

South Australia

## **Native Vegetation (Exemptions) Variation Regulations 2006**

under the *Native Vegetation Act 1991*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Native Vegetation (Exemptions) Variation Regulations 2006*.

#### **2—Commencement**

These regulations come into operation on the day on which they are made.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

### **Part 2—Variation of *Native Vegetation Regulations 2003***

#### **4—Variation of regulation 3—Interpretation**

- (1) Regulation 3, definition of *C.F.S.*—delete the definition
  - (2) Regulation 3, definition of *country*—delete "*Country Fires Act 1989*" and substitute:  
*Fire and Emergency Services Act 2005*
  - (3) Regulation 3—after the definition of *River Murray Floodplain Area* insert:  
*SACFS* means the South Australian Country Fire Service;
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## **5—Variation of regulation 5—Exemptions**

- (1) Regulation 5(1)(a)(ii)(B)—after "the Council is satisfied" insert:

(on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit)
- (2) Regulation 5(1)(a)(ii)(B)—before "there is no other practicable alternative" insert:

the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that
- (3) Regulation 5(1)(a)(ii)(B)—after "has been approved by the Council and that" insert:

, after taking into account the full extent of clearance that is to be undertaken on the relevant land,
- (4) Regulation 5(1)(d)(i)(A)—delete subparagraph (A) and substitute:
  - (A) the clearance is incidental to the construction or expansion of a building or infrastructure and the Minister has, by instrument in writing, declared that he or she is satisfied that the clearance is in the public interest; or
- (5) Regulation 5(1)(d)(iii)—after "the Council is satisfied" insert:

(on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit)
- (6) Regulation 5(1)(d)(iv)—before "there is no other practicable alternative" insert:

the Council is satisfied (on the basis on information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that
- (7) Regulation 5(1)—after paragraph (d) insert:
  - (da) if—
    - (i) the clearance is incidental to proposed development to be undertaken on land; and
    - (ii) any development authorisation required by or under the *Development Act 1993* has been obtained; and
    - (iii) the Council is satisfied (on the basis on information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit)—
      - (A) that the vegetation is not significant (including by taking into account the scale or nature of surrounding vegetation and relevant guidelines prepared and published by the Council); and
      - (B) that there is no other practicable alternative that would involve no clearance or the clearance of less vegetation; and

- (iv) 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 relevant development is to be 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;
- (8) Regulation 5(1)(j)(i)—delete subparagraph (i) and substitute:
- (i) the clearance is incidental to the lawful construction of a new dam that will cover—
    - (A) in areas designated by the Council, by notice in the Gazette, for the purposes of this provision—less than 500 square metres in surface area when full;
    - (B) in other areas of the State—less than 200 square metres in surface area when full; and
- (9) Regulation 5(1)(j)—after subparagraph (iv) insert:
- and
- (v) in the case of a dam within the ambit of subparagraph (i)(A) that will cover 200 square metres or more in surface area when full—the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the site of the dam is the most suitable that is available;
- (10) Regulation 5(1)—after paragraph (j) insert:
- (ja) if—
    - (i) the clearance is incidental to the lawful construction or expansion of a dam on pastoral land (as defined in section 3(1) of the Act); and
    - (ii) the vegetation is not of a class specified in Schedule 1; and
    - (iii) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the site for the dam is the most suitable that is available; and

- (iv) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that 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 management plan that has been approved by the Council and that results in a significant environmental benefit on the relevant property, 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;
- (11) Regulation 5(1)(k)—delete paragraph (k) and substitute:
- (k) if—
    - (i) the vegetation is growing or is situated within 20 metres of a dwelling, or a building used for tourist or camp accommodation (including a dwelling or such a building in the course of construction if the foundations, concrete slab or other footings have been completed); and
    - (ii) any development authorisation required by or under the *Development Act 1993* has been obtained (if relevant); and
    - (iii) in the case of a building used for tourist or camp accommodation, the building was constructed before the commencement of the *Native Vegetation (Exemptions) Variation Regulations 2006*, or is the subject of a development authorisation granted under the *Development Act 1993* before the commencement of the *Native Vegetation (Exemptions) Variation Regulations 2006*; and
    - (iv) the clearance of the vegetation is to be undertaken by the owner of the land, or by a person who is acting under a written agreement with the owner of the land; and
    - (v) 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—SACFS has, by written instrument, indicated that it supports the clearance of the vegetation for fire-control purposes;
  - (ka) if—

- (i) the vegetation is growing or is situated within 5 metres of a building designed to be entered and used by people or animals (including such a building 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 by the owner of the land, or by a person who is acting under a written agreement with the owner of the land; 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—SACFS has, by written instrument, indicated that it supports the clearance of the vegetation for fire-control purposes;
- (12) Regulation 5(1)—after paragraph (l) insert:
  - (la) if—
    - (i) the clearance involves the limb of a plant that is overhanging a building; and
    - (ii) the clearance is confined to removing the limb (or a part of the limb to any point up to the trunk of the plant),  
  
(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (13) Regulation 5(1)(m)(ii)—delete "*Country Fires Act 1989*" and substitute:

