of Primary Industry.

10. "Presiding Member" is the member of the Soil Conservation Advisory Committee who will preside at meetings and have a casting vote. See Clauses 12 and 17 (items 30 and 35).

11. "project" means an activity relating to soil conservation that is funded under the Bill in accordance with an arrangement or agreement. Activities could include the prevention, mitigation or control of soil erosion and land degradation by direct measures such as earthworks, or by indirect measures such as education and research.

12. "State", for the sake of convenience, also means the Northern Territory.

Sub-Clause 3(2)

13. Authorised officers, who have powers and responsibilities under a number of Clauses in the Bill, are those officers authorised in writing by the Minister for these purposes. The purpose of having authorised officers is to facilitate administration of the Bill while retaining Ministerial responsibility.

PART II - FINANCIAL ASSISTANCE

Clause 4: The States

Sub-Clause 4(1)

14. This Clause concerns the provision of financial assistance to the States, including State bodies such as soil conservation services or agencies. (Provision of financial assistance to Commonwealth Departments is covered under Clause 5, while other persons and institutions are covered under Clause 6). The basis for the provision of financial assistance will be a written agreement between the Minister and the appropriate State Minister under Clause 4(1). While the Minister may be guided by the Committee's recommendations as to the desirability and priority of candidate projects (see item 28), the final authority rests with the Minister as regards selection and funding of projects. Ministerial agreements are commensurate with the government-to-government status of the transaction. Clause 4(1) also requires that funds be provided either in respect of projects specified in the agreement, or for projects which could subsequently be specified by amending agreements to a head agreement.

Sub-Clause 4(2)

15. Financial assistance to the States will be provided where there is a written agreement. Clause 4(2) indicates that the agreement must conform with the provisions of other Clauses in the Bill (see Sub-clause 4(5) and Clause 7 in particular).

Sub-Clause 4(3)

16. Any agreements or amending agreements will be tabled in each House within 15 sitting days of the making of the agreement, so that they can receive proper Parliamentary scrutiny.

Sub-Clause 4(4)

17. Where progress of a project is dependent on provision of funds under the Bill, it is possible to make an advance of some or all of the amount, provided the agreement allows for this. The conditions attached to financial assistance, including such advances are set out in Clause 7 (see items 21 to 25). Advances may, for example, be required where the relevant State agency may have difficulty progressing a project until the funds are actually available.

Sub-Clause 4(5)

18. Provision of financial assistance to the States may only be made from monies appropriated specifically for this purpose. Separate appropriations under Clauses 5 and 8, concerning payments to Commonwealth Departments and to other persons, allow full Parliamentary scrutiny of each component of the financial assistance granted by the Commonwealth.

Clause 5: Commonwealth Departments

19. While there are non-statutory means of transferring funds between Commonwealth Departments, their inclusion in the Bill as a separate appropriation item will more readily enable identification of the relative extent to which the soil conservation activities of Commonwealth Departments receive financial support under the Bill. Clause 5(1) requires that all payments be approved by the Minister and that these should be in terms of arrangements. These arrangements will not be subject to the conditions that apply to agreements with the States or with other persons, given that they are internal arrangements within the Commonwealth, subject to scrutiny by the Commonwealth Auditor-General and other relevant financial directions of the Commonwealth.

Clause 6: Other persons

20. Clause 6(3) indicates that "person" also refers to organisations, so that this Clause may encompass universities, research organisations, individuals or private companies and the like. Agreements under Clause 6 vary from agreements with States (see item 14) in that the Minister need not make the actual agreement, the reason being that such agreements would be more numerous and are not inter-government transactions. However, the Minister must approve any agreements made by authorised officers. As with the agreements with States, the Minister may approve advances of some or all of a payment for a project, provided that there is a corresponding reference in the agreement. Financial assistance under Clause 6 will be made from the National Soil Conservation Program Fund, which is a trust account (see item 26).

Clause 7: Conditions, etc

21. Clause 7(1) sets out the basic components that would normally be contained in agreements. These including making all payments subject to conditions concerning their amount, timing, frequency, whether or not by advances, etc. It further allows for agreement on how the project is to be executed, and for review of the agreement and any consequential amendment of the agreement. These broad conditions are intended to ensure that monies are used efficiently and in the intended manner. Where there is a failure, Clause 7(2) must be applied.

