

SOUTH AUSTRALIA

NATIVE VEGETATION ACT 1991

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 January 1994**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Application of Act
5. Act to bind Crown

PART 2 OBJECTS OF THIS ACT

6. Objects

PART 3 ADMINISTRATION

DIVISION 1—THE NATIVE VEGETATION COUNCIL

7. Establishment of the Council
8. Membership of the Council
9. Conditions of office
10. Allowances and expenses
11. Procedures at meetings of the Council
12. Validity of acts of the Council and immunity of members
13. Personal interest of member
14. Functions of the Council
15. Delegation of powers and functions
16. Staff
17. Annual report

DIVISION 2—CONCILIATORS

18. Appointment of conciliators
19. Conditions of appointment
20. Allowances, etc.

DIVISION 3—THE NATIVE VEGETATION FUND

21. The Fund
22. Accounts and audit

PART 4 HERITAGE AGREEMENTS AND FINANCIAL AND OTHER ASSISTANCE

23. Heritage agreements
- 23A. Effect of heritage agreement
- 23B. Registration of heritage agreements
- 23C. Enforcement of heritage agreements
24. Assistance to landowners
25. Guidelines for the application of assistance and the management of native vegetation

Native Vegetation Act 1991

**PART 5
CLEARANCE OF NATIVE VEGETATION**

DIVISION 1—CONTROL OF CLEARANCE

- 26. Offence of clearing native vegetation contrary to this Part
- 27. Clearance of native vegetation
- 28. Application for consent
- 29. Provisions relating to consent
- 30. Referral to conciliator

DIVISION 2—CIVIL ENFORCEMENT PROCEEDINGS

- 31. Jurisdiction of the Court
- 32. Appeals
- 33. Commencement of proceedings

**PART 6
MISCELLANEOUS**

- 34. Evidentiary provision, etc.
- 35. Proceedings for an offence
- 36. Powers of entry, etc.
- 37. Hindering of officers, etc.
- 38. Vicarious liability
- 39. Offences by bodies corporate
- 40. General defence
- 41. Regulations

SCHEDULE 1

Principles of Clearance of Native Vegetation

SCHEDULE 2

Repeal and Transitional Provisions

SCHEDULE 3

Amendments to the South Australian Heritage Act 1978

**APPENDIX 1
LEGISLATIVE HISTORY**

**APPENDIX 2
DIVISIONAL PENALTIES**

NATIVE VEGETATION ACT 1991

being

Native Vegetation Act 1991 No. 16 of 1991
[Assented to 18 April 1991]¹

as amended by

Heritage Act 1993 No. 56 of 1993 [Assented to 27 May 1993]²

¹ Came into operation 18 April 1991: *Gaz.* 18 April 1991, p. 1294.

² Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1890.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide incentives and assistance to landowners in relation to the preservation and enhancement of native vegetation; to control the clearance of native vegetation; to repeal the Native Vegetation Management Act 1985; to make consequential amendments to the South Australian Heritage Act 1978; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Native Vegetation Act 1991*.

Commencement

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

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**biological diversity**" means diversity of ecosystems and ecological processes and of the plants, animals and micro-organisms that comprise or participate in those ecosystems or processes;

"**to clear**" native vegetation includes to cause or permit the clearance of native vegetation;

"**clearance**", in relation to native vegetation, means—

- (a) the killing or destruction of native vegetation;
- (b) the removal of native vegetation;
- (c) the severing of branches, limbs, stems or trunks of native vegetation;
- (d) the burning of native vegetation;
- (e) any other substantial damage to native vegetation,

and includes the draining or flooding of land, or any other act or activity, that causes the killing or destruction of native vegetation, the severing of branches, limbs, stems or trunks of native vegetation or any other substantial damage to native vegetation;

"**conciliator**" means a person appointed and holding office as a conciliator under Part 3 Division 2;

"**the Council**" means the Native Vegetation Council established by this Act;

"**the Fund**" means the Native Vegetation Fund established by this Act;

* * * * *

"**isolated plant**"—see subsections (2) and (3);

Native Vegetation Act 1991

"**land**" includes an interest in land;

"**local council**" means a municipal or district council;

"**member**" means a member of the Council;

"**native vegetation**" means a plant or plants of a species indigenous to South Australia including a plant or plants growing in or under waters of the sea but does not include—

- (a) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by regulation to be included in this definition; or
- (b) a plant intentionally sown or planted by a person unless the person was acting in compliance with a condition imposed by the Council under this Act or by the Native Vegetation Authority under the repealed Act, or with the order of a court under this Act or the repealed Act;

"**owner**" of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;
- (b) in relation to land held under Crown lease—the lessee;
- (c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;
- (d) in relation to any other land—the Minister who is responsible for the care, control and management of the land or, if no Minister is responsible for the land, the Minister of Lands;

"**pastoral land**" means land comprised in a lease granted under the *Pastoral Land Management and Conservation Act 1989* over Crown land for the pasturing of stock and other ancillary purposes;

"**principles of clearance of native vegetation**" means principles set out in schedule 1 to which the Council must have regard when determining an application for consent to clear native vegetation;

"**the repealed Act**" means the *Native Vegetation Management Act 1985* repealed by this Act;

"**soil conservation district**" means an area of land declared to be a soil conservation district under the *Soil Conservation and Land Care Act 1989*;

"**waters of the sea**" includes any water that is subject to the ebb and flow of the tide.