*Fire and Emergency Services Act 2005*
- (14) Regulation 5(1)(o)—delete paragraph (o) and substitute:
  - (o) by an officer of SACFS or any other member of SACFS acting under section 97 of the *Fire and Emergency Services Act 2005*, or by any other person acting with the authority of an officer of SACFS or other member of SACFS under that section (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);
- (15) Regulation 5(1)(u)—after subparagraph (ii) insert:

and

  - (iii) the person undertaking the clearance complies with any guidelines determined or approved by the Council for the purposes of this provision,
- (16) Regulation 5(1)(v)(iii)(C)—delete "*Country Fires Act 1989*" wherever occurring and substitute, in each case:

*Fire and Emergency Services Act 2005*
- (17) Regulation 5(1)(w)(i)—delete "*Country Fires Act 1989*" and substitute:

*Fire and Emergency Services Act 2005*

- (18) Regulation 5(1)(x)—delete "*Country Fires Act 1989*" and substitute:

*Fire and Emergency Services Act 2005*

- (19) Regulation 5(1)(z)—delete "*Country Fires Act 1989*" wherever occurring and substitute, in each case:

*Fire and Emergency Services Act 2005*

- (20) Regulation 5(1)—after paragraph (zd) insert:

(zda) if—

- (i) the clearance is incidental to operations authorised before 25 August 2003 under the *Mining Act 1971* or the *Petroleum Act 2000*; and
- (ii) the clearance—
  - (A) is clearance that is envisaged or authorised by or under a program or approval under the relevant Act; or
  - (B) is clearance that would reasonably be expected to have been required under the authorisation under the relevant Act taking into account the circumstances that existed immediately before 25 August 2003;

- (21) Regulation 5(1)(zf)(i)—delete "was used" and substitute:

has been used

- (22) Regulation 5(1)—after paragraph (zf) insert:

(zfa) if—

- (i) the vegetation to be cleared consists of plants that have regrown over a period of time after previous clearance undertaken in accordance with the provisions of the Act or these regulations; and
- (ii) the land on which the vegetation is situated has been consistently used for agricultural purposes as part of a commercial enterprise since the land was lawfully cleared; and
- (iii) the clearance is undertaken in accordance with a management plan that has been approved by the Council;

(zfb) if—

- (i) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit)—

- (A) that the vegetation to be cleared is situated on land that has been the subject of regional land degradation processes over a period of time and consists of plants that have grown on the land due to those processes; and
    - (B) that the land on which the vegetation is situated is being used, or has previously been used, for agricultural purposes but that use has been reduced or discontinued (as the case may be) due to the degradation; and
    - (C) that the clearance is being undertaken so as to enable the land to be used for agricultural purposes; and
  - (ii) the clearance is undertaken in accordance with a management plan that has been approved by the Council;
- (23) Regulation 5(1)(zi)—after subparagraph (ii) insert:
- (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)
- (24) Regulation 5—after subregulation (1) insert:
- (1a) For the purposes of subregulation (1)(d), **infrastructure** includes, unless the contrary intention appears—
    - (a) flood mitigation works;
    - (b) an airstrip;
    - (c) a shipping channel.
  - (1b) For the purposes of subregulation (1)(da), the Council must ensure that guidelines are prepared in accordance with the procedures that apply to guidelines under section 25 of the Act.
  - (1c) For the purposes of subregulation (1)(k) and (ka), an indication of support from SACFS for the clearance of vegetation may only be given by a person who has been specifically authorised by an instrument in writing to act on behalf of SACFS under these regulations.
- (25) Regulation 5—after subregulation (7) insert:
- (8) A management plan under subregulation (1)(zfa) must make express provision for a review of the operation of the management plan to be conducted from time to time.
  - (9) The Council must, in considering whether the requirements of subregulation (1)(zfb)(i) have been satisfied in a particular case, seek and consider the advice of the regional NRM board for the NRM region where the relevant land is situated.
  - (10) The Council may, in determining whether there is a practicable alternative to a particular course of action under consideration under this regulation, take into account the cost of any alternative.

- (11) For the purposes of this regulation (and without limiting any other provision), the Council may—
- (a) require a person seeking the benefit of this regulation for a particular purpose to provide to the Council such information as the Council may reasonably require to determine the matter;
  - (b) direct that any information to be provided to the Council be in a form determined by the Council (after consulting with any relevant person as the Council thinks fit);
  - (c) direct that a person comply with any other requirement determined by the Council (including a requirement as to the form or content of any plan or other document).

### **6—Variation of regulation 9—Definition of native vegetation**

Regulation 9—definition of *native vegetation*, (a)—delete paragraph (a) and substitute:

- (a) the diameter of the trunk of the tree at 300 millimetres from the base of the tree is—
  - (i) in the case of a tree located on Kangaroo Island—300 millimetres or more;
  - (ii) in any other case—600 millimetres or more; and

### **7—Variation of regulation 13—The Fund**

Regulation 13—after its present contents (now to be designated as subregulation (1)) insert:

- (2) Other money standing to the credit of the Fund may be used or made available for any costs associated with research, promotional activities, investigations or other activities that, in the opinion of the Minister, will further the objects of the Act.

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 9 February 2006

No 25 of 2006

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