

(Reprint No. 8)

South Australia

NATIVE VEGETATION REGULATIONS 1991

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **1 July 2002**.*

REGULATIONS UNDER THE NATIVE VEGETATION ACT 1991

NATIVE VEGETATION REGULATIONS 1991

being

No. 40 of 1991: *Gaz.* 18 April 1991, p. 1311

as varied by

No. 248 of 1993: *Gaz.* 27 October 1993, p. 2100¹

No. 204 of 1994: *Gaz.* 1 December 1994, p. 1912²

No. 12 of 1997: *Gaz.* 6 February 1997, p. 854³

No. 174 of 1998: *Gaz.* 21 August 1998, p. 616⁴

No. 159 of 1999: *Gaz.* 29 July 1999, p. 626⁵

No. 263 of 1999: *Gaz.* 16 December 1999, p. 3489⁶

No. 141 of 2002: *Gaz.* 27 June 2002, p. 2760⁷

¹ Came into operation 15 January 1994: reg. 2.

² Came into operation 1 December 1994: reg. 2.

³ Came into operation 6 February 1997: reg. 2.

⁴ Came into operation 21 August 1998: reg. 2.

⁵ Came into operation 29 July 1999: reg. 2.

⁶ Came into operation 16 December 1999: reg. 2.

⁷ **Came into operation 1 July 2002: reg. 2.**

N.B. The following regulations have been disallowed:

No. 201 of 1997: *Gaz.* 4 September 1997, p. 647 disallowed on 11 December 1997 see *Gaz.* 18 December 1997, p. 1646.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the regulations see Appendix.

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**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Native Vegetation Regulations 1991*.

Interpretation

2. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Native Vegetation Act 1991*;

"**private mine**" means land declared under the *Mining Act 1971* to be a private mine;

"**the township of Robe**" means the area shown as the township of Robe in the Development Plan.

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**PART 2
CONTROL OF CLEARANCE OF NATIVE VEGETATION**

DIVISION 1—EXEMPTIONS

Exemptions

3. (1) Pursuant to section 27 of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared—

- (a) if the clearance is authorised or required by an Act or regulation;
- (b) where the clearance is incidental to the lawful erection of a building or other structure;
- (c) if—
 - (i) the clearance is incidental to a proposed development to which section 48 of the *Development Act 1993* applies; and
 - (ii) an environmental impact statement, public environmental report or development report, and an Assessment Report, relating to the development have been prepared; and
 - (iii) the Minister administering the *Development Act 1993* referred the environmental impact statement, public environmental report or development report to the Native Vegetation Council for comment and report and—
 - (A) the Native Vegetation Council provided comments which were included (wholly or substantially) in the relevant Assessment Report; or
 - (B) the Council failed to provide comments within eight weeks after receiving the Minister's invitation for comment and report; and
 - (iv) the Governor has granted his or her consent to the proposed development under section 48 of the *Development Act 1993* and the vegetation is cleared in accordance with that consent;
- (d) where the clearance is incidental to the building, repair or maintenance work of the Crown;
- (da) where—
 - (i) the clearance is incidental to the building, repair or maintenance work of an electricity entity within the meaning of the *Electricity Act 1996*; and
 - (ii) the clearance has been approved in writing by the Minister responsible for the administration of that Act; and
 - (iii) the person undertaking the clearance complies with any conditions of approval imposed by the Minister;
- (e) where—
 - (i) the clearance is incidental to the lawful construction of a dam that will be used in primary production; and

- (ii) the vegetation to be cleared comprises trees with a stem diameter at the lowest point on the stem above ground level of over 150 millimetres; and
- (iii) the land on which the vegetation is situated has been cleared of all other native vegetation and has been maintained during the immediately preceding 5 years for cultivation or pasture;

[Please Note: River red gum (*Eucalyptus camaldulensis*) cannot be cleared pursuant to paragraph (e)—see regulation 3(2)]

(f) where the vegetation is situated within 20 metres of a dwelling;

(g) where—

- (i) the purpose of the clearance is to prevent, or reduce, the risk of personal injury or damage to property (but not injury or damage caused by fire); and
- (ii) the plant or plants comprising the vegetation exceed two metres in height; and
- (iii) the nature and extent of the clearance is reasonable;

(h) where—

- (i) the clearance consists of burning for the purpose of reducing combustible material on land; and
- (ii) the owner of the land or the district bushfire prevention committee under the *Country Fires Act 1989* for the area in which the land is situated has prepared a management plan that applies to the burning of the vegetation and the Council has given its approval to the management plan; and
- (iii) the person who carries out the burning complies with the requirements of the management plan;

(ha) where—

- (i) the only purpose of the clearance is to protect a dwelling or other building from the threat of fire; and
- (ii) the person undertaking the clearance complies with guidelines prepared by the Council relating to the clearance (the Council must consult the Country Fire Service Board, the Soil Conservation Council, the South Australian Farmers Federation Incorporated, the Local Government Association of South Australia and the Conservation Council of South Australia Incorporated when preparing the guidelines);

