South Australia

Native Vegetation Act 1991

An Act to provide incentives and assistance to landowners in relation to the preservation and enhancement of native vegetation; to control the clearance of native vegetation; and for other purposes.

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1 Principles of clearance of native vegetation
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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Native Vegetation Act 1991*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

biological diversity or ***biodiversity*** means the variety of life forms represented by plants, animals and other organisms and micro-organisms, the genes that they contain, and the ecosystems and ecosystem processes of which they form a part;

breach of this Act means a contravention of, or a failure to comply with, a provision of this Act and ***breached*** has a corresponding meaning;

building includes a structure that is fixed to land;

to clear native vegetation includes to cause or permit the clearance of native vegetation;

clearance, in relation to native vegetation, means—

(a) the killing or destruction of native vegetation;

(b) the removal of native vegetation;

(c) the severing of branches, limbs, stems or trunks of native vegetation;

(d) the burning of native vegetation;

(e) any other substantial damage to native vegetation,

and includes the draining or flooding of land, or any other act or activity, that causes the killing or destruction of native vegetation, the severing of branches, limbs, stems or trunks of native vegetation or any other substantial damage to native vegetation;

the Council means the Native Vegetation Council established by this Act;

ERD Court means the Environment, Resources and Development Court;

the Fund means the Native Vegetation Fund established by this Act;

isolated plant—see subsections (2) and (3);

land includes—

(a) land submerged by water; and

(b) an interest in land;

local council means a municipal or district council;

member means a member of the Council;

Minister for the Adelaide Dolphin Sanctuary means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

Murray-Darling Basin has the same meaning as in the *Murray-Darling Basin Act 1993*;

native vegetation means a plant or plants of a species indigenous to South Australia including a plant or plants growing in or under waters of the sea but does not include—

(a) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by regulation to be included in this definition; or

(b) a plant intentionally sown or planted by a person unless the person was acting—

(i) in compliance with a condition imposed by the Council under this Act or by the Native Vegetation Authority under the repealed Act, or with the order of a court under this Act or the repealed Act; or

(ii) in pursuance of a proposal approved by the Council under Part 4 Division 2; or

(iii) in compliance with a condition imposed by a Minister, statutory authority or prescribed person or body under—

(A) the *River Murray Act 2003*; or

(B) the *Water Resources Act 1997*; or

(C) any other Act prescribed by the regulations for the purposes of this paragraph;

NRM region means a Natural Resources Management Region established under the *Natural Resources Management Act 2004*;

owner of land means—

(a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;

(ab) in relation to dedicated land within the meaning of the *Crown Lands Act 1929* that has not been granted in fee simple but which is under the care, control and management of a Minister, local council or other body or person—the Minister, council or other body or person;

(b) in relation to land held under Crown lease—the lessee;

(c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;

(d) in relation to any other land—the Minister who is responsible for the care, control and management of the land or, if no Minister is responsible for the land, the Minister for Environment and Conservation;

pastoral land means land comprised in a lease granted under the *Pastoral Land Management and Conservation Act 1989* over Crown land for the pasturing of stock and other ancillary purposes;

principles of clearance of native vegetation means principles set out in Schedule 1 to which the Council must have regard when determining an application for consent to clear native vegetation;

the repealed Act means the *Native Vegetation Management Act 1985* repealed by this Act;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

waters of the sea includes any water that is subject to the ebb and flow of the tide.

(2) A plant will be taken to be an isolated plant if—

(a) it is at least one metre in height; and

(b) there is no other plant comprising native vegetation that is 200 millimetres or more in height within 50 metres of it.

(3) Each plant of a group of two or three plants or of a group of plants that is the subject of a determination by the Council under subsection (4) will be taken to be an isolated plant if it would be an isolated plant under subsection (2) except for its proximity to another plant, or other plants, in the group.

(4) The Council may, where in its opinion the circumstances of a particular case justify a determination under this subsection, determine that each plant of a group of four or more plants will be taken to be an isolated plant.

(5) A determination under subsection (4) must be agreed to by all the members of the Council present at the meeting at which it is made.

(6) The distance between two plants for the purposes of subsection (2) will be taken to be the distance between those parts of the plants that are above ground level and are closest to each other.

3A—Substantially intact vegetation

(1) A stratum of native vegetation will be taken for the purposes of this Act to be substantially intact if, in the opinion of the Council—

(a) the stratum has not been seriously degraded by human activity during the immediately preceding period of 20 years; or

(b) the only serious degradation of the stratum by human activity during that period has been caused by fire.

(2) In this section—

stratum of native vegetation means a layer of a plant community consisting of plants that comprise native vegetation and that have a similar growth habit.

4—Application of Act

(1) Subject to this section, this Act applies to the whole of the State.

(2) This Act applies in those parts of the Hundreds of Adelaide, Munno Para, Noarlunga and Yatala—

(a) that are within the zone designated as the Metropolitan Open Space System or Hills Face Zone by a Development Plan or Development Plans under the *Development Act 1993*; or

(b) that are to the east of the Hills Face Zone; or

(c) that are within an area prescribed by regulation for the purposes of this subsection,

but does not, subject to subsection (2a), apply in any other part of those Hundreds.

(2a) This Act applies to the whole of the area of the City of Onkaparinga.

(2b) This Act applies—

(a) in that part of the Hundred of Port Adelaide bounded on the east by the western boundary of Port Wakefield Road and on the south by the northern boundary of the area of the Corporation of the City of Salisbury; and

(b) in that part of the area of the Corporation of the City of Salisbury bounded on the east by the western boundary of Port Wakefield Road;

(c) in any other part of the Hundred of Port Adelaide prescribed by regulation for the purposes of this subsection,

but does not apply in any other part of the Hundred of Port Adelaide.

(2c) However, the Governor should not make a regulation under subsection (2) or (2b) unless—

(a) —

(i) the Governor considers that the regulation should be made in order to enhance the preservation or management of an area that includes significant native vegetation, or in order to assist in the provision of a significant environmental benefit in a particular respect; and

(ii) the Governor is satisfied that the Minister has taken reasonable steps to consult with—

(A) any local council whose area includes any part of the area to which the regulation relates; and

(B) the Environment, Resources and Development Committee of the Parliament; and

(C) any member of the House of Assembly whose electoral district includes any part of the area to which the regulation relates,

about the proposal to make the regulation; or

(b) —

(i) the Governor considers that the regulation should be made as an interim measure pending consultation under paragraph (a); and

(ii) the regulation is expressed to expire not more than two months after the day on which it is made.

(3) The Governor may, by regulation, exclude any other part or parts of the State from the operation of this Act.

5—Act to bind Crown

This Act binds the Crown.

Part 2—Objects of this Act

6—Objects

The objects of this Act include—

(a) the conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation, in order to prevent further—

(i) reduction of biological diversity and degradation of the land and its soil; and

(ii) loss of quantity and quality of native vegetation in the State; and

(iii) loss of critical habitat; and

(b) the provision of incentives and assistance to landowners to encourage the commonly held desire of landowners to preserve, enhance and properly manage the native vegetation on their land; and

(c) the limitation of the clearance of native vegetation to clearance in particular circumstances including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the sustainable use of land for primary production; and

(d) the encouragement of research into the preservation, enhancement and management of native vegetation; and

(e) the encouragement of the re-establishment of native vegetation in those parts of the State where native vegetation has been cleared or degraded.

Part 3—Administration

Division 1—The Native Vegetation Council

7—Establishment of the Council

(1) The Native Vegetation Council is established.

(2) The Council has the powers, functions and duties conferred, assigned or imposed by this Act.

8—Membership of the Council

(1) The Council consists of seven members appointed by the Governor of whom—

(a) one (who will be the presiding member of the Council) must be nominated by the Minister; and

(b) one must be a person selected by the Minister from a panel of three persons nominated by the South Australian Farmers Federation Incorporated; and

(c) one must be a person selected by the Minister from a panel of three persons nominated by the Conservation Council of South Australia; and

(d) 1 must be a person selected by the Minister for the time being responsible for the administration of the *Natural Resources Management Act 2004* from a panel of 3 persons nominated by the NRM Council established under that Act; and

(e) one must be a person selected by the Minister from a panel of three persons nominated by the Local Government Association of South Australia;

(f) one must be nominated by the Commonwealth Minister for the Environment; and

(g) one must be a person with extensive knowledge of, and experience in, the preservation and management of native vegetation nominated by the Minister.

(2) All members of the Council must have some knowledge of, and experience in, the preservation and management of native vegetation.

(3) The members nominated by the South Australian Farmers Federation Incorporated and the Local Government Association of South Australia must be persons who—

(a) carry on a business of primary production (whether as owner or manager of the business); and

(b) live on, or in close proximity to, the land on which the business is carried on; and

(c) manage the business on a daily basis.

(4) At least one member of the Council must be a woman and one must be a man.

(6) The Governor may appoint a deputy to a member of the Council and the deputy may, in the absence, or during a temporary vacancy in the office, of that member, act as a member of the Council.

(7) The appointment of a deputy to a member is subject to the same nomination and qualification requirements as the appointment of the member.

9—Conditions of office

(1) A member of the Council will be appointed for a term not exceeding two years on conditions determined by the Governor and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member may be removed from office by the Governor—

(a) for misconduct; or

(b) for neglect of duty; or

(c) for incompetence; or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

10—Allowances and expenses

A member of the Council, or of a committee established by the Council, is entitled to such remuneration, allowances and expenses as the Governor may determine.

11—Procedures at meetings of the Council

(1) The presiding member will preside at meetings of the Council or, in his or her absence, his or her deputy will preside or, in the absence of both of them, a member chosen by those present will preside.

(2) Subject to subsection (3) the Council may act despite vacancies in its membership.

(3) Four members constitute a quorum of the Council.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the Council but if the members are equally divided the decision of the person presiding at the meeting is the decision of the Council.

(5) Subject to this Act, the Council may determine its own procedures.

12—Validity of acts of the Council and immunity of members

(1) No act or proceeding of the Council is invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability attaches to a member for any act or omission by the member, or by the Council, in good faith and in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge, of duties under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Council attaches instead to the Crown.

13—Personal interest of member

A member who has a personal interest, or a direct or indirect pecuniary interest, in a matter under consideration by the Council must not take part in any deliberations or decision of the Council in relation to that matter.

Maximum penalty: $5 000.

