

South Australia

Native Vegetation (Miscellaneous) Amendment Act 2013

An Act to amend the *Native Vegetation Act 1991*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Native Vegetation (Miscellaneous) Amendment Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Native Vegetation Act 1991*

4—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *breach*—delete "and *breached* has a corresponding meaning" and substitute:
 - and includes a contravention of, or a failure to comply with, a term of a heritage agreement
- (2) Section 3(1), definition of *native vegetation*, (b)—delete "unless the person was acting" and substitute:
 - unless the plant was sown or planted
- (3) Section 3(1), definition of *native vegetation*, (b)—after subparagraph (ii) insert:
 - (iia) in circumstances involving the use of money paid into the Fund for the purpose of achieving a significant environmental benefit; or

5—Amendment of section 4—Application of Act

- (1) Section 4(2)—delete "subsection (2a)" and substitute:
 - subsections (2a) and (2ab)
- (2) Section 4—after subsection (2a) insert:
 - (2ab) This Act applies in that part of the City of Mitcham consisting of the following suburbs:
 - (a) Belair;

- (b) Bellevue Heights;
- (c) Blackwood;
- (d) Coromandel Valley;
- (e) Craighburn Farm;
- (f) Eden Hills;
- (g) Glenalta;
- (h) Hawthorndene.

6—Insertion of section 4A

After section 4 insert:

4A—Interaction with *Fire and Emergency Services Act 2005*

In the event of an inconsistency between this Act and the *Fire and Emergency Services Act 2005*, the *Fire and Emergency Services Act 2005* will prevail to the extent of the inconsistency.

7—Amendment of section 8—Membership of Council

- (1) Section 8(1)(b)—delete "the South Australian Farmers Federation Incorporated" and substitute:

Primary Producers SA Incorporated

- (2) Section 8(1)(f)—delete paragraph (f) and substitute:

- (f) 1 must be a person with extensive knowledge of, and experience in, planning, development or mining nominated by the Minister after consultation with the Minister for Planning; and

- (3) Section 8(3)—delete "the South Australian Farmers Federation Incorporated" and substitute:

Primary Producers SA Incorporated

- (4) Section 8—after subsection (7) insert:

- (8) In this section—

Minister for Planning means the Minister who has portfolio responsibility for urban and regional planning within the State.

8—Amendment of section 9—Conditions of office

Section 9(2)—after paragraph (d) insert:

or

- (e) for breach of, or non-compliance with, a condition of appointment.

9—Amendment of section 14—Functions of the Council

Section 14(2)—delete subsection (2) and substitute:

- (2) The Council, in performing a function, or exercising a power, under this Act—
 - (a) must take into account, and seek to further, the objects of this Act; and
 - (b) must take into account, and seek to further, the principles of clearance of native vegetation (insofar as they are relevant in the particular circumstances); and
 - (c) must take into account the provisions of the State NRM plan, and any other relevant NRM plan, under the *Natural Resources Management Act 2004*,

and, in any event, must not act in a manner that is seriously at variance with the principles of clearance of native vegetation.

10—Amendment of section 21—The Fund

(1) Section 21(3)—after paragraph (cb) insert:

- (cc) amounts paid into the Fund in accordance with an order under section 31EA; and
- (cd) amounts paid into the Fund in accordance with any provision made by the regulations; and

(2) Section 21(3a)—delete "section 28(3)(b)(iii)" and substitute:

section 28(3)(b)(ii)(C)

(3) Section 21(3a)—delete "section 28(3)(b)(iia)" and substitute:

section 28(3)(b)(ii)(A)

(4) Section 21(6)—delete subsection (6) and substitute:

- (6) Money paid into the Fund under subsection (3)(c), (ca), (cb), (cc) or (cd) must, as far as practicable, be used—
 - (a) to preserve and maintain native vegetation on land that is within the same region of the State as the relevant land (including preserving and maintaining native vegetation referred to in paragraph (b)); or
 - (b) 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.

