



NATIVE VEGETATION MANAGEMENT ACT, 1985

No. 87 of 1985

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section

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

PART II ADMINISTRATION

DIVISION I—THE NATIVE VEGETATION AUTHORITY

6. Establishment of the Authority
7. Membership of the Authority
8. Procedures at meetings of the Authority
9. Validity of acts of Authority and immunity of members
10. Personal interest of member
11. Remuneration, etc., of members
12. Functions of Authority
13. Delegation of powers and functions
14. Staff
15. Annual report

DIVISION II—THE NATIVE VEGETATION ADVISORY COMMITTEE

16. The Native Vegetation Advisory Committee
17. Functions and powers of the Committee
18. Use of departmental services by Committee

PART III CONTROL OF CLEARANCE OF NATIVE VEGETATION

19. Offence of clearing native vegetation contrary to this Part
20. Clearance of native vegetation
21. Provisions relating to consent

PART IV ENFORCEMENT PROCEEDINGS

DIVISION I—CIVIL ENFORCEMENT PROCEEDINGS

22. Jurisdiction of the Court
23. Commencement of proceedings
24. Appeals

DIVISION II—PROCEEDINGS FOR OFFENCES

25. Proceedings for an offence against this Act

PART V**PAYMENTS TO LANDOWNERS**

- 26. Interpretation
- 27. Entitlement to payment
- 28. Amount of payment
- 29. Assessment of payment
- 30. Payment of amount due

PART VI**MISCELLANEOUS**

- 31. Power to inspect land and premises
- 32. Regulations

SCHEDULES



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 87 of 1985

An Act to control the clearance, and to facilitate the management, of native vegetation; and for other purposes.

[Assented to 19 September 1985]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I PRELIMINARY

- Short title. 1. This Act may be cited as the "Native Vegetation Management Act, 1985".
- Commencement. 2. (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Interpretation. 3. In this Act, unless the contrary intention appears—
- "the Authority" means the Native Vegetation Authority established under this Act;
- "to clear" native vegetation includes to cause, suffer 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) any other substantial damage to native vegetation:

“the Committee” means the Native Vegetation Advisory Committee established under this Act:

“council” means a municipal or district council:

“the Development Plan” means the Development Plan constituted by the Planning Act, 1982:

“heritage agreement” means a heritage agreement entered into under the South Australian Heritage Act, 1978:

“member” means a member of the Authority:

“native vegetation” means a plant or plants of a species indigenous to South Australia:

“owner” of land means—

(a) where the land has been alienated from the Crown by grant in fee simple—the holder of an estate in fee simple in the land;

(b) where the land is held from the Crown by lease or licence—the lessee or licensee;

(c) where the land is held from the Crown under an agreement to purchase—the person who is entitled to the benefit of the agreement;

(d) in relation to other land—the Crown,

and “to own” has a corresponding meaning:

“Supplementary Development Plan” means a Supplementary Development Plan prepared, or in the course of preparation, under the Planning Act, 1982.

4. (1) Subject to subsection (2), this Act applies to the whole of the State. Application of Act.

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

5. This Act binds the Crown. Act to bind Crown.

PART II

ADMINISTRATION

DIVISION I—THE NATIVE VEGETATION AUTHORITY

6. (1) There shall be an authority entitled the “Native Vegetation Authority”. Establishment of the Authority.

(2) The Authority shall have the powers, functions and duties conferred, assigned or imposed by this Act.

7. (1) The Authority shall consist of 5 members of whom—

(a) one (who shall be the presiding officer of the Authority) shall be the person for the time being holding, or acting in, the office of Chairman of the South Australian Planning Commission; Membership of the Authority.

and

(b) four shall be appointed by the Governor as follows:

- (i) one shall be a person nominated by the Minister from a panel of 4 persons nominated by the United Farmers and Stockowners of S.A. Inc.;
- (ii) one shall be a person nominated by the Minister from a panel of 4 persons nominated by the Nature Conservation Society of S.A. Inc.;
- (iii) one shall be a person with extensive knowledge of, and experience in, the conservation of native vegetation nominated by the Minister;
- (iv) one shall be a person with extensive knowledge of agricultural land management nominated by the Minister.