14—Functions of the Council

(1) The Council has the following functions:

(a) to keep the condition of the native vegetation of the State under review; and

(b) to advise the Minister in relation to—

(i) the preservation, enhancement and management of existing native vegetation; and

(ii) the re-establishment of native vegetation on land where native vegetation has been cleared or degraded; and

(iii) research into the preservation, enhancement and management of native vegetation and the re-establishment of native vegetation on cleared land; and

(c) to keep the principles of clearance of native vegetation under review and to advise the Minister of any changes to the principles that it considers are necessary or desirable; and

(d) to determine applications for consent to clear native vegetation under Part 5; and

(da) to assess and respond to applications referred to the Council under the *Development Act 1993*; and

(e) to encourage research into the preservation, enhancement and management of existing native vegetation; and

(f) to encourage the re-establishment of native vegetation on land from which native vegetation has been cleared; and

(g) to administer the Fund pursuant to Division 3; and

(h) such other functions as are assigned to the Council under this or any other Act.

(2) The Council must, when assessing an application referred to the Council, take into account, and seek to further, the objects of this Act and the principles of clearance of native vegetation so far as they are relevant to that application, and must not provide a response that is seriously at variance with those principles.

(3) If the Council has reason to believe that a person may have acted in contravention of this Act, the Council should investigate the matter as expeditiously as possible.

15—Delegation of powers and functions

(1) Subject to this Act, the Council may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to—

(i) the presiding member or another member of the Council; or

(ii) a committee established by the Council (whether or not it consists of or includes a member or members of the Council); or

(iii) a local council or other body corporate; or

(iv) any other person;

(b) may be made subject to such conditions as the Council thinks fit;

(c) is revocable at will and does not derogate from the power of the Council to act in any matter itself.

(3) A delegation and the revocation of a delegation under this section must be in writing.

(4) A delegation under this section may be made to the person for the time being holding an office or position specified in the delegation.

(5) Where the Council delegates powers or functions to a local council in pursuance of this section, the local council may, with the approval of the Council, subdelegate those powers to a committee or officer of the local council.

(5a) The Council may only make a delegation to a local council or an officer of a local council under subsection (2) with the written approval of the relevant council.

(5b) The Council may only make a delegation to a local council or an officer of a local council under subsection (2), or approve a subdelegation to a committee or officer of a local council under subsection (5), if—

(a) in the case of a delegation to a local council or a subdelegation to a committee—the Council makes it a condition of the delegation or approval (as the case may be) that the local council or committee will, in the exercise or performance of a delegated power or function, seek the advice of a person who holds a qualification in a field of natural resource management, or in biology;

(b) in the case of a delegation or subdelegation to an officer of a local council—the officer is a person who holds a qualification in a field of natural resource management, or in biology.

(6) A person to whom powers or functions are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which the delegate has a personal interest or a direct or indirect pecuniary interest.

Maximum penalty: $5 000.

(7) A person who is a member of a local council or the governing body of a body corporate to which powers or functions are delegated under this section is disqualified from taking part in any deliberations or decisions of the local council or body corporate made pursuant to the delegation in relation to any matter in which that person has a personal interest or a direct or indirect pecuniary interest.

Maximum penalty: $5 000.

(8) Despite a preceding subsection, the Council may only delegate a power to act in relation to any matter within the Murray-Darling Basin with the approval of the Minister to whom the administration of the *River Murray Act 2003* is committed.

(9) Despite a preceding subsection, the Council may only delegate a power to act in relation to any matter within the Adelaide Dolphin Sanctuary with the approval of the Minister for the Adelaide Dolphin Sanctuary.

16—Staff

(1) There must be a secretary to the Council and such other staff to assist the Council as the Governor thinks fit.

(2) The secretary and other members of staff will be appointed, and hold office, subject to, and in accordance with, the *Public Sector Management Act 1995* and may hold office in conjunction with any other office in the Public Service of the State.

(3) The Council may, with the approval of the Minister administering a department, make use of the services of officers of that department.

17—Annual report

(1) On or before 31 October in each year, the Council must prepare and present to the Minister a report upon the administration of this Act during the year that ended on the preceding 30 June and must as part of that report, report upon the work of the Council in carrying out its functions and achieving the objects of this Act.

(2) The report must set out the purposes for which money from the Fund was applied in the relevant year and the amount applied for each purpose and must explain why the Fund was applied in that manner.

(3) The Minister must, within six sitting days after receiving a report presented under this section, cause copies of the report to be laid before both Houses of Parliament.

Division 3—The Native Vegetation Fund

21—The Fund

(1) The Native Vegetation Fund is established.

(2) The Fund is subject to the management and control of the Council.

(3) The Fund consists of—

(a) money appropriated by Parliament for the purposes of the Fund; and

(b) fees payable in respect of applications to the Council to clear native vegetation; and

(c) amounts paid into the Fund in accordance with a condition under section 29(11)(d); and

(ca) expiation fees and penalties recovered in respect of offences against this Act; and

(cb) amounts paid into the Fund in accordance with an order under section 31A(6)(f) or (g); and

(d) interest and accretions arising from investment of the Fund.

(3a) If an application to clear native vegetation is made to a local council or other body corporate or other person acting under delegation from the Council, the prescribed fee paid by the applicant under section 28(3)(b)(iii) (excluding the fee prescribed for the report referred to in section 28(3)(b)(iia)) may be retained by the local council or other body or person.

(4) The Fund may, with the approval of the Minister, be invested in a manner determined by the Council.

(5) The Council may make payments from the Fund in accordance with this Act.

(6) Money paid into the Fund under subsection (3)(c), (ca) or (cb) must, as far as practicable, be used—

(a) to establish or regenerate native vegetation on land that is within the same region of the State as the relevant land and that has been selected by the Council for that purpose after having regard to the Regional Biodiversity Plan or Plans (if any) approved by the Minister that apply within that region; and

(b) to preserve and maintain that vegetation once established or reinstated.

(7) In subsection (6)—

relevant land means—

(a) in a case where subsection (3)(c) applies—land that is to be cleared under the consent to which the relevant condition relates;

(b) in a case where subsection (3)(ca) or (cb) applies—land on which the native vegetation involved in the offence or breach of the Act by virtue of which the relevant amount became payable was grown or was situated.

22—Accounts and audit

(1) The Council must keep proper accounts of receipts and payments in relation to the Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Part 4—Heritage agreements, proposals for revegetation and financial and other assistance

Division 1—Heritage agreements

23—Heritage agreements

(1) The Minister may enter into a heritage agreement with the owner of land—

(a) where native vegetation is growing or situated and the Minister considers that provision should be made for the preservation or enhancement of the native vegetation; or

(b) where the land has been re-vegetated with plants of one or more species indigenous to the local area so as to be representative of a naturally occurring plant community and the Minister considers, after having regard to the Regional Biodiversity Plan or Plans (if any) approved by the Minister, and associated pre-European vegetation mapping (if any) undertaken by the Minister, that apply in the vicinity of the relevant land, that provision should be made for the preservation or enhancement of that vegetation.

(2) A heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.

(3) The Minister may, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the agreement.

(4) A heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.

(5) The Minister must not enter into, vary or terminate a heritage agreement under this section without first consulting and obtaining the approval of the Council.

23A—Effect of heritage agreement

(1) A heritage agreement may contain any provision for the preservation or enhancement of native vegetation.

(2) A heritage agreement may, for example—

(a) restrict the use of land to which it applies;

(b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;

(c) restrict the nature of work that may be carried out on the land;

(d) provide for the management of the land, native vegetation on the land or any animals living on or visiting the land in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;

(e) provide for remission of rates or taxes in respect of the land;

(f) provide for the Minister to pay to the owner of the land an amount in respect of the decrease in the value of the land resulting from the execution of the heritage agreement and noting by the Registrar-General of the fact that it has come into force;

(g) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the heritage agreement.

(3) A term of a heritage agreement providing for the remission of rates or taxes has effect despite any law to the contrary.

(4) The amount that the Minister agrees to pay in respect of the decrease in the value of the land referred to in subsection (2) must not exceed the amount of the decrease determined by the Valuer-General.

(5) Any money required by the Minister to meet his or her obligations under a heritage agreement entered into under this section must be paid to the Minister from the Fund.

23B—Registration of heritage agreements

(1) The Council must keep a register of heritage agreements entered into under this Act and must include in the register any agreement varying or terminating a heritage agreement.

(2) The register must be kept available for public inspection at the office of the Council during ordinary office hours.

(3) When the Minister enters into a heritage agreement, or an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the *Real Property Act 1886*, against the land (and, subject to an appropriate application under this subsection, must ensure that the note is not removed once made).

Division 2—Approval by the Council of proposal for revegetation

23D—Application of Division

This Division applies to native vegetation if—

(a) the Council has declared that this Division applies to the vegetation under section 23E; or

(b) the vegetation is established pursuant to a proposal approved by the Council under section 23F.

23E—Declaration in relation to existing vegetation

The Council may, on the application of the owner of land that has been revegetated with plants of one or more species indigenous to South Australia, declare that this Division applies to the vegetation if, in its opinion, the value of the vegetation is sufficient to warrant the application of the controls against clearance under Part 5.

23F—Proposal for revegetation of land

An owner of land who wishes to revegetate the land with plants of one or more species indigenous to the local area that will be representative of a naturally occurring plant community may submit the proposal to the Council for approval.

23G—Information required on application or submission

The landowner's application under section 23E or submission under section 23F must be in a form approved by the Council and must include, or be accompanied by, such information as the Council requires.

23H—Decision by the Council

(1) If, in the opinion of the Council after having regard to the Regional Biodiversity Plan or Plans (if any) prepared by the Minister, and associated pre-European vegetation mapping (if any) undertaken by the Minister, that apply in the vicinity of the relevant land, and any other matter considered relevant by the Council, the value of the native vegetation referred to in section 23E or 23F is, or will be, sufficient to warrant application of the controls against clearance under Part 5, it may make a declaration in relation to the vegetation under section 23E or approve the proposal under section 23F.

(2) The Council may, if it thinks it appropriate to do so, vary or revoke a declaration or approval made or given under this Division.

23I—Noting of Council's approval against the title to the land

(1) Where the Council has made a declaration or given its approval under this Division, it must inform the Registrar-General in writing of the declaration or approval and must provide the Registrar-General with such further information as he or she requires to comply with subsection (3).

(2) However, the Council need not proceed to inform the Registrar-General of an approval under section 23F until the Council is satisfied that it is appropriate to do so in accordance with the terms of the approval.

(3) The Registrar-General must note the declaration or approval against the relevant instrument of title for the land or, in the case of land not under the *Real Property Act 1886*, against the land.

(4) The Registrar-General must, on application by the Council after the making of a decision under section 23H(2), vary or cancel a note under subsection (3) (but must otherwise ensure that the note is not removed once made).