22. Clause 7(2) describes conditions that must be included in all agreements. They provide that where either the Minister or an authorised officer is satisfied that conditions have not been met or that the project does not conform to the agreement, the payee will refund monies or have monies deducted from any further payments due for the project or for other projects under the Bill. The same conditions apply if there has been an overpayment to the payee in respect of a project or projects under the Bill. Either the Minister or an authorised officer may initiate action where there is a breach of conditions but the Minister will determine the amount of any refund or deduction. The purpose of Clause 7(2) is to provide the Commonwealth with specific powers to ensure that financial assistance is being used in the agreed and intended manner, and to recover monies where this is not the case. In general, it is expected that determinations will be made by the Minister where recovery action may involve significant or disputed amounts, and the authorised officer will take action in less significant cases, such as where refund of overpayment is involved.

23. Clause 7(3) describes conditions that would normally be contained in agreements concerning financial accountability and reporting requirements that would have to be met before a payee became fully entitled to payment under the agreement. In the case of the States, the Auditor-General or the responsible chief executive of the body responsible for expenditure of monies received under the Bill must provide an authorised officer with a statement and certificate that the money was expended in accordance with an agreement, or state that a certificate to this effect has been received from a qualified accountant. The latter option would normally apply where some work on the project may have been undertaken by a person outside the direct control of the payee, such as a contractor. In the case of other persons a statement and a certificate from a qualified accountant are required. However, if the payee in this case is subject to audit by a State or Commonwealth Auditor-General, for example an organisation such as CSIRO or a university, the responsible chief executive (or another officer specified in the agreement) may provide the certificate. An authorised officer can also require any further information to be provided. Furthermore, where the Minister authorises this in writing, an authorised officer or other person is entitled

to access to all financial and other documents concerning a project. The payee may also be required to provide a special or interim report on a project to an authorised officer (in addition to the requisite final report) and the authorised officer may specify the particulars to be required in a report. This would normally arise if there were reasons to believe that there was unsatisfactory progress or some other cause for concern in connection with a project. All the above conditions are clearly directed not only at providing the opportunity to detect mismanagement etc, but also to enable full accounting of the use to which financial assistance is put in a particular project and consequently to enable assessment of the Commonwealth's role in soil conservation.

24. Clause 7(4) specifies that an agreement may, where appropriate, provide that a payee will pay to the Commonwealth some or all of any net income derived from a project funded by the Bill, and makes similar provisions concerning patents and the disposal of goods. This would be a matter for consideration in the light of the nature of each project, such as the anticipated amount of income, how readily it could be realised, etc. The terms of the agreement in respect of Clause 7(4) can be determined by the Minister or an authorised officer and the nature of the project and amounts involved would indicate which would be appropriate. The purpose in providing a capacity to recover monies such as those described above, is that the Bill is intended to provide support for soil conservation, and not to provide revenue to organisations, some of which may have activities outside soil conservation to which such revenue could be applied.

25. Clause 7(5) indicates that a payee is the party to which amounts are payable under the agreement. Clause 7(5) also specifies that all the conditions in Clause 7 are applicable to advances as well as payments for expenditure, and specifies the requisite professional status of accountants who may provide certificates under Clause 7(3).

PART III - NATIONAL SOIL CONSERVATION PROGRAM FUND

Clause 8: National Soil Conservation Program Fund

26. This Clause establishes a trust account, into which will be paid any monies appropriated for use by other persons (that is, not for State or Commonwealth Department projects), other monies such as bequests, and payments to the Commonwealth by other persons under Clauses 7(2) and 7(4). The Fund will be used to make payments and advances to other persons under Clause 6, to meet expenses associated with the Soil Conservation Advisory Committee (see item 28) and for other administrative costs associated with the Bill which the Minister considers should be paid for out of the Fund. Appropriations will be paid directly into the Fund. The Fund is established under section 62A of the Audit Act 1901. The reason for establishing a trust account for the purpose of

providing financial assistance to persons under Clause 6, as opposed to Clause 4 or 5 (States and Commonwealth Departments) is to facilitate the management of projects by persons, such as universities or individual researchers, by providing flexibility in the supply of financial assistance that would not always be possible in the normal budget cycle. Experience has shown that such flexibility is necessary to efficiently manage the relatively small but numerous grants to individuals or institutions, but not with the State agencies which generally have some capacity to cope with unexpected circumstances.