(2) A plant will be taken to be an isolated plant if—

- (a) it is at least one metre in height; and
- (b) there is no other plant comprising native vegetation that is 200 millimetres or more in height within 50 metres of it.

(3) Each plant of a group of two or three plants or of a group of plants that is the subject of a determination by the Council under subsection (4) will be taken to be an isolated plant if it would be an isolated plant under subsection (2) except for its proximity to another plant, or other plants, in the group.

(4) The Council may, where in its opinion the circumstances of a particular case justify a determination under this subsection, determine that each plant of a group of four or more plants will be taken to be an isolated plant.

(5) A determination under subsection (4) must be agreed to by all the members of the Council present at the meeting at which it is made.

(6) The distance between two plants for the purposes of subsection (2) will be taken to be the distance between those parts of the plants that are above ground level and are closest to each other.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Application of Act

4. (1) Subject to this section, this Act applies to the whole of the State.

(2) This Act does not apply within those parts of the State that—

(a) are within the area shown as Metropolitan Adelaide in the Development Plan; and

(b) are also within the area of a local council (excluding the cities of Happy Valley, Mitcham, Munno Para and Noarlunga and the District Councils of East Torrens, Stirling and Willunga); but

(c) are not within the zone shown as the Hills Face Zone in the Development Plan.

(3) The Governor may, by regulation, exclude any other part or parts of the State from the operation of this Act.

Act to bind Crown

5. This Act binds the Crown.

Native Vegetation Act 1991

**PART 2
OBJECTS OF THIS ACT**

Objects

6. The objects of this Act include—

- (a) the provision of incentives and assistance to landowners in relation to the preservation, enhancement and management of native vegetation; and
- (b) the conservation of the native vegetation of the State in order to prevent further reduction of biological diversity and further degradation of the land and its soil; and
- (c) the limitation of the clearance of native vegetation to clearance in particular circumstances including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the efficient use of land for primary production; and
- (d) the encouragement of research into the preservation, enhancement and management of native vegetation; and
- (e) the encouragement of the re-establishment of native vegetation in those parts of the State that have been cleared of native vegetation.

**PART 3
ADMINISTRATION**

DIVISION 1—THE NATIVE VEGETATION COUNCIL

Establishment of the Council

7. (1) The Native Vegetation Council is established.

(2) The Council has the powers, functions and duties conferred, assigned or imposed by this Act.

Membership of the Council

8. (1) The Council consists of seven members appointed by the Governor of whom—

- (a) one (who will be the presiding member of the Council) must be nominated by the Minister; and
- (b) one must be a person selected by the Minister from a panel of three persons nominated by the United Farmers and Stockowners of S.A. Inc.; and
- (c) one must be a person selected by the Minister from a panel of three persons nominated by the Conservation Council of South Australia; and
- (d) one must be a person selected by the Minister for the time being responsible for the administration of the *Soil Conservation and Land Care Act 1989* from a panel of three persons nominated by the Soil Conservation Council established under that Act; and
- (e) one must be nominated by the Local Government Association; and
- (f) one must be nominated by the Commonwealth Minister for the Environment; and
- (g) one must be a person with extensive knowledge of, and experience in, the preservation and management of native vegetation nominated by the Minister.

(2) All members of the Council must have some knowledge of, and experience in, the preservation and management of native vegetation.

(3) The members nominated by the United Farmers and Stockowners of S.A. Inc. and the Local Government Association must be persons who—

- (a) carry on a business of primary production (whether as owner or manager of the business); and
- (b) live on, or in close proximity to, the land on which the business is carried on; and
- (c) manage the business on a daily basis.

(4) At least one member of the Council must be a woman and one must be a man.

(5) If practicable the Minister must nominate a person who was a member of the Native Vegetation Authority immediately before the commencement of this Act as the first presiding member of the Council.

Native Vegetation Act 1991

(6) The Governor may appoint a deputy to a member of the Council and the deputy may, in the absence, or during a temporary vacancy in the office, of that member, act as a member of the Council.

(7) The appointment of a deputy to a member is subject to the same nomination and qualification requirements as the appointment of the member.