Division 3—Financial and other assistance

24—Assistance to landowners

(1) An owner of land that is subject to a heritage agreement may apply to the Council for financial or other assistance in—

(a) managing the land, native vegetation on the land or any animals living on or visiting the land;

(b) preserving or enhancing native vegetation on the land;

(c) establishing native vegetation on the land;

(d) undertaking research in relation to the preservation, enhancement or management of native vegetation on the land or of animals living on or visiting the land.

(1a) An owner of land in relation to which a proposal has been approved by the Council under Division 2 may apply to the Council for financial assistance in establishing native vegetation on the land in accordance with the proposal.

(2) An application must be in a form approved by the Council and must set out the applicant's proposals for the application of the assistance requested by the applicant.

(3) The applicant's proposals must be based on guidelines adopted by the Council under this Part.

(4) The Council may grant an application for assistance subject to such conditions as it thinks fit including, in the case of an application under subsection (1), the execution of an agreement varying the heritage agreement in a manner approved by the Council.

(5) Money payable by way of financial assistance under this section must be paid from the Fund.

(6) Where, in the opinion of the Council, a person to whom the Council has granted financial assistance under this section—

(a) contravenes or fails to comply with a condition attached to the grant of the assistance; or

(b) fails, within a reasonable time, to apply the amount granted for the purpose for which it was granted,

the Council may serve written notice on that person demanding repayment of the amount granted or such lesser amount as is specified in the notice.

(7) An amount demanded by the Council under subsection (6) is a debt due by the person from whom it is demanded to the Council and upon recovery must be paid by the Council into the Fund.

(8) A court that is considering a claim for payment of a debt referred to in subsection (7) may refuse to order payment of all or part of the amount claimed if, in its opinion, the person to whom the financial assistance was granted has applied it in accordance with the conditions on which it was granted or in accordance with what he or she genuinely believed to be the conditions on which it was granted.

25—Guidelines for the application of assistance and the management of native vegetation

(1) The Council must prepare draft guidelines in relation to—

(a) the application of financial and other assistance provided by the Council; and

(b) the management of native vegetation; and

(c) the operation of section 29(4a).

(2) After preparation of the draft guidelines the Council must—

(a) by public advertisement, invite members of the public to make representations to the Council (within a period of not less than two months following publication of the advertisement) as to matters that should be addressed by the guidelines; and

(b) submit the guidelines for comment by the regional NRM board for the NRM region to which the guidelines relate; and

(c) where the guidelines relate to pastoral land, submit the guidelines to the Pastoral Board for comment; and

(e) where the guidelines relate to land within the area of a local council, submit the guidelines to the Local Government Association of South Australia for comment; and

(f) submit the guidelines to the South Australian Farmers Federation Incorporated and to the Conservation Council of South Australia Incorporated for comment; and

(g) where the guidelines relate to land within the Murray-Darling Basin, submit the guidelines to the Minister to whom the administration of the *River Murray Act 2003* is committed for comment.

(3) The public advertisement referred to in subsection (2)(a) must—

(a) specify an address at which copies of the draft guidelines may be purchased or inspected;

(b) specify an address to which representations in connection with the draft guidelines may be forwarded.

(3a) Where the guidelines relate to land within the Murray-Darling Basin, the guidelines must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under the *River Murray Act 2003* (insofar as they may be relevant).

(3b) Where the guidelines relate to land within the Adelaide Dolphin Sanctuary, the guidelines must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).

(4) The Council may adopt the draft guidelines with, or without, amendment but must, before adopting them, consider all representations made by members of the public and comments made pursuant to subsection (2).

(5) The Council must, by public advertisement, specify an address at which copies of guidelines adopted by the Council may be purchased or inspected.

(5a) The Council may, by following the procedures required by this section for the preparation and adoption of the initial guidelines, prepare and adopt guidelines varying or replacing guidelines previously adopted under this section.

(5b) Where the Council thinks it is desirable to take the time to consult on proposed guidelines in more detail than is required by this section, it may prepare and adopt guidelines under this section as an interim measure with the intention of varying or replacing them if necessary after it has had time for further consultation.

(5c) For the purposes of this section, draft guidelines in relation to the application of financial and other assistance will only be taken to relate to an NRM region, pastoral land, the Murray-Darling Basin or the Adelaide Dolphin Sanctuary if the guidelines explicitly state that they do.

(6) In this section—

public advertisement means an advertisement published in the Gazette and in a newspaper circulating throughout the State.

Part 5—Clearance and enforcement

Division 1—Control of clearance

26—Offence of clearing native vegetation contrary to this Part

(1) A person must not clear native vegetation unless the clearance is in accordance with this Part.

Maximum penalty: A sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or $100 000, whichever is greater.

Expiation fee: $500.

(2) A person must not contravene or fail to comply with a condition attached to a consent granted under this Part.

Maximum penalty: A sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or $100 000, whichever is greater.

Expiation fee: $500.

(2a) If a court convicts a person—

(a) of an offence against subsection (1); or

(b) of an offence against subsection (2) where the effect of the contravention of or failure to comply with the condition that constitutes the offence is that native vegetation has been cleared without the consent of the Council,

the Council must, within the prescribed period, initiate civil proceedings under Division 2 in order to require the offender to make good the breach of this Act unless such proceedings have already been commenced, or an order has already been made, under that Division in relation to the matter, or the conviction is overturned on appeal.

(3) In this section—

land in relation to which the offence was committed means—

(a) land on which the vegetation is or was growing or is or was situated; and

(b) land that has been, or will be, affected in any way (including by an increase in its value) by reason of the commission of the offence;

the prescribed period, in relation to the initiation of civil proceedings against an offender, means—

(a) 21 days after the time within which the offender may appeal against the relevant conviction; or

(b) if an appeal is commenced—21 days after—

(i) the appeal is dismissed, struck out or withdrawn; or

(ii) any questions raised by the appeal have been finally determined;

the prescribed rate means—

(a) the amount (if any) per hectare by which the land in relation to which the offence was committed has increased in value as a direct result of the commission of the offence; or

(b) $2 500,

whichever is the greater.

(4) In determining the amount by which the value of land has increased as the result of the commission of an offence under this section, no account may be taken of the possibility that the establishment of vegetation on the cleared land may be ordered under Division 2.

27—Clearance of native vegetation

(1) Subject to any other Act or law to the contrary—

(a) native vegetation may, subject to this section, be cleared with the consent of the Council given in accordance with section 29;

(b) native vegetation may, subject to subsection (5)(b), be cleared—

(i) if the vegetation is of a prescribed class; or

(ii) in prescribed circumstances.

(2) Subject to subsection (3), the Council cannot give its consent to the clearance of native vegetation under subsection (1)(a) if the vegetation comprises or forms part of a stratum of native vegetation that is substantially intact (see section 3A).

(3) The Council may, despite subsection (2) but subject to the other requirements of this Division, give its consent to the harvesting of native vegetation if, in its opinion, the harvesting will not result in any lasting damage to the plants comprising the vegetation, lead to significant soil damage or erosion, or result in any long-term loss of biodiversity.

(4) The Council may give its consent under subsection (3) subject to such conditions (if any) as the Council thinks fit to impose.

(5) Native vegetation that is growing or is situated on land that is subject to a heritage agreement under this Act or a heritage agreement that was entered into in compliance with a condition of consent to clear native vegetation under the repealed Act cannot be cleared—

(a) under subsection (1)(a) unless the Minister has also given his or her consent to the clearance;

(b) under subsection (1)(b) unless a regulation prescribing a class of vegetation under paragraph (b)(i) or circumstances under paragraph (b)(ii) explicitly extends its operation to vegetation on land that is subject to a heritage agreement.

(6) If the Minister attaches conditions to his or her consent under subsection (5)(a), the Council's consent to the clearance will be taken to be subject to the same conditions, in addition to any other conditions imposed by the Council.

28—Application for consent

(1) Subject to subsection (2), the owner of land on which native vegetation is growing or is situated, or a person acting on his or her behalf, (but no other person) may apply for consent to clear the vegetation.

(2) Where the land is held from the Crown under a miscellaneous lease, an application for consent to clear vegetation can only be made by the Minister for Environment and Conservation.

(3) An application for consent—

(a) must be in a form approved by the Council;

(b) must be accompanied by—

(i) a native vegetation management plan prepared by the applicant in accordance with guidelines adopted by the Council under Part 4; and

(ii) either—

(A) information that establishes that the planting and maintenance of native vegetation on the land after clearance or on adjacent land in accordance with the native vegetation management plan will, after allowing for the loss of the vegetation to be cleared, result in a significant environmental benefit; or

(B) information that establishes that it is not possible for the applicant to provide a significant environmental benefit in the manner referred to in subsubparagraph (A); and

(iia) the prescribed number of copies of a report relating to the proposed clearance prepared in a form approved by the Council; and

(iib) such other information as the Council reasonably requires; and

(iii) the prescribed fee (including the fee prescribed for the report referred to in subparagraph (iia)).

(4) Where an applicant provides information referred to in subsection (3)(b)(ii)(B), he or she may propose that he or she make a payment into the Fund to compensate for the fact that there will not be a significant environmental benefit associated with the proposed clearance.

(5) The report referred to in subsection (3)(b)(iia) must be prepared by the agency or instrumentality of the Crown or other person or body specified by the regulations.

(6) On receipt of the fee prescribed for the report referred to in subsection (3)(b)(iia), the Council (or a local council or other body or person acting under delegation from the Council) must pay the amount of the fee to the Minister who must apply the amount received towards the cost of administering this Act.

(7) The Council must ensure that a copy of the report referred to in subsection (3)(b)(iia), and of any *Assessment Report* prepared by the Minister's department in response to the making of an application under this section, is available for inspection, without fee, during ordinary office hours at the principal office of the Council, and is also available in any other manner, or at any other place, determined by the Minister.

29—Provisions relating to consent

(1) Subject to this section, in deciding whether to consent to an application to clear native vegetation, the Council—

(a) must have regard to the principles of clearance of native vegetation so far as they are relevant to that decision; and

(b) must not make a decision that is seriously at variance with those principles.

(2) When determining an application to clear native vegetation in order to facilitate the management of other native vegetation, the Council must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to facilitate the management of that other vegetation.

(3) When determining an application to clear native vegetation that is growing or is situated on land that forms part of a property that is used for the business of primary production, the Council must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to operate the business as efficiently as possible.