(2) A member to be appointed by the Governor shall be appointed for a term not exceeding 2 years and, at the expiration of that term, is eligible for reappointment.

(3) The conditions of appointment of a member shall be determined by the Governor.

(4) The Governor may appoint a person to be a deputy of a member and the deputy may, in the absence of the member, act as a member of the Authority.

(5) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of the member's deputy.

(6) The Governor may remove a member (other than the presiding officer) from office for—

- (a) a breach of, or non-compliance with, the conditions of the member's appointment;
 - (b) mental or physical incapacity to carry out official duties;
 - (c) neglect of duty;
- or
- (d) dishonourable conduct.

(7) The office of a member appointed by the Governor becomes vacant if the member—

- (a) dies;
 - (b) completes a term of appointment and is not reappointed;
 - (c) attains the age of 65 years;
 - (d) resigns by written notice to the Minister;
- or
- (e) is removed from office by the Governor pursuant to subsection (6).

Procedures at meetings of the Authority.

8. (1) Three members (of whom one must be the presiding officer) constitute a quorum of the Authority.

(2) The presiding officer shall preside at all meetings of the Authority.

(3) A question arising before the Authority shall be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the presiding officer.

(4) The Authority shall cause accurate minutes to be kept of the business conducted at its meetings.

(5) Subject to this Act, the procedures for the calling of meetings of the Authority and the conduct of business at meetings of the Authority shall be determined by the Authority.

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

Validity of acts of the Authority and immunity of members.

(2) No liability attaches to a member for any act or omission by the member, or by the Authority, 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 Authority shall attach instead to the Crown.

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

Personal interest of member.

Penalty: \$2 500.

11. A member is entitled to such remuneration, allowances and expenses as are determined by the Governor.

Remuneration, etc., of members.

12. (1) The Minister may delegate to the Authority powers or functions vested in the Minister by this Act or by a heritage agreement entered into by the Minister in pursuance of this Act.

Functions of Authority.

(2) The functions of the Authority are as follows:

(a) to act as the Minister's delegate in relation to matters delegated under subsection (1);

(b) to advise the Minister—

(i) on proposed heritage agreements (including terms relating to financial assistance in the management of land);

(ii) on the amount of payments that the Minister should make under Part V;

and

(iii) on any other matter on which the Minister seeks advice.

13. (1) Subject to this Act, the Authority may, with the approval of the Minister, delegate any of its powers or functions (including powers or functions delegated to the Authority by the Minister).

Delegation of powers and functions.

(2) A delegation under this section—

(a) may be made to—

- (i) the presiding officer or another member of the Authority;
- (ii) a committee (whether or not it consists of or includes a member or members of the Authority);
- (iii) a council or other body corporate;
- or
- (iv) any other person;

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

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

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

(4) 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: \$2 500.

(5) A person who is a member of a committee, a council or the governing body of a body corporate to which powers or functions are delegated under this section is disqualified from participating in decisions of the committee, 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: \$2 500.

Staff.

14. (1) There shall be a secretary to the Authority and such other staff to assist the Authority as the Governor thinks fit.

(2) The secretary and other members of staff shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967, and may hold office in conjunction with any other office in the Public Service of the State.

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

Annual report.

15. (1) On or before the thirty-first day of October in each year, the Authority shall prepare and present to the Minister a report upon the administration of this Act during the year that ended on the preceding thirtieth day of June.

(2) The Minister shall, as soon as practicable after receiving a report presented under this section, cause copies of the report to be laid before each House of Parliament.

DIVISION II—THE NATIVE VEGETATION ADVISORY COMMITTEE

Native Vegetation
Advisory
Committee.