Conditions of office

9. (1) A member of the Council will be appointed for a term not exceeding two years on conditions determined by the Governor and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member may be removed from office by the Governor—

(a) for misconduct; or

(b) for neglect of duty; or

(c) for incompetence; or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office by the Governor under subsection (2).

(4) Upon the office of a member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

Allowances and expenses

10. A member of the Council, or of a committee established by the Council, is entitled to such remuneration, allowances and expenses as the Governor may determine.

Procedures at meetings of the Council

11. (1) The presiding member will preside at meetings of the Council or, in his or her absence, his or her deputy will preside or, in the absence of both of them, a member chosen by those present will preside.

(2) Subject to subsection (3) the Council may act notwithstanding vacancies in its membership.

(3) Four members constitute a quorum of the Council.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the Council but if the members are equally divided the decision of the person presiding at the meeting is the decision of the Council.

(5) Subject to this Act, the Council may determine its own procedures.

Validity of acts of the Council and immunity of members

12. (1) No act or proceeding of the Council is invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability attaches to a member for any act or omission by the member, or by the Council, in good faith and in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge, of duties under this Act.

(3) A liability that would, but for subsection (2), attach to a member of the Council attaches instead to the Crown.

Personal interest of member

13. A member who has a personal interest, or a direct or indirect pecuniary interest, in a matter under consideration by the Council must not take part in any deliberations or decision of the Council in relation to that matter.

Penalty: Division 6 fine.

Functions of the Council

14. The Council has the following functions:

- (a) to keep the condition of the native vegetation of the State under review; and
- (b) to advise the Minister in relation to—
 - (i) the preservation, enhancement and management of existing native vegetation; and
 - (ii) the re-establishment of native vegetation on land from which native vegetation has been cleared; and
 - (iii) research into the preservation, enhancement and management of native vegetation and the re-establishment of native vegetation on cleared land; and
- (c) to keep the principles of clearance of native vegetation under review and to advise the Minister of any changes to the principles that it considers are necessary or desirable; and
- (d) to determine applications for consent to clear native vegetation under Part 5; and
- (e) to encourage research into the preservation, enhancement and management of existing native vegetation; and
- (f) to encourage the re-establishment of native vegetation on land from which native vegetation has been cleared; and
- (g) to administer the Fund pursuant to Division 3; and
- (h) such other functions as are assigned to the Council by this Act.

Native Vegetation Act 1991

Delegation of powers and functions

15. (1) Subject to this Act, the Council may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to—

(i) the presiding member or another member of the Council; or

(ii) a committee established by the Council (whether or not it consists of or includes a member or members of the Council); or

(iii) a local council or other body corporate; or

(iv) any other person;

(b) may be made subject to such conditions as the Council thinks fit;

(c) is revocable at will and does not derogate from the power of the Council to act in any matter itself.

(3) A delegation and the revocation of a delegation under this section must be in writing.

(4) A delegation under this section may be made to the person for the time being holding an office or position specified in the delegation.

(5) Where the Council delegates powers or functions to a local council in pursuance of this section, the local council may, with the approval of the Council, subdelegate those powers to a committee or officer of the local council.

(6) A person to whom powers or functions are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which the delegate has a personal interest or a direct or indirect pecuniary interest.

Penalty: Division 6 fine.

(7) A person who is a member of a local council or the governing body of a body corporate to which powers or functions are delegated under this section is disqualified from taking part in any deliberations or decisions of the local council or body corporate made pursuant to the delegation in relation to any matter in which that person has a personal interest or a direct or indirect pecuniary interest.

Penalty: Division 6 fine.

Staff

16. (1) There must be a secretary to the Council and such other staff to assist the Council as the Governor thinks fit.

(2) The secretary and other members of staff will be appointed, and hold office, subject to, and in accordance with, the *Government Management and Employment Act 1985* and may hold office in conjunction with any other office in the Public Service of the State.

(3) The Council may, with the approval of the Minister administering a department, make use of the services of officers of that department.

Annual report

17. (1) On or before 31 October in each year, the Council must prepare and present to the Minister a report upon the administration of this Act during the year that ended on the preceding 30 June and must as part of that report, report upon the work of the Council in carrying out its functions and achieving the objects of this Act.

(2) The report must set out the purposes for which money from the Fund was applied in the relevant year and the amount applied for each purpose and must explain why the Fund was applied in that manner.

(3) The Minister must, within six sitting days after receiving a report presented under this section, cause copies of the report to be laid before both Houses of Parliament.

DIVISION 2—CONCILIATORS

Appointment of conciliators

18. The Minister must appoint at least three persons who have wide knowledge of, and experience in, the preservation and management of native vegetation to be conciliators for the purposes of this Act.

Conditions of appointment

19. (1) A conciliator will be appointed for such term and on such conditions as the Minister thinks fit.

(2) A conciliator may be removed from office by the Minister—

(a) for misconduct; or

(b) for neglect of duty; or

(c) for incompetence; or

(d) for mental or physical incapacity to carry out the duties of office satisfactorily.

(3) The office of a conciliator becomes vacant if he or she—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) is removed from office by the Minister under subsection (2).

(4) If, upon the office of a conciliator becoming vacant, the number of conciliators falls below three, a person must be appointed in accordance with this Act to the vacant office.

Native Vegetation Act 1991

Allowances, etc.

20. A conciliator is entitled to such remuneration, allowances and expenses as the Minister may determine.

DIVISION 3—THE NATIVE VEGETATION FUND

The Fund

21. (1) The Native Vegetation Fund is established.

(2) The Fund is subject to the management and control of the Council.

(3) The Fund consists of—

(a) money appropriated by Parliament for the purposes of the Fund; and

(b) fees payable in respect of applications to the Council to clear native vegetation; and

(c) penalties payable in respect of offences against this Act; and

(d) interest and accretions arising from investment of the Fund.

(4) The Fund may, with the approval of the Minister, be invested in a manner determined by the Council.

(5) The Council may make payments from the Fund in accordance with this Act.

(6) The Council must in each year apply such amounts as it considers appropriate from the Fund for research into the preservation, enhancement and management of native vegetation and to encourage the re-establishment of native vegetation on land from which native vegetation has been cleared.

Accounts and audit

22. (1) The Council must keep proper accounts of receipts and payments in relation to the Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

PART 4

HERITAGE AGREEMENTS AND FINANCIAL AND OTHER ASSISTANCE

Heritage agreements

23. (1) The Minister may enter into a heritage agreement with the owner of land on which native vegetation is growing or is situated.

(2) A heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.

(3) The Minister may, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the agreement.

(4) A heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.

(5) The Minister must not enter into, vary or terminate a heritage agreement under this section without first consulting and obtaining the approval of the Council.

Effect of heritage agreement

23A. (1) A heritage agreement may contain any provision for the preservation or enhancement of native vegetation.

(2) A heritage agreement may, for example—

(a) restrict the use of land to which it applies;

(b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;

(c) restrict the nature of work that may be carried out on the land;

(d) provide for the management of the land, native vegetation on the land or any animals living on or visiting the land in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;

(e) provide for remission of rates or taxes in respect of the land;

(f) provide for the Minister to pay to the owner of the land an amount in respect of the decrease in the value of the land resulting from the execution of the heritage agreement and noting by the Registrar-General of the fact that it has come into force;

(g) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the heritage agreement.

(3) A term of a heritage agreement providing for the remission of rates or taxes has effect notwithstanding any law to the contrary.

(4) The amount that the Minister agrees to pay in respect of the decrease in the value of the land referred to in subsection (2) must not exceed the amount of the decrease determined by the Valuer-General.

Native Vegetation Act 1991

(5) Any money required by the Minister to meet his or her obligations under a heritage agreement entered into under this section must be paid to the Minister from the Fund.

Registration of heritage agreements

23B. (1) The Council must keep a register of heritage agreements entered into under this Act and must include in the register any agreement varying or terminating a heritage agreement.

(2) The register must be kept available for public inspection at the office of the Council during ordinary office hours.

(3) When the Minister enters into a heritage agreement, or an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the *Real Property Act 1886*, against the land.

Enforcement of heritage agreements

23C. (1) If—

- (a) a party to a heritage agreement fails to comply with it; or
- (b) there is reason to apprehend that a party to a heritage agreement may fail to comply with it,

any other party to the agreement may apply to the District Court for an order under this section.

(2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.

Assistance to landowners

24. (1) An owner of land that is subject to a heritage agreement may apply to the Council for financial or other assistance in—

- (a) managing the land, native vegetation on the land or any animals living on or visiting the land;
- (b) preserving or enhancing native vegetation on the land;
- (c) establishing native vegetation on the land;
- (d) undertaking research in relation to the preservation, enhancement or management of native vegetation on the land or of animals living on or visiting the land.

(2) An application must be in a form approved by the Council and must set out the applicant's proposals for the application of the assistance requested by the applicant.

(3) The applicant's proposals must be based on guidelines adopted by the Council under this Part.

(4) The Council may grant an application for assistance subject to such conditions as it thinks fit including the execution of an agreement varying the heritage agreement in a manner approved by the Council.

(5) Money payable by way of financial assistance under this section must be paid from the Fund.

(6) Where, in the opinion of the Council, a person to whom the Council has granted financial assistance under this section—

- (a) contravenes or fails to comply with a condition attached to the grant of the assistance; or
- (b) fails, within a reasonable time, to apply the amount granted for the purpose for which it was granted,

the Council may serve written notice on that person demanding repayment of the amount granted or such lesser amount as is specified in the notice.

(7) An amount demanded by the Council under subsection (6) is a debt due by the person from whom it is demanded to the Council and upon recovery must be paid by the Council into the Fund.

(8) A court that is considering a claim for payment of a debt referred to in subsection (7) may refuse to order payment of all or part of the amount claimed if, in its opinion, the person to whom the financial assistance was granted has applied it in accordance with the conditions on which it was granted or in accordance with what he or she genuinely believed to be the conditions on which it was granted.

Guidelines for the application of assistance and the management of native vegetation

25. (1) The Council must prepare draft guidelines in relation to the application of financial and other assistance provided by the Council and must also prepare draft guidelines in relation to the management of native vegetation.

(2) After preparation of the draft guidelines the Council must—

- (a) by public advertisement, invite members of the public to make representations to the Council (within a period of not less than two months following publication of the advertisement) as to matters that should be addressed by the guidelines; and
- (b) submit the guidelines for comment by the soil conservation boards of the soil conservation districts (if any) to which the guidelines relate; and
- (c) where the guidelines relate to pastoral land, submit the guidelines to the Pastoral Board for comment.

(3) The public advertisement referred to in subsection (2)(a) must—

- (a) specify an address at which copies of the draft guidelines may be purchased or inspected;
- (b) specify an address to which representations in connection with the draft guidelines may be forwarded.

(4) The Council may adopt the draft guidelines with, or without, amendment but must, before adopting them, consider all representations made by members of the public and comments made by soil conservation boards or the Pastoral Board pursuant to subsection (2).

Native Vegetation Act 1991

(5) The Council must, by public advertisement, specify an address at which copies of guidelines adopted by the Council may be purchased or inspected.

(6) In this section—

"public advertisement" means an advertisement published in the *Gazette* and in a newspaper circulating throughout the State.

PART 5
CLEARANCE OF NATIVE VEGETATION

DIVISION 1—CONTROL OF CLEARANCE

Offence of clearing native vegetation contrary to this Part

26. (1) A person must not clear native vegetation unless the clearance is in accordance with this Part.

Penalty: Division 2 fine or a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed, whichever is greater.

(2) A person must not contravene or fail to comply with a condition attached to a consent granted under this Part.

Penalty: Division 2 fine or a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed, whichever is greater.

(3) In this section—

"land in relation to which the offence was committed" means—

- (a) land on which the vegetation is or was growing or is or was situated; and
- (b) land that has been, or will be, affected in any way (including by an increase in its value) by reason of the commission of the offence;

"the prescribed rate" means—

- (a) the amount (if any) per hectare by which the land in relation to which the offence was committed has increased in value as a direct result of the commission of the offence; or
- (b) the amount of a division 7 fine,

whichever is the greater.

(4) In determining the amount by which the value of land has increased as the result of the commission of an offence under this section, no account may be taken of the possibility that the establishment of vegetation on the cleared land may be ordered under Division 2.

Clearance of native vegetation

27. Subject to any other Act or law to the contrary—

- (a) native vegetation may be cleared with the consent of the Council given in accordance with section 29;
- (b) native vegetation may be cleared—
 - (i) if the vegetation is of a prescribed class; or
 - (ii) in prescribed circumstances.

Native Vegetation Act 1991

Application for consent

28. (1) Subject to subsection (2), the owner of land on which native vegetation is growing or is situated, or a person acting on his or her behalf, (but no other person) may apply for consent to clear the vegetation.

(2) Where the land is held from the Crown under a miscellaneous lease, an application for consent to clear vegetation can only be made by the Minister of Lands.

(3) An application for consent—

(a) must be in a form approved by the Council;

(b) must be accompanied by—

(i) a native vegetation management plan prepared by the applicant in accordance with guidelines adopted by the Council under Part 4; and

(ii) such information as the Council reasonably requires; and

(iii) the prescribed fee.

Provisions relating to consent

29. (1) Subject to subsection (4), in deciding whether to consent to an application to clear native vegetation, the Council—

(a) must have regard to the principles of clearance of native vegetation so far as they are relevant to that decision; and

(b) must not make a decision that is seriously at variance with those principles.

(2) When determining an application to clear native vegetation in order to facilitate the management of other native vegetation, the Council must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to facilitate the management of that other vegetation.

(3) When determining an application to clear native vegetation that is growing or is situated on land that forms part of a property that is used for the business of primary production, the Council must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to operate the business as efficiently as possible.

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

(a) the vegetation comprises one or more isolated plants; and

(b) the applicant is engaged in the business of primary production; and

(c) in the opinion of the Council, the retention of that plant, or those plants, would put the applicant to unreasonable expense in carrying on that business or would result in an unreasonable reduction of potential income from that business.

(5) Where native vegetation that is the subject of an application for the Council's consent to clear under this Division is in a soil conservation district, the Council must, before giving its consent, consult the soil conservation board for that district and have regard to the board's recommendations (if any) in relation to the application.

(6) Where native vegetation that is the subject of an application for the Council's consent to clear under this Division is on pastoral land, the Council must, before giving its consent, consult the Pastoral Board and have regard to the Board's recommendations (if any) in relation to the application.

(7) Where the land on which the vegetation is growing or is situated is pastoral land and is also in a soil conservation district, both the soil conservation board and the Pastoral Board must be consulted under subsections (5) and (6).

(8) Where a soil conservation board or the Pastoral Board has been consulted by the Council under subsection (5) or (6), the board concerned may request the owner of the land to submit to it a property plan under the *Soil Conservation and Land Care Act 1989* or the *Pastoral Land Management and Conservation Act 1989* (whichever is appropriate) and, until the plan has been submitted to it, the board may recommend to the Council that it refuse consent solely on the ground that the plan has not been submitted.

(9) Section 41(10) of the *Pastoral Land Management and Conservation Act 1989* does not apply to, or in relation to, a property plan requested by the Pastoral Board under subsection (8).

(10) A consent under this Division is subject to such conditions (if any) as the Council thinks fit to impose, and any such conditions are binding on, and enforceable against, the person by whom the clearance is undertaken, all subsequent owners of the land and any other person who acquires the benefit of the consent.

(11) The Council may give its consent to clearance of native vegetation pursuant to subsection (4) if, and only if—

- (a) it attaches to the consent a condition requiring the applicant to establish native vegetation on land specified by the Council; and
- (b) the Council is satisfied that the environmental benefits that will be provided by that vegetation significantly outweigh the environmental benefits provided by the vegetation to be cleared.

(12) Subject to subsection (15), no appeal lies against a refusal of consent or a condition attached to a consent under this Division.

(13) Consent to undertake clearance under this Division remains in force for two years or for such longer period as the Council may fix at the time of granting consent or subsequently on application by a person who has the benefit of the consent.

(14) An applicant for consent under this Division may appear before the Council in support of the application and the Council must observe the rules of natural justice when considering and determining the application.

(15) Where an applicant satisfies a District Court that the Council has failed to observe the rules of natural justice the Court may quash the Council's decision and direct it to reconsider the application.

Native Vegetation Act 1991

(16) Where the Council refuses an application in whole or in part or attaches conditions to its consent, it must provide the applicant with a written statement of the reasons for its decision.

Referral to conciliator

30. (1) An applicant for consent to clear native vegetation who is dissatisfied with the Council's determination of the application may request the Council to refer the application to a conciliator for assessment.

(2) The Council must refer an application to a conciliator in pursuance of a request under subsection (1) for preliminary assessment.

(3) If, after preliminary assessment, the conciliator is of the opinion that a full assessment and report should be made under subsection (4) he or she must proceed with the assessment and report.

(4) After making the assessment the conciliator must submit a written report to the Council that either confirms the Council's determination or recommends that the Council vary the determination or revoke the determination and make a determination recommended by the conciliator.

(5) The report must include the conciliator's reasons for his or her recommendation.

(6) Upon receiving the conciliator's report the Council must, if the report recommends that the determination be varied or revoked, reconsider the application and in doing so the Council must have regard to the conciliator's recommendation.

DIVISION 2—CIVIL ENFORCEMENT PROCEEDINGS

Jurisdiction of the Court

31. (1) Where a person contravenes or fails to comply with a provision of this Act, the Council may apply to a District Court for an order under this section.

(2) The application may be made in the absence of the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, it must issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(3) If—

(a) after hearing—

(i) the applicant and the respondent; and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed to comply with a provision of this Act; or

(b) the respondent fails to appear in response to the summons or, having appeared, does not take advantage of the opportunity to be heard,

the Court may order the respondent to do either or both of the following—

- (c) to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Act;
- (d) to make good the contravention or default in a manner, and within a period, specified by the Court.

(4) Where the respondent has cleared native vegetation in contravention of this Act, the Court must make an order against the respondent under subsection (3)(d).

(5) The order must require, or include a requirement, that the respondent make good the contravention or default by establishing native vegetation on the actual land on which the original vegetation was growing or was situated before it was cleared and where that vegetation, or part of it, is still growing or situated on that land, the Court may order its removal so that the new vegetation can be established on that land.

(6) Any person with a legal or equitable interest in land to which an application under this section relates is entitled to appear and be heard in proceedings based on the application before a final order is made.

(7) If, upon an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(8) An interim order—

- (a) may be made on application in the absence of the respondent; and
- (b) will be subject to such conditions as the Court thinks fit; and
- (c) does not operate after the proceedings in which it is made are finally determined.

(9) A person who contravenes or fails to comply with an order, or an interim order, under this section is (without prejudice to any liability that may be incurred in proceedings for punishment of a contempt of the order) guilty of an offence.

Penalty: Division 2 fine.

(10) Where the Court makes an order under subsection (3)(d) against the respondent to an application and the respondent fails to comply with the order within the period specified by the Court, the Council may, by leave of the Court, cause any works contemplated by the order to be carried out, and may recover the costs of those works, as a debt, from the respondent.

(11) The Court may make such orders in relation to the costs of proceedings under this section as it thinks just.

Appeals

32. (1) Subject to the rules of the Supreme Court, an appeal lies against—

- (a) an order of a District Court made in the exercise of the jurisdiction conferred by this Division; or

Native Vegetation Act 1991

(b) a decision by a District Court not to make an order under this Division,
to the Land and Valuation Court.

(2) An appeal under this section must be instituted within 60 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Land and Valuation Court.

Commencement of proceedings

33. (1) Proceedings under this Division may be commenced at any time within three years after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorisation of the Minister, at any later time within six years after that date.

(2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Division must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

**PART 6
MISCELLANEOUS**

Evidentiary provision, etc.

34. (1) An allegation in civil enforcement proceedings under this Act or in proceedings for an offence against this Act that vegetation is, or was, comprised of a plant or plants of a species indigenous to South Australia must be accepted as proved in the absence of proof to the contrary.

(2) Where in civil enforcement proceedings under this Act or in proceedings for an offence against this Act it is proved that vegetation has been cleared, it must be presumed in the absence of proof to the contrary that the vegetation was cleared by the occupier of the land on which it is or was growing or is or was situated.

(3) It must be presumed in civil enforcement proceedings under this Act and in proceedings for an offence against this Act, in the absence of proof to the contrary, that vegetation to which the proceedings relate was not intentionally sown or planted by a person.

(4) In any legal proceedings, an apparently genuine document appearing to be a copy of a heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

Proceedings for an offence

35. (1) An offence against this Act is a summary offence.

(2) Proceedings for an offence against this Act may be commenced at any time within three years after the date of the alleged commission of the offence or in exceptional circumstances, with the authorisation of the Minister, at any later time within 6 years after the date of the alleged commission of the offence.

(3) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings for an offence against this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(4) A penalty payable in respect of an offence against this Act must be paid into the Fund.

Powers of entry, etc.

36. (1) If a person authorised by the Minister (an "authorised officer") suspects on reasonable grounds that an offence against this Act is being, or has been, committed, the officer may—

- (a) enter and inspect the land on which the suspected offence is being, or has been, committed;
- (b) require the person suspected of committing, or having committed, the offence to state his or her full name and usual place of residence.

(2) If an authorised officer suspects on reasonable grounds that a person is about to commit an offence against this Act the officer may require the person to state his or her full name and usual place of residence.

(2a) An authorised officer may, at any reasonable time, enter and inspect land for the purposes of determining whether a heritage agreement entered into under this Act is being, or has been, complied with.

Native Vegetation Act 1991

(3) A person who has commenced clearing native vegetation with the consent of the Council or the Native Vegetation Authority must, if required to do so by an authorised officer, produce to the officer the Council's, or the Authority's, consent and must not continue to clear the vegetation until he or she has complied with that requirement.

Penalty: Division 8 fine.

(4) An authorised officer may request any suitable person to assist the officer in the exercise of powers under this section.

(5) A person giving assistance in response to such a request has the powers of the officer.

(6) A person who fails to comply with a requirement of an authorised officer or a person assisting an authorised officer under this section is guilty of an offence.

Penalty: Division 8 fine.

(7) An authorised officer, or a person assisting an authorised officer, who, in relation to the exercise of powers under this Act—

(a) addresses offensive language to any other person; or

(b) without lawful authority or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Hindering of officers, etc.

37. (1) A person must not—

(a) hinder; or

(b) use abusive, threatening or insulting language; or

(c) assault,

an authorised officer, or a person assisting an authorised officer, in the exercise of powers under section 36.

Penalty: (a) in the case of an assault, a division 5 fine or division 5 imprisonment;

(b) in any other case, a division 6 fine.

Vicarious liability

38. For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

Offences by bodies corporate

39. Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

General defence

40. It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Regulations

41. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) In particular regulations may—

(a) amend schedule 1;

(b) prescribe and provide for the payment of fees and may empower the Council, or any other person to whom fees are payable, to remit payment of the whole or part of the fees.

(3) Any such regulations—

(a) may apply generally throughout the State or be limited in application to a particular area; and

(b) may operate by reference to any factor or combination of factors and, in particular, may operate by reference to the direction or opinion of a person or body named for that purpose in the regulation.

Native Vegetation Act 1991

SCHEDULE 1**Principles of Clearance of Native Vegetation**

1. Native vegetation should not be cleared if, in the opinion of the Council—

- (a) it comprises a high level of diversity of plant species; or
- (b) it has significance as a habitat for wildlife; or
- (c) it includes plants of a rare, vulnerable or endangered species; or
- (d) the vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered; or
- (e) it is significant as a remnant of vegetation in an area which has been extensively cleared; or
- (f) it is growing in, or in association with, a wetland environment; or
- (g) it contributes significantly to the amenity of the area in which it is growing or is situated; or
- (h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinization has already occurred or, where such erosion or salinization has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity; or
- (i) the clearance of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding; or
- (k) —
 - (i) after clearance the land will be used for a particular purpose; and
 - (ii) the land is the subject of assessment under section 35 of the *Soil Conservation and Land Care Act 1989*; and
 - (iii) according to that assessment the use of the land for that purpose cannot be sustained.

2. In this schedule, unless the contrary intention appears—

"**endangered species**" means a species of plant for the time being appearing in Part 2 of schedule 7 of the *National Parks and Wildlife Act 1972*;;

"**plant community**" means plants of a species indigenous to South Australia growing in association with one another and forming a group that is distinct from other plant communities;

"**rare species**" means a species of plant for the time being appearing in Part 2 of schedule 9 of the *National Parks and Wildlife Act 1972*;

"**vulnerable species**" means a species of plant for the time being appearing in Part 2 of schedule 8 of the *National Parks and Wildlife Act 1972*;

"**wildlife**" has the same meaning as in the *National Parks and Wildlife Act 1972*.

SCHEDULE 2

Repeal And Transitional Provisions

1. (1) The *Native Vegetation Management Act 1985* is repealed.

(2) Part 5 of the *Native Vegetation Management Act 1985* will be taken to have been repealed on 13 February 1991.

2. (1) Where an application made on or before 12 February 1991 to the Native Vegetation Authority under the repealed Act for consent to clear native vegetation had not been determined by the Authority before the repeal of Part 5 of the repealed Act—

(a) the repealed Act will continue to apply to, and in relation to, that application to the exclusion of this Act; and

(b) where the application is refused or is granted subject to conditions, Part 5 of the repealed Act will apply for the benefit of the owner of the land but a claim for the payment of money under that Part must be made within two years of the Authority's decision on which the claim is based.

(2) Where an application made on or after 13 February 1991 to the Native Vegetation Authority under the repealed Act for consent to clear native vegetation had not been determined by the Authority at the commencement of this Act, the repealed Act (excluding Part 5) will continue to apply to, and in relation to, that application to the exclusion of this Act.

(3) A person who, immediately before the repeal of Part 5 of the repealed Act, had the right—

(a) to claim the payment of money under that Part; or

(b) to require the Minister to enter into a heritage agreement and then claim the payment of money under that Part,

is entitled to exercise those rights within two years of the repeal of that Part.

(4) A condition attached to the Authority's consent granted under the repealed Act (whether before or after the commencement of this Act) may be enforced under this Act as if it were attached to consent granted under this Act.

(5) The Native Vegetation Authority continues in existence as if the repealed Act had not been repealed for the purpose of administering the repealed Act (whether pursuant to section 16 of the *Acts Interpretation Act 1915* or to this clause) and, if necessary, new appointments may be made to it.

3. The party to heritage agreements made before the commencement of this Act and referred to in those agreements as "the Minister" will, after the commencement of this Act, be taken to be the Minister who is, for the time being, responsible for the administration of this Act.

Native Vegetation Act 1991**SCHEDULE 3***Amendments to the South Australian Heritage Act 1978*

The *South Australian Heritage Act 1978* is amended as follows:

Provision Amended	How Amended
Section 4(1)	<p>Strike out paragraph <i>(ab)</i> of the definition of "the Authority" and substitute:</p> <p style="padding-left: 40px;"><i>(ab)</i> where the agreement was entered into under the <i>Native Vegetation Management Act 1985</i> or the <i>Native Vegetation Act 1991</i> the Minister for the time being responsible for the administration of the <i>Native Vegetation Act 1991</i>.</p>
Section 16A	<p>Strike out subsection (3) and substitute:</p> <p style="padding-left: 40px;">(3) The Minister for the time being responsible for the administration of the <i>Native Vegetation Act 1991</i> may enter into a heritage agreement with the owner of an Item comprising land on which native vegetation is growing or is situated if the Minister considers that the vegetation should be preserved or enhanced.</p>

APPENDIX 1

LEGISLATIVE HISTORY

Section 3:	definition of "heritage agreement" repealed by 56, 1993, Sched. 2
Section 23:	substituted by 56, 1993, Sched. 2
Sections 23A - 23C:	inserted by 56, 1993, Sched. 2
Section 34(4):	inserted by 56, 1993, Sched. 2
Section 36(2a):	inserted by 56, 1993, Sched. 2

Native Vegetation Act 1991

APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.