(4) The Council may give its consent to clearance of native vegetation that is in contravention of subsection (1)(b) if—

(a) the vegetation comprises one or more isolated plants; and

(b) the applicant is engaged in the business of primary production; and

(c) in the opinion of the Council, the retention of that plant, or those plants, would put the applicant to unreasonable expense in carrying on that business or would result in an unreasonable reduction of potential income from that business.

(4a) The Council may give its consent to the clearance of native vegetation that is in contravention of subsection (1)(b) if—

(a) the Council has adopted guidelines under section 25 that apply in relation to the region where the native vegetation is situated (being guidelines envisaged under subsection (1)(c) of that section); and

(b) the Council is satisfied—

(i) that a significant environmental benefit, which outweighs the value of retaining the vegetation, is to be achieved through the imposition of conditions and the taking of other action by the applicant; and

(ii) that the particular circumstances justify the giving of consent.

(5) The Council must, before giving its consent, consult the regional NRM board for the NRM region where the native vegetation is situated and have regard to the board's recommendations (if any) in relation to the application.

(6) Where native vegetation that is the subject of an application for the Council's consent to clear under this Division is on pastoral land, the Council must, before giving its consent, consult the Pastoral Board and have regard to the Board's recommendations (if any) in relation to the application.

(8) Where the Pastoral Board has been consulted by the Council under subsection (6), the board may request the owner of the land to submit to it a property plan under the *Pastoral Land Management and Conservation Act 1989* and, until the plan has been submitted to it, the board may recommend to the Council that it refuse consent solely on the ground that the plan has not been submitted.

(9) Section 41(10) of the *Pastoral Land Management and Conservation Act 1989* does not apply to, or in relation to, a property plan requested by the Pastoral Board under subsection (8).

(9a) If an application for the Council's consent relates to native vegetation within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such consents), the Council must, before giving its consent—

(a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and

(b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then it be subject to conditions specified by the Minister).

(9b) If an application for the Council’s consent relates to native vegetation, other than mangroves, within the Adelaide Dolphin Sanctuary and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such consents), the Council must, before giving its consent, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.

(9c) If an application for the Council's consent relates to mangroves (*Avicennia marina*) within the Adelaide Dolphin Sanctuary, the Council must, before giving its consent—

(a) consult with the Minister for the Adelaide Dolphin Sanctuary; and

(b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then it be subject to conditions specified by the Minister).

(10) In addition to the other requirements for consultation under this section—

(a) the Council must allow any person who desires to do so to make representations in writing to the Council, within the period prescribed by the regulations, in relation to the granting or refusal of consent to an application to clear native vegetation; and

(b) the Council may, as it thinks fit, allow a person to appear personally or by representative before it to be heard on whether the Council should or should not consent to an application to clear native vegetation.

(11) Subject to subsection (12), the Council may give its consent to clearance of native vegetation under this section if, and only if—

(a) —

(i) it attaches to the consent a condition requiring the applicant to establish and manage native vegetation on land specified by the Council; and

(ii) the Council is satisfied that the establishment and management of vegetation in accordance with that condition will, after allowing for the loss of the vegetation to be cleared, result in a significant environmental benefit; or

(b) —

(i) it attaches to the consent a condition requiring the applicant to protect native vegetation growing or situated on land specified by the Council by erecting, improving or maintaining a fence or other barrier on the boundary of the land or on the boundary of land that includes the land to be protected to the specifications included in the condition by the Council so as to prevent livestock or other animals from entering the land; and

(ii) the Council is satisfied that the erection, improvement or maintenance of the fence or other barrier in accordance with that condition will, after allowing for the loss of the vegetation to be cleared, result in a significant environmental benefit; or

(c) —

(i) it attaches to the consent a condition requiring the applicant to enter into a heritage agreement under this Act with respect to specified native vegetation; and

(ii) the Council is satisfied that the management and protection of that vegetation in accordance with the heritage agreement will, after allowing for the loss of the vegetation to be cleared, result in a significant environmental benefit; or

(d) in a case where section 28(4) applies, it attaches to the consent a condition requiring the applicant to make a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6).

(12) A consent to clearance of native vegetation under this section may be unconditional if, and only if, the Council is satisfied that—

(a) the clearance would not result in any loss of biodiversity; and

(b) the attachment of a condition to the consent under subsection (11) would place an unreasonable burden on the applicant.

(13) Consent to undertake clearance under this Division remains in force for two years or for such longer period as the Council may fix at the time of granting consent or subsequently on application by a person who has the benefit of the consent.

(14) An applicant for consent under this Division may appear before the Council in support of the application and the Council must observe the rules of natural justice when considering and determining the application.

(16) Where the Council refuses an application in whole or in part or attaches conditions to its consent, it must provide the applicant with a written statement of the reasons for its decision.

(17) The provisions of this section also apply to circumstances where the Council is considering an application referred to the Council under the *Development Act 1993* as if the Council were considering an application for consent under this Act, subject to such modifications, additions or exclusions as may be necessary for the purpose.

29A—Avoidance of duplication of procedures etc

(1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where the clearance of native vegetation requires consent under this Act and approval under the Commonwealth Act.

(2) Despite any other provision of this Act, the Council may—

(a) accept a Commonwealth Act document as an application for consent under section 28 if (subject to subsection (5)) it complies with the requirements of this Act; and

(b) accept the whole or part of a plan, report, statement, assessment or other document used, or to be used, for the purposes of the Commonwealth Act as a native vegetation management plan referred to in section 28(3)(b)(i) if (subject to subsection (5)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.

(3) To avoid doubt, where a controlled action under the Commonwealth Act comprises or includes the clearance of native vegetation, the Council may, when considering an application for consent to clear the native vegetation use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give his or her approval to the controlled action under that Act.

(4) Where a controlled action under the Commonwealth Act comprises or includes the clearance of native vegetation, the Council—

(a) must, if the Commonwealth Minister has given his or her approval to the controlled action, consider whether the conditions (if any) to be imposed on the consent should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act;

(b) may impose a condition on the consent that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.

(5) A document accepted under subsection (2)—

(a) may be in a form that does not comply with the requirements of this Act; and

(b) may include information or other material that is irrelevant for the purposes of this Act.

(6) Once a document is accepted under subsection (2) the document will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.

(7) In this section—

assessment report means—

(a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or

(b) a report under section 121 of the Commonwealth Act;

Commonwealth Act means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

Commonwealth Act document means—

(a) a referral under section 68, 69 or 71 of the Commonwealth Act; or

(b) information given by a person to the Minister under the Commonwealth Act under section 86 of that Act; or

(c) information and invitation published by a proponent under section 93 of the Commonwealth Act; or

(d) guidelines prepared under section 97 or 102 of the Commonwealth Act; or

(e) a draft report prepared under section 98 of the Commonwealth Act; or

(f) a finalised report prepared under section 99 of the Commonwealth Act; or

(g) a draft statement prepared under section 103 of the Commonwealth Act; or

(h) a finalised statement prepared under section 104 of the Commonwealth Act; or

(i) an assessment report.

30—Conditions of consent

(1) A consent under this Division to the clearance of native vegetation is subject to such conditions (if any) as the Council thinks fit to impose.

(2) Without limiting subsection (1), consent may be subject to one or more of the following conditions:

(a) a condition requiring the applicant to—

(i) establish vegetation consisting of a specified number of plants of a specified species on specified land; and

(ii) nurture, protect and maintain the plants until they are fully established or for such period as the Council specifies;

(b) a condition requiring the applicant to protect native vegetation growing or situated on specified land;

(c) a condition restricting the purposes for which land referred to in a condition under paragraph (a)(i) or (b) can be used;

(d) a condition requiring the applicant to destroy plants of a non endemic species specified by the Council growing on land specified by the Council;

(e) a condition that the applicant enter into a heritage agreement with the Minister under this Act in the terms specified by the Council for the management of specified native vegetation;

(f) a condition requiring that a copy of the consent issued by the Council be kept in such manner, and in any place, specified by the Council.

(3) Conditions imposed on consent to clear native vegetation are binding on, and enforceable against—

(a) the applicant for the consent; and

(b) all owners and subsequent owners of the land to be cleared and any other land to which a condition relates; and

(c) an occupier of the land to be cleared and any other person who acquires the benefit of the consent.

(4) The Council must inform the Registrar-General in writing of all conditions imposed under this section that relate to land (including conditions under subsection (2)(c)) and must provide the Registrar-General with such further information as the Registrar-General requires to comply with subsection (5).

(5) The Registrar-General must note the conditions against the relevant instrument of title for the land or, in the case of land not under the *Real Property Act 1886*, against the land.

(6) The Registrar-General must, on the application of the Council after the variation or revocation of a condition under this section, vary or cancel a note under subsection (5) (but must otherwise ensure that the note is not removed once made).

30A—Marking or tagging of cleared vegetation

(1) The regulations may establish a scheme for the marking or tagging of any cleared native vegetation of a prescribed kind.

(2) A scheme established under subsection (1) may—

(a) extend to persons who are in possession of native vegetation after it has been cleared;

(b) make provision for the marking of cleared native vegetation in a manner determined by the Council, or for the use of tags issued by the Council;

(c) prescribe fines (not exceeding $10 000) for contravention of a regulation;

(d) make any other provision that may be necessary or expedient for the purposes of establishing the scheme envisaged by subsection (1).

Division 2—Civil enforcement proceedings

31—Interpretation

In this Division, a reference to a breach of this Act includes a reference to a contravention of, or a failure to comply with, a heritage agreement.

31A—Application to ERD Court for enforcement

(1) The following persons may apply to the ERD Court for an order to remedy or restrain a breach of this Act:

(a) the Council; or

(b) a person who owns or who has any other legal or equitable interest in land that has been, or will be, affected by the breach; or

(c) in the case of a contravention of, or failure to comply with, a heritage agreement—a party to the agreement.

(2) Proceedings under this section may be brought in a representative capacity with the consent of all persons on whose behalf they are to be brought.

(3) If proceedings under this section are brought by a person other than the Council—

(a) the applicant must serve a copy of the application on the Council within three days after filing the application with the Court; and

(b) the Court must, on application by the Council, join the Council as a party to the proceedings.

(4) An application may be made in the absence of the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant the applicant permission to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(5) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.