Clause 9: Application of gifts or bequests

27. Clause 9(1) ensures that any conditions applying to bequests or gifts, for example a condition that the bequest should be used specifically for soil conservation in one State, can be observed. All such monies must, in terms of Clause 9(2), be specifically accounted for.

PART IV - SOIL CONSERVATION ADVISORY COMMITTEE

Clause 10: Soil Conservation Advisory Committee

28. The Committee's function will partly be to advise the Minister how funds that are appropriated under this Bill should be distributed amongst prospective projects. It will have general responsibility for recommending to the Minister the nature of the conditions that should apply to agreements and arrangements. The Committee will also advise the Minister on the effectiveness of the Act and on the broader issues associated with the Commonwealth's involvement in soil conservation.

Clause 11: Constitution of the Committee

29. The Committee will have between 5 and 7 members. The two members appointed by the Australian Soil Conservation Council (or until that body is fully functional the Australian Agricultural Council - see Clause 20) will probably be State Government employees, but will represent Council rather than a State or States. The Commonwealth will be represented by a single member. Between 2 and 4 other persons will be members, and the Bill specifies that they should be in a position to contribute special skills or knowledge to soil conservation. The mix of membership required under the Bill will ensure that the Committee is expert and non-partisan, and that it is large enough to offer a balanced view but small enough to operate efficiently and effectively. The three year term of membership will provide the opportunity for fresh views to be brought to the Committee, without losing stability or continuity. The Minister will appoint all members, but under Clause 11(2) (a) will be obliged to appoint the two members nominated by Council. Clause 11 also provides that where the positions held by Departmental or Council-nominated members are vacant for

over 3 months, or where the number of other members falls below two for over 3 months, the Committee's powers will be invalidated until the position is rectified. This serves to ensure that membership of the Committee will remain representative, within reasonably flexible limits.

Clause 12: Presiding Member

30. The Presiding Member, appointed from the members by the Minister, will fill the general functions of the Chair. The appointment can be revoked by the Minister at any time.

Clause 13: Deputy members

31. Only members who represent the Department or Council can appoint and revoke the appointment of their own deputy, subject to the Minister's approval in the first case and in the second by advising the Minister. This provides a desirable measure of flexibility. A deputy member can not preside at a meeting.

Clause 14: Removal and resignation

32. The Bill provides that removals and resignations should be subject to appropriate standards.

Clause 15: Remuneration and allowances

33. With the exception of the Commonwealth member, all members and deputy members will be remunerated at rates determined or prescribed by the Remuneration Tribunal. Allowances are payable at rates prescribed by the Tribunal.

Clause 16: Disclosure of interest

34. Members with a potential or actual pecuniary interest in any matter before the Committee must draw this to the attention of the Committee. The Minister or the Committee will determine (in the absence of that member) whether or not that member should be party to any deliberation or decision by the Commonwealth on the matter. This process will further ensure that the Committee's decisions on projects and agreements are impartial.

Clause 17: Meetings of Committee

35. Clause 17 concerns the frequency of meetings and procedural matters such as the quorum, casting vote by the Presiding Member, etc.

PART V - MISCELLANEOUS

Clause 18: Appointment of consultants

36. The Committee may appoint consultants, with the approval of the Minister, to advise the Committee. Terms and conditions of engagement developed by the Committee would require the

Minister's approval. Given the broad base of the Committee, it is probable that consultants would seldom be required.

Clause 19: Annual report

37. The Committee will present the Minister with an annual report, which the Minister will table in each House within 15 sitting days of receipt. The report will cover such matters as the nature and outcome of projects funded under the Act, total outlays, and the operation and accounts of the Fund. The first report under the Bill will be for the year ending 30 June 1986.

Clause 20: Transitional

38. The purpose of this Clause is to ensure that, if the Australian Soil Conservation Council is not operational by the time the Bill is enacted, its functions can in the interim be undertaken by the Australian Agricultural Council, thereby ensuring that no unnecessary delay in establishing the Soil Conservation Advisory Committee need occur. The need for this Clause arises because establishment of the Australian Soil Conservation Council has only recently been recommended, and it is not certain that it will be operational before the Bill is enacted.

Clause 21: Regulations

39. The Governor-General may make regulations under the Act.