(i) where—

- (i) the clearance is solely for the purpose of providing fencing material (but not for the construction of trellises) or firewood for use (for a period not exceeding two years from the time of the clearance) by the owner of the land on which the vegetation was growing or was situated; and
- (ii) the vegetation has a stem diameter at one metre above the ground of 200 millimetres or less; and

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(iii) the nature and extent of the clearance is reasonable;

[Please Note: River red gum (*Eucalyptus camaldulensis*) cannot be cleared pursuant to paragraph (i)—see regulation 3(2)]

(j) where the clearance is for the purpose of—

(i) providing a strip of cleared land of not more than five metres in width on each side of an existing fence (or of a fence in the course of construction), to give access for the purpose of maintaining or establishing the fence; or

(ii) a track for the passage of vehicles having four or more wheels and that is not more than five metres in width;

(k) where the clearance is for a fire break and—

(i) the fire break is not more than five metres in width; or

(ii) the fire break is not more than 15 metres in width and—

(A) the fire break is situated on a property the sole use, or one of the principal uses, of which is primary production; and

(B) the purpose of the fire break is to protect that property; and

(C) the fire break is situated within the area of a rural council as defined in the *Country Fires Act 1989*; and

(D) the district bushfire prevention committee established under the *Country Fires Act 1989* for that area has given its consent to the clearance;

(ka) where the clearance is for a fire break and—

(i) the owner of the land on which the vegetation is growing or the district bushfire prevention committee under the *Country Fires Act 1989* for the area in which the land is situated has prepared a management plan that applies to the clearance of the vegetation and the Council has given its approval to the management plan; and

(ii) the person undertaking the clearance does so in accordance with the management plan;

(l) by, or on behalf of, a local council where—

(i) the vegetation is growing on a road reserve in the area of the council; and

(ii) the person undertaking the clearance complies with a management plan relating to the clearance prepared by the local council and approved by the Council or, if no such plan has been prepared and approved, with guidelines prepared by the Council relating to the clearance;

(m) by, or on behalf of, a local council where—

(i) the vegetation is on a reserve (other than a road reserve) vested in the council or the care, control and management of which is vested in the council; and

- (ii) the person undertaking the clearance complies with a management plan relating to the clearance prepared by the local council and approved by the Council;
- (n) where the clearance comprises the taking of—
 - (i) a specimen; or
 - (ii) a cutting for propagation; or
 - (iii) such part of a plant as is required in order to obtain the seeds of the plant, and does not cause substantial damage to the plant;
- (o) where the clearance is incidental to exploratory or mining operations authorised under the *Mining Act 1971* or the *Petroleum Act 1940*;
- (p) where the clearance is incidental to mining operations at a private mine at which mining operations have not been discontinued for a period exceeding 12 months at any time after 21 November 1984;
- (q) where—
 - (i) the land on which the vegetation is situated was used for cultivation, pasture or forestry within five years immediately before the proposed clearance occurs; and
 - (ii) the clearance is necessary to maintain the land so that it can continue to be used for cultivation, pasture or forestry to the extent to which it had been used for that purpose within the immediately preceding five years; and
 - (iii) —
 - (A) the vegetation has a stem diameter at the lowest point on the stem above ground level of 150 millimetres or less; or
 - (B) the vegetation is of the genus *Xanthorrhoea*;
- (r) by grazing of domestic stock in a manner and at a rate that is consistent with the manner in which, and the rate at which, the land has been grazed by domestic stock of the same species during the previous 10 years;
- (s) if—
 - (i) the vegetation is causing land management problems because it is—
 - (A) detrimentally affecting other native vegetation; or
 - (B) growing on land previously cleared of native vegetation; and
 - (ii) the person undertaking the clearance complies with—
 - (A) a management plan relating to the proposed clearance approved by the Council; or

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(B) if no such plan has been approved—guidelines prepared by the Council relating to the proposed clearance (the Council must consult the Soil Conservation Council, the South Australian Farmers Federation Incorporated, the Local Government Association of South Australia and the Conservation Council of South Australia Incorporated when preparing the guidelines);

(t) where—

- (i) it is not reasonably practicable to comply with an obligation under the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* to destroy or control animals or plants without at the same time destroying, damaging or otherwise clearing native vegetation; and
- (ii) the person undertaking the clearance complies with guidelines prepared by the Council relating to the clearance (the Council must consult the Animal and Plant Control Commission, the Soil Conservation Council, the South Australian Farmers Federation Incorporated, the Local Government Association of South Australia and the Conservation Council of South Australia Incorporated when preparing the guidelines).