(6) If—

(a) after hearing—

(i) the applicant and the respondent; and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act; or

(b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,

the Court may, by order, exercise one or more of the following powers:

(c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the breach;

(d) require the respondent to make good the breach in a manner, and within a period, specified by the Court, or to take such other action as may appear appropriate to the Court, taking into account the nature and extent of the original vegetation;

(e) require the respondent to pay to any person who has suffered loss or damage as a result of the breach, or incurred costs or expenses as a result of the breach, compensation for the loss or damage or an amount for, or towards, those costs or expenses;

(f) require the respondent to pay into the Fund an amount, determined by the Court to be appropriate in the circumstances, on account of the financial benefit that the respondent has gained, or can reasonably be expected to gain, by committing the breach;

(g) require the respondent to pay into the Fund an amount, determined by the Court, in the nature of exemplary damages (and this amount may be in addition to any amount ordered to be paid under paragraph (f));

(h) require the respondent to take specified action to publicise—

(i) the breach of this Act; and

(ii) the environmental and other consequences flowing from the breach; and

(iii) the other requirements of the order made against the respondent;

(i) require the respondent to refrain from an act or course of action, or to undertake an act or course of action, to ensure that the respondent does not gain an ongoing benefit from the breach.

(7) In assessing damages under subsection (6)(g), the Court must have regard to—

(a) damage to the environment caused by the breach of this Act; and

(b) the detriment to the public interest resulting from the breach; and

(c) any benefit (including financial benefit) that the respondent sought to gain by committing the breach; and

(d) any other matter it considers relevant.

(8) The power conferred by subsection (6)(f) or (g) can only be exercised by a Judge of the Court.

(9) The Council, and any person with a legal or equitable interest in land to which an application under this section relates, is entitled to appear and be heard in proceedings based on the application before a final order is made.

(10) The Court may make such order in relation to costs of proceedings under this section as it thinks just and reasonable.

(11) In this section—

breach of this Act includes a threatened contravention of, or failure to comply with, this Act or a heritage agreement.

31B—Order where native vegetation has been cleared

(1) Subject to subsection (6)(d) or (7), where the ERD Court is satisfied on the balance of probabilities that the respondent—

(a) has cleared native vegetation in contravention of this Act; or

(b) has cleared native vegetation pursuant to the Council's consent but has not complied with a condition of a kind referred to in section 30(2) attached to the consent,

the Court must make an order against the respondent under section 31A(6)(d).

(2) The order under section 31A(6)(d) must direct the respondent to—

(a) remove the buildings, works or vegetation (if any) that have been erected, undertaken or planted on the land since the clearance occurred; and

(b) establish vegetation consisting of plants of a species specified in the order in such numbers and on such parts of the cleared land as is specified in the order; and

(c) nurture, protect and maintain the plants until they are fully established or for such period as is specified in the order.

(3) The order under section 31A(6)(d) may—

(a) where part of the original vegetation is still growing or situated on the land—direct that it be removed so that the new vegetation can be established on the land;

(b) include such ancillary directions or orders as the Court thinks fit.

(4) Where the respondent is not the owner or occupier of the land, the order authorises him or her (or a person authorised by him or her) to—

(a) enter the land with such materials and equipment as are reasonably necessary to comply with the order; and

(b) to enter and cross any other land specified in the order with the materials and equipment referred to in paragraph (a) for the purpose of gaining access to the cleared land.

(5) An owner or occupier of land or any other person who hinders or obstructs the respondent (or a person authorised by the respondent) in carrying out the directions of an order under this section or entering and crossing land under subsection (4) is guilty of an offence.

Maximum penalty: $10 000.

(6) If the ERD Court is satisfied on the balance of probabilities that—

(a) the owner or occupier of the cleared land did not know and could not reasonably have been expected to know of the circumstances referred to in subsection (1) requiring the making of an order under section 31A(6)(d); and

(b) compliance with an order under section 31A(6)(d) will cause financial loss to that person,

the Court may—

(c) assess the amount of the financial loss and order the respondent to pay that amount to the owner or occupier of the land; or

(d) refuse to make the order or make the order in a modified form.

(7) If the Court is satisfied that compliance with any order under section 31A(6)(d) would not be reasonably practicable, it may refuse to make the order.

(8) However, the Court cannot take into account financial grounds when making an assessment under subsection (7) unless the Court is satisfied that it would be unduly harsh not to do so.

(9) The Court must include in the order a requirement that a copy of the order be served on the Registrar-General and that the Registrar-General note the order against the relevant certificate or other instrument of title or, in the case of land not under the *Real Property Act 1886*, against the land (and the Registrar-General must, on service of the order, make the note and then must not remove the note except pursuant to an order of the Court).

(10) If, in the opinion of the Court, it should refuse under subsection (6)(d) or (7) to make an order under section 31A(6)(d), the Court may make an order against the respondent requiring the establishment of vegetation in accordance with the provisions of this section on some other land owned by the respondent.

31C—Interim order

(1) If, on an application under this Division or before the determination of the proceedings commenced by an application under this Division, the ERD Court is satisfied that, in order to protect native vegetation from clearance or to preserve the rights or interests of parties to the proceedings, or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(2) An interim order—

(a) may be made on an application in the absence of the respondent; and

(b) may be made whether or not the application has been referred to a conference under section 31A(5); and

(c) will be made subject to such conditions as the Court thinks fit; and

(d) will not (as such) operate after the proceedings in which it is made are finally determined.

31D—Enforcement of orders

(1) A person who contravenes or fails to comply with an order under this Division is, in addition to liability for contempt of the order, guilty of an offence.

Maximum penalty: $100 000.

(2) Where the ERD Court makes an order under section 31A(6)(d) and the respondent fails to comply with the order within the period specified by the Court, the Council may cause any work contemplated by the order to be carried out, and may recover the costs and expenses of that work, as a debt, from the respondent.

(3) Section 31B(4) and (5) apply to, and in relation to, the Council when acting under subsection (2) as though it were the respondent.

(4) Where an amount is recoverable from a person by the Council under subsection (2)—

(a) the Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and

(b) the amount together with any interest so payable is, until paid, a first charge in favour of the Council on all land owned by the person.

31E—Enforcement notices

(1) If an authorised officer who has been expressly authorised by the Minister to issue directions under this section has reasonable grounds on which to believe that a person has breached this Act, or is likely to breach this Act, the authorised officer may do such of the following as the officer considers necessary or appropriate in the circumstances:

(a) direct the person to refrain, either for a specified period or until further notice, from the act, or course of action, that constitutes, or would constitute, the breach;

(b) if, in the opinion of the authorised officer, a breach has occurred and the breach is a minor breach—direct the person to make good the breach in a manner, and within a period, specified by the authorised officer;

(c) take such urgent action as is required or is, in the opinion of the authorised officer, desirable because of any situation arising from the breach or likely breach (as the case may be).

(2) A direction under subsection (1) must be given by notice in writing.

(3) A notice under subsection (2) must—

(a) identify the authorised officer who is issuing the direction; and

(b) set out any appeal rights that the person to whom the direction is given may have under this Act.

(4) If a person fails to comply with a direction under subsection (1)(b) within the time specified in the notice, the Council may cause the necessary action to be taken.

(5) The costs and expenses incurred by the Council under subsection (4) may be recovered by the Council as a debt due from the person whose failure gave rise to the action.

(6) Where an amount is recoverable from a person by the Council under this section—

(a) the Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and

(b) the amount together with any interest so payable is, until paid, a first charge in favour of the Council on all land owned by the person.

(7) Subject to any order of the ERD Court to the contrary, the operation of a direction is not suspended pending the determination of an appeal.

(8) A person who contravenes or fails to comply with a direction under this section is guilty of an offence.

Maximum penalty: $10 000.

(9) A direction cannot be given under this section in relation to a breach if it appears that the breach occurred more than 12 months before the direction is given.

31F—Miscellaneous provisions

(1) The ERD Court may order an applicant in proceedings under section 31A—

(a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; and

(b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (2).

(2) If on an application under section 31A the ERD Court is satisfied—

(a) that the respondent has not breached this Act; and

(b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and

(c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage which the respondent has suffered.

(3) A person who fails to comply with an order of the ERD Court under this Division commits a contempt of Court.

(4) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under subsection (1) or (2).

(5) The ERD Court may, on application under this subsection by a person to whom a notice has been given under section 31D(4)(a) or 31E(6)(a), extend the period that has been fixed by the Council for the purposes of the notice (and the relevant order of the Court under this subsection will then have effect according to its terms).

32—Appeals

(1) Subject to the rules of the Supreme Court, an appeal lies against—

(a) an order of the ERD Court made in the exercise of the jurisdiction conferred by this Division; or

(b) a decision by the ERD Court not to make an order under this Division,

to the Land and Valuation Court.

(2) An appeal under this section must be instituted within 60 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Land and Valuation Court.

33—Commencement of proceedings

(1) Proceedings under this Division may be commenced at any time within four years after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorisation of the Minister, at any later time within six years after that date.

(2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Division must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

Division 3—Authorised officers

33A—Appointment of authorised officers

(1) The Minister may appoint an officer or employee of the Crown or a local council to be an authorised officer for the purposes of this Act.

(2) An appointment of an authorised officer—

(a) must be in writing; and

(b) must be for a fixed term; and

(c) may be subject to conditions; and

(d) may be in respect of the whole State or any specified part of the State.

(3) Each authorised officer must be issued with an identity card that—

(a) includes a photograph of the authorised officer; and

(b) includes a statement about the authorised officer's powers under this Act; and

(c) in the case of an authorised officer who has been expressly authorised by the Minister to issue directions under section 31E—expressly states that fact; and

(d) if the appointment is in respect of part of the State only—states the part of the State in respect of which the authorised officer is appointed.

(4) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).

(5) An authorised officer must, if requested to do so, produce evidence of his or her appointment by providing a copy of his or her notice of appointment, or by showing his or her identity card for inspection, before exercising the powers of an authorised officer under this Act in relation to any person.

(6) The Minister may, at any time, vary or revoke an appointment which he or she has made, or vary or revoke a condition of an appointment or impose a further condition in relation to an appointment.

(7) No civil or criminal liability attaches to an authorised officer or a person assisting an authorised officer for an act or omission by the authorised officer or by a person assisting the authorised officer in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of any power, function or duty under this Act.

(8) A civil liability that would, but for subsection (7), lie against an authorised officer or assistant lies instead against the Crown.

