

South Australia

Native Vegetation Regulations 2003

under the *Native Vegetation Act 1991*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Native Vegetation Regulations 2003*.

2—Commencement

These regulations will come into operation on the day on which section 4 of the *Native Vegetation (Miscellaneous) Amendment Act 2002* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Native Vegetation Act 1991*;

building means a building or structure that is permanently fixed to land so that it cannot be moved without dismantling or destroying it and—

- (a) includes a transportable building if the building is connected to a sewage system or a septic tank and then is not moved after it is first connected to that sewage system or septic tank; but
- (b) does not include a building or structure erected or placed on land in contravention of the *Development Act 1993* or a corresponding previous enactment;

business day means any day except Saturday, Sunday or a public holiday;

C.F.S. means the Country Fire Service;

country has the same meaning as in the *Country Fires Act 1989*;

Development Plan means a Development Plan under the *Development Act 1993*;

dwelling means a building or part of a building used as a self-contained residence;

fence means a fence consisting of posts and wire fixed permanently to land and designed for the purpose of controlling access by people or the movement of animals;

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

infrastructure means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, the provision of telecommunications, or the drainage, removal or treatment of waste water or sewage; or
- (b) roads and their supporting structures or works; or
- (c) ports, wharfs, jetties, railways, trams and busways;

private mine means land declared under the *Mining Act 1971* to be a private mine;

township of Robe means the area shown as the township of Robe in the Development Plan that applies to that area of the State.

Part 2—Exemptions from clearance controls under Act

4—Application of Part

Exemptions under this Part do not extend to native vegetation growing or situated on land that is subject to a heritage agreement under the Act or a heritage agreement that was entered into in compliance with a condition of consent to clear native vegetation under the repealed Act unless the paragraph setting out the exemption explicitly extends its operation to that vegetation.

5—Exemptions

- (1) Pursuant to section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared—
- (a) if it is proposed to erect a building that is a dwelling or a structure or other facility that is ancillary to a dwelling and—
- (i) any development authorisation for the erection of the dwelling or structure or other facility required by or under the *Development Act 1993* has been obtained; and
- (ii) either—
- (A) the vegetation—
- does not comprise or form part of a stratum of native vegetation that is substantially intact; and
 - except where the dwelling is within a residential or township zone under the relevant Development Plan, does not include vegetation of the genus *Eucalyptus* with a stem diameter at 300 millimetres above the ground of 200 millimetres or more, or other vegetation with a stem diameter at the lowest point of the stem above ground level of 100 millimetres or more; or
- (B) —
- the Council is satisfied that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the proposed site for the building is the most suitable that is available; and
 - there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
 - the clearance is undertaken in accordance with a management plan that has been approved by the Council and that results in a significant environmental benefit on the property where the building is to be situated, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act;

- (b) if it is proposed to erect a building or a structure or other facility that is ancillary to a building, other than a dwelling or a structure or other facility that is ancillary to a dwelling, and—
 - (i) any development authorisation for the erection of the building or structure or other facility required by or under the *Development Act 1993* has been obtained; and
 - (ii) the vegetation—
 - (A) does not comprise or form part of a stratum of native vegetation that is substantially intact; and
 - (B) except where the building is within a tourist accommodation, business, centre, commerce, commercial, industrial, industry or office zone under the relevant Development Plan, does not include vegetation of the genus *Eucalyptus* with a stem diameter at 300 millimetres above the ground of 200 millimetres or more, or other vegetation with a stem diameter at the lowest point of the stem above ground level of 100 millimetres or more;
- (c) if—
 - (i) the clearance is incidental to a proposed development to which section 48 of the *Development Act 1993* applies; and
 - (ii) an environmental impact statement, public environmental report or development report, and an Assessment Report, relating to the development have been prepared under that Act; and
 - (iii) the Minister responsible for the administration of the *Development Act 1993* referred the environmental impact statement, public environmental report or development report to the Native Vegetation Council for comment and report and—
 - (A) the Council provided comments which were included (wholly or substantially) in the relevant Assessment Report; or
 - (B) the Council failed to provide comments within 8 weeks after receiving the Minister's invitation for comment and report; and
 - (iv) the Governor has granted his or her consent to the proposed development under section 48 of the *Development Act 1993*; and
 - (v) the clearance is undertaken in accordance with that consent; and

- (vi) the clearance is undertaken in accordance with a management plan that has been approved by the Council that results in a significant environmental benefit on the property where the development is being undertaken, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act;
- (d) if—
- (i) —
 - (A) the clearance is incidental to the construction of a building or infrastructure and the Council is satisfied that the clearance is in the public interest; or
 - (B) the clearance is required in connection with the provision of infrastructure or services to a building or proposed building, or to any place; and
 - (ii) any development authorisation required by or under the *Development Act 1993* has been obtained; and
 - (iii) the Council is satisfied that, after taking into account the need to preserve biological diversity and the nature and purposes of any proposed building or infrastructure that is yet to be constructed, the proposed site of the building or infrastructure is the most suitable that is available; and
 - (iv) there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
 - (v) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision or a management plan that has been approved by the Council, and either there will be a significant environmental benefit on the property where the clearance is being undertaken or within the same region of the State, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act;
- (e) if—
- (i) the clearance is incidental to the repair or maintenance work of the Crown; and
 - (ii) the person undertaking the clearance—

- (A) has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the Crown); or
 - (B) is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
 - (C) is acting in a situation of urgency that requires action without delay; and
- (iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

(f) if—

(i) —

- (A) the clearance is being undertaken as part of the duty of an electricity entity under Part 5 of the *Electricity Act 1996*; or
- (B) the clearance is incidental to any repair or maintenance work of an electricity entity within the meaning of the *Electricity Act 1996*; and

(ii) the person undertaking the clearance—

- (A) is acting in accordance with the principles of vegetation clearance under the *Electricity Act 1996*; or
- (B) has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the electricity entity); or
- (C) is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
- (D) is acting in a situation of urgency that requires action without delay; and

(iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

- (g) if—
- (i) the clearance is incidental to the repair or maintenance of any infrastructure; and
 - (ii) the person undertaking the clearance—
 - (A) has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the person who is responsible for the infrastructure); or
 - (B) in acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
 - (C) is acting in a situation of urgency that requires action without delay; and
 - (iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

- (h) if—
- (i) the clearance is incidental to work being undertaken by or on behalf of the Commissioner of Highways; and
 - (ii) except where the clearance is incidental to repair or maintenance work, there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
 - (iii) either—
 - (A) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision or a management plan that has been approved by the Council, and either there will be a significant environmental benefit at the site of the relevant work or within the same region of the State, or the Commissioner of Highways or another person undertaking the work has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act; or

- (B) the clearance is incidental to repair or maintenance work and the person undertaking the clearance—
 - has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the Commissioner of Highways); or
 - is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
 - is acting in a situation of urgency that requires action without delay; and
- (iv) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act;
- (i) if the clearance is incidental to the repair or maintenance of an existing dam;
- (j) if—
 - (i) the clearance is incidental to the lawful construction of a new dam that will cover less than 200 square metres in surface area when full; and
 - (ii) the vegetation to be cleared comprises trees with a stem diameter at the lowest point on the stem above ground level of 150 millimetres or more; and
 - (iii) the land on which the vegetation is situated has been cleared of all other native vegetation and has been maintained during the immediately preceding 5 years for cultivation or pasture; and
 - (iv) the vegetation is not of a class specified in Schedule 1;
- (k) if—
 - (i) the vegetation is growing or is situated within 20 metres of a dwelling (including a dwelling in the course of construction if the foundations, concrete slab or other footings have been completed); and
 - (ii) the clearance of the vegetation is to be undertaken—
 - (A) on land that is owned by the person or persons who own the land on which the dwelling is situated; or
 - (B) on other land and with the agreement in writing of the person or persons who own the land on which the clearance is to be undertaken; and

- (iii) in a case involving the proposed clearance of vegetation of the genus *Eucalyptus* with a stem diameter at 300 millimetres above the ground of 200 millimetres or more situated in the country—the C.F.S. has given its approval to the clearance of the vegetation;
- (l) if—
- (i) a plant comprising native vegetation exceeds 2 metres in height; and
 - (ii) there is a danger that the plant will fall over or a limb or some other part of the plant will fall from it because of disease, wind damage or any other cause; and
 - (iii) there is a real risk of personal injury or damage to property if that occurs; and
 - (iv) it is not reasonably practicable to avoid the risk by avoiding the vicinity in which the plant is growing or is situated; and
 - (v) the state of the plant has been assessed by a person with expertise in the area of plant health, or by any other person acting in an emergency situation or in any other situation that gives rise to an immediate risk of personal injury or damage to property; and
 - (vi) the clearance is confined to removing the limb or other part of the plant causing the danger and only extends to destroying the plant if that is necessary to remove the existing danger,
- (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (m) if—
- (i) the purpose of the clearance is to reduce combustible material on land; and
 - (ii) the owner of the land or the district bushfire prevention committee under the *Country Fires Act 1989* for the area in which the land is situated has prepared a management plan that applies to the clearance of the vegetation and the Council has given its approval to the management plan after taking into account the operation of subregulation (2); and
 - (iii) the person who carries out the clearance complies with the requirements of the management plan;
- (n) if—
- (i) the only purpose of the clearance is to protect a dwelling or other building from the threat of fire; and
 - (ii) the person undertaking the clearance complies with any guidelines relating to the clearance of vegetation near buildings to protect the buildings from fire prepared by the Council in accordance with section 25 of the Act;

- (o) by a C.F.S. officer or any other member of the C.F.S. acting under section 54 of the *Country Fires Act 1989*, or by any other person acting with the authority of a C.F.S. officer or other member of the C.F.S. under that section (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (p) by the State Co-ordinator or an authorised officer acting under section 15 of the *State Disaster Act 1980* (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (q) if—
 - (i) the clearance is solely for the purpose of providing firewood for use by the owner of the land on which the vegetation was growing or was situated for the purpose of domestic heating or cooking; and
 - (ii) the quantity of firewood provided by the clearance when aggregated with the quantity of firewood (if any) previously provided by clearance under this paragraph (or a previous corresponding paragraph) and not yet burnt does not exceed 6 cubic metres when calculated over the immediately preceding period of 2 years; and
 - (iii) the vegetation has a stem diameter at 300 millimetres from the base of the plant of 200 millimetres or less; and
 - (iv) in the case of living vegetation—the clearance does not kill the vegetation, does not prevent regrowth, and is undertaken at least 300 millimetres above the base of the plant; and
 - (v) either—
 - (A) the vegetation is not of a class specified in Schedule 1; or
 - (B) the clearance complies with guidelines prepared by the Council for the purposes of this provision;
- (r) if—
 - (i) the clearance is solely for the purpose of—
 - (A) providing fence posts for the construction of permanent fencing on the land on which the vegetation was growing or was situated (or on other land owned by the owner of the land on which the vegetation was growing or was situated) for the purpose of controlling access by people or the movement of animals and is consistent with practices undertaken on the land over the immediately preceding period of 25 years; or
 - (B) repairing an existing fence on the land on which the vegetation was growing or was situated (or on the other land owned by the owner of the land on which the vegetation was growing or was situated) for the purpose of controlling access by people or the movement of animals; and

- (ii) the quantity of fence posts provided by the clearance when aggregated with the quantity of fence posts (if any) previously provided by clearance under this paragraph (or a previous corresponding paragraph) and not yet used does not exceed the quantity required by the plans the owner has when the clearance occurs for the construction of fencing on his or her land in the period of 2 years from the time of clearance; and
- (iii) the vegetation has a stem diameter at 300 millimetres from the base of the plant of 200 millimetres or less; and
- (iv) in the case of living vegetation—
 - (A) the vegetation was growing on land subject to a pastoral lease under the *Pastoral Land Management and Conservation Act 1989* the terms of which explicitly provide that vegetation on the land may be cleared for the sole purpose of providing fence posts; or
 - (B) the clearance does not kill the vegetation, does not prevent regrowth and is undertaken at least 300 millimetres above the base of the plant; and
- (v) the clearance has been undertaken in accordance with a management plan that has been approved by the Council; and
- (vi) either—
 - (A) the vegetation is not of a class specified in Schedule 1; or
 - (B) the clearance complies with guidelines prepared by the Council for the purposes of this provision;
- (s) if the clearance is for the purpose of providing a strip of cleared land of not more than 5 metres in width on either side or both sides of an existing fence or of a fence in the course of construction to provide access for the purpose of maintaining or establishing the fence and—
 - (i) the fence is reasonably required to control access by people or the movement of animals; and
 - (ii) the clearance is required to give reasonable access to the fence and is limited to the extent reasonably required to achieve that access; and
 - (iii) there is no other practicable alternative (including, in the case of a new fence, to the position of the fence) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared,(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement but does not apply to vegetation on a road reserve);
- (t) if the clearance is for the purpose of establishing or maintaining an existing track that is not more than 5 metres in width for use by vehicles having at least 4 wheels and—

- (i) the track is reasonably required to provide access; and
 - (ii) the clearance is limited to the extent reasonably required to achieve the relevant purpose; and
 - (iii) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared,
- (but this paragraph does not apply to vegetation on a road reserve);
- (u) if the clearance is for the purpose of establishing or maintaining a walking track that is not more than 1 metre in width and—
 - (i) the track is used, or is genuinely expected to be used, by pedestrians; and
 - (ii) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared,
- (but this paragraph does not apply to vegetation on a road reserve);
- (v) if the clearance is for a fuel break for fire-control purposes and—
 - (i) the fuel break is not more than 5 metres in width or such lesser width that when added to the width of adjacent land that is cleared (or sufficiently cleared) for fuel break purposes or is the subject of consent granted by the Council for clearance to an extent that is sufficient for fuel break purposes is not more than 5 metres in width and the fuel break is along an existing fence-line (and within 5 metres of the fence); or
 - (ii) the fuel break is not more than 7.5 metres in width or such lesser width that when added to the width of adjacent land that is cleared (or sufficiently cleared) for fuel break purposes is not more than 7.5 metres in width and—
 - (A) the fuel break is on the boundary between land owned by different persons; and
 - (B) all, or a substantial part, of the vegetation to be cleared is part of an area of a mallee scrub community that is the subject of a declaration by the Council under subregulation (7) that is in force; and
 - (C) where the full width of the fuel break or of any part of it is within the area referred to in subsubparagraph (B), the distance of all points on the lateral boundaries of the fuel break, or that part of it that is within the area, is at least 100 metres from every point on the boundaries of the area; or

- (iii) the fuel break is not more than 15 metres in width or such lesser width that when added to the width of adjacent land that is cleared (or sufficiently cleared for fuel break purposes) is not more than 15 metres in width and—
 - (A) the fuel break is situated on a property the sole use, or one of the principal uses, of which is primary production; and
 - (B) the purpose of the fuel break is to protect that property; and
 - (C) the fuel break is situated within the area of a rural council as defined in the *Country Fires Act 1989* and the district bushfire prevention committee established under the *Country Fires Act 1989* for that area has given its consent to the clearance after taking into account the operation of subregulations (3), (4) and (5); and
 - (D) the clearance is at least 200 metres from another fuel break cleared under this paragraph (other than a fuel break that runs at right-angles, or approximately at right-angles, to the fuel break that is being cleared), and the clearance complies with any guidelines prepared by the Council for the purposes of this subparagraph,

(but this paragraph does not apply to vegetation on a road reserve);
- (w) if the clearance is for a fuel break for fire-control purposes and—
 - (i) the owner of the land on which the vegetation is growing or the district bushfire prevention committee under the *Country Fires Act 1989* for the area in which the land is situated has prepared a management plan that applies to the clearance of the vegetation and the Council has given its approval to the management plan; and
 - (ii) the person undertaking the clearance does so in accordance with the management plan,

(but this paragraph does not apply to vegetation on a road reserve);
- (x) by, or on behalf of, a district bushfire prevention committee under the *Country Fires Act 1989* if—
 - (i) the vegetation is growing on a road reserve; and
 - (ii) the local council for the area (if any) has consented to the clearance; and
 - (iii) the person undertaking the clearance complies with a management plan approved by the Council or, if no such plan has been approved, with any guidelines prepared by the Council in accordance with section 25 of the Act relating to the clearance;
- (y) by, or on behalf of, a local council if—
 - (i) the vegetation is growing on a road reserve in the area of the council; and

- (ii) the person undertaking the clearance complies with a management plan relating to the clearance prepared by the local council and approved by the Council or, if no such plan has been prepared and approved, with any guidelines prepared by the Council in accordance with section 25 of the Act relating to the clearance;
- (z) by, or on behalf of, a rural council as defined in the *Country Fires Act 1989* for a fuel break for fire-control purposes if—
 - (i) the fuel break is not more than 5 metres in width or such lesser width that when added to the width of adjacent land that is cleared (or is sufficiently cleared for fuel break purposes) is not more than 5 metres in width and—
 - (A) the vegetation is on a reserve (other than a road reserve) vested in the council or the care, control and management of which is vested in the council; and
 - (B) the purpose of the fuel break is to protect the reserve; and
 - (C) the fuel break will be bounded on one side by a boundary of the reserve or will be situated on both sides of a boundary of the reserve; and
 - (D) the person undertaking the clearance complies with a management plan relating to the clearance prepared by the rural council and approved by the Council; or
 - (ii) the fuel break is not more than 15 metres in width or such lesser width that when added to the width of adjacent land that is cleared (or is sufficiently cleared for fuel break purposes) is not more than 15 metres in width and—
 - (A) the district bushfire prevention committee established under the *Country Fires Act 1989* for that area has given its consent to the clearance after taking into account the operation of subregulations (3), (4) and (5); and
 - (B) the person undertaking the clearance complies with guidelines prepared by the Council for the purposes of this subparagraph;
- (za) if—
 - (i) the clearance is for fire prevention or fire protection purposes in a reserve constituted under the *National Parks and Wildlife Act 1972* or in a wilderness protection zone or area constituted under the *Wilderness Protection Act 1992*; and
 - (ii) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision;
- (zb) if the clearance comprises the taking of—
 - (i) a specimen; or
 - (ii) a cutting for propagation; or

- (iii) such part of a plant as is required in order to obtain the seeds of the plant,

and does not cause substantial damage to the plant;

(zc) if—

- (i) the clearance is incidental to exploratory operations authorised under the *Mining Act 1971* or the *Petroleum Act 2000*; and
- (ii) the clearance is undertaken in accordance with accepted industry environmental management practices for facilitating the regrowth of native vegetation, recognised by the Council for the purposes of this subparagraph; and
- (iii) there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

(zd) if—

- (i) the clearance is incidental to operations authorised under the *Mining Act 1971* or the *Petroleum Act 2000*; and
- (ii) —
 - (A) in the case of operations authorised under the *Mining Act 1971*, the clearance is undertaken in accordance with a management plan under that Act and the Council has signified that, as a result of work undertaken in accordance with that plan, there will be a significant environmental benefit on the site of the operations or within the same region of the State, or the person undertaking the operations has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act; and

- (B) in the case of operations authorised under the *Petroleum Act 2000*, the clearance is undertaken in accordance with a statement of environmental objectives under that Act and the Council has signified that, as a result of work undertaken in accordance with that statement, there will be a significant environmental benefit at the site of the operations or within the same region of the State, or the person undertaking the operations has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

- (ze) if the clearance is incidental to mining operations at a private mine at which mining operations have not been discontinued for a period exceeding 12 months at any time after 21 November 1984 (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (zf) if—
 - (i) the land on which the vegetation is situated was used for cultivation, pasture or forestry within 5 years immediately before the proposed clearance occurs; and
 - (ii) the clearance is necessary to maintain the land so that it can continue to be used for cultivation, pasture or forestry to the extent to which it had been used for that purpose within the immediately preceding 5 years; and
 - (iii) the vegetation to be cleared consists only of plants or parts of plants that have grown or have regrown in the immediately preceding 5 years; and
 - (iv) either—
 - (A) the vegetation has a stem diameter at the lowest point on the stem above ground level of 150 millimetres or less; or
 - (B) the vegetation is of the genus *Xanthorrhoea*;
- (zg) if—
 - (i) the native vegetation to be cleared comprises plants that are used, or are to be used, for grazing by domestic animals; and
 - (ii) the purpose of the clearance is to maintain the value of the native vegetation for the purpose of pasture; and
 - (iii) the clearance is in accordance with practices used during the previous 10 years on the land on which the vegetation is growing for the purpose of maintaining pasture; and

- (iv) the clearance is undertaken in accordance with a management plan that has been prepared by, or on behalf of, the owner of the land on which the vegetation is growing or by the soil conservation board for the soil conservation district in which the land is situated and has been approved by the Council;
- (zh) by grazing domestic stock on land in a manner and at a rate that will not cause permanent degradation of the native vegetation on the land but only if—
 - (i) the manner and rate of grazing is consistent with the manner in which, and the rate at which, the land has been grazed by domestic stock of the same species during the previous 10 years; or
 - (ii) —
 - (A) the owner of the land has prepared a management plan that applies to grazing of vegetation on the land by the relevant species of animal; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan and, where the land on which the vegetation is growing is pastoral land, the Pastoral Board has also given its approval to the management plan; and
 - (D) the grazing occurs in accordance with the management plan;
- (zi) if the purposes of the clearance is to preserve or enhance biological diversity and—
 - (i) —
 - (A) the owner of the land has prepared a management plan that provides for monitoring the effects of the clearance; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan; and
 - (D) the clearance is undertaken in accordance with the management plan; or
 - (ii) the clearance is undertaken in accordance with guidelines that apply to the clearance that have been prepared by the Council in accordance with section 25 of the Act;
- (zj) if the vegetation is causing land management problems because it is detrimentally affecting other native vegetation, or is growing on land previously cleared of native vegetation, and—

- (i) —
 - (A) the owner of the land has prepared a management plan relating to the proposed clearance; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan; and
 - (D) the clearance is undertaken in accordance with the management plan; or
- (ii) the clearance is undertaken in accordance with guidelines that have been prepared by the Council in accordance with section 25 of the Act;

(zk) if—

- (i) it is not reasonably practicable to comply with an obligation under the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* to destroy or control animals or plants without at the same time destroying, damaging or otherwise clearing native vegetation; and
- (ii) the person undertaking the clearance complies with guidelines relating to the clearance prepared by the Council in accordance with section 25 of the Act after consultation with the Animal and Plant Control Commission (in addition to any other consultation required by that section),

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement but does not apply to vegetation on a road reserve);

(zl) if—

- (i) the land on which the vegetation is situated is in the County of Cardwell or within the hundreds of Stirling, Willalooka, Duffield, Landseer, Peacock, Marcollat, Minecrow, Woolumbool, Townsend, Lochaber, Murrabinna, Spence or Joyce; and
- (ii) the clearance is to provide cleared land—
 - (A) for the purposes of the construction or maintenance of water management works within the meaning of the *South Eastern Water Conservation and Drainage Act 1992* by, or on behalf of, the South Eastern Water Conservation and Drainage Board pursuant to section 34 of that Act; or
 - (B) for the purposes of the implementation of the Project under the *Upper South East Dryland Salinity and Flood Management Act 2002* by, or on behalf of, the relevant Minister under that Act; and

- (iii) the Board, the relevant Minister or a person acting on behalf of the Board or that Minister has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
 - (iv) the clearance is undertaken in accordance with the management plan;
- (zm) if—
 - (i) the land on which the vegetation is situated is in the County of Flinders or Robinson; and
 - (ii) the clearance is necessary to preserve or augment an underground water supply of a city or town; and
 - (iii) the clearance has been requested by the local council; and
 - (iv) the owner of the land or the person who has the care, control and management of the land has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
 - (v) the clearance is undertaken in accordance with the management plan.
- (2) For the purposes of paragraph (m) of subregulation (1), the Council must, when considering a management plan under that paragraph, have regard to the following:
 - (a) the need to protect people and property; and
 - (b) the need to preserve vegetation for such of the reasons set out in paragraphs (a) to (k) (inclusive) of Schedule 1 of the Act as are applicable; and
 - (c) if the Council is of the opinion that there is more than one effective method of clearing native vegetation in the relevant circumstances, the need for the person undertaking the clearance to use the method of clearance that will cause the least environmental damage.
- (3) The decision of a district bushfire prevention committee to consent to the proposed clearance of land under subregulation (1)(v)(iii)(C) or (z)(ii)(A) must be made in accordance with guidelines relating to the clearance of native vegetation for fire-control purposes in the committee's area adopted by the Council under section 25 of the Act.
- (4) If relevant guidelines have not been adopted by the Council, the district bushfire prevention committee must, when making its decision, have regard to the following:
 - (a) the need to protect land used for primary production; and
 - (b) the need to preserve the vegetation for such of the reasons set out in paragraphs (a) to (k) (inclusive) of Schedule 1 of the Act as are applicable.
- (5) If a district bushfire prevention committee is of the opinion that there is more than one effective method of clearing native vegetation in the circumstances of an application for its consent under subregulation (1)(v)(iii)(C) or (z)(ii)(A), it must, if it gives its consent to the clearance and subject to any relevant guidelines adopted by the Native Vegetation Council, direct the applicant to use the method of clearance that will cause the least environmental damage.

- (6) A committee's consent to clearance under subregulation (1)(v)(iii)(C) or (z)(ii)(A) is subject to—
- (a) a condition that the applicant comply with a direction (if any) given to the applicant under subregulation (5); and
 - (b) such other conditions as the committee imposes.
- (7) The Council may, by notice in the Gazette, declare that subparagraph (ii) of paragraph (v) of subregulation (1) applies in relation to an area of a mallee scrub community identified in the notice and may, by subsequent notice in the Gazette, vary or revoke such a declaration.

6—Restrictions on clearance of vegetation

- (1) Native vegetation may not be cleared pursuant to regulation 5(1)(k) if—
- (a) the vegetation is situated within any of the following areas:
 - (i) sections 13, 135, 136, 224, 225, 227, 228, 229, 230, 285, 368, 492, 512, 530 and D in the Hundred of Waterhouse;
 - (ii) part sections 13, 30, 223 and 225 that are in the Hundred of Waterhouse;
 - (iii) that part of section 214 that is within the township of Robe;
 - (iv) that part of part section 369, Hundred of Waterhouse, that is east of Christine Drive and Lake Road; or
 - (b) the vegetation—
 - (i) consists of a tree (including a dead tree) where the diameter of the trunk of the tree at 300 millimetres from the base of the tree is 600 millimetres or more; and
 - (ii) is situated within the 1956 flood plain of the River Murray, other than where the vegetation is within the area of a city or township.
- (2) Native vegetation may not be cleared pursuant to regulation 5(1)(a), (b), (j), (q), (r), (s), (t), (u), (v) or (z) if—
- (a) the clearance would be contrary to the requirements of a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or of an order of a court under the Act or the repealed Act; or
 - (b) the vegetation was sown or planted in compliance with a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or in compliance with an order of a court under the Act or the repealed Act.
- (3) In this regulation—
- township** has the same meaning as in the *Local Government Act 1999*.

7—Compliance with management plan

A person must not—

- (a) clear native vegetation in contravention of a management plan under regulation 5; or
- (b) fail to comply with the terms or requirements of regulation 5.

Part 3—Application for consent

8—Application for consent

- (1) For the purposes of section 28(3)(b)(iia) of the Act, the prescribed number of copies is 1.
- (2) For the purposes of section 28(3)(b)(iii) of the Act, the prescribed fee is \$400 plus the fee referred to in subregulation (3).
- (3) The fee payable by an applicant for consent to clear native vegetation for the preparation of the report referred to in section 28(3)(b)(iia) of the Act is the Minister's estimate of the reasonable cost of preparing a report of that kind determined after consultation with the Council.
- (4) The Council may remit payment of, or refund, the whole, or part, of a fee payable or paid in relation to an application (including a fee for a report under section 28(3)(b)(iia) of the Act).
- (5) For the purposes of section 28(5) of the Act, any agency, instrumentality, person or body approved by the Council as an entity that may prepare a report of the relevant kind is specified.

Part 4—Miscellaneous

9—Definition of native vegetation

For the purposes of the Act and these regulations—

native vegetation includes a dead tree of a species indigenous to South Australia if—

- (a) the diameter of the trunk of the tree at 300 millimetres from the base of the tree is 600 millimetres or more; and
- (b) the tree provides or has the potential to provide, or is a part of a group of trees or other plants (whether alive or dead) that provides, or has the potential to provide, a habitat for animals of a listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

10—Interest

- (1) Interest accrues from the end of the period referred to in section 31D(4)(a) or 31E(6)(a) of the Act at the prime bank rate for the relevant financial year.
- (2) Interest accrues on unpaid interest at 6 monthly intervals from the end of the period referred to in subregulation (1).

(3) In this regulation—

prime bank rate for a particular financial year means the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the first trading day of the Bank in that financial year.

11—Prescribed form (section 33C(8) of Act)

For the purposes of section 33C(8) of the Act, the form set out in Schedule 2 is prescribed.

12—Service of notices

Notice may be served under the Act on a land owner—

- (a) personally; or
- (b) by posting it to the land owner at the address of the land owner last known to the person or body serving the notice.

13—Use of money paid under regulations

Money standing to the credit of the Fund on account of a payment into the Fund under Part 2 of these regulations must, as far as practicable, be used—

- (a) to establish or regenerate native vegetation on land that is within the same region of the State as the land that is to be cleared by virtue of the exemption under that Part 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; and
- (b) to preserve and maintain that vegetation once established or reinstated.

14—Revocation

The *Native Vegetation Regulations 1991 (Gazette 18.4.1991 p1311)*, as varied, are revoked.

Schedule 1—Specified species of vegetation for the purposes of regulation 5(1)

River red gum

Eucalyptus camaldulensis

Schedule 2—Notice under section 33C(8) of Act

Native Vegetation Act 1991

Notice of information relating to a warrant

NOTE: Section 33C of the *Native Vegetation Act 1991* provides for the issuing and execution of a warrant in various cases. A warrant has been issued under the Act and the following information is provided in relation to this matter:

1. The name of authorised officer executing the warrant is:

This person is an authorised officer under the *Native Vegetation Act 1991*.

2. This warrant was issued by the following magistrate:

3. This warrant was issued on
at a.m./p.m.

4. The warrant authorises the following course of action:

- A warrant expires at the expiration of 1 month from the date of its issue.
- A person may be guilty of an offence if he or she fails to comply with a requirement under the Act or hinders an authorised officer in the lawful exercise of a power under the Act. The maximum penalty for an offence is \$5 000. (A person is not required to answer any question if to do so might incriminate the person or make the person liable to a criminal penalty.)

.....
(Authorised officer executing warrant)

.....
(Date)

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2003	173	<i>Gazette 21.8.2003 p3282</i>	25.8.2003: r 2
2003	227	<i>Gazette 13.11.2003 p4055</i>	13.11.2003: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
r 5		
r 5(1)	varied by 227/2003 r 4	13.11.2003