

South Australia

**Native Vegetation (Miscellaneous) Amendment
Bill 2008**

A BILL FOR

An Act to amend the *Native Vegetation Act 1991* and to make a related amendment to the *Heritage Places Act 1993*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Native Vegetation Act 1991*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 4—Application of Act
- 6 Amendment of section 7—Establishment of the Council
- 7 Amendment of section 8—Membership of the Council
- 8 Amendment of section 9—Conditions of office
- 9 Amendment of section 12—Validity of acts of the Council
- 10 Repeal of section 13
- 11 Amendment of section 14—Functions of the Council
- 12 Amendment of section 21—The Fund
- 13 Amendment of section 25—Guidelines for the application of assistance and the management of native vegetation
- 14 Amendment of section 26—Offence of clearing native vegetation contrary to this Part
- 15 Amendment of section 28—Application for consent
- 16 Insertion of section 28A
 - 28A Credit for environmental benefits
- 17 Repeal of section 31
- 18 Amendment of section 33B—Powers of authorised officers
- 19 Amendment of section 33D—Provisions relating to seizure
- 20 Amendment of section 35—Proceedings for an offence
- 21 Amendment of section 41—Regulations

Schedule 1—Related amendment of *Heritage Places Act 1993*

- 1 Amendment of Schedule 1—Transitional provisions
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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 2008*.

2—Commencement

- 5 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:

5 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

- 10 (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:

15 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:

- 20 (a) Belair;
(b) Bellevue Heights;
(c) Blackwood;
(d) Coromandel Valley;
(e) Craigburn Farm;
(f) Eden Hills;
25 (g) Glenalta;
(h) Hawthorndene.

6—Amendment of section 7—Establishment of the Council

Section 7—after subsection (2) insert:

- 30 (3) The Council is subject to the general direction and control of the Minister (but the Minister cannot give any direction with respect to any advice or recommendation that the Council might give or make, or in relation to a particular application that is being assessed by, or that is to be, or has been, assessed by, the Council).

7—Amendment of section 8—Membership of the Council

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

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

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 12—Validity of acts of the Council

Section 12(2) and (3)—delete subsections (2) and (3)

10—Repeal of section 13

Section 13—delete section 13

11—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.

12—Amendment of section 21—The Fund

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

- (cc) amounts paid into the Fund in accordance with any provision made by the regulations; and

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

- (6) Subject to subsection (6a), money paid into the Fund under subsection (3)(c), (ca), (cb) or (cc) 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

- 5 (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—
- 10 (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—
- 15 (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
- 20 (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.
- 25 (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.
- 30 (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.
- (3) Section 21(7)—delete "subsection (6)" and substitute:
- 35 this section
- (4) Section 21(7), definition of *relevant land*—after paragraph (b) insert:
- (c) in a case where subsection (3)(cc) applies—land on which the native vegetation that is relevant to the operation of the particular regulation was grown or was situated.

13—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) 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

14—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

15—Amendment of section 28—Application for consent

(1) Section 28(3)(b)(ii)(A)—delete "the planting and maintenance of native vegetation on the land after clearance or on adjacent land" and substitute:

subsequent establishment, regeneration or maintenance of native vegetation (whether on the land after the proposed clearance or on other land)

(2) Section 28(3)(b)(ii)—after subparagraph (A) insert:

(AB) information that establishes that the applicant has a credit under section 28A that, after allowing for the loss of the vegetation to be cleared, would have resulted in a significant environmental benefit had the establishment, regeneration or maintenance of native vegetation that is the subject of the credit occurred as contemplated by subparagraph (A); or

(3) Section 28(3)(b)(ii)(B)—after "subparagraph (A)" insert:

or (AB)

16—Insertion of section 28A

After section 28 insert:

28A—Credit for environmental benefits

(1) If—

5 (a) a person 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

10 (b) the Council is satisfied that the additional benefit is of a
significant value,

the Council may—

15 (c) for the purposes of section 28(3)(b)(ii)(AB), credit the
person with having achieved an environmental benefit of a
value (whether monetary or otherwise) determined by the
Council; and

20 (d) in determining a subsequent application by the person for
consent under section 28, 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 the application is made) to the amount of
environmental benefit the person must achieve, or the
amount of compensation proposed to be paid under
section 28(4), in order that the consent be granted in the
circumstances.

25 (2) In determining the value of an environmental benefit under
subsection (1)(c), 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 requirement for
30 consent under section 28 to have been granted in the circumstances.

17—Repeal of section 31

Section 31—delete the section

18—Amendment of section 33B—Powers of authorised officers

Section 33B(4), (5) and (6)—delete subsections (4), (5) and (6)

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

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

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20—Amendment of section 35—Proceedings for an offence

Section 35(1)—delete subsection (1) and substitute:

- 5 (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.

21—Amendment of section 41—Regulations

(1) Section 41(2)(e)—delete "\$500" and substitute:

\$750

(2) Section 41(2)—after paragraph (e) insert:

- 10 (f) provide for amounts of money (whether or not specified by the regulations) to be paid into the Fund for the purposes of achieving a significant environmental benefit;
- (g) create offences punishable by a fine not exceeding \$10 000;
- (h) fix expiation fees for alleged offences against the regulations;
- 15 (i) make provisions facilitating proof of the commission of offences against the regulations.

Schedule 1—Related amendment of *Heritage Places Act 1993*

1—Amendment of Schedule 1—Transitional provisions

Schedule 1, clause 2—after subclause (7) insert:

- 20 (7a) A heritage agreement entered into under the repealed Act by the Minister responsible for the administration of that Act in the Minister's capacity as Trustee of the State Heritage (as established by that Act) in force immediately before the commencement of this subclause that—
- 25 (a) relates to the preservation or enhancement of any plant or plants of a species indigenous to Australia (including any such plant that has been intentionally sown or planted); and
- (b) immediately before that commencement, does not apply to land constituting a registered place or State Heritage Area,
- 30 becomes, by force of this subclause, a heritage agreement under the *Native Vegetation Act 1991* (and may then have effect in all respects as if entered into under that Act).
- 35 (7b) A reference to the Trustee of the State Heritage in a heritage agreement within the ambit of subclause (7a) will, after the commencement of this subclause, be taken to be a reference to the Minister responsible for the administration of the *Native Vegetation Act 1991*.

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- (7c) A heritage agreement within the ambit of a preceding subclause that is or becomes, by virtue of this clause, a heritage agreement under the *Native Vegetation Act 1991* may contain any provision for the preservation or enhancement of any plant or plants of a species indigenous to Australia even if the plant or plants do not constitute native vegetation under that Act (and may be varied or renewed on this basis).