33B—Powers of authorised officers

(1) Subject to this Division, an authorised officer may—

(a) enter and inspect any land for any reasonable purpose connected with the administration or enforcement of this Act; and

(b) give directions with respect to the stopping or movement of a vehicle that—

(i) has been used in, or is suspected by the authorised officer of having been used in, the clearance of native vegetation; or

(ii) is carrying a plant, or any part of a plant, comprising native vegetation,

as reasonably required in connection with the administration or enforcement of this Act; and

(c) take samples of any plant or any part of any plant from any land, for identification and analysis as reasonably required in connection with the administration or enforcement of this Act; and

(d) with the authority of a warrant issued under section 33C require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act; and

(e) with the authority of a warrant issued under section 33C examine, copy or take extracts from any documents so produced or require a person to provide a copy of any such document or information; and

(f) take photographs or films or make audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act; and

(g) dig up any land by the use of hand-held equipment for the purpose of taking samples; and

(h) with the authority of a warrant issued under section 33C, to the extent to which it is reasonably required, take mechanical equipment on to any land and dig up the land, or any part of it, for the purposes of taking samples that the authorised officer reasonably suspects may constitute evidence of a breach of this Act;

(i) in addition to the powers under a preceding paragraph, seize and retain anything that the authorised officer reasonably suspects may constitute evidence of a breach of this Act; and

(j) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a breach of this Act to state the person's full name and usual place of residence; and

(k) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters; and

(l) give any directions reasonably required in connection with the exercise of a power conferred by any of the paragraphs of this subsection or otherwise in connection with the administration or enforcement of this Act.

(2) Without limiting subsection (1)(a), an authorised officer may enter and inspect any land for the purpose of determining whether a heritage agreement entered into under this Act or entered into in compliance with a condition of consent to clear native vegetation under the repealed Act is being, or has been, complied with.

(3) An authorised officer must not exercise a power conferred by subsection (1)(a) or (2) in respect of residential premises.

(4) Where an authorised officer enters land and takes samples of any plant or any part of any plant for identification and analysis, the authorised officer must take reasonable steps to provide the owner of land with a reasonable amount of information about his or her actions.

(5) Where an authorised officer enters land and takes photographs or films or makes audio, video or other recordings, the authorised officer must, as soon as reasonably practicable after entering the land—

(a) serve notice on the owner or occupier of the land informing him or her of the date on which the authorised officer entered the land; and

(b) provide the owner or occupier with a copy of the photographs, films, audio, video or other recordings (if any) taken or made by the authorised officer when on the land.

(6) A copy provided under subsection (5)(b) must be in an electronic form unless the Minister authorises it to be provided in some other form.

(7) Where an authorised officer digs up any land under subsection (1), the authorised officer must, after taking such steps as the authorised officer thinks fit in the exercise of powers under that subsection, insofar as is reasonably practicable, take steps to ensure that the land is restored to such state as is reasonable in the circumstances.

(8) Before an authorised officer requires a person to answer questions under subsection (1)(k), the authorised officer must inform the person of his or her right to decline to answer any question that might tend to incriminate the person or to make the person liable to a criminal penalty.

(9) Where—

(a) a person whose native language is not English is suspected of having committed an offence against this Act; and

(b) the person is not reasonably fluent in English,

the following provisions apply:

(c) the person is entitled to be assisted by an interpreter during any questioning conducted by an authorised officer in the course of an investigation of the suspected offence;

(d) where it appears that the person may be entitled to be assisted by an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until the person has been informed of the right to an interpreter;

(e) if the person requests the assistance of an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until an interpreter is present.

(10) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

(11) An authorised officer may require an occupier of any land or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.

(12) Where a person gives assistance to an authorised officer as required under subsection (11), the person must, if he or she so requires, be reimbursed by the authorised officer or the Minister for any reasonable costs and expenses incurred in giving the assistance.

33C—Issue of warrants

(1) Where, on the application of an authorised officer, a magistrate is satisfied that there are reasonable grounds to believe that the inspection of documents may provide information relevant to the administration or enforcement of this Act, the magistrate may issue a warrant authorising an authorised officer—

(a) to require a specified person to produce documents under section 33B(1)(d); and

(b) to examine, copy and take extracts from those documents or to require a person to provide a copy of any of those documents under section 33B(1)(e).

(2) Where, on the application of an authorised officer, a magistrate is satisfied that there are reasonable grounds to believe that a person may have committed a breach of this Act, the magistrate may issue a warrant authorising an authorised officer to take action under section 33B(1)(h).

(3) An application for the issue of a warrant may be made either personally or by telephone.

(4) The grounds of an application for a warrant must be verified by affidavit.

(5) An application for the issue of a warrant may not be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.

(6) Where an application for the issue of a warrant is made by telephone, the following provisions apply:

(a) the applicant must inform the magistrate of his or her name and identify himself or herself as an authorised officer, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised officer; and

(b) the applicant must inform the magistrate of the grounds on which he or she seeks the issue of the warrant; and

(c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the magistrate must inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

(d) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant; and

(e) the warrant will be taken to have been issued, and will come into force, when signed by the magistrate; and

(f) the magistrate must inform the applicant of the terms of the warrant; and

(g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

(7) A magistrate by whom a warrant is issued must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the ERD Court.

(8) An authorised officer who executes a warrant must, as soon as practicable after execution of the warrant—

(a) prepare a notice in the prescribed form containing—

(i) his or her own name and a statement that he or she is an authorised officer under this Act; and

(ii) the name of the magistrate who issued the warrant and the date and time of its issue; and

(iii) a description of the authority conferred by the warrant; and

(b) give the notice to the person affected by the warrant.

(9) A warrant, if not executed at the expiration of one month from the date of its issue, then expires.

33D—Provisions relating to seizure

(1) Where a thing has been seized under this Division the following provisions apply:

(a) the thing must be held pending proceedings for an offence against this Act related to the thing seized, unless the Minister, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));

(b) where proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of the offence, the court may—

(i) order that it be forfeited to the Minister; or

(ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Minister or that the person to whom it was released or the defendant pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

(c) where—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),

then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure.

(2) In subsection (1)—

the prescribed period means six months or such longer period as the ERD Court may, on application by the Minister, allow.

33E—Offence to hinder etc authorised officers

(1) A person who—

(a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or

(b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(c) refuses or fails to comply with a requirement or direction of an authorised officer under this Division; or

(d) when required by an authorised officer under this Division to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: $5 000.

(2) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: $10 000 or two years imprisonment or both.

(3) Despite subsection (1)(d), a person is not obliged to answer a question under this Division if to do so might tend to incriminate the person or make the person liable to a criminal penalty.

33EA—Offences by authorised officers etc

An authorised officer, or a person assisting an authorised officer, who—

(a) addresses offensive language to any other person; or

(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: $5 000.

Part 5A—Administrative appeals

33F—Right of appeal

(1) An applicant for consent to clear native vegetation may appeal to the ERD Court against a refusal by the Council on or after the commencement of this Part to grant the consent or against the imposition by the Council on or after the commencement of this Part of conditions on the consent.

(2) A person who has been given a written direction under section 31E may appeal to the ERD Court against the direction.

(3) An appeal under subsection (1) or (2) must be instituted in the manner and form determined by the Court within the prescribed period after the appellant first has notice of the decision or direction appealed against or within such further time as the Court considers to be reasonable in the circumstances.

(4) The prescribed period referred to in subsection (3) is—

(a) in the case of an appeal under subsection (1)—two months;

(b) in the case of an appeal under subsection (2)—14 days after the direction is given to the appellant.

(5) An appeal under subsection (1) will be in the nature of a judicial review of an administrative decision on grounds relating to the practices or procedures of the Council that are recognised by administrative law (and not so as to allow in any respect a review of the merits of the decision).

(6) On an appeal the Court may—

(a) in the case of an appeal under subsection (1)—

(i) affirm the decision appealed against; or

(ii) rescind the decision appealed against and remit the subject matter of the appeal to the Council for consideration or further consideration in accordance with any recommendations of the Court (but not so as to derogate from the ultimate discretion of the Council to refuse to grant a consent, or to impose conditions with respect to the granting of a consent);

(b) in the case of an appeal under subsection (2)—

(i) affirm the direction appealed against; or

(ii) rescind the direction appealed against (but not so as to derogate from the ability of an authorised officer to give a further direction in an appropriate case after taking into account any relevant decision of the Court).

(7) Despite subsection (1) of section 17 of the Environment, Resources and Development Court Act 1993, a person cannot be joined under that subsection as a party to proceedings on an appeal under subsection (1) of this section but the Court may, if it is of the opinion that there is some good reason for doing so, allow a person who is not a party to the proceedings to appear or be represented in the proceedings and, in so doing—

(a) produce documents and other materials; and

(b) make representations and submissions.

33G—Expiry of Part

This Part will expire on 1 January 2007 (and any reference to an appeal under this Part in any other section of this Act will then have no effect).

Note—

Part 5A has expired.

Part 5B—Interest and recovery of money

33H—Interest

(1) Interest accrues on an amount payable to the Council under sections 31D and 31E and on unpaid interest under those sections in accordance with the regulations.

(2) A person who is liable to pay an amount under the provisions referred to in subsection (1) is also liable to pay interest that accrues, or has accrued, on or in relation to that amount.

(3) Regulations referred to in subsection (1) may (without limiting their scope) prescribe the time from which interest accrues.

33I—Sale of land for non-payment

(1) Where an amount payable under this Act, or interest in relation to such an amount, is a first charge on land and has been unpaid for one year or more, the Council may sell the land.

(2) Before the Council sells land in pursuance of this section, it must serve notice on the owner and occupier of the land—

(a) stating the period for which the amount and interest have been unpaid; and

(b) stating the amount of the total liability for the amount and interest presently outstanding and charged on the land; and

(c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the Council may allow), the Council intends to sell the land for non-payment of the amount and interest.

(3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).

(4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Council may proceed to sell the land.

(5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Council may set a reserve price for the purposes of the auction).

(6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

(7) If, before the date of the auction, the outstanding amount and the costs incurred by the Council in proceeding under this section are paid to the Council, the Council must withdraw the land from auction.

(8) If—

(a) an auction fails; or

(b) the land is held from the Crown under a lease, licence or agreement to purchase,

the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.

(9) Any money received by the Council or the Minister in respect of the sale of land under this section will be applied as follows:

(a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;

(b) secondly—in discharging the liability for the amount and interest payable under this Act;

(c) thirdly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);

(d) fourthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;

(e) fifthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;

(f) sixthly—in discharging any other mortgages, encumbrances and charges of which the Council or the Minister (as the case may be) has notice;

(g) seventhly—in payment to the former owner of the land.

(10) If the former owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.

(11) Where land is sold by the Council or the Minister in pursuance of this section, an instrument of transfer executed by the Council or the Minister (as the case may be) will operate to vest title to the land in the purchaser.

(12) The title vested in a purchaser under subsection (11) will be free of—

(a) all mortgages and charges; and

(b) except in the case of land held from the Crown under lease or licence—all leases and licences,

(and the Registrar-General, when registering or enrolling an instrument of transfer to vest title in the purchaser, must discharge any caveat relating to the land, and may make any note or endorsement, or take any other action in relation to any instrument, certificate, register or record, as the Registrar-General thinks fit).

