

Legislative Council—No 133A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 20 June 2013

South Australia

**Natural Resources Management (Review)
Amendment Bill 2010**

A BILL FOR

An Act to amend the *Natural Resources Management Act 2004*.

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Schedule 1—Transitional provision

1 Presiding member of NRM Council to continue

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Natural Resources Management (Review) Amendment Act 2010*.

5 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.

10 Part 2—Amendment of *Natural Resources Management Act 2004*

4—Amendment of section 3—Interpretation

(2) Section 3(1), definition of *domestic purpose*, paragraph (a)—delete paragraph (a) and substitute:

15 (a) taking water for the purpose of watering or irrigating land, other than land used solely in connection with a dwelling; or

(ab) without limiting paragraph (a)—taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or

20 (6) Section 3(1), definition of *private land*, (a)—delete "*Crown Lands Act 1929*" and substitute:

Crown Land Management Act 2009

(7) Section 3(1), definition of *residential premises*—delete the definition

(8) Section 3(1), definition of *surface water*—after paragraph (c) insert:

25 (e) water in a watercourse if the watercourse, or a particular part of a watercourse, is declared by proclamation under subsection (13) to constitute surface water for the purposes of this Act;

(12) Section 3—after subsection (12) insert:

(13) The Governor may—

30 (a) by proclamation, declare a watercourse, or a part of a watercourse, to constitute surface water for the purposes of this Act;

- (b) by subsequent proclamation or proclamations, vary or revoke a proclamation under paragraph (a).

- (14) A proclamation under subsection (13) will have effect according to its terms.

5 **5—Amendment of section 11—Powers of delegation**

Section 11(4)(b)—after "Chapter 5" insert:

(other than a function or power under section 110(3), 111, 114(10) or 117(4))

6—Amendment of section 13—Composition of NRM Council

- (a1) Section 13(2)(a)—delete "(who will be the presiding member)"

- 10 (1) Section 13—after subsection (4) insert:

(4a) Subsection (4) does not apply if—

- (a) the Minister is seeking to fill a casual vacancy in the membership of the NRM Council; and
- (b) the unexpired period of office of the member whose position has become vacant (the "former member") is less than 2 years; and
- (c) the Minister's intention is that the term of office of the person appointed to the vacant position will be equal to the unexpired term of the former member at the time that the vacant position is filled; and
- (d) the Minister has consulted with the presiding member of the Council in respect of filling the vacant position.

- (2) Section 13(5)(a)(v)—delete "administration" and substitute:

management

- 25 (3) Section 13—after subsection (7) insert:

(7a) The Governor must appoint a suitable member of the NRM Council to be the presiding member of the NRM Council (however a member cannot serve as presiding member of the NRM Council for more than 8 consecutive years).

30 **7—Amendment of section 14—Conditions of membership**

- (1) Section 14(1)—delete "3" and substitute:

4

- (2) Section 14(1)—delete "subject to the qualification that a person cannot serve as a member of the NRM Council for more than 6 consecutive years"

- 35 (3) Section 14—after subsection (1) insert:

- (1a) However, a person cannot serve as a member of the NRM Council—
 - (a) if the person has at any point been a presiding member of the NRM Council—for more than 12 consecutive years; or
 - (b) in any other case—for more than 8 consecutive years.

8—Amendment of section 20—Annual report

Section 20(2)—delete subsection (2) and substitute:

- (2) The report must include any report or information provided to the NRM Council under this Act for inclusion in its annual report.

9—Amendment of section 22—Establishment of regions

Section 22(4)—delete "notice" and substitute:

proclamation

10—Amendment of section 25—Composition of boards

(1) Section 25—after subsection (3) insert:

(3a) Subsections (2) and (3) do not apply if—

- (a) the Minister is seeking to fill a casual vacancy in the membership of a regional NRM board; and
- (b) the unexpired term of office of the member whose position has become vacant (the "former member") is less than 2 years; and
- (c) the Minister's intention is that the term of office of the person appointed to the vacant position will be equal to the unexpired term of the former member at the time that the vacant position is filled; and
- (d) the Minister has consulted with the presiding member of the regional NRM board in respect of filling the vacant position.

(2) Section 25(4)(a)(vi)—delete "administration" and substitute:

management

(3) Section 25(8)—after "board" second occurring insert:

(however a member cannot serve as presiding member of a particular regional NRM board for more than 8 consecutive years)

11—Amendment of section 26—Conditions of membership

(1) Section 26(1)—delete "3" and substitute:

4

(2) Section 26(1)—delete "subject to the qualification that a person cannot serve as a member of a particular regional NRM board for more than 6 consecutive years"

(2a) Section 26—after subsection (1) insert:

(1a) However, a person cannot serve as a member of a particular regional NRM board—

- (a) if the person has at any point been a presiding member of the regional NRM board—for more than 12 consecutive years; or
- (b) in any other case—for more than 8 consecutive years.

- (3) Section 26(3)(f)—delete "the Minister" and substitute:
the Governor

12—Amendment of section 38—Annual reports

- (1) Section 38(1)—delete subsection (1) and substitute:

- 5 (1) A regional NRM board must, on or before 30 November in every year, provide to the Minister a report—
- (a) on its activities for the financial year ending on the preceding 30 June (and the regional NRM board need not provide a report under the *Public Sector Act 2009*); and
- 10 (b) on the activities of any NRM group within its region (and any NRM group need not provide a report under the *Public Sector Act 2009*).

- (2) Section 38—after subsection (2) insert:

- 15 (3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.
- (4) The relevant regional NRM board must ensure that a copy of any report within the ambit of subsection (3) is published on the regional NRM board's website within 5 business days after being laid before
- 20 both Houses of Parliament under that subsection.

12A—Amendment of section 48—Composition of NRM groups

- (1) Section 48(2)(a)—delete "in a newspaper circulating generally throughout the relevant region" and substitute:

on its website, and give such other public notice as the board may determine,

- 25 (2) Section 48(3)—delete subsection (3)

- (3) Section 48(6)—after "group" second occurring insert:

(however a member cannot serve as presiding member of a particular NRM group for more than 8 consecutive years)

13—Amendment of section 49—Conditions of membership

- 30 (1) Section 49(1)—delete "3" and substitute:

4

- (2) Section 49(1)—delete "subject to the qualification that a person cannot act as a member of a particular NRM group for more than 9 consecutive years"

- (2a) Section 49—after subsection (1) insert:

35 (1a) However, a person cannot serve as a member of a particular NRM group—

- (a) if the person has at any point been a presiding member of the NRM group—for more than 12 consecutive years; or
- (b) in any other case—for more than 8 consecutive years.

14—Repeal of section 57

Section 57—delete the section

15A—Amendment of section 69—Powers of authorised officers

(1) Section 69(1)(d)—delete paragraph (d) and substitute:

- 5 (d) use reasonable force to break into or open any part of, or anything in
 or on, any place or vehicle, but only if the authorised officer—
- (i) is acting under the authority of a warrant issued by a
 magistrate; or
- 10 (ii) is acting with the permission of the owner of the relevant
 land, or the person apparently in charge of the vehicle (as
 the case requires); or
- (iii) believes on reasonable grounds that immediate action is
 required because a Category 1 or Category 2 animal may be
 present in the place or vehicle;

15 (2) Section 69—after subsection (9) insert:

- (9a) If an authorised officer causes any damage by digging up any land
 under this section, the entity that appointed the authorised officer is
 liable to pay reasonable compensation to any person who has
 suffered loss on account of that damage.

20 16—Repeal of section 72

Section 72—delete the section

16A—Amendment of section 73—Offences by authorised officers

Section 73—after paragraph (b) insert:

or

- 25 (c) represents that he or she is authorised (however described) under this
 or any other Act to exercise a particular power when he or she is not
 so authorised,

17—Amendment of section 75—Regional NRM plans

(1) Section 75(1)—after "its operations" insert:

30 and in order to promote the objects of this Act within its region

(2) Section 75(3)—after paragraph (b) insert:

- (ba) set strategic directions for all natural resource management activities
 that are to be undertaken under this Act in relation to its region; and

(3) Section 75(3)(b)(iii)—after "flood mitigation" insert:

35 , and plans to manage significant issues associated with the drainage of land
 (insofar as these issues are not being managed or addressed in other ways)

(3a) Section 75(3)(h)(ii)—delete "for the first of those years"

(3b) Section 75(3)(h)(ii)—delete "year" wherever occurring and substitute in each case:
period

(4) Section 75(3)(i)—after "Chapter 5" insert:

and subsection (3a) applies for the purposes of this paragraph

5 (5) Section 75(3)—after paragraph (j) insert:

(ja) if the plan proposes a water levy be declared under Chapter 5 Part 1 Division 2—set out the board's proposals or recommendations with respect to the basis on which the levy will be imposed under section 101; and

10 (6) Section 75(3)(k)—delete paragraph (k) and substitute:

(k) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a permit under Chapter 7 Part 2; and

(7) Section 75—after subsection (3) insert:

15 (3a) This subsection applies for the purposes of paragraph (i) of subsection (3) if—

(a) a plan proposes—

(i) that funds should now comprise or include an amount to be raised or recovered by a levy under Chapter 5 Part 1 Division 1 or Division 2; and

20 (ii) such a levy has not been imposed in the financial year immediately preceding the financial year in which the levy is to be imposed; or

(b) a plan proposes—

(i) that a levy under Chapter 5 Part 1 Division 1 or Division 2 imposed in 1 financial year be again imposed in the next financial year; and

25 (ii) that the amount to be raised or recovered by the levy in the next financial year will be an amount that exceeds the amount raised for the last financial year adjusted to reflect increases (if any) in the CPI during the financial year immediately preceding that last financial year.

18—Amendment of section 76—Preparation of water allocation plans

35 (1) Section 76(4)—after paragraph (a) insert:

(aab) include—

(i) an assessment of the capacity of the water resource to meet environmental water requirements; and

- 5
- (ii) information about the water that is to be set aside for the environment including, insofar as is reasonably practicable, information about the quantity and quality, the time when that water is expected to be made available, and the type and extent of the ecosystems to which it is to be provided; and
 - (iii) a statement of the environmental outcomes expected to be delivered on account of the provision of environmental water under the plan; and

(2) Section 76(4)(h)(i)—delete subparagraph (i) and substitute:

- 10
- (i) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a permit under Chapter 7 Part 2; and

(3) Section 76—after subsection (8) insert:

- 15
- (9) For the purposes of this section, environmental water requirements are those water requirements that must be met in order to sustain the ecological values of ecosystems that depend on the water resource, including their processes and biodiversity, at a low level of risk.

19—Repeal of section 78

Section 78—delete the section

20—Amendment of section 79—Preparation of plans and consultation

(1) Section 79(1)—delete subsection (1) and substitute:

- (1) A regional NRM board proposing to create a plan must prepare a draft plan for the purposes of this Division.

- 25
- (1a) A regional NRM board must, at the time that it commences the preparation of a draft plan, give public notice of its decision to proceed to prepare a draft in a manner determined by the board.

(2) Section 79(6)(a)—after subparagraph (ix) insert:

- 30
- (ixa) any body that represents the interests of Aboriginal people identified by the Minister for the purposes of this subparagraph (either in relation to a particular plan or more generally); and

(2a) Section 79(10)—delete subsection (10) and substitute:

- (10) The board must publish an invitation under subsection (9) on its website, and may give such other public notice of the invitation as the board may determine.

35

(3) Section 79—after subsection (18) insert:

- (19) The board may, as part of the processes associated with subsections (16), (17) and (18), amend the draft plan as the board thinks fit.

21—Amendment of section 80—Submission of plan to Minister

Section 80(1)—after "section 79(18)" insert:

(and, if relevant, under section 79(19))

22—Amendment of section 81—Review and amendment of plans

- 5 (a1) Section 81(1)—delete "plan annually." and substitute:
plan—
- (a) at any time the board is proposing an increase in the amount to be raised by way of levy (being an increase not contemplated by the current plan); and
- 10 (b) without limiting paragraph (a), at least once every 3 years.
- (a2) Section 81(2)—delete subsection (2)
- (a3) Section 81(3)—delete "annual"
- (1) Section 81(4)—delete "5" and substitute:
10
- 15 (2) Section 81(7)(a)(i)—delete subparagraph (i) and substitute:
- (i) publishes a summary of the proposed amendments, as well as a notice inviting members of the public to provide it with written submissions in relation to the proposed amendments within a specified period (being a period of at least 21 days), on its website and in such other manner as the board may determine; and
- 20 (3) Section 81(10)(b)(ii)—delete subparagraph (ii) and substitute:
- (ii) that the amount to be raised or recovered by the levy in the next financial year will be an amount that exceeds the amount raised for the last financial year adjusted to reflect increases (if any) in the CPI during the financial year immediately preceding that last financial year,
- 25 (4) Section 81(10)—after "the procedures set out in section 80(8) to (16) must be followed when the plan is amended" insert:
(and if the amendment is otherwise within the ambit of subsection (8) then no other procedures, other than the procedures set out in subsection (7) and the procedures referred to in this subsection, need be followed)
- 30

22A—Amendment of section 84—Time for preparation and review of plans

- 35 (1) Section 84(2)—delete "preparation of a concept statement or by the public and other consultation required by this Act, the Minister may dispense with the requirements for the concept statement and" and substitute:
public and other consultation required by this Act, the Minister may dispense with the requirements for such
- (2) Section 84(3)—delete "the annual review of its plan" and substitute:
reviews of its plan as required under this Act

23—Amendment of section 97—Outside council areas

- (1) Section 97(4)—delete "will be" and substitute:
may be

24—Amendment of section 100—Interpretation

- 5 Section 100(1), definition of *levy*—delete the definition and substitute:
levy includes an instalment of a levy.

25—Amendment of section 106—Determination of quantity of water taken

Section 106(1)—after paragraph (e) insert:

- 10 (f) water taken for the purposes of the construction or repair of a public road must be disregarded;
- (g) if water taken for the purposes of the construction or repair of a public road is not measured by meter, or the water is taken for other purposes as well, the Minister must make an assessment of the quantity of water taken for those purposes on such basis as the Minister thinks fit.
- 15

26—Amendment of section 115—Declaration of penalty in relation to unauthorised or unlawful taking of water

Section 115(4)—after "subsection (1)(cb)" insert:
or (d)

20 **28—Amendment of section 124—Right to take water subject to certain requirements**

- (1) Section 124(3)—delete "and (6)" and substitute:
, (6) and (6a)

30—Amendment of section 127—Water affecting activities

- 25 (3) Section 127(6), Expiation fee provision—delete this provision and substitute:
Expiation fee: If the offence is constituted by a breach of a prescribed condition of a water management authorisation or permit—\$750.

32—Amendment of section 135—Permits

Section 135(4)—delete subsection (4) and substitute:

- 30 (4) A relevant authority must—
- (a) take into account the provisions of the relevant regional NRM plan when considering an application for a permit;
and
- (b) ensure that the permit, if granted, and any conditions of the permit, are not inconsistent with the provisions of the relevant regional NRM plan.
- 35

34—Amendment of section 150—Transfer of water licences

(1) Section 150(13)—after paragraph (c) insert:

- (d) require a reduction in the size of a dam, or require other work to be undertaken with respect to a dam, wall or structure, to match the effect of the transfer.

(2) Section 150—after subsection (14) insert:

- (14a) A person who holds a water licence that is subject to the operation of subsection (13)(d) must comply with that requirement within a period specified by the Minister.

Maximum penalty:

- (a) where the offender is a body corporate—\$50 000;
(b) where the offender is a natural person—\$25 000.

35—Amendment of section 152—Source of allocation

(1) Section 152(1)—after paragraph (a) insert:

- (ab) as a carry-over under subsection (7)(a) or (b); or

(2) Section 152—after subsection (2) insert:

- (2a) In a case where subsection (1)(ab) applies, the water allocation that is carried over will be subject to such adjustments (including a reduction) as the Minister may determine for the purposes of this section.

(3) Section 152(7)—delete subsection (7) and substitute:

- (7) A water allocation will initially relate to a specified period (not exceeding 12 months) and if water is not taken under the terms of the allocation during that period the allocation may be carried over if—

- (a) to do so is authorised by the relevant water allocation plan;
or
(b) a carry-over is allowed by the Minister (either by determination of the Minister in a particular case or cases or under a policy established by the Minister for the purposes of this section by notice in the Gazette),

but otherwise the water allocation will expire at the end of the period.

36—Amendment of section 161—Variation of approvals

(1) Section 161(1)—after paragraph (d) insert:

- (da) at any time if the variation is necessary, in the opinion of the Minister, to provide consistency with action taken with respect to the variation or transfer of a water licence that is relevant to the water resource works approval; or

(2) Section 161(4)(b)—delete "licence" and substitute:

water resource works approval

37—Amendment of section 164N

Section 164N—after subsection (11) insert—

- 5 (12) If a person who is an existing user under a preceding subsection divests himself or herself of land (or an interest in land) in relation to which the rights of an existing user arises under those subsections—
- 10 (a) the person who acquires the land (or the interest in land), or any successor to that person, will be regarded as the existing user in substitution for the earlier existing user (and to obtain the benefit of any action or commitment taken or made by an earlier existing user); and
- (b) those subsections will apply subject to any modifications necessary to take into account the operation of this subsection, and such other modifications as may be prescribed by the regulations.

15 38—Amendment of section 167—Allocation of reserved water

Section 167(1)(d)—delete "subsections (2) and (4) of section 151" and substitute:
subsections (2) and (7) of section 147

39A—Amendment of section 171—By-laws

20 Section 171(7)(b)—delete "cause to be published a notice in a newspaper circulating generally throughout the region setting out" and substitute:

publish the proposed by-law, as well as a notice inviting members of the public to provide the board with written submissions in relation to the proposed by-law within a specified period (being a period of at least 6 weeks), on its website and in such other manner as the board may determine

25 40—Amendment of section 175—Movement of animals or plants

- (1) Section 175(2)—after "control area for a class of" insert:
animals or
- (2) Section 175(2)(a)—delete "a plant" and substitute:
an animal or plant
- 30 (3) Section 175(2)(b)—delete "a plant" and substitute:
an animal or plant

41—Amendment of section 176—Possession of animals or plants

Section 176(1)—delete subsection (1) and substitute:

- 35 (1) Subject to this Act, a person must not keep, or have in his or her possession or control, an animal of a class to which this subsection applies.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$50 000 or imprisonment for 1 year;

(b) if the offence relates to a Category 2 animal—\$20 000 or imprisonment for 6 months;

(c) if the offence relates to a Category 3 animal—\$10 000.

Expiation fee: If the offence relates to a Category 3 animal—\$500.

5 (1a) Subject to this Act, a person must not keep, or have in his or her possession or control, an animal of a class to which this subsection applies within a control area for that class of animals.

Maximum penalty:

10 (a) if the offence relates to a Category 1 animal—\$50 000 or imprisonment for 1 year;

(b) if the offence relates to a Category 2 animal—\$20 000 or imprisonment for 6 months;

(c) if the offence relates to a Category 3 animal—\$10 000.

Expiation fee: If the offence relates to a Category 3 animal—\$500.

15 **42—Amendment of section 177—Sale of animals or plants, or produce or goods carrying animals or plants**

Section 177(2)—delete "carrying a plant" and substitute:

carrying an animal or plant

43—Amendment of section 179—Offence to release animals or plants

20 (1) Section 179—before subsection (1) insert:

(a1) A person must not release an animal of a class to which this subsection applies, or cause or permit an animal of that class to be released.

Maximum penalty: \$100 000 or imprisonment for 2 years.

25 (2) Section 179(3)—after "an offence against" insert:

subsection (a1),

(3) Section 179(4)(a)(ii)—delete subparagraph (ii) and substitute:

(ii) warning the defendant that if the animal, or an animal of that class (as the case may be)—

30 (A) in the case of an animal under subsection (a1)—were to be released within any part of the State; and

(B) in the case of an animal under subsection (1)—were to be released into a control area,

then the defence would not apply;

35 (4) Section 179(5)—after "contravention of" insert:

subsection (a1) or

(5) Section 179(8)(b)—after "open environment" insert:

(including by sowing or planting any plant or plant material or by otherwise distributing seeds, spores, cuttings, divisions or other plant propagating material)

5 **44—Amendment of section 181—Requirement to control certain animals or plants**

(1) Section 181—before subsection (1) insert:

10 (a1) A person who has in his or her possession or control an animal of a class to which this subsection applies must comply with any instructions of an authorised officer with respect to the keeping or management of any animal of that class.

Maximum penalty:

15 (a) if the offence relates to a Category 1 animal—\$50 000 or imprisonment for 1 year;

(b) if the offence relates to a Category 2 animal—\$20 000 or imprisonment for 6 months;

(c) if the offence relates to a Category 3 animal—\$10 000.

Expiation fee: If the offence relates to a Category 3 animal—\$500.

(2) Section 181(3)—delete "subsection (1) or (2)" and substitute:

20 this section

46—Repeal of section 234

Section 234—delete the section

Schedule 1—Transitional provision

1—Presiding member of NRM Council to continue

25 Despite section 13(7a) of the *Natural Resources Management Act 2004* as enacted by this Act, the presiding member of the NRM Council immediately before the commencement of this clause (being the member referred to in section 13(2)(a) of that Act) will continue as the presiding member of the NRM Council until—

30 (a) he or she is removed from office, or his or her office is vacated, under section 14 of that Act; or

(b) the expiration of his or her current term of office,
whichever occurs first.