16. (1) There shall be a committee entitled the "Native Vegetation Advisory Committee".

(2) The Committee shall consist of 8 members, appointed by the Governor, of whom—

- (a) one shall be a person with extensive experience in local government;
- (b) three shall be persons with extensive knowledge of, and experience in, agriculture, land management or rural affairs;
- (c) two shall be persons with extensive experience in the conservation of flora and fauna or in reforestation;
- (d) one shall be a person with extensive knowledge of forestry and of botany or ecology;
- (e) one shall be a person with extensive experience in the use of native vegetation in relation to hydrological management.

(3) The Governor shall appoint one of the members to be the presiding officer of the Committee.

(4) The first members of the Committee appointed by the Governor shall include at least one who is a member of the Authority and, when making appointments to fill subsequent vacancies, the Governor shall ensure that at least one member of the Authority is a member of the Committee.

(5) Members of the Committee shall hold office at the pleasure of the Governor.

(6) The procedures for calling meetings of the Committee and conducting its proceedings shall be determined by the Committee.

17. (1) The Committee—

- (a) may, of its own motion, and shall, at the request of the Minister, advise the Minister on the retention and management of areas of native vegetation including the clearing of native vegetation or the planting of native vegetation in cleared areas;
- (b) may, of its own motion, and shall, at the request of the Minister, make recommendations as to regulations that should be made under this Act;
- (c) may, of its own motion, and shall, at the request of the Advisory Committee on Planning, advise that Committee as to the effect of Supplementary Development Plans on the preservation and management of native vegetation.

Functions and powers of the Committee.

(2) The Committee may, with the approval of the Minister, establish specialist subcommittees to investigate and report to the Committee on any matter.

(3) A member of the Committee, or of a subcommittee appointed under subsection (2), who has a personal interest, or a direct or indirect pecuniary interest, in any matter before the Committee or the subcommittee shall not take part in any deliberations or decision of the Committee or the subcommittee in relation to that matter.

Penalty: \$2 500.

18. The Committee may, with the approval of the Minister administering a department of the Public Service, make use of the services of that department.

Use of departmental services by Committee.

PART III

CONTROL OF CLEARANCE OF NATIVE VEGETATION

Offence of clearing native vegetation contrary to this Part.

19. (1) A person shall not clear native vegetation contrary to this Part.

Penalty: \$10 000 or the prescribed sum, whichever is greater.

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

Penalty: \$10 000 or the prescribed sum, whichever is greater.

(3) In this section—

“the prescribed sum” means a sum calculated at the rate of \$1 000 for each hectare (or part of a hectare) of land in relation to which the offence was committed.

Clearance of native vegetation.

20. (1) Subject to subsection (4) and to any other Act or law to the contrary, native vegetation may be cleared—

(a) with the consent of the Authority;

(b)—

(i) from prescribed areas;

(ii) if the vegetation is of a prescribed class;

(iii) by a person of a prescribed class;

or

(iv) in prescribed circumstances.

(2) No person, other than the owner of land on which native vegetation is situated or a person acting on the owner's behalf, may apply for consent to clear that vegetation.

(3) A person who holds land from the Crown by Miscellaneous Lease or by licence must have the approval of the Minister of Lands to apply for consent under this Act to clear native vegetation from land subject to the lease or licence.

(4) Subject to the requirements of any other Act or regulation, native vegetation shall not be cleared if the vegetation is on land that is the subject of a heritage agreement unless—

(a) the agreement permits the clearance of the vegetation;

or

(b) the vegetation is cleared in accordance with the agreement.

Provisions relating to consent.

21. (1) In deciding whether to consent to an application to clear native vegetation, the Authority—

(a) shall have regard to the provisions of the Development Plan so far as they are relevant to that decision;

and

(b) shall not make a decision that is seriously at variance with those provisions.

(2) A consent under this Part is subject to such conditions (if any) as the Authority thinks fit to impose, and any such condition shall be binding

on, and enforceable against, the person by whom the clearance is undertaken, and any person who acquires the benefit of the consent.