(13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the presiding member of the Council stating that the requirements of this section in relation to the sale of the land have been observed.

(14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer despite the non-production of the duplicate, but in that event he or she must cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(15) A reference in this section to land, or title to land, held from the Crown under lease, licence or agreement to purchase, is a reference to the interest of the lessee, licensee or purchaser in the land.

Part 6—Miscellaneous

33J—Constitution of Environment, Resources and Development Court

The following provisions apply, subject to section 31A(8), in respect of the constitution of the ERD Court when exercising jurisdiction under this Act:

(a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of a Judge and one commissioner;

(b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;

(c) the Court may not be constituted of or include a commissioner unless—

(i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or

(ii) in any other case—at least one commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has wide practical knowledge of, and experience in, the preservation and management of native vegetation.

34—Evidentiary provisions etc

(1) An allegation in enforcement proceedings under Part 5 Division 2 or in proceedings for an offence against this Act that vegetation is, or was, comprised of a plant or plants of a species indigenous to South Australia must be accepted as proved in the absence of proof to the contrary.

(2) Where in enforcement proceedings under Part 5 Division 2 or in proceedings for an offence against this Act it is proved that vegetation has been cleared, it must be presumed in the absence of proof to the contrary that the vegetation was cleared by the owner and occupier of the land on which it is or was growing or is or was situated.

(3) It must be presumed in enforcement proceedings under Part 5 Division 2 and in proceedings for an offence against this Act, in the absence of proof to the contrary, that vegetation to which the proceedings relate was not intentionally sown or planted by a person.

(3a) Where in enforcement proceedings under Part 5 Division 2 or in proceedings for an offence against this Act it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer or person assisting an authorised officer, the alleged fact must be accepted as proved in the absence of proof to the contrary.

(4) In any legal proceedings, an apparently genuine document appearing to be a copy of a heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

35—Proceedings for an offence

(1) Proceedings for a summary offence against this Act must be commenced—

(a) within 4 years of the date on which the offence is alleged to have been committed; or

(b) in exceptional circumstances, with the authorisation of the Minister—within 6 years of the date on which the offence is alleged to have been committed.

(3) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings for an offence against this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(4) A penalty payable in respect of an offence against this Act must be paid into the Fund.

(5) An authorised officer cannot issue an expiation notice to a person alleged to have committed an offence against this Act unless the authorised officer has referred the matter to the Council and the Council has specifically authorised the issuing of the notice.

36—Assessment of costs and expenses

For the purposes of this Act, the costs and expenses that have been or would be incurred by the Council in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

38—Vicarious liability

For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

39—Offences by bodies corporate

Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

40—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

40A—Register of applications

(1) The Council must maintain a public register of applications for consent to clear vegetation received by the Council under Part 5.

(2) The register must include—

(a) the name and address of the applicant; and

(b) the date of the application and the date on which the application was received by the Council; and

(c) a description of the application; and

(d) the location and a description of the land to which the application relates; and

(e) when it is made, the decision made by the Council in relation to the application; and

(f) any other information required by the regulations.

(3) The register is to be made available for inspection, without fee, during ordinary office hours at the principal office of the Council.

(4) The Council must ensure that the register can be inspected at a website determined by the Council (but is not required to have available for inspection at the website information relating to an application received by the Council before the commencement of this section unless the Council has that information in the form of electronic data).

40B—Ministerial power of delegation

(1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the Minister to act in any matter; and

(d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

41—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) In particular regulations may—

(a) amend Schedule 1;

(b) prescribe and provide for the payment of fees (and provide that the amount of a fee may be prescribed as the Minister's estimate of the cost of the service provided);

(c) provide that money, or specified categories of money, standing to the credit of the Fund, is to be used or made available for a purpose or purposes specified by the regulations;

(d) empower the Council, or any other person to whom fees are payable, to remit payment of the whole or part of the fees;

(e) fix expiation fees, not exceeding $500, for alleged offences against this Act.

(3) Any such regulations—

(a) may apply generally throughout the State or be limited in application to a particular area; and

(b) may operate by reference to any factor or combination of factors and, in particular, may operate by reference to the direction or opinion of a person or body named for that purpose in the regulation; and

(c) may refer to or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time.

Schedule 1—Principles of native vegetation clearance

1—Principles of clearance of native vegetation

Native vegetation should not be cleared if, in the opinion of the Council—

(a) it comprises a high level of diversity of plant species; or

(b) it has significance as a habitat for wildlife; or

(c) it includes plants of a rare, vulnerable or endangered species; or

(d) the vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered; or

(e) it is significant as a remnant of vegetation in an area which has been extensively cleared; or

(f) it is growing in, or in association with, a wetland environment; or

(g) it contributes significantly to the amenity of the area in which it is growing or is situated; or

(h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity; or

(i) the clearance of the vegetation is likely to cause deterioration in the quality of surface or underground water; or

(j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding; or

(k) —

(i) after clearance the land will be used for a particular purpose; and

(ii) the regional NRM board for the NRM region where the land is situated has, as part of its NRM plan under the *Natural Resources Management Act 2004*, assessed—

(A) the capability and preferred uses of the land; and

(B) the condition of the land; and

(iii) according to that assessment the use of the land for that purpose cannot be sustained; or

(l) the clearance of the vegetation would cause significant harm to the River Murray within the meaning of the *River Murray Act 2003*; or

(m) the clearance of vegetation would cause significant harm to the Adelaide Dolphin Sanctuary.

2—Interpretation

In this Schedule, unless the contrary intention appears—

endangered species means a species of plant for the time being appearing in Part 2 of Schedule 7 of the *National Parks and Wildlife Act 1972*;

plant community means plants of a species indigenous to South Australia growing in association with one another and forming a group that is distinct from other plant communities;

rare species means a species of plant for the time being appearing in Part 2 of Schedule 9 of the *National Parks and Wildlife Act 1972*;

vulnerable species means a species of plant for the time being appearing in Part 2 of Schedule 8 of the *National Parks and Wildlife Act 1972*;

wildlife has the same meaning as in the *National Parks and Wildlife Act 1972*.

Schedule 2—Transitional provisions

2 (1) Where an application made on or before 12 February 1991 to the Native Vegetation Authority under the repealed Act for consent to clear native vegetation had not been determined by the Authority before the repeal of Part 5 of the repealed Act—

(a) the repealed Act will continue to apply to, and in relation to, that application to the exclusion of this Act; and

(b) where the application is refused or is granted subject to conditions, Part 5 of the repealed Act will apply for the benefit of the owner of the land but a claim for the payment of money under that Part must be made within two years of the Authority's decision on which the claim is based.

(2) Where an application made on or after 13 February 1991 to the Native Vegetation Authority under the repealed Act for consent to clear native vegetation had not been determined by the Authority at the commencement of this Act, the repealed Act (excluding Part 5) will continue to apply to, and in relation to, that application to the exclusion of this Act.

(3) A person who, immediately before the repeal of Part 5 of the repealed Act, had the right—

(a) to claim the payment of money under that Part; or

(b) to require the Minister to enter into a heritage agreement and then claim the payment of money under that Part,

is entitled to exercise those rights within two years of the repeal of that Part.

(4) A condition attached to the Authority's consent granted under the repealed Act (whether before or after the commencement of this Act) may be enforced under this Act as if it were attached to consent granted under this Act.

(5) The Native Vegetation Authority continues in existence as if the repealed Act had not been repealed for the purpose of administering the repealed Act (whether pursuant to section 16 of the *Acts Interpretation Act 1915* or to this clause) and, if necessary, new appointments may be made to it.

3 The party to heritage agreements made before the commencement of this Act and referred to in those agreements as "the Minister" will, after the commencement of this Act, be taken to be the Minister who is, for the time being, responsible for the administration of this Act.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Native Vegetation Act 1991* repealed the following:

Native Vegetation Management Act 1985

Legislation amended by principal Act

The *Native Vegetation Act 1991* amended the following:

South Australian Heritage Act 1978

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	16	*Native Vegetation Act 1991*	18.4.1991	18.4.1991 (*Gazette 18.4.1991 p1294*)
1993	56	*Heritage Act 1993*	27.5.1993	15.1.1994 (*Gazette 27.10.1993 p1890*)
2000	88	*Development (System Improvement Program) Amendment Act 2000* as amended by 44/2002	21.12.2000	Sch 1 (cl 4)—21.12.2002 (s 7(5) *Acts Interpretation Act 1915*)
2001	16	*Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001*	17.5.2001	Pt 5 (s 7)—14.6.2001 (*Gazette 14.6.2001 p2221*)
2002	44	*Native Vegetation (Miscellaneous) Amendment Act 2002*	12.12.2002	19.12.2002 (*Gazette 19.12.2002 p4736*) except ss 3(b), (d)—(f), 4—14, 16—19, 21—24, s 33F(1), (4)(a), (5), (6)(a) & (7) (as inserted by s 29), 32, 35, 36 and Sch—25.8.2003 (*Gazette 21.8.2003 p3276*)
2003	35	*River Murray Act 2003*	31.7.2003	Sch (cl 15)—24.11.2003 (*Gazette 20.11.2003 p4203*)
2004	23	*Statutes Amendment (Courts) Act 2004*	8.7.2004	Sch 1—1.9.2004 (*Gazette 26.8.2004 p3402*)