- (6a) However, the Council may use the money referred to in subsection (6) to establish, regenerate or maintain native vegetation in a region of the State other than the region where the relevant land is located if—
- (a) the Council is satisfied that the environmental benefit to be achieved in the other region will outweigh the value of achieving a significant environmental benefit within the region where the relevant land is located; and
 - (b) the native vegetation includes or supports—
 - (i) plants of a rare, vulnerable or endangered species; or
 - (ii) plants that provide habitat for rare, vulnerable or endangered species of native animals; or
 - (iii) the whole, or a part, of a plant community that is rare, vulnerable or endangered; or
 - (iv) a significant remnant of vegetation in an area which has been extensively cleared; and
 - (c) the establishment, regeneration or maintenance of the native vegetation is carried out in accordance with guidelines adopted under section 25 that apply to such establishment, regeneration or maintenance.
- (6b) For the purposes of making an assessment under this section as to whether 2 or more places are within the same region of the State, the Council may take into account such matters as it thinks fit.
- (6c) To avoid doubt, nothing in this section prevents the Council from making a payment from the Fund to the person or body who paid the money into the Fund so that the person or body can establish, regenerate or maintain native vegetation in accordance with this Act.
- (5) Section 21(7)—delete "subsection (6)" and substitute:
this section
- (6) Section 21(7), definition of *relevant land*, (b)—delete "or (cb)" and substitute:
, (cb) or (cc)
- (7) Section 21(7), definition of *relevant land*—after paragraph (b) insert:
(c) in a case where subsection (3)(cd) applies—land on which the native vegetation that is relevant to the operation of the particular regulation was grown or was situated.

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

- (1) Section 25(1)—after paragraph (b) insert:
(ba) the establishment, regeneration or maintenance of native vegetation under section 21(6a); and

- (2) Section 25(1)—after paragraph (c) insert:
- and
 - (d) clearing vegetation by the process commonly known as a cold burn;
 - and
 - (e) any other matter required by the regulations.
- (3) Section 25(2)—after paragraph (a) insert:
- and
 - (ab) submit the guidelines to the Minister for comment; and
- (4) Section 25(2)(f)—delete "the South Australian Farmers Federation Incorporated" and substitute:

Primary Producers SA Incorporated

12—Insertion of Part 4A

After section 25 insert:

Part 4A—Credit, assignment and third party establishment of environmental benefits

25A—Credit for environmental benefits

- (1) If—
- (a) a person—
 - (i) has achieved an environmental benefit (not being a benefit required in relation to a consent to clear native vegetation or under any other requirement under this Act); or
 - (ii) has, in accordance with a consent to clear native vegetation, achieved an environmental benefit that exceeds the value of the minimum benefit needed to offset the loss of the cleared vegetation; and
 - (b) the Council is satisfied that the benefit or excess benefit (as the case requires) is of a significant value,
- the Council may, for the purposes of this Act—
- (c) credit the person with having achieved an environmental benefit of a value determined by the Council (whether monetary or otherwise); and
 - (d) take into account and apply the value of the credit (adjusted to reflect the value, in the Council's opinion, of the native vegetation the subject of the credit at the time it is so applied) to—
 - (i) an amount of environmental benefit the person must achieve; or

- (ii) an amount of compensation proposed to be paid into the Fund under section 28(4); or
 - (iii) an amount to be paid into the Fund under any other provision of this Act as an alternative to achieving an environmental benefit.
- (2) In determining the value of an excess benefit contemplated by subsection (1)(a)(ii), the Council must have regard to the approximate difference between the value of the environmental benefit achieved by the person and the value of the environmental benefit that would, in the Council's opinion, have been the minimum the person would have been required to achieve in the circumstances.

25B—Assignment of credit

- (1) Subject to this section, a person credited under section 25A with having achieved an environmental benefit (the *assignor*) may, with the written approval of the Council, assign the whole or part of the credit to another person or body (the *assignee*).
- (2) An application for approval under subsection (1)—
 - (a) must be made in a manner and form determined by the Council; and
 - (b) must be accompanied by such information as the Council may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- (3) The Council must not give its approval under subsection (1) unless the assignor has complied with any requirement of the Council to do 1 or more of the following:
 - (a) enter into a heritage agreement in respect of the native vegetation that is the subject of the credit to be assigned;
 - (b) enter into a management agreement under section 25D in respect of the native vegetation that is the subject of the credit to be assigned.
- (4) Before giving its approval under subsection (1), the Council must have regard to any Regional Biodiversity Plan or Plans approved by the Minister that apply within any region relevant to the application.
- (5) An approval may be conditional or unconditional.
- (6) A condition of an approval is binding on, and enforceable against—
 - (a) the assignor; and
 - (b) all owners and occupiers, and subsequent owners and occupiers, of the land on which the native vegetation that is the subject of the assigned credit is growing or situated.
- (7) The Council may, by notice in writing, vary or revoke a condition of an approval.