(3) No appeal lies against a refusal of consent or a condition attached to a consent under this Part.

(4) The Authority shall not delegate the consideration or determination of an application for consent to clear native vegetation where—

(a) a delegate, or subdelegate, of the Authority has previously refused consent, or attached conditions to consent, to clear that vegetation;

and

(b) the application was made within 3 months after the applicant received a written statement of the reasons for the decision of the delegate or subdelegate.

(5) Consent to undertake clearance under this Part remains in force for 10 years or for such longer period as the Authority may fix at the time of granting consent or subsequently on application by a person who has the benefit of the consent.

(6) An applicant for consent under this Part may appear before the Authority in support of the application.

(7) Where the Authority refuses an application in whole or in part or attaches conditions to its consent, it must—

(a) provide the applicant with a written statement of the reasons for its decision;

(b) if the owner of the land will be entitled to a payment under Part V—declare what land (if any), being part of the holding, is suitable, after clearing, for agriculture on a permanent basis.

PART IV

ENFORCEMENT PROCEEDINGS

DIVISION I—CIVIL ENFORCEMENT PROCEEDINGS

22. (1) Where a person contravenes or fails to comply with a provision of this Act, the Authority may apply to a Local Court of Full Jurisdiction for an order under this section. Jurisdiction of the Court.

(2) The application may be made *ex parte* and, if the Court is satisfied on the application that the respondent has a case to answer, it shall 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 by order—

- (c) require the respondent 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) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Court.

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

(5) 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.

(6) An interim order—

- (a) may be made on an *ex parte* application;
- (b) shall be made subject to such conditions as the Court thinks fit;
- and
- (c) shall not operate after the proceedings in which it is made are finally determined.

(7) A person who contravenes or fails to comply with an order, or an interim order, under this section shall (without prejudice to any liability that may be incurred in proceedings for punishment of a contempt of the order) be guilty of an offence and liable to a penalty not exceeding \$10 000.

(8) 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 Authority 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.

(9) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for consent to clear native vegetation that should have been, but was not, made or to remedy any other default.

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

Commencement
of proceedings.

23. (1) Proceedings under this Division may be commenced at any time within 3 years after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorization of the Minister, at any later time within 10 years after that date.

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

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

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

or

(b) a decision by a Local 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 30 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.

DIVISION II—PROCEEDINGS FOR OFFENCES

25. (1) The offences constituted by this Act are summary offences.

Proceedings for an offence against this Act.

(2) Proceedings for an offence against this Act may be commenced at any time within 3 years after the date of the alleged commission of the offence or, with the authorization of the Minister, at any later time within 10 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 authorize the commencement of proceedings for an offence against this Act shall be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

PART V

PAYMENTS TO LANDOWNERS

26. (1) In this Part, unless the contrary intention appears—

Interpretation.

“agricultural land” means land declared by the Authority to be suitable, after clearing, for agriculture on a permanent basis;

“Commonwealth Government Bond Rate” means the rate declared by the Treasurer under subsection (2);

“holding” means land that immediately before 12 May, 1983—

(a) was owned by one person or by a number of persons as co-owners and comprised a single allotment or a number of adjoining allotments or a number of allotments separated by no more than 5 kilometres;

(b) was owned by the members of a family and comprised a number of adjoining allotments or a number of allotments separated by no more than 5 kilometres;

or

(c)—

- (i) was owned by a number of persons;
- (ii) comprised a number of adjoining allotments or a number of allotments separated by no more than 5 kilometres;

and

- (iii) was managed as a single unit:

“land” includes an interest in land:

“members of a family” means persons who are related to each other by blood or marriage.

(2) The Treasurer shall, as soon as practicable after the commencement of each financial year, by notice published in the *Gazette*, declare a rate that, in the Treasurer’s opinion, represents the average yield on parcels of Commonwealth Government Bonds that were the subject of trading on the first business day in the financial year and that—

(a) had a face value of 1 million dollars;

and

(b) had a maturity date more than 10 years but less than 11 years after the commencement of the financial year.