2004	34	*Natural Resources Management Act 2004*	5.8.2004	Sch 4 (cll 26(1) & 27(1), (2))—2.9.2004 (*Gazette 2.9.2004 p3545*); Sch 4 (cll 24, 25, 26(2)—(4), 27(3)—(5) & 28)—1.7.2005 (*Gazette 30.6.2005 p2093*)
2005	5	*Adelaide Dolphin Sanctuary Act 2005*	14.4.2005	Sch 2 (cll 49—53)—1.7.2005 (*Gazette 2.6.2005 p1684*)
2005	20	*Statutes Amendment (Environment and Conservation Portfolio) Act 2005*	9.6.2005	Pt 4 (ss 25 & 26) & Sch 4—23.6.2005 (*Gazette 23.6.2005 p1901*)
2006	**17**	***Statutes Amendment (New Rules of Civil Procedure) Act 2006***	**6.7.2006**	**Pt 53 (s 171)—4.9.2006 (*Gazette 17.8.2006 p2831*)**
2009	84	*Statutes Amendment (Public Sector Consequential Amendments) Act 2009*	10.12.2009	Pt 96 (ss 226—229)—1.2.2010 (*Gazette 28.1.2010 p320*)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2002 Sch	25.8.2003
Pt 1		
s 2	*deleted by 44/2002 Sch*	*25.8.2003*
s 3		
s 3(1)		
Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 cl 49(1)	1.7.2005
biological diversity	*deleted by 20/2005 s 25*	*23.6.2005*
biological diversity or biodiversity	inserted by 20/2005 s 25	23.6.2005
breach	inserted by 44/2002 s 3(a)	19.12.2002
building	inserted by 44/2002 s 3(a)	19.12.2002
conciliator	*deleted by 44/2002 s 3(b)*	*25.8.2003*
ERD Court	inserted by 44/2002 s 3(c)	19.12.2002
heritage agreement	*deleted by 56/1993 Sch 2*	*15.1.1994*
Minister for the Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 cl 49(2)	1.7.2005
land	substituted by 44/2002 s 3(d)	25.8.2003
Murray-Darling Basin	inserted by 35/2003 Sch cl 15(a)	24.11.2003
native vegetation	amended by 44/2002 s 3(e)	25.8.2003
	amended by 35/2003 Sch cl 15(b)	24.11.2003
NRM region	inserted by 34/2004 Sch 4 cl 24(1)	1.7.2005
owner	amended by 44/2002 s 3(f), Sch	25.8.2003
River Murray Protection Area	inserted by 35/2003 Sch cl 15(c)	24.11.2003
soil conservation district	*deleted by 34/2004 Sch 4 cl 24(2)*	*1.7.2005*

s 3A	inserted by 44/2002 s 4	25.8.2003
s 4		
s 4(2)	substituted by 44/2002 s 5	25.8.2003
s 4(2a)—(2c)	inserted by 44/2002 s 5	25.8.2003
Pt 2		
s 6	amended by 44/2002 s 6	25.8.2003
Pt 3		
Pt 3 Div 1		
s 8		
s 8(1)	amended by 44/2002 s 7, Sch	25.8.2003
	amended by 34/2004 Sch 4 cl 25	1.7.2005
s 8(3)	amended by 44/2002 Sch	25.8.2003
s 8(5)	*deleted by 44/2002 Sch*	*25.8.2003*
s 11		
s 11(2)	amended by 44/2002 Sch	25.8.2003
s 13	amended by 44/2002 Sch	25.8.2003
s 14		
s 14(1)	s 14 amended by 88/2000 Sch 1 cl 4(c), (d)	21.12.2002
	s 14 amended and redesignated as s 14(1) by 44/2002 s 8(a), (b)	25.8.2003
s 14(2) and (3)	inserted by 44/2002 s 8(b)	25.8.2003
s 15		
s 15(5a) and (5b)	inserted by 44/2002 s 9	25.8.2003
s 15(6) and (7)	amended by 44/2002 Sch	25.8.2003
s 15(8)	inserted by 35/2003 Sch cl 15(d)	24.11.2003
s 15(9)	inserted by 5/2005 Sch 2 cl 50	1.7.2005
s 16		
s 16(2)	amended by 44/2002 Sch	25.8.2003
Pt 3 Div 2	*deleted by 44/2002 s 10*	*25.8.2003*
Pt 3 Div 3		
s 21		
s 21(3)	amended by 44/2002 s 11(a)	25.8.2003
s 21(3a)	inserted by 44/2002 s 11(b)	25.8.2003
s 21(6)	substituted by 44/2002 s 11(c)	25.8.2003
s 21(7)	inserted by 44/2002 s 11(c)	25.8.2003
Pt 4	heading substituted by 44/2002 s 12	25.8.2003
Pt 4 Div 1	heading inserted by 44/2002 s 12	25.8.2003
s 23	substituted by 56/1993 Sch 2	15.1.1994
s 23(1)	substituted by 44/2002 s 13	25.8.2003
s 23A	inserted by 56/1993 Sch 2	15.1.1994
s 23A(3)	amended by 44/2002 Sch	25.8.2003
s 23B	inserted by 56/1993 Sch 2	15.1.1994
s 23B(3)	amended by 44/2002 s 14	25.8.2003

s 23C	*inserted by 56/1993 Sch 2*	*15.1.1994*
	deleted by 44/2002 s 15	*19.12.2002*
Pt 4 Div 2	inserted by 44/2002 s 16	25.8.2003
Pt 4 Div 3	heading inserted by 44/2002 s 17	25.8.2003
s 24		
s 24(1a)	inserted by 44/2002 s 18(a)	25.8.2003
s 24(4)	amended by 44/2002 s 18(b)	25.8.2003
s 25		
s 25(1)	substituted by 34/2004 Sch 4 cl 26(1)	2.9.2004
s 25(2)	amended by 44/2002 s 19(a)	25.8.2003
	amended by 35/2003 Sch cl 15(e)	24.11.2003
	amended by 34/2004 Sch 4 cl 26(2)	1.7.2005
	(d) deleted by 34/2004 Sch 4 cl 26(3)	1.7.2005
s 25(3a)	inserted by 35/2003 Sch cl 15(f)	24.11.2003
s 25(3b)	inserted by 5/2005 Sch 2 cl 51(1)	1.7.2005
s 25(4)	amended by 44/2002 s 19(b)	25.8.2003
s 25(5a) and (5b)	inserted by 44/2002 s 19(c)	25.8.2003
s 25(5c)	inserted by 44/2002 s 19(c)	25.8.2003
	substituted by 35/2003 Sch cl 15(g)	24.11.2003
	substituted by 34/2004 Sch 4 cl 26(4)	1.7.2005
	substituted by 5/2005 Sch 2 cl 51(2)	1.7.2005
Pt 5	heading substituted by 44/2002 Sch	25.8.2003
Pt 5 Div 1		
s 26		
s 26(1) and (2)	amended by 44/2002 s 20(a)	19.12.2002
s 26(2a)	inserted by 44/2002 s 20(b)	19.12.2002
s 26(3)		
the prescribed period	inserted by 44/2002 s 20(c)	19.12.2002
the prescribed rate	amended by 44/2002 Sch	25.8.2003
s 27		
s 27(1)	s 27 amended and redesignated as s 27(1) by 44/2002 s 21(a)—(c)	25.8.2003
s 27(2)—(6)	inserted by 44/2002 s 21(c)	25.8.2003
s 28		
s 28(2)	amended by 44/2002 Sch	25.8.2003
s 28(3)	amended by 44/2002 s 22(a), (b)	25.8.2003
s 28(4)—(7)	inserted by 44/2002 s 22(c)	25.8.2003
s 29		
s 29(1)	amended by 34/2004 Sch 4 cl 27(1)	2.9.2004
s 29(4a)	inserted by 34/2004 Sch 4 cl 27(2)	2.9.2004
s 29(5)	substituted by 34/2004 Sch 4 cl 27(3)	1.7.2005
s 29(7)	*deleted by 34/2004 Sch 4 cl 27(4)*	*1.7.2005*

s 29(8)	substituted by 34/2004 Sch 4 cl 27(5)	1.7.2005
s 29(9a)	inserted by 35/2003 Sch cl 15(h)	24.11.2003
s 29(9b) and (9c)	inserted by 5/2005 Sch 2 cl 52	1.7.2005
s 29(10)	substituted by 44/2002 s 23(a)	25.8.2003
s 29(11)	substituted by 44/2002 s 23(a)	25.8.2003
	amended by 20/2005 s 26(1)	23.6.2005
s 29(12)	deleted by 44/2002 s 23(a)	25.8.2003
	inserted by 20/2005 s 26(2)	23.6.2005
s 29(15)	*deleted by 44/2002 s 23(b)*	*25.8.2003*
s 29(17)	inserted by 88/2000 Sch 1 cl 4(e)	21.12.2002
s 29A	inserted by 16/2001 s 7	14.6.2001
s 30	substituted by 44/2002 s 24	25.8.2003
s 30A	inserted by 44/2002 s 24	25.8.2003
Pt 5 Div 2		
s 31	substituted by 44/2002 s 25	19.12.2002
s 31A	inserted by 44/2002 s 25	19.12.2002
s 31A(4)	**amended by 17/2006 s 171**	**4.9.2006**
ss 31B—31F	inserted by 44/2002 s 25	19.12.2002
s 32		
s 32(1)	amended by 44/2002 s 26	19.12.2002
s 33		
s 33(1)	amended by 44/2002 s 27	19.12.2002
Pt 5 Div 3	inserted by 44/2002 s 28	19.12.2002
Pt 5A	inserted by 44/2002 s 29	19.12.2002
	expired: s 33G	(1.1.2007)
Pt 5B	inserted by 44/2002 s 29	19.12.2002
s 33I		
s 33I(14)	amended by 20/2005 Sch 4	23.6.2005
Pt 6		
s 33J	inserted by 44/2002 s 30	19.12.2002
	amended by 23/2004 Sch 1	1.9.2004
s 34		
s 34(1)	amended by 44/2002 s 31(a)	19.12.2002
s 34(2)	amended by 44/2002 s 31(a), (b)	19.12.2002
s 34(3)	amended by 44/2002 s 31(a)	19.12.2002
s 34(3a)	inserted by 44/2002 s 31(c)	19.12.2002
s 34(4)	inserted by 56/1993 Sch 2	15.1.1994
s 35		
s 35(1)	substituted by 44/2002 Sch	25.8.2003
s 35(2)	*deleted by 44/2002 Sch*	*25.8.2003*
s 35(5)	inserted by 44/2002 s 32	25.8.2003
s 36	amended by 56/1993 Sch 2	15.1.1994
	substituted by 44/2002 s 33	19.12.2002

s 37	*deleted by 44/2002 s 34*	*19.12.2002*
ss 40A and 40B	inserted by 44/2002 s 35	25.8.2003
s 41		
s 41(2)	amended by 44/2002 s 36	25.8.2003
s 41(3)	amended by 35/2003 Sch cl 15(i)	24.11.2003
Sch 1		
cl 1	amended by 35/2003 Sch cl 15(j)	24.11.2003
	amended by 34/2004 Sch 4 cl 28	1.7.2005
	amended by 5/2005 Sch 2 cl 53	1.7.2005
Sch 2		
cl 1	*deleted by 44/2002 Sch*	*25.8.2003*
Sch 3	*deleted by 44/2002 Sch*	*25.8.2003*

Historical versions

Reprint No 1—15.1.1994

Reprint No 2—14.6.2001

Reprint No 3—21.12.2002

Reprint No 4—25.8.2003

Reprint No 5—24.11.2003

1.9.2004 (electronic only)

2.9.2004

23.6.2005 (electronic only)

1.7.2005