

South Australia

Pastoral Land Management and Conservation (Miscellaneous) Amendment Act 2004

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Pastoral Land Management and Conservation (Miscellaneous) Amendment Act 2004*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Pastoral Land Management and Conservation Act 1989*

4—Amendment of section 3—Interpretation

- (1) Section 3, definition of *Aborigine*—delete the definition and substitute:

Aboriginal person means a descendant of the Aboriginal people who is accepted as a member by a group in the community who claim descent from the Aboriginal people;

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

ILUA means an indigenous land use agreement registered under Part 2 Division 3 of the *Native Title Act 1993* of the Commonwealth, the parties to which must include, but are not limited to, the Crown, a lessee of pastoral land and a native title group;

- (3) Section 3—after the definition of *motor vehicle* insert:

native title group means—

- (a) in the case where the ILUA is an ILUA (body corporate agreement) under Part 2 Division 3 Subdivision B of the *Native Title Act 1993* of the Commonwealth—the persons referred to in section 24BD(1) of that Act; and
- (b) in the case where the ILUA is an ILUA (area agreement) under Part 2 Division 3 Subdivision C of the *Native Title Act 1993* of the Commonwealth—the persons referred to in section 24CD(2) or (3) (as the case requires) of that Act; and
- (c) in any case—
 - (i) a person who is, pursuant to section 24EA of the *Native Title Act 1993* of the Commonwealth, bound by a particular ILUA; and
 - (ii) a person—

- (A) who holds native title; or
- (B) who is a member of a native title claim group (within the meaning of the *Native Title Act 1993* of the Commonwealth),

in relation to the land or waters subject to a particular ILUA;
and

- (iii) any other person identified in the regulations as being included within the ambit of this definition,

but does not include a person identified in the regulations as being excluded from the ambit of this definition;

- (4) Section 3—after its present contents (now to be designated as subsection (1)) insert:
 - (2) For the purposes of the definition of *ILUA*, a *native title group* does not include a person who would not, but for the operation of paragraph (c) of the definition of *native title group*, be included in the definition of *native title group*.

5—Amendment of section 4—Objects of this Act

Section 4(d)—delete "Aborigines" and substitute:

Aboriginal persons

6—Amendment of section 5—Duty of the Minister and the Board

Section 5—after paragraph (b) insert:

- (c) must have regard to the relevant terms of any ILUA.

7—Repeal of section 6

Section 6—delete the section

8—Amendment of section 20—Assessment of land prior to grant of lease

Section 20—after its present contents (now to be designated as subsection (1)) insert:

- (2) However, the Minister may grant a pastoral lease over Crown land without an assessment having been made under subsection (1)(b)(ii) if an assessment has been made within the previous 14 years.

9—Amendment of section 22—Conditions of pastoral leases

- (1) Section 22(1)(a)(i) and (ii)—delete subparagraphs (i) and (ii)
- (2) Section 22(1)(a)(vi)—after "exercising" insert:
 - , or attempting to exercise,
- (3) Section 22—after subsection (1) insert:
 - (1a) A condition referred to in subsection (1)(a) or (1)(b), and a reservation referred to in subsection (1)(c), will be taken to be a condition or reservation (as the case requires) of all pastoral leases (whether granted before or after the commencement of this subsection).

- (4) Section 22—after subsection (4) insert:
- (5) A condition of a pastoral lease is, to the extent that it relates to the minimum stocking rate of pastoral land, void and of no effect.
 - (6) The Board may, at the request or with the consent of the lessee—
 - (a) approve the pasturing (as part of the commercial enterprise under the lease) of a species of animal other than a species specified in the lease; and
 - (b) approve a level of stock on the land, or on a particular part of the land, in excess of the maximum levels specified in the lease; and
 - (c) approve the use of land subject to a pastoral lease for a purpose other than pastoral purposes; and
 - (d) —
 - (i) set aside from use for pastoral purposes land, or a part of the land, subject to a pastoral lease; and
 - (ii) approve the use of the pastoral land set aside for the primary purpose of traditional Aboriginal pursuits, conservation purposes or other purposes as specified by the Board.
 - (7) An approval of the Board under subsection (6) must be in writing and may be subject to conditions.

10—Substitution of sections 25 and 26

Sections 25 and 26—delete the sections and substitute:

25—Assessment of land

- (1) The Board must cause an assessment of the condition of the land comprised in each pastoral lease to be completed at intervals of not more than 14 years.
- (2) An assessment of the condition of land pursuant to this Act—
 - (a) must be thorough; and
 - (b) must include an assessment of the capacity of the land to carry stock; and
 - (c) must be conducted in accordance with recognised scientific principles; and
 - (d) must be carried out by persons who are qualified and experienced in land assessment techniques; and
 - (e) must take into account any matter prescribed by the regulations.
- (3) The Board must, by notice in writing, advise a lessee of a proposed assessment not less than 28 days before the assessment is due to commence.