Entitlement to
payment.

27. (1) Subject to this section, the owner of land who is unable to clear native vegetation from the land—

(a) by reason only of the Authority’s refusal of consent to the clearance;

or

(b) to the extent, or in the manner, desired by reason only of conditions attached by the Authority to its consent,

is, if he or she has entered into a heritage agreement with the Minister in respect of the land, entitled to payment by the Minister of a sum of money under this Part.

(2) Subject to subsection (3), the Minister shall, if required to do so by an owner of land referred to in subsection (1), enter into a heritage agreement with the owner in relation to the whole of the land or so much of it as the owner decides.

(3) Where, in the opinion of the Authority, the cost of fencing the boundaries of land that the owner proposes to make subject to a heritage agreement would be excessive—

(a) by reason of the position of the boundaries;

(b) by reason of the length of the boundaries in relation to the area of the land;

or

(c) by reason of the position of the boundaries and the length of the boundaries in relation to the area of the land,

the Authority may, on the application of the Minister, direct that the boundaries be altered by the inclusion of additional land or the exclusion of land included in the original proposal.

(4) The owner is entitled to appear before, and be heard by, the Authority in relation to an application under subsection (3).

(5) The heritage agreement shall be in the form set out in the second schedule or in such other form as the parties agree.

(6) The Minister is not bound to make a payment under this Part—

(a) in respect of land acquired on or after 12 May, 1983;

(b) in respect of land that is not agricultural land;

(c) in respect of land held from the Crown by Miscellaneous Lease or by licence;

(d) where the area of the land in respect of which the payment would otherwise be due is 12.5 per cent or less of the area of the holding of which that land is part.

(7) Where land in relation to which a payment is due under this Part is owned by two or more co-owners—

(a) no payment shall be made to an owner whose interest was acquired on or after 12 May, 1983;

(b) the payment to an owner whose interest was acquired before that date shall be in proportion to his or her interest in the land immediately before that date or to his or her interest in the land at the time of entering into the heritage agreement, whichever is less.

(8) A claim for the payment of money under this Part must be made within 10 years of the Authority's decision on which the claim is based.

28. (1) Subject to this Act, the amount of the payment to which the owner of land is entitled under this Part is the diminution (if any) in the market value of the land resulting from the Authority's decision. Amount of payment.

(2) Where the area of land in respect of which the payment is to be made is greater than 12.5 per cent of the area of the holding of which it is part, the payment shall be reduced by an amount determined as follows:

$$A = \frac{\text{RNV}}{\text{CL}} \times 100$$

where—

A = the amount of the reduction expressed as a percentage of the amount otherwise payable

RNV = an area that is 12.5 per cent of the area of the holding

CL = the area in respect of which payment is to be made.

29. (1) The Valuer-General shall, at the request of the Minister or the person claiming payment, assess the amount payable under this Part. Assessment of payment.

(2) The payment shall be assessed as at the date of execution of the heritage agreement.

(3) If the Minister or a person claiming payment is dissatisfied with the Valuer-General's assessment, the Minister or the claimant may, subject to the rules of the Supreme Court, appeal against the assessment to the Land and Valuation Court.

(4) The appeal must be instituted within 30 days of the date on which the appellant is notified in writing of the Valuer-General's assessment, or such longer period as may be allowed by the Land and Valuation Court.

(5) The Valuer-General shall, at the request of an owner of land who is considering entering into a heritage agreement, estimate the amount of the payment that the owner will receive if the owner enters into the agreement.

(6) No liability attaches to the Valuer-General in respect of an assessment or estimation under this section.

Payment of
amount due.

30. (1) The Minister may pay the amount due under this Part—

(a) within 1 month after the Valuer-General assesses the amount;

(b) in accordance with an agreement with the owner of the land;

or

(c) by 10 equal annual instalments commencing within 1 month after the Valuer-General assesses the amount.