- (8) An approval remains in force for the period specified by the Council in the approval, or for such longer period as the Council may fix on application by the assignor or assignee.
- (9) The Council must inform the Registrar-General in writing of all conditions imposed under this section that relate to land and must provide the Registrar-General with such further information as the Registrar-General requires to comply with subsection (10).
- (10) 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.
- (11) 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 (10) (but must otherwise ensure that the note is not removed once made).
- (12) For the purposes of this Act—
 - (a) credit assigned under this section will be taken to be credit of the assignee;
 - (b) an assignment of credit that contravenes this section is, unless the Council determines otherwise, void and of no effect.

25C—Achievement of environmental benefit by accredited third party provider

- (1) Subject to this section, a requirement under this Act that an environmental benefit be achieved by a person (the *proponent*) may, with the written approval of the Council, be satisfied by means of the achievement of the environmental benefit by an accredited third party provider.
- (2) An application for approval under subsection (1)—
 - (a) must be made in a manner and form determined by the Council; and
 - (b) must be accompanied by such information as the Council may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- (3) The Council must not give its approval under subsection (1) unless the accredited third party provider—
 - (a) has entered into a management agreement under section 25D in respect of the native vegetation comprising the environmental benefit; and
 - (b) has complied with any other requirements prescribed by the regulations for the purposes of this section.
- (4) Before giving its approval under subsection (1), the Council must have regard to any Regional Biodiversity Plan or Plans approved by the Minister that apply within any region relevant to the application.

- (5) An approval may be conditional or unconditional.
- (6) A condition of an approval is binding on, and enforceable against—
 - (a) the accredited third party provider; and
 - (b) all owners and occupiers, and subsequent owners and occupiers, of the land on which the native vegetation comprising the environmental benefit is growing or situated.
- (7) The Council may, by notice in writing, vary or revoke a condition of an approval.
- (8) An approval remains in force for the period specified by the Council in the approval, or for such longer period as the Council may fix on application by the proponent or provider.
- (9) The Council must inform the Registrar-General in writing of all conditions imposed under this section that relate to land and must provide the Registrar-General with such further information as the Registrar-General requires to comply with subsection (10).
- (10) 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.
- (11) 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 (10) (but must otherwise ensure that the note is not removed once made).
- (12) In this section—

accredited third party provider means a person or body accredited for the purposes of this section in accordance with the regulations.

25D—Management agreements

- (1) The Minister may enter into a management agreement with—
 - (a) an assignor of credit under section 25B; or
 - (b) an accredited third party provider of an environmental benefit under section 25C.
- (2) A management agreement may contain such provisions for the management of the relevant native vegetation as the Minister thinks fit, including (without limiting the generality of this subsection)—
 - (a) requiring specified work or work of a specified kind to be carried out in accordance with specified standards on the land on which the relevant native vegetation is growing or situated (the *subject land*); and
 - (b) restricting the nature of work or other activities that may be carried out on the subject land.
- (3) A management agreement attaches to the subject land and is binding on the current owner of the subject land whether or not that owner was the person with whom the agreement was made.

- (4) The Minister may, by agreement with the owner of the subject land to which a management agreement applies, vary or terminate the agreement.
- (5) A management agreement is, to the extent specified in the agreement, binding on the occupier of the subject land.
- (6) The Minister must not enter into, vary or terminate a management agreement under this section without first consulting and obtaining the approval of the Council.
- (7) If the Minister enters into a management agreement, or an agreement varying or terminating a management agreement, the Registrar-General must, on application by the Minister, note the agreement against the relevant instrument of title or, in the case of subject 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).
- (8) In this section—
relevant native vegetation means the native vegetation that is the subject of credit assigned under section 25B or that comprises the environmental benefit achieved, or to be achieved, by the accredited third party provider under section 25C (as the case requires).