- (4) On completing an assessment of the condition of land, the Board must forward—
 - (a) a copy of the assessment; and
 - (b) a written report of any action the Board proposes taking as a consequence of the assessment,to the lessee.
- (5) The Board cannot take any action under this Act as a consequence of an assessment until after the end of the period during which an application for assistance may be lodged under section 25B.

25A—Establishment of pool of persons for the purposes of section 25B

- (1) The Minister must establish a pool of persons for the purposes of section 25B.
- (2) The pool will consist of such number of persons (being not less than 2 and not more than 6) as the Minister thinks fit, appointed by the Minister after consultation with the South Australian Farmers Federation and the Conservation Council of South Australia Inc.
- (3) A member of the public service is not eligible for appointment as a member of the pool.
- (4) A member of the pool will be appointed on terms and conditions determined by the Minister.
- (5) Each person appointed under subsection (2) must have qualifications or experience in pastoral land management.
- (6) The Minister must maintain a public register containing the name and contact details of each member of the pool.
- (7) The public register is to be available for inspection, without fee, during ordinary office hours—
 - (a) at a public office, or public offices, determined by the Minister; and
 - (b) at a website determined by the Minister.
- (8) The Minister may, by notice in the Gazette, publish guidelines in relation to the provision of assistance under section 25B.

25B—Assistance to lessee

- (1) A lessee who has received under section 25(4)—
 - (a) a copy of an assessment; or
 - (b) a written report of proposed action,may, within 60 days after the copy of the assessment or the report is forwarded to the lessee under that section, apply to the Minister for assistance in relation to the lessee's dealings with the Board, or any other person or body, as a consequence of the assessment or in relation to the proposed action.

- (2) An application under subsection (1)—
 - (a) may request that the assistance be provided by a particular member of the pool of persons established under section 25A; and
 - (b) must identify—
 - (i) the nature of the assistance sought by the lessee; and
 - (ii) if the lessee seeks assistance to dispute any part of the assessment, or oppose any proposed action—the grounds for the dispute or opposition; and
 - (c) must be made in a manner and form determined by the Minister and will not be conditional on the payment of any fee.
- (3) If an application is made under subsection (1), the Minister must, unless satisfied that the application is frivolous or vexatious, appoint a member of the pool to provide assistance to the lessee in accordance with any guidelines published in accordance with section 25A(8) (and if the application requests that the assistance be provided by a particular member of the pool, the Minister must appoint that member unless the Minister is of the opinion that it would be inappropriate for any reason for that member to do so).
- (4) A member of the pool must—
 - (a) inform the Minister in writing of any direct or indirect interest that the person has or acquires that conflicts, or may conflict, with the provision of any assistance that the member is appointed to provide; and
 - (b) comply with any directions given by the Minister regarding the resolution of the conflict, or potential conflict.

Maximum penalty: \$20 000.

- (5) Subsection (4) does not apply in relation to an interest that the member has or acquires while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.
- (6) No civil liability attaches to a member of the pool for an act or omission in good faith in the exercise or purported exercise of a function under this section.
- (7) The Pastoral Board must give consideration to any comments made to the Board by the lessee relating to the assessment, or the written report of proposed action, referred to in subsection (1).

26—Extension of term of pastoral leases and variation of conditions

- (1) The Board may, by notice in writing given to the lessee, vary the land management conditions of a pastoral lease to take effect on the date or dates specified in the notice (and, if a property plan has been approved in respect of the pastoral lease, the variation must accord with the terms of the plan).
- (2) However, the Board cannot vary the land management conditions of a pastoral lease unless the lease conditions as varied by the Board are accepted by the lessee.
- (3) Subject to subsection (5), the Board must, by notice in writing given to the lessee within 12 months after the completion of the most recent assessment under section 25—
 - (a) if the land management conditions of a pastoral lease are not to be varied by the notice under this subsection—extend the term of a pastoral lease; or
 - (b) if the land management conditions of a pastoral lease are to be varied by the notice under this subsection—offer to extend the term of a pastoral lease,by such period as will bring the term to 42 years (measured from the date the most recent assessment was completed).
- (4) An offer to extend the term of a pastoral lease under subsection (3)(b) is subject to the condition that the lessee accepts the lease conditions as varied within 12 months after receiving the offer (and if the lessee does not accept the lease conditions as varied within that period the offer is, by force of this section, withdrawn).
- (5) The Board may refuse to extend the term of a pastoral lease if satisfied—
 - (a) there has been a wilful breach of a condition of the lease resulting in, or likely to result in, degradation of the land; or
 - (b) the lessee has, without reasonable excuse, failed to discharge a duty imposed by section 7.
- (6) If—
 - (a) an offer to extend a pastoral lease has been withdrawn under subsection (4); or
 - (b) the Board has refused to extend the term of a pastoral lease under subsection (5),

the Board may (either on an application by the lessee or of its own motion), if satisfied that the grounds for the revocation or refusal no longer exist, extend the term of a pastoral lease by such period as will bring the balance of the term to 42 years (measured from the date the most recent assessment was completed).

- (7) For the purposes of this section, an assessment is taken to have been completed on the day that the Board resolves to issue a notice under subsection (3).

11—Insertion of section 31A

After section 31 insert:

31A—Variation of land subject to lease

- (1) The Minister may, by notice in writing to the relevant lessees—
- (a) excise land, or a part of land, subject to a pastoral lease and transfer the land, or the part of land, to another lease; and
 - (b) alter the boundaries of the leases accordingly.
- (2) Despite a provision of this Act, the Minister may, in the same notice—
- (a) vary the rent payable under a pastoral lease to take into account the increase or reduction in value of the lease resulting from the alteration of the boundaries; and
 - (b) vary the land management conditions of a pastoral lease (including varying a condition relating to the maximum level of stock on the land, or a particular part of the land).
- (3) The Minister may only take action under this section—
- (a) on the recommendation of the Board; and
 - (b) at the request or with the consent of the relevant lessees.
- (4) On registration by the Registrar-General of a boundary alteration pursuant to this section—
- (a) the alteration takes effect; and
 - (b) all registered interests or caveats to which the pastoral lease is subject extend over the lease as so altered.

12—Amendment of section 42—Verification of stock levels

Section 42(1)—delete subsection (1) and substitute:

- (1) The lessee under a pastoral lease must, not later than 31 July in each year, furnish the Board with a statutory declaration as to stock levels on the pastoral land as at 30 June of that year.

13—Insertion of Part 6 Division 2A

Part 6—after Division 2 insert:

Division 2A—Indigenous land use agreements

46A—Indigenous land use agreement binding on lessees

- (1) An ILUA that is in force in relation to pastoral land is binding on the current lessee of the land whether or not the lessee was the person with whom the ILUA was made.

- (2) A lessee of pastoral land may enter an ILUA in relation to contiguous pastoral land that is under the lessee's management and control (and the lessee of the contiguous pastoral land will be taken not to be the occupier of that land for the purposes of this Division).
- (3) An ILUA that is in force in relation to pastoral land the subject of subsection (2) is binding on the current occupier of the land whether or not the occupier was the person with whom the ILUA was made.

46B—Immunity from liability

- (1) Subject to this section, no civil liability attaches to a party to an ILUA for injury, damage or loss—
 - (a) caused by another party to the ILUA; or
 - (b) suffered by a person who is unlawfully on pastoral land the subject of the ILUA unless the injury, damage or loss was caused intentionally or through gross negligence.
- (2) Subject to this section, an ILUA may—
 - (a) modify the duty of care or standard of care required of a party to an ILUA as against another party to the ILUA; or
 - (b) limit the civil liability of a party to an ILUA as against another party to the ILUA.
- (3) To avoid doubt, sections 17C(4) and (6) of the *Wrongs Act 1936* do not apply to an occupier of pastoral land the subject of an ILUA.
- (4) Nothing in this section affects the operation of a statutory insurance or compensation scheme.
- (5) For the purposes of this section, a reference to—
 - (a) a party to an ILUA includes a reference to—
 - (i) in the case of a lessee of pastoral land—
 - (A) that lessee, in relation to pastoral land used by the lessee for pastoral purposes that is contiguous to land the subject of the pastoral lease; and
 - (B) a family member, employee or invitee (not being a person entering the pastoral land under section 48) of the lessee that is on the pastoral land; and
 - (ii) in the case of a native title group—an invitee of an Aboriginal person exercising a right of entry or staying on the pastoral land under the ILUA or section 47(1).
 - (b) a reference to pastoral land includes a reference to contiguous land that is located within the perimeter fence line of land the subject of a pastoral lease, but is not the subject of the lease.

46C—ILUA to be endorsed on lease

- (1) If an ILUA is entered in relation to pastoral land, the Minister must cause a notice of that fact (in a form approved by the Registrar-General) to be lodged with the Registrar-General.
- (2) The Registrar-General must, on receipt of a notice under subsection (1), endorse on the relevant pastoral lease or pastoral leases the fact that an ILUA has been entered in relation to pastoral land the subject of the lease or leases.
- (3) No stamp duty or fee is payable in respect of a notice lodged or action of the Registrar-General pursuant to this section.

14—Amendment of section 47—Rights of Aboriginal persons

- (1) Section 47(1)—delete "subsection (2), an Aborigine" and substitute:
this section, an Aboriginal person
- (2) Section 47(2)—delete "Aborigine" and substitute:
Aboriginal person
- (3) Section 47—after subsection (2) insert:
 - (3) An ILUA in force in relation to particular pastoral land may—
 - (a) confer a right to enter, travel across or stay on the land in addition to the rights conferred by subsection (1); or
 - (b) remove or qualify, or make any other provision in relation to, the rights conferred by subsection (1).

15—Amendment of section 48—Right to travel across and camp on pastoral land

- (1) Section 48(2)—after "Act" insert:
and to the terms (if any) of an ILUA relating to public access and activities on the land in force in relation to the land
- (2) Section 48—after subsection (2) insert:
 - (2a) A term of an ILUA may only limit a right conferred by subsection (2) to the extent reasonably necessary for the following purposes:
 - (a) restricting public access to places identified by the native title group as being places of cultural significance;
 - (b) preventing injury, damage or loss to any person that may arise from an activity undertaken under the ILUA or under section 47(1);
 - (c) protecting an activity of the native title group on pastoral land the subject of the ILUA.

(3) Section 48—after subsection (8) insert:

(8a) A lessee must not give consent under subsection (5), or the Minister under subsection (7), to a proposal to travel across or camp on pastoral land in a manner referred to in subsection (3) if to do so would be inconsistent with the terms (if any) of an ILUA in force in relation to the land relating to public access and activities on the land.

(4) Section 48—after subsection (9) insert:

(10) An authorised person may give to a person travelling across or camping on pastoral land the subject of an ILUA such directions as may be reasonably required for the purpose of giving effect to a term of an ILUA relating to one or more of the purposes referred to in subsection (2a).

(11) A person who, without lawful authority or reasonable excuse, fails to comply with a direction under subsection (10) is guilty of an offence.
Maximum penalty: \$1 250.

(12) In this section—

authorised person means—

- (a) the lessee of pastoral land the subject of the ILUA; or
- (b) the native title group in relation to pastoral land the subject of the ILUA; or
- (c) an employee of the lessee or other person acting on the authority of the lessee.

(13) In proceedings for an offence against this section, an allegation in the complaint that a person named in the complaint was on a specified date an authorised person in relation to specified pastoral land will be accepted, in the absence of proof to the contrary, as proof of the authorisation.

16—Insertion of sections 48A and 48B

After section 48 insert:

48A—Public register

(1) The Minister must maintain a public register in relation to this Division.

(2) The public register must contain—

- (a) details of each pastoral lease the subject of an ILUA; and
- (b) contact details of each lessee of pastoral land the subject of an ILUA; and
- (c) contact details of each native title group who is a party to an ILUA; and

- (d) information relating to the terms (if any) of an ILUA relating to the access of Aboriginal persons onto pastoral land the subject of an ILUA; and
 - (e) information relating to the terms (if any) of an ILUA relating to public access onto pastoral land the subject of an ILUA.
- (3) The public register may be kept in the form of a computer record.
 - (4) The public register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Minister.
 - (5) The Minister must ensure that copies of material on the public register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.
 - (6) The Minister must ensure that the public register can be inspected at a website determined by the Minister.
 - (7) For the purposes of subsection (2)(c), a *native title group* does not include a person who would not, but for the operation of paragraph (c) of the definition of *native title group* in section 3(1), be included in the definition of *native title group*.

48B—Trespassers on pastoral land the subject of an ILUA

- (1) If—
 - (a) a person trespasses on pastoral land the subject of an ILUA; and
 - (b) the nature of the trespass is such as to interfere with the enjoyment of the land by the lessee or the native title group; and
 - (c) the trespasser is asked by an authorised person to leave the land,

the trespasser is, if he or she fails to leave the land forthwith or again trespasses on the land within 24 hours of being asked to leave, guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (2) A person who trespasses on pastoral land the subject of an ILUA must, if asked to do so by an authorised person, give his or her name and address to the authorised person.

Maximum penalty: \$1 250.

- (3) An authorised person, on asking a trespasser to leave pastoral land the subject of an ILUA or to give a name and address, must, if the trespasser so requests, inform the trespasser of—
 - (a) the authorised person's name and address; and
 - (b) the capacity in which the person is an authorised person under this section.

(4) In this section—

authorised person means—

- (a) the lessee of pastoral land the subject of the ILUA; or
- (b) the native title group in relation to pastoral land the subject of the ILUA; or
- (c) an employee of the lessee or other person acting on the authority of the lessee; or
- (d) a person acting on the written authority of the native title group;

pastoral land includes a building or structure.

- (5) In proceedings for an offence against this section, an allegation in the complaint that a person named in the complaint was on a specified date an authorised person in relation to specified pastoral land will be accepted, in the absence of proof to the contrary, as proof of the authorisation.
- (6) For the purposes of subsection (4)(d), a *native title group* does not include a person who would not, but for the operation of paragraph (c) of the definition of *native title group* in section 3(1), be included in the definition of *native title group*.