(2) The Minister shall pay interest at the Commonwealth Government Bond Rate on the unpaid balance of the amount assessed at each anniversary of the execution of the heritage agreement to which the assessment relates.

(3) The Minister may, on the recommendation of the Authority, make payments under this Part—

(a) to an owner of land who would not otherwise be entitled to such payments;

(b) in addition to amounts payable under this Part.

PART VI

MISCELLANEOUS

Power to inspect
land and
premises.

31. (1) A member of the Authority or a person authorized in writing by the Minister may—

(a) at any reasonable time, enter upon and inspect land for any reasonable purpose connected with the administration of this Act, but no building shall be entered pursuant to this subsection unless the occupier has been given reasonable notice of the proposed entry;

(b) require any person who the member or authorized person believes has committed, or is about to commit, an offence under this Act to state that person's full name and usual place of residence.

(2) No person shall obstruct another in the exercise of a power conferred by this section.

Penalty: \$200.

Regulations.

32. (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) 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.

(3) The regulations may prescribe and provide for the payment of fees and may empower the Authority, or any other person to whom fees are payable, to remit payment of the whole or part of those fees.

SCHEDULES

FIRST SCHEDULE

TRANSITIONAL PROVISIONS

1. A planning authorization under the Planning Act, 1982, for the clearance of native vegetation that was in force immediately before the commencement of Part III shall be deemed to be consent to the clearance granted by the Authority under this Act on the commencement of that Part and any conditions to which the planning authorization was subject shall be deemed to be conditions attached to the consent.

2. A consent referred to in clause 1 shall operate for 5 years from the commencement of Part III or for such longer period as the Authority may fix on application by a person who has the benefit of the consent.

3. Applications under the Planning Act, 1982, to the South Australian Planning Commission for approval to clear native vegetation that have not been determined at the commencement of Part III shall be deemed to be applications to the Authority for consent to clear that vegetation under this Act.

4. An appeal under the Planning Act, 1982, against—

(a) the refusal of the South Australian Planning Commission to grant approval for the clearance of native vegetation;

or

(b) conditions imposed by the Commission when granting such approval,

that had been instituted, but not determined, at the commencement of Part III shall proceed and be determined as if the relevant provisions of the Planning Act, 1982, had remained in force and if the Planning Appeal Tribunal subsequently grants approval to the clearance that approval shall be deemed to be consent to the clearance granted by the Authority under this Act and any conditions to which the approval is subject shall be deemed to be conditions attached to the consent.

5. Where an owner of land was refused planning authorization under the Planning Act, 1982, in relation to the clearance of native vegetation or an authorization for such clearance had been granted under that Act subject to conditions, the owner may require the Minister to enter into a heritage agreement and make payment of a sum of money under Part V as if the Authority had refused its consent to the clearance or imposed conditions on its consent under this Act.

6. Where the Minister is not able to establish with certainty whether clearance of native vegetation occurred before or after the commencement of Part III, it shall be presumed in proceedings under Part IV in respect of that clearance that the clearance occurred after the commencement of Part III.

SECOND SCHEDULE

MEMORANDUM OF AGREEMENT made the day of
 BETWEEN:
 [here insert the title of the Minister responsible for the administration of the Native Vegetation Management Act, 1985] (hereinafter called "the Minister") of the one part and
 (hereinafter called "the owner") of the other part.

RECITALS

- A. The owner is the owner of that piece of land containing hectares,
 Section Hundred of being the whole of the land comprised in
- B. The owner has, pursuant to the Native Vegetation Management Act, 1985, required the Minister to enter into this agreement in respect of the whole of the land referred to in Recital A (or that portion of the land referred to in Recital A as is delineated in the plan attached to this agreement).