(u) where—

- (i) the land on which the vegetation is situated is in the County of Cardwell; and
- (ii) the clearance is to provide cleared land for the purpose of the construction and maintenance of water management works (within the meaning of the *South Eastern Water Conservation and Drainage Act 1992*) by, or on behalf of, the South Eastern Water Conservation and Drainage Board pursuant to section 34 of that Act; and
- (iii) the Board or the person undertaking the clearance on its behalf has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
- (iv) the Board or the person undertaking the clearance on its behalf complies with the plan;

(v) where—

- (i) the land on which the vegetation is situated is in the County of Flinders or Robinson; and
- (ii) the clearance is necessary to preserve or augment an underground water supply of a city or town; and
- (iii) the clearance has been requested by the local council; and
- (iv) the owner of the land or the person who has the care, control and management of the land has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
- (v) the person undertaking the clearance complies with the plan.

(2) River red gum (*Eucalyptus camaldulensis*) cannot be cleared pursuant to subregulation (1)(e) or (i).

(3) For the purpose of determining the width of the fire break referred to in subregulation (1)(k)(ii), the fire break will be taken to include—

- (a) any area of land cleared to give access for the purpose of maintaining or establishing a fence that adjoins, or is adjacent to, the fire break; and
- (b) any area of land cleared for the purposes of a track that adjoins or is adjacent to the fire break.

(4) The decision of a district bushfire prevention committee to consent to the proposed clearance of land under subregulation (1)(k)(ii)(D) must be made in accordance with guidelines relating to the clearance of native vegetation for fire break purposes in the committee's area adopted by the Native Vegetation Council under section 25 of the Act.

(5) If relevant guidelines have not been adopted by the Council, the district bushfire prevention committee must, when making its decision, have regard to the following:

- (a) the need to protect land used for primary production; and
- (b) the need to preserve the vegetation for such of the reasons set out in paragraphs (a) to (k) (inclusive) of schedule 1 of the Act as are applicable.

(6) If a district bushfire prevention committee is of the opinion that there is more than one effective method of clearing native vegetation in the circumstances of an application for its consent under subregulation (1)(k)(ii)(D), it must, if it gives its consent to the clearance and subject to any relevant guidelines adopted by the Native Vegetation Council, direct the applicant to use the method of clearance that will cause the least environmental damage.

(7) A committee's consent to clearance under subregulation (1)(k)(ii)(D) is subject to—

- (a) a condition that the applicant comply with a direction (if any) given to the applicant under subregulation (6); and
- (b) such other conditions as the committee imposes.

Restrictions on clearance of vegetation

4. (1) Native vegetation may not be cleared pursuant to paragraph (f) of regulation 3 where the vegetation is situated within the following areas:

- (a) sections 13, 135, 136, 224, 225, 227, 228, 229, 230, 285, 368, 492, 512, 530 and D in the Hundred of Waterhouse; and
- (b) part sections 13, 30, 223 and 225 that are in the Hundred of Waterhouse; and
- (c) that part of section 214 that is within the township of Robe; and
- (d) that part of part section 369, Hundred of Waterhouse, that is east of Christine Drive and Lake Road.

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- (2) Native vegetation cannot be cleared pursuant to regulation 3(b), (e), (i), (j), (k) or (m)—
- (a) if the clearance would be contrary to the requirements of a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or of an order of a court under the Act or the repealed Act;
 - (b) if the vegetation was sown or planted in compliance with a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or in compliance with an order of a court under the Act or the repealed Act.

**DIVISION 2—APPLICATION FOR CONSENT TO CLEARANCE
OF NATIVE VEGETATION**

Application for consent

5. (1) An application for the consent of the Council to the clearance of native vegetation must be accompanied by—

- (a) a plan delineating the land to which the application relates; and
- (b) a native vegetation management plan prepared by the applicant in accordance with guidelines adopted by the Council under Part 4 of the Act; and
- (c) a fee of \$400.

(2) The Council may remit payment of, or refund, the whole, or part, of a fee payable or paid in relation to an application.

(3) A fee paid in relation to an application under subregulation (1)(c) must be applied towards the cost of administering the Act in accordance with the directions of the Minister.

**PART 3
MISCELLANEOUS**

Service of notices

6. Notice may be served under the Act on a land owner—

- (a) personally; or
- (b) by posting it to the land owner at the address of the land owner last known to the person or body serving the notice.

Register of applications

7. (1) The Council must make available for inspection by members of the public a register of applications received by the Council.

(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) the decision made by the Council in relation to the application.

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 3(1): varied by 248, 1993, reg. 3; 204, 1994, reg. 3(a); 12, 1997, reg. 3; 174, 1998, reg. 3; 159, 1999, reg. 4(b) (Sched. 2 cl. 3); 263, 1999, reg. 3

Regulation 3(3) - (7): inserted by 204, 1994, reg. 3(b)

Regulation 5(1): varied by **141, 2002, reg. 3(a)**

Regulation 5(3): inserted by **141, 2002, reg. 3(b)**