25E—Register

- (1) The Council must keep a register for the purposes of this Part.
- (2) The register must contain the information required by the regulations in relation to—
 - (a) each credit under section 25A; and
 - (b) each application of credit toward the matters contemplated by section 25A(1)(d); and
 - (c) each assignment of credit under section 25B; and
 - (d) each achievement of an environmental benefit by accredited third party providers under section 25C; and
 - (e) each management agreement under section 25D,and may contain any other information the Council thinks fit.
- (3) The register must be kept available for public inspection, without fee, at the office of the Council during ordinary office hours.

13—Amendment of section 26—Offence of clearing native vegetation contrary to this Part

- (1) Section 26(1), penalty provision—delete "\$500" and substitute:
\$750
- (2) Section 26(2), penalty provision—delete "\$500" and substitute:
\$750

- (3) Section 26(3), definition of *the prescribed period*—delete "21 days" wherever occurring and substitute in each case:

6 months

14—Amendment of section 27—Clearance of native vegetation

- (1) Section 27(1)—after paragraph (b) insert:

(c) native vegetation may, subject to subsection (5)(c), be cleared without any other restriction under this Act if the clearance falls within the ambit of subsection (4a).

- (2) Section 27—after subsection (4) insert:

(4a) The clearance of native vegetation falls within the ambit of this subsection if—

- (a) the clearance occurs in the course of clearing vegetation by the process commonly known as a cold burn (being a cold burn conducted in accordance with any relevant guidelines adopted by the Council under section 25); or
- (b) the clearance is authorised by the relevant Chief Officer under subsection (4b).

(4b) The relevant Chief Officer may authorise the clearance of native vegetation under this subsection if the Chief Officer considers—

- (a) that the clearance is reasonably necessary and appropriate for the purpose of protecting the life, health or safety of any person from a serious risk of bushfire after taking into account any guidelines developed by the Council after consultation with the Chief Officer of SACFS and the Chief Officer of SAMFS; and
- (b) that it is appropriate to proceed under this subsection rather than the other provisions of this Act due to the circumstances of the particular case.

(4c) A Chief Officer may—

- (a) give an authorisation under subsection (4b) subject to such conditions (if any) as the Chief Officer thinks fit to impose; and
- (b) vary or revoke an authorisation under subsection (4b) due to a change in circumstances.

(4d) A Chief Officer may only delegate a power under subsection (4b) or (4c) to a Deputy Chief Officer or Assistant Chief Officer of the relevant service.

- (3) Section 27(5)—delete "or a heritage agreement that was entered into in compliance with a condition of consent to clear native vegetation under the repealed Act" and substitute:

, a heritage agreement that was entered into in compliance with a condition of consent to clear native vegetation under the repealed Act or a management agreement under section 25D

- (4) Section 27(5)(b)—delete "a heritage agreement" and substitute:

such an agreement

- (5) Section 27—after subsection (6) insert:

- (7) In this section—

Chief Officer means a Chief Officer of SACFS or a Chief Officer of SAMFS (as the case requires) and includes a person for the time being acting in the relevant office;

fire-control purposes—these are purposes associated with preventing or controlling the spread of fires or potential fires;

relevant Chief Officer, in relation to an authorisation under subsection (4b), means—

- (a) if the relevant land is in a fire district established for the purposes of SAMFS—the Chief Officer of SAMFS;

- (b) in any other case—the Chief Officer of SACFS;

SACFS means the South Australian Country Fire Service;

SAMFS means the South Australian Metropolitan Fire Service.

15—Amendment of section 28—Application for consent

- (1) Section 28(3)(b)—delete paragraph (b) and substitute:

- (b) must be accompanied by—

- (i) —

- (A) if an environmental benefit required under this Act is to be satisfied by the application of a credit under section 25A—

- if the credit has been assigned in accordance with section 25B—a management agreement prepared under section 25D; and
- in any case—
 - information that establishes that the applicant has been credited, in accordance with section 25A or 25B, with having achieved an environmental benefit of a particular value; and

- information that establishes that the environmental benefit the subject of the credit amounts, after allowing for the loss of the vegetation to be cleared, to a significant environmental benefit; or
- (B) if an environmental benefit required under this Act has been, or is to be, achieved by an accredited third party provider in accordance with section 25C—
- a management agreement prepared under section 25D; and
 - information that establishes that the environmental benefit achieved, or to be achieved, by the accredited third party provider will, after allowing for the loss of the vegetation to be cleared, result in a significant environmental benefit; or
- (C) if an environmental benefit required under this Act is to be achieved in any other way—
- a native vegetation management plan prepared by the applicant in accordance with guidelines adopted by the Council under Part 4; and
 - information that establishes that subsequent establishment, regeneration or maintenance of native vegetation (whether on the land after the proposed clearance or on other 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
- (D) information that establishes that it is not possible for the applicant to achieve a significant environmental benefit in the manner contemplated by subsubparagraph (C); and
- (ii) in any case—
- (A) the prescribed number of copies of a report relating to the proposed clearance prepared in a form approved by the Council; and
- (B) such other information as the Council reasonably requires; and
- (C) the prescribed fee (including the fee prescribed for the report referred to in subsubparagraph (A)).

- (2) Section 28(4)—delete "subsection (3)(b)(ii)(B)" and substitute:

subsection (3)(b)(i)(D)

- (3) Section 28(5)—delete "subsection (3)(b)(iia)" and substitute:

subsection (3)(b)(ii)(A)

- (4) Section 28(6)—delete "subsection (3)(b)(iia)" and substitute:

subsection (3)(b)(ii)(A)

- (5) Section 28(7)—delete "subsection (3)(b)(iia)" and substitute:

subsection (3)(b)(ii)(A)

16—Amendment of section 29—Provisions relating to consent

- (1) Section 29—after subsection (4a) insert:

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

(a) —

- (i) a significant environmental benefit, which outweighs the value of retaining the vegetation, has been achieved and credited to the applicant under section 25A, or assigned to the applicant under section 25B; or

- (ii) a significant environmental benefit, which outweighs the value of retaining the vegetation, has been, or is to be, achieved by an accredited third party provider in accordance with section 25C; or

- (iii) a significant environmental benefit, which outweighs the value of retaining the vegetation, has been, or is to be, achieved by or on behalf of the applicant, having regard to the combined value of—

(A) the value of any environmental benefit credited to the applicant under section 25A, or assigned to the applicant under section 25B; and

(B) the value of any environmental benefit that has been, or is to be, achieved by an accredited third party provider in accordance with section 25C; and

(C) the value of any environmental benefit to be achieved through the imposition of conditions and the taking of other action by the applicant; and

- (b) that the particular circumstances justify the giving of consent.

(2) Section 29—after subsection (12) insert:

(12a) Subsections (11) and (12) do not apply in relation to a consent to which subsection (4b)(a)(i), (ii) or (iii) applies.

(12b) The Council must account for the application of any credited environmental benefit to a consent under this Division in accordance with the scheme prescribed by the regulations.

17—Amendment of section 29A—Avoidance of duplication of procedures etc

Section 29A(2)(b)—delete "section 28(3)(b)(i)" and substitute:

section 28(3)(b)(i)(C)

18—Repeal of section 31

Section 31—delete the section

19—Amendment of section 31E—Enforcement notices

(1) Section 31E(3)—delete subsection (3) and substitute:

(3) A notice under subsection (2) must identify the authorised officer issuing the direction.

(2) Section 31E(4)—delete "If" and substitute:

Subject to section 31EA, if

(3) Section 31E(9)—delete "12 months" and substitute:

2 years

20—Insertion of section 31EA

After section 31E insert:

31EA—Substituted direction where compliance with enforcement notice not reasonably practicable

(1) If—

(a) an authorised officer gives a direction to a person under section 31E(1)(b); and

(b) it is not reasonably practicable for the person to comply with the direction,

the person may apply to the Council for a substituted direction under this section.

(2) An application for an order under this section must be made in a manner and form determined by the Council.

- (3) The Council may, if satisfied that compliance with the direction under section 31E(1)(b) is not reasonably practicable, revoke the direction and instead direct the person—
 - (a) to take such action as may appear appropriate to the Council (whether on the person's land or otherwise), taking into account the nature and extent of the alleged breach forming the basis for the original direction; or
 - (b) to pay into the Fund an amount, determined by the Council to be appropriate in the circumstances, on account of any benefit that the person has gained, or can reasonably be expected to gain, by allegedly committing the breach; or
 - (c) to refrain from an act or course of action, or to undertake an act or course of action, to ensure that the person does not gain an ongoing benefit from the alleged breach.
- (4) A direction under this section—
 - (a) must specify the period within which the direction must be complied with;
 - (b) must comply with any other requirement set out in the regulations.
- (5) Without limiting this section, section 31E (other than subsection (9)) applies to a direction under this section as if it were a direction under section 31E(1)(b).

21—Substitution of section 33

Section 33—delete the section and substitute:

33—Commencement of proceedings

Proceedings under this Division must be commenced—

- (a) if the proceedings relate to an offence under this Act which the respondent has expiated or of which the respondent has been convicted or found guilty—within 6 months after the date on which the respondent so expiated, or was convicted or found guilty of, the offence (as the case requires); or
- (b) in any other case—within 5 years after the date of the alleged contravention of, or failure to comply with, a provision of this Act.

22—Amendment of section 33A—Appointment of authorised officers

- (1) Section 33A(2)(b)—delete paragraph (b)
- (2) Section 33A(3)(b), (c) and (d)—delete paragraphs (b), (c) and (d)

23—Amendment of section 33D—Provisions relating to seizure

Section 33D(2)—delete "six" and substitute:

24—Substitution of section 33J

Delete section 33J and substitute:

33J—Constitution and criminal jurisdiction of ERD Court

- (1) Subject to this Act, the following provisions apply 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—
 - (i) in relation to proceedings for an offence against this Act—a magistrate and 1 commissioner; or
 - (ii) in any case—a Judge and 1 commissioner;
 - (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner, or a magistrate and 1 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 1 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 1 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.
- (2) Offences constituted by this Act lie within the criminal jurisdiction of the ERD Court.

33K—Applications during criminal proceedings

- (1) If, during the course of criminal proceedings before a court in respect of an offence against this Act, the prosecutor applies for an order under this Act relating to the offence, the court must deal with the application during the course of the criminal proceedings unless satisfied by the defendant that to do so would not be appropriate in the circumstances.
- (2) If an application for an order under this Act is made to a court before which a person was convicted of an offence against this Act—
 - (a) the application may be dealt with by the court; and
 - (b) any power in relation to the relevant order may be exercised by the court,

whether or not the court is constituted in the same way as when the person was convicted of the offence.

25—Amendment of section 34—Evidentiary

Section 34—after subsection (4) insert:

- (5) In enforcement proceedings under Part 5 Division 2 or in proceedings for an offence against this Act, a document produced by the prosecution or plaintiff (as the case requires) and purporting to certify that a remotely sensed image specified in the document—
 - (a) was captured by a specified device and is accurate to the extent indicated in the document; and
 - (b) was captured at a specified time on a specified date; and
 - (c) is an image of a specified place,constitutes, in the absence of proof to the contrary, proof of the facts so certified.
- (6) For the purposes of this section, a reference to an electronic, sonic, optical, mechanical or other device includes a reference to any software used by, or in relation to, such a device.
- (7) In any legal proceedings, an apparently genuine document appearing to be a copy of a management agreement under section 25D certified by the Minister is, in the absence of proof to the contrary, proof of the agreement and its terms.
- (8) In this section—

image includes—

 - (a) a copy of an image; and
 - (b) data from which an image can be produced;

remotely sensed image means—

 - (a) an image captured by a device (whether a camera or otherwise) mounted on or in a satellite or aircraft; and
 - (b) any other image declared by the regulations to be included in the ambit of this definition.

26—Amendment of section 35—Proceedings for an offence

- (1) Section 35(1)—delete subsection (1) and substitute:
 - (1) Proceedings for an offence against this Act must be commenced within 5 years after the date on which the offence is alleged to have been committed.
- (2) Section 35(3)—delete subsection (3)

27—Substitution of section 41

Section 41—delete the section and substitute:

41—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or relating to—
 - (a) exemptions (conditional or unconditional) from specified provisions of this Act; and
 - (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
 - (c) fines, not exceeding \$10 000, for offences against the regulations; and
 - (d) expiation fees, not exceeding \$750, for offences against this Act or the regulations; and
 - (e) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may vary Schedule 1.
- (4) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Council or other specified person or body;
 - (c) refer to or incorporate, wholly or partially and with or without modification, a code, standard 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.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
 - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.