NOW IT IS AGREED as follows:

1. In this agreement, unless the contrary intention appears—
 - (a)—
 - "native fauna" means an animal or animals of a species indigenous to South Australia;
 - "owner" means the person who has executed this agreement as owner of the subject land and includes a person to whom ownership of the land and the rights and liabilities under this agreement have passed;
 - "the subject land" means the land that is subject to this agreement;
 - (b) terms defined in the Native Vegetation Management Act, 1985, have the meanings defined in that Act.
2. During the term of this agreement, the subject land is dedicated to the conservation of native vegetation and native fauna on the land and, subject to this agreement, shall not be used in a manner inconsistent with that dedication.
3. The owner shall not, without the written consent of the Minister, undertake or permit on the subject land—
 - (a) the clearance of native vegetation;
 - (b) the planting of vegetation, whether native or exotic;
 - (c) the construction of a building or other structure;
 - (d) the grazing of stock;
 - (e) any other activity that, in the opinion of the Minister, is likely to damage, injure or endanger the native vegetation or native fauna on the subject land.
4. The owner shall comply with the National Parks and Wildlife Act, 1972, the Native Vegetation Management Act, 1985, the Pest Plants Act, 1975, the Vertebrate Pests Act, 1975, and all other Acts and statutory instruments from time to time in force in relation to the subject land.
5. The owner shall give written notice to the Minister of—
 - (a)—
 - (i) any damage to, or destruction of, native vegetation or native fauna on the subject land or the removal of any native vegetation or native fauna from the land;
 - (ii) any activity on the subject land that is likely, in the owner's opinion, to result in damage, destruction or removal referred to in subparagraph (i);
 - (b) any change in ownership of the subject land,
 as soon as practicable after first becoming aware of the matter to which the notice relates.
6. (1) Subject to this clause, the owner is released from the payment of—
 - (a) rates and taxes (other than council rates) in respect of the subject land during the term of this agreement;
 - (b) council rates in respect of the subject land in the second rating year next following the commencement of this agreement and thereafter until the termination of the agreement.
 (2) The owner is not released from the payment of rates and taxes in relation to land that, in the opinion of the Minister after receiving advice from the Authority—
 - (a) is used for primary production or for any other commercial purpose;
 - (b) comprises a dwelling and curtilage.
7. (1) The Minister may, at any time and at the Minister's expense—
 - (a) construct or replace fences on the boundaries, or through any part of, the subject land;
 - or
 - (b) perform on those fences major repair work required as the result of damage by fire.

(2) The owner shall, at the owner's expense and to the satisfaction of the Minister, perform all other necessary maintenance and repair work on all fences (whether constructed by the Minister or not) on the boundaries or on any other part of the subject land.

8. The Minister and any employee or agent of the Minister authorized by the Minister may, at any reasonable time—

- (a) enter the subject land for the purposes of—
 - (i) constructing any fence on the land;
 - (ii) inspecting the land or any fence on the land;
 - (iii) exercising any other powers of the Minister under this agreement;
- (b) obtain access to the subject land across land of the owner for the purposes referred to in paragraph (a).

9. If the owner is in breach of this agreement, the Minister may, by notice in writing served on the owner, require the owner to remedy the breach and, if the owner fails to do so, the aggregate value of the rates and taxes from payment of which the owner (and every predecessor in title of the owner) has been relieved by virtue of this agreement must be paid by the owner to the appropriate rating or taxing authority.

10. The Minister may delegate any of the Minister's powers under this agreement to any person.

11. This agreement may not be varied except in writing signed by the parties.

12. An act or omission based on a genuine mistake as to the boundaries of the subject land shall not constitute a breach of this agreement.

13. This agreement remains in force until terminated by the parties.

14. Notice shall, for the purposes of this agreement, be properly served on the owner if it is—

- (a) posted to the owner at the owner's last address known to the Minister;
- or
- (b) fixed in a prominent position on the subject land.

SIGNED by the Minister
in the presence of:

.....
..... (Witness)

SIGNED by the owner
in the presence of:

.....
..... (Witness)

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor