

South Australia

Pastoral Land Management and Conservation (Renewable Energy) Amendment Act 2014

An Act to amend the *Pastoral Land Management and Conservation Act 1989*.

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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 *Pastoral Land Management and Conservation (Renewable Energy) Amendment Act 2014*.

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 *Pastoral Land Management and Conservation Act 1989*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *the repealed Act* insert:

solar energy facility means a facility for the harnessing of energy from the sun;

- (2) Section 3(1)—after the definition of *variation* insert:

wind farm means a facility for the harnessing of energy from the wind;

wind farm licence means a licence under Part 6 Division 4 authorising the operation of a wind farm (or specified aspects of a wind farm) on pastoral land, including the construction of access roads and infrastructure associated with the wind farm.

5—Amendment of section 4—Objects

Section 4—after paragraph (e) insert:

and

- (f) to provide for the operation of wind farms on pastoral land, concurrently with the land being used for pastoral purposes.

6—Amendment of section 9—Pastoral Land Management Fund

- (1) Section 9(2)—after paragraph (a) insert:

(ab) 95% of—

- (i) any fee paid for an approval under Part 6 Division 4 to enter and occupy pastoral land; and
- (ii) any licence fees payable under a wind farm licence granted under Part 6 Division 4; and

- (2) Section 9(5)—delete "The Fund" and substitute:

Subject to subsection (6), the Fund

- (3) Section 9—after subsection (5) insert:

- (6) The Fund may be applied for the purpose of making a payment under section 49K.

7—Amendment of section 22—Conditions of pastoral leases

- (1) Section 22(1)(a)—after subparagraph (vi) insert:

- (vii) the lessee's obligation not to hinder, obstruct or interfere with the holder of a wind farm licence under Part 6 Division 4 who is exercising, or attempting to exercise, a right under the licence;

- (2) Section 22(1)(c)—after subparagraph (ii) insert:

- (iii) the right of the Minister to grant a wind farm licence under Part 6 Division 4.

- (3) Section 22—after subsection (7) insert:

- (8) Despite the preceding provisions of this section, the Minister may, from time to time, issue directions to a lessee for the purposes of the condition referred to in subsection (1)(a)(vii) (and such directions will have effect as if they were conditions of the lease).

Note—

Directions might, for example, specify areas in which trees are not to be planted so as not to interfere with the operation of a wind farm.

8—Amendment of section 31—Alteration of boundaries

- (1) Section 31—after subsection (1) insert:

- (1a) If—

- (a) part only of the land subject to a pastoral lease (the *relevant land*) has been resumed in accordance with section 32 for the purposes of a solar energy facility; and
- (b) construction of the solar energy facility has not, in the opinion of the Minister, been substantially completed within 5 years after the date on which the resumption took effect,

the Minister may, by notice in the Gazette, alter the boundary of the pastoral lease referred to in paragraph (a) so that the relevant land is again included in the lease.

- (2) Section 31(2)—delete "in the same notice" and substitute:

in a notice under this section

9—Amendment of section 32—Resumption of land

Section 32(3)—delete subsection (3) and substitute:

- (3) The resumption takes effect—
 - (a) if the resumption is for the purposes of a solar energy facility—on a day specified in the notice in the Gazette, which must be a day falling at least 2 months after the date on which that notice is given; or
 - (b) in any other case—on a day specified in the notice in the Gazette, which must be a day falling at least 6 months after the date on which that notice is given.

10—Insertion of Part 6 Division 4

After Part 6 Division 3 insert:

Division 4—Wind farms

49A—Interpretation

In this Division—

access agreement—each of the following are access agreements in relation to pastoral land:

- (a) an agreement between an applicant for a wind farm licence in relation to the land and the lessee for access to the land, or infrastructure on the land, by the lessee;
- (b) if a resources tenement is held over the land—an agreement between an applicant for a wind farm licence in relation to the land and the holder of the resources tenement for access to the land, or infrastructure on the land, by the resources tenement holder during construction and operation of the wind farm,

but an access agreement may not provide for access by a lessee or resources tenement holder to infrastructure associated with a wind farm if access to the infrastructure is not required for pastoral purposes or activities under the relevant resources tenement;

ERD Court means the Environment, Resources and Development Court;

prescribed interested party, in relation to pastoral land, means the following:

- (a) the lessee;
- (b) the holder of a resources tenement over the land;
- (c) if there is a native title declaration for the land—the registered representative of the native title holders and the relevant representative Aboriginal body;

- (d) if there is no native title declaration for the land—all persons who hold, or may hold, native title in the land;¹

Note—

- 1 For method of service see Part 5 *Native Title (South Australia) Act 1994*.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

resources tenement means—

- (a) a mining tenement (within the meaning of the *Mining Act 1971*); or
- (b) a tenement under the *Petroleum and Geothermal Energy Act 2000*.

49B—Minister may grant licences

- (1) Subject to this section, the Minister may grant wind farm licences in relation to pastoral land.
- (2) Before deciding whether to grant a licence, the Minister must consult with, and have regard to the views of, the prescribed interested parties.
- (3) The Minister must provide the prescribed interested parties with information that, in the opinion of the Minister, is relevant and necessary for the purposes of consultation.
- (4) The Minister may not grant a wind farm licence in relation to pastoral land unless the applicant has—
- (a) entered into an access agreement with the lessee; and
- (b) if a resources tenement is held over the land—entered into an access agreement with the holder of the resources tenement.
- (5) If the Minister has not determined an application for a licence within 3 months (or such longer period, not exceeding 12 months, as may be agreed between the Minister and the applicant), the application will be taken to have been refused.

49C—Applicant for licence to enter access agreement with resources tenement holder

- (1) For the purposes of section 49B(4)(a) and (b), the parties to a proposed access agreement must negotiate in good faith with a view to entering into the access agreement.
- (2) If either of the negotiating parties requests the ERD Court to do so, the Court must mediate between the parties to assist in obtaining their agreement.
- (3) If agreement between the negotiating parties is not reached within 6 months from when the negotiations were initiated, either party may apply to the ERD Court for a determination.

- (4) On application under this section, the ERD Court may—
 - (a) make a determination in relation to access to the land by the lessee or resources tenement holder (as the case requires) during the construction and operation of the wind farm (and a determination of the Court is to be taken to be an access agreement entered into between the parties for the purposes of this Division); and
 - (b) make other orders that the ERD Court considers to be appropriate in the circumstances.
- (5) An access agreement entered into for the purposes of this Division is binding on, and enforceable by, a person to whom a wind farm licence, a pastoral lease or a resources tenement is transferred or assigned as if the person were a party to the agreement.
- (6) A party to an access agreement who believes that the other party (the *respondent*) has contravened, or failed to comply with, a term of the agreement may apply to the ERD Court and the ERD Court may, if satisfied that the respondent is in default, make 1 or more of the following orders:
 - (a) an order that the respondent take specified action to comply with the agreement or to rectify a situation caused by the respondent;
 - (b) an order that the respondent pay compensation for loss or damage caused by a breach or a failure to comply with the agreement;
 - (c) any other order that the ERD Court considers to be appropriate in the circumstances.

49D—Interaction between Division and licence

The powers of the Minister under this Division in relation to a wind farm licence are in addition to, and do not derogate from, the provisions of the licence but where a provision of the licence is inconsistent with this Act, the Act prevails to the extent of the inconsistency.

49E—Rights under licence

- (1) A wind farm licence may grant such rights as the Minister considers necessary for the proper functioning of the wind farm to which the licence relates and may include the right to exclude the lessee or any other person from infrastructure associated with the wind farm (provided that the licence must be consistent with an access agreement entered into in relation to the land).
- (2) A wind farm licence may grant rights in relation to the operation of—
 - (a) the wind farm as a whole; or
 - (b) specified aspects of the wind farm.

49F—Minister to fix terms and conditions

- (1) Subject to this Act, the terms and conditions on which wind farm licences will be granted or renewed under this Act (including the licence fees payable under licences) will be as fixed by the Minister.
- (2) The Minister may, with the consent of the licensee, vary the terms and conditions of a licence.
- (3) Subject to subsection (4), a licence must include—
 - (a) a condition that the licensee provide the prescribed interested parties with information on an ongoing basis regarding—
 - (i) the proposed location and area of access roads and infrastructure associated with the wind farm; and
 - (ii) planned activities on the land (including construction of the wind farm) to be conducted under the licence; and
 - (b) conditions ensuring that a proper process is put in place, during the term of the licence, for the eventual decommissioning of the wind farm and rehabilitation of the wind farm site.
- (4) If more than 1 licence is granted in relation to a wind farm, only 1 of the licences must include the conditions referred to in subsection (3)(a)(i) and (b) (and the Minister may, in his or her absolute discretion, determine which of the licences will include the conditions).
- (5) A licence (other than a licence granted to a Crown agency) must—
 - (a) be granted for a term of at least 25 years; and
 - (b) give the licensee a right to renew the licence for a term of at least 25 years.
- (6) In determining the licence fees payable under a licence, the Minister must not take into account the value of any work carried out by the licensee in relation to the land or any other improvements on the land that do not belong to the Crown.

49G—Waiver of conditions etc

Despite any other provision of this Act or a provision contained in a wind farm licence, the Minister may, if satisfied that it would be reasonable in the circumstances—

- (a) waive a breach of, or compliance with, a condition of a licence unconditionally or subject to conditions; or
- (b) waive, reduce or remit any licence fees payable under a licence or may allow any licence fee, or part of a licence fee, to be paid at a time other than that specified in the licence.

49H—Dealing with licence

- (1) Subject to this section and the conditions of the wind farm licence, the licence cannot be transferred, assigned, mortgaged, sublet or otherwise dealt with without the consent of the Minister.
- (2) If the Minister has consented to a wind farm licence being mortgaged under this section, the mortgagee may exercise rights pursuant to the mortgage agreement in relation to the licence without the further consent of the Minister if notice, in writing, of the proposed exercise of rights has been given to the Minister.
- (3) A wind farm licence granted to a body corporate may be transferred or assigned to a related body corporate without the consent of the Minister if notice, in writing, of the proposed transfer or assignment has been given to the Minister.
- (4) If the licensee transfers or assigns the licence—
 - (a) all accrued and accruing liabilities to the Crown pass to the transferee or assignee; and
 - (b) any such liabilities that had accrued before the date of the transfer or assignment may be enforced against the transferor or assignor (who will be regarded as jointly and severally liable with the transferee or assignee).

49I—Cancellation of licences

- (1) Subject to subsection (2), the Minister may, by notice in writing to a licensee, cancel a wind farm licence if—
 - (a) the Minister is satisfied that a condition of the licence has been breached; or
 - (b) the Minister is not satisfied (on the basis of evidence provided by the licensee) that the licensee has achieved the critical progress milestones specified in subsection (3); or
 - (c) the licensee requests the cancellation.
- (2) The Minister cannot cancel a licence under subsection (1)(a) unless satisfied—
 - (a) that the licensee has been allowed a reasonable opportunity to make good the breach but has failed to do so; or
 - (b) that cancellation is necessary in order to prevent, arrest or minimise damage to or deterioration of land associated with the wind farm.
- (3) For the purposes of subsection (1)(b) the following critical progress milestones must be achieved by a licensee:
 - (a) within 3 years after the grant of the licence, the licensee must—
 - (i) have financing for construction of the major components of the wind farm approved; and

- (ii) have executed contracts for the construction of the major components of the wind farm;
 - (b) within 5 years after the grant of the licence, the licensee must have all wind turbines erected and have completed the turbine commissioning tests.
- (4) Subject to the regulations, no compensation is payable by the Crown in respect of the cancellation of a licence under this section.

49J—Access to pastoral land prior to grant of licence

- (1) A person who intends to apply for a wind farm licence may, with the approval of the Minister, enter and occupy pastoral land—
 - (a) to conduct any investigations or tests, temporarily install any devices, or take any samples, for the purposes of making such application (or determining whether to make such application); or
 - (b) for a purpose approved by the Minister.
- (2) The Minister may only grant an approval under subsection (1) if the person who intends to enter and occupy pastoral land has paid the fee fixed by the Minister.
- (3) A person who intends to enter and occupy pastoral land under subsection (1) must give the prescribed interested parties at least 14 days notice of his or her intention to enter and occupy the land.
- (4) If the Minister grants an approval under this section to a person to enter and occupy pastoral land, no application may, for the period of 2 years and 6 months commencing from the granting of the approval, be made by another person to the Minister for an approval under this section in respect of that land.
- (5) The Minister may, on application by a person granted an approval under this section, extend the period of 2 years and 6 months referred to in subsection (4) so that that subsection would apply in relation to the land for a further period of 3 years from the granting of the application for the extension, if the Minister is satisfied that the person has developed a plan for a wind farm on the land and can fund completion of that plan.
- (6) Nothing in this section requires a person granted an approval under this section to disclose to the Minister or any other person any information collected pursuant to the approval.
- (7) An approval granted to a body corporate under this section will be taken to apply to a related body corporate on the related body corporate giving notice, in writing, to the Minister of its intention to exercise rights under the approval.

49K—Payments

- (1) Subject to this section, the Minister must authorise the payment (on an equitable basis) of an amount or amounts from the Fund to the prescribed interested parties if—
 - (a) an approval is granted to a person under section 49J to enter and occupy pastoral land; or
 - (b) a wind farm licence is granted in relation to pastoral land, (and the prescribed interested parties are not entitled to any other payment or compensation under this Act in respect of the wind farm).
- (2) Before authorising the payment of an amount or amounts to a prescribed interested party under subsection (1), the Minister must consult with, and have regard to the views of, the prescribed interested party.
- (3) A payment may not be made under this section to a prescribed interested party that is the holder of a resources tenement over the land.
- (4) Subsection (1)(a) does not apply to a prescribed interested party of a kind referred to in paragraph (d) of the definition of prescribed interested party.

49L—Appeals to ERD Court

- (1) A person who is dissatisfied with a decision made under this Division may appeal against the decision to the ERD Court.
- (2) An appeal must be made in a manner and form determined by the ERD Court, setting out the grounds of the appeal.
- (3) Subject to this section, an appeal under this section must be instituted within 21 days after notice of the relevant decision is given to the appellant.
- (4) If the reasons of the Minister are not given to the appellant in writing at the time of making the decision and the appellant (within the period specified in subsection (3) as the time within which an appeal may be instituted) requires the Minister to state the reasons in writing—
 - (a) the Minister must, within 30 days after being required to do so by the appellant, state in writing the reasons for the decision; and
 - (b) the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.
- (5) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.

- (6) Unless otherwise determined by the ERD Court, an appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to that appeal).
- (7) Subject to subsection (8), the institution of an appeal does not affect the operation of the decision to which the appeal relates.
- (8) The ERD Court may, on application by a party to an appeal, make an order staying or otherwise affecting the operation or implementation of the whole or a part of a decision if the Court is satisfied that it is appropriate to do so.
- (9) An order under subsection (8)—
 - (a) may be varied or revoked by the ERD Court by further order; and
 - (b) is subject to such conditions as are specified in the order; and
 - (c) has effect until—
 - (i) the end of the period of operation (if any) specified in the order; or
 - (ii) the decision of the ERD Court on the appeal comes into operation,whichever is the earlier.
- (10) The ERD Court must not make an order under subsection (8) unless each party to the appeal has been given a reasonable opportunity to make submissions in relation to the matter.
- (11) The ERD Court may, on hearing an appeal under this section—
 - (a) confirm, vary or revoke the decision or order appealed against;
 - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
 - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.
- (12) An order for costs cannot be made against an appellant unless the ERD Court is satisfied that the appellant's conduct in relation to the proceedings was frivolous, vexatious or calculated to cause delay.

49M—Exemption from stamp duty

The grant or renewal of a wind farm licence is exempt from stamp duty.

49N—Special provisions relating to Murray-Darling Basin and River Murray Protection Areas

- (1) If a proposed wind farm licence relates to an area within the Murray-Darling Basin, the Minister must, in considering whether to grant the licence, take into account the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (2) If a proposed licence relates to a River Murray Protection Area under the *River Murray Act 2003* and is within a class of licences prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such licences), the Minister must, before deciding whether to grant the licence—
 - (a) consult with the Minister to whom the administration of that Act is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the licence (including a direction that the licence not be granted, or that if it is granted, then the licence be subject to conditions specified by the Minister).

49O—Application of *Crown Land Management Act 2009*

- (1) Part 3 Division 6 of the *Crown Land Management Act 2009* does not apply to a wind farm licence.
- (2) Part 4 Division 3 of the *Crown Land Management Act 2009* applies to a wind farm licence, and to the holder of that licence, as if the licence granted the holder a right in relation to Crown land under that Act.

49P—Rights under wind farm licence to prevail

- (1) Despite section 62 (but subject to subsection (2)), a licence or other interest in land may not be granted by or under any other Act if to do so would be inconsistent with the rights of the holder of a wind farm licence under this Act.
- (2) Nothing in this section prevents—
 - (a) the renewal of a licence or other interest in land; or
 - (b) the grant of a licence or other interest in land—
 - (i) that is associated with a licence or interest in land granted before the commencement of this Division; or
 - (ii) with the consent of the holder of the relevant wind farm licence.