

South Australia

Native Vegetation (Miscellaneous) Amendment Bill 2024

A BILL FOR

An Act to amend the *Native Vegetation Act 1991*.

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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 *Native Vegetation (Miscellaneous) Amendment Act 2024*.

2—Commencement

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

Part 2—Amendment of *Native Vegetation Act 1991*

3—Amendment of section 3—Interpretation

- (1) Section 3(1)—before the definition of *Adelaide Dolphin Sanctuary* insert:
accredited third party provider—see section 25C(12);
- (2) Section 3(1), definition of *breach*—after "heritage agreement" insert:
or a conservation agreement
- (3) Section 3(1)—after the definition of *clearance* insert:
contravene includes failure to comply with;
- (4) Section 3(1), definition of *isolated plant*—delete the definition;
- (5) Section 3(1)—after the definition of *Minister for the Adelaide Dolphin Sanctuary* insert:
mitigation hierarchy—see section 3B;
- (6) Section 3(1)—after the definition of *native vegetation* insert:
native vegetation management plan—see section 23C;
- (7) Section 3(1)—after the definition of *pastoral land* insert:
plant community means plants of a species indigenous to South Australia growing in association with one another and forming a group that is distinct from other plant communities;
- (8) Section 3(1)—after the definition of *River Murray Protection Area* insert:
significant environmental benefit—see section 3C;
substantially intact native vegetation—see section 3A;
- (9) Section 3(2) to (6)—delete subsections (2) to (6) (inclusive)

4—Substitution of section 3A

Section 3A—delete the section and substitute:

3A—Meaning of substantially intact native vegetation

- (1) For the purposes of this Act, a stratum of native vegetation will be considered to be substantially intact if, in the opinion of the Council—
- (a) it constitutes, or forms part of, a contiguous area of native vegetation; and
- (b) —
- (i) the stratum has not been seriously degraded by human activity within the immediately preceding period of 20 years; or

- (ii) if the stratum has been seriously degraded by human activity within the immediately preceding period of 20 years, the degradation—

(A) was caused by fire; or

(B) would not have occurred but for an act or acts, or a failure or failures to act, that constitute, or would have constituted, a breach of this Act.

- (2) In this section—

degradation in relation to a stratum of native vegetation includes—

- (a) a loss of native vegetation cover; and
- (b) a reduction in the diversity of native plant species; and
- (c) a reduction in the ability of the ecosystem of which it forms a part to be self-sustaining;

stratum of native vegetation means a layer of a plant community consisting of plants that comprise native vegetation and that have a similar growth habit.

3B—Mitigation hierarchy

For the purposes of this Act, a reference to the ***mitigation hierarchy*** is a reference to an order of priority to be applied in relation to the clearance of native vegetation as follows:

- (a) ***avoidance***—measures must be taken to avoid clearance of native vegetation;
- (b) ***minimisation***—if clearance of native vegetation cannot be avoided, measures must be taken to minimise the duration, intensity and extent of the impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative);
- (c) ***rehabilitation or restoration***—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by the impacts of clearance of native vegetation that cannot be avoided or further minimised;
- (d) ***offset***—where required under this Act, any adverse impact on native vegetation or ecosystems that cannot be avoided or minimised must be offset by the achievement of a significant environmental benefit that outweighs that impact.

3C—Significant environmental benefit

- (1) This section applies to, and in respect of, a significant environmental benefit required to be achieved by a person under this Act.

- 5 (2) A significant environmental benefit means an environmental benefit that has been or will be achieved by measures, actions or requirements to establish, regenerate, enhance, manage or protect native vegetation on specified land, that the Council is satisfied is of significant value.
- 10 (3) In determining whether an environmental benefit is of a significant value, the Council must be satisfied that the benefit, allowing for the loss of the vegetation to be cleared, outweighs, or will outweigh, any adverse impacts of the clearance.
- 15 (4) In making such a determination, the Council must, so far as is reasonably practicable, and to the extent the Council determines is relevant in the circumstances of the associated clearance, be satisfied that—
- 20 (a) the environmental benefit achieved, or to be achieved, will continue for a period that is as long as, or longer than, the effects of any adverse impact that may result from the clearance of the native vegetation; and
- 25 (b) any measures, actions or requirements undertaken, or to be undertaken, to achieve the environmental benefit were, or are, in addition to any measures, actions or requirements or other obligations otherwise required to be undertaken under this Act, any other Act or pursuant to some other agreement or contractual arrangement by the person required to achieve the benefit; and
- 30 (c) the environmental benefit would not otherwise be achieved, or have been achieved, but for the measures, actions or requirements undertaken or to be undertaken; and
- 35 (d) the measures, actions or requirements by which an environmental benefit has been, or is to be, achieved address, or will address, the impacts on the particular vegetation and animal habitat that constitutes, or forms part of, the vegetation that has been, or is proposed to be, cleared, unless the Council is satisfied that alternative measures, actions or requirements achieve, or would achieve, an environmental benefit that is of a higher conservation value, in accordance with guidelines adopted under section 25 that relate to the achievement of such a benefit; and

- (e) the measures, actions or requirements by which an environmental benefit has been, or is to be, achieved have been, or will be, undertaken, so far as is reasonably practicable, within an area or region that is proximate to the land that has been, or is to be, cleared, unless the Council is satisfied that measures, actions or requirements undertaken, or to be undertaken, in another area or region achieve, or would achieve, an environmental benefit that is of a higher conservation value, in accordance with guidelines adopted under section 25 that relate to the achievement of such a benefit; and
- (f) the measures, actions or requirements by which an environmental benefit has been, or is to be, achieved address, or will address, in the opinion of the Council, all the direct and indirect impacts that have resulted, or are reasonably likely to result, from the clearance of the vegetation.
- (5) A requirement that a significant environmental benefit be achieved in connection with the clearance of native vegetation may be satisfied by 1 or more of the following, as determined by the Council:
- (a) measures, actions or requirements undertaken, or to be undertaken, by the person proposing to clear the vegetation;
- (b) the application of the value of an environmental benefit credited to the person under section 25A or assigned to the person under section 25B;
- (c) measures, actions or requirements undertaken by an accredited third party provider, on behalf of the person making the application, in accordance with section 25C;
- (d) payment into the Fund of an amount, determined by the Council, to be sufficient for the purpose of achieving a significant environmental benefit.
- (6) Where an amount is paid into the Fund as referred to in subsection (5)(d), subsection (4) applies to a determination of the Council as to whether the measures, actions and requirements for the establishment, regeneration, enhancement, management and protection of native vegetation to be undertaken pursuant to the payment of an amount out of the Fund will achieve a significant environmental benefit in respect of the clearance of native vegetation to which the payment into the Fund related (as contemplated by section 21(6)).

- (7) Measures, actions and requirements for the establishment, regeneration, enhancement, management and protection of specified native vegetation on specified land that are required for the achievement of a significant environmental benefit (including where an amount paid into the Fund as referred to in subsection (5)(d) is to be paid out of the Fund for the purpose of achieving that benefit as contemplated by section 21(6)) must be set out in a native vegetation management plan approved by the Council.
- (8) The land on, or in relation to which, a significant environmental benefit has been, or will be, achieved (including where an amount paid into the Fund as referred to in subsection (5)(d) is to be paid out of the Fund for the purpose of achieving a significant environmental benefit as contemplated by section 21(6)) must—
- (a) be subject to a heritage agreement or a conservation agreement (as determined by the Council), on such terms as the Council thinks fit; or
 - (b) become subject to a heritage agreement or a conservation agreement (as determined by the Council), on such terms as the Council thinks fit, within a period specified by the Council.
- (9) Where a requirement to achieve a significant environmental benefit relates to clearance of native vegetation for the purposes of erecting a prescribed building or other facility that is ancillary to a prescribed building, the loss of native vegetation to be taken into account, in respect of which the significant environmental benefit is required, will be taken to include any loss of native vegetation that would result from clearance that would be permitted in relation to that building or facility under a regulation made pursuant to section 27(1)(b) (whether or not that clearance is ever undertaken or intended to be undertaken).
- (10) In this section—
prescribed building has the same meaning as in Schedule 1A clause 2(3).

5—Substitution of section 8

Section 8—delete the section and substitute:

8—Membership of Council

- (1) The Council consists of 7 members appointed by the Minister.
- (2) Subject to this section, the Council must consist of members who, in the opinion of the Minister, collectively have knowledge, skills and experience across the following areas:
 - (a) native vegetation management and preservation;
 - (b) primary production;
 - (c) planning and development;

- (d) Aboriginal traditional land management;
- (e) environmental law;
- (f) biodiversity conservation;
- (g) civil or environmental engineering.

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

- (a) at least 1 member must be a person who carries on, or has carried on, a business of primary production (whether as owner or manager of the business); and
- (b) at least 1 member must be a person who has practical experience in the management of native vegetation.

(4) Before appointing a member or members under subsection (1) or appointing a deputy to a member under subsection (7), the Minister must give each relevant body notice of the fact that an appointment or appointments are to be made, and of any person proposed to be appointed, and give consideration to any submission made by any such body within a period (which must be of at least 21 days) specified by the Minister.

(5) At least 1 member of the Council must be a woman and 1 must be a man.

(6) The Minister must appoint a suitable member to be the presiding member of the Council (and may from time to time revoke any such appointment and make a new appointment).

(7) The Minister may appoint a suitable person to be a deputy to a member of the Council and the deputy may, in the absence, or during a temporary vacancy in the office, of that member, act as a member of the Council.

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

(9) In this section—

relevant body means—

- (a) the Conservation Council of South Australia; and
- (b) the Local Government Association of South Australia; and
- (c) Primary Producers SA Incorporated; and
- (d) any other person or body prescribed by the regulations for the purposes of this definition.

6—Amendment of section 11—Procedures at meetings of the Council

Section 11(1)—delete "his or her" wherever occurring and substitute in each case:
 the presiding member's

7—Amendment of section 21—The Fund

- (1) Section 21(3)(c)—delete "section 29(11)(d)" and substitute:

section 29(11)(b) or the requirements of a standard operating procedure under section 27(1)(ba)(ii)

- (2) Section 21(3)(cc)—delete "section 31EA" and substitute:

section 31E or 31EB

- (3) Section 21(3)—after paragraph (cd) insert:

(ce) amounts paid into the Fund in accordance with a condition under section 30(2)(ea); and

(cf) amounts paid into the Fund in accordance with a condition under section 30(2)(eb); and

- (4) Section 21(3)—after paragraph (d) insert:

and

(e) all other money that is required or authorised by or under this Act or any other law to be paid into the Fund.

- (5) Section 21(3a)—delete "section 28(3)(b)(ii)(C)" and substitute:

section 28(3)(e)

- (6) Section 21(3a)—delete "section 28(3)(b)(ii)(A)" and substitute:

section 28(3)(c)

- (7) Section 21(5) to (7)—delete subsections (5) to (7) (inclusive) and substitute:

(5) Subject to subsections (6) and (7), the Council may apply the Fund—

(a) to make payments in accordance with this Act; and

(b) to make payments in accordance with a condition under section 30(2)(ea)(i) in relation to money paid into the Fund under such a condition; and

(c) to make payments in accordance with a condition contemplated by section 25C(5)(b) in relation to money paid into the Fund under a condition under section 30(2)(ea)(ii); and

(d) for any other purpose to further the objects of this Act, or to support the operation or administration of this Act.

(6) Money paid into the Fund under subsection (3)(c), (ca), (cb), (cc), or (cd) must, as far as practicable, be applied in accordance with this Act for the purpose of achieving a significant environmental benefit in accordance with the requirements of section 3C(2), (3) and (4), as determined by the Council.

- (7) Money paid into the Fund under subsection (3)(cf) must, as far as practicable, be used for the purpose of supporting the administration, monitoring and enforcement of measures, actions or requirements that relate to the satisfaction of the requirement to achieve a significant environmental benefit in relation to the clearance of native vegetation in respect of which the payment was made.

8—Amendment of section 23—Heritage agreements

Section 23—after subsection (5) insert:

- (6) When the Minister enters into a heritage agreement, or an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the Real Property Act 1886, against the land (and, subject to an appropriate application under this subsection, must ensure that the note is not removed once made).

9—Amendment of section 23A—Effect of heritage agreement

- (1) Section 23A(2)(d)—before "management" second and third occurring insert:

native vegetation

- (2) Section 23A(2)—after paragraph (d) insert:

- (da) provide for the period for or within which specified measures, actions or requirements are to be undertaken or carried out;

- (3) Section 23A(5)—delete "his or her" and substitute:

the Minister's

10—Repeal of section 23B

Section 23B—delete the section

11—Insertion of Part 4 Division 1A

Before Part 4 Division 2 insert:

Division 1A—Conservation agreements

23B—Conservation agreements

- (1) The Council may enter into a conservation agreement with the owner of land for the establishment, management, conservation, protection and enhancement of native vegetation on the land.
- (2) A conservation agreement may contain such provisions as the Council thinks fit including (without limiting the generality of this subsection) to—
- (a) restrict the use of the land to which it applies; and
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land; and

- 5
- (c) restrict the nature of work or other activities that may be carried out on the land; and
- (d) provide for the management of the land, native vegetation on the land or any animals living on or visiting the land in accordance with a particular native vegetation management plan or in accordance with native vegetation management plans to be agreed from time to time between the Council and the owner of the land; and
- 10
- (e) provide for the Council to pay to the owner of the land an amount as an incentive to enter into the conservation agreement; and
- (f) provide for the period for or within which specified measures, actions or requirements are to be undertaken or carried out; and
- 15
- (g) make provision for any other matters relating to the management, conservation, protection or enhancement of native vegetation on the land.
- (3) A conservation agreement remains in force until the agreement—
- (a) is terminated under this section; or
- 20
- (b) if relevant, expires under the terms of the agreement (including under the terms of the agreement as varied under this section).
- (4) Subject to subsection (5), the Council may, by agreement with the owner of the land to which a conservation agreement applies, vary or terminate the agreement.
- 25
- (5) If a conservation agreement is entered into in relation to a requirement under this Act that an environmental benefit be achieved by a person (including where the achievement of the benefit is, or is to be, satisfied by application of a credit under section 25A, an assignment of credit in accordance with section 25B or by an accredited third party provider in accordance with section 25C), the conservation agreement must not be varied or terminated if that variation or termination would prevent the achievement of the required environmental benefit in full, unless the variation or termination is as a consequence of some other agreement or arrangement under this Act being entered into for the management, conservation, protection or enhancement of native vegetation on the land to which the conservation agreement applied.
- 30
- (6) If the terms of a conservation agreement provide for the expiry of the agreement, the agreement may, if the terms of the agreement so provide, be varied under subsection (4) to extend the term of the agreement for a further specified period or periods.
- 35
- (7) A conservation agreement attaches to the land to which it applies and is binding on the current owner of the land whether or not the owner was the person with whom the agreement was made.
- 40
- 45

- (8) A conservation agreement is, to the extent specified in the agreement, binding on the occupier of the land.
- (9) If—
- (a) the Council enters into a conservation agreement; or
 - (b) the Council enters into an agreement varying a conservation agreement (including a variation to extend the term of the agreement), or terminating a conservation agreement; or
 - (c) a conservation agreement expires under the terms of the agreement,
- the Registrar-General must, on application by the Council, note the agreement, or expiry of the agreement (as the case requires) against the relevant instrument of title or, in the case of subject land not under the *Real Property Act 1886*, against the land (and, subject to an appropriate application under this subsection, must ensure that the note is not removed once made).
- (10) Any money required to meet the obligations of the Council under a conservation agreement entered into under this section must be paid from the Fund.
- (11) Where, in the opinion of the Council, a person to whom money from the Fund has been paid under a conservation agreement has contravened a term of the agreement, the Council may serve written notice on that person demanding repayment of the amount paid or such lesser amount as is specified in the notice.
- (12) An amount demanded by the Council under subsection (11) is a debt due by the person from whom it is demanded to the Council and upon recovery must be paid by the Council into the Fund.
- (13) A court that is considering a claim for payment of a debt referred to in subsection (12) may refuse to order payment of all or part of the amount if, in its opinion, the person to whom the money was paid did not contravene the terms of the agreement.

Division 1B—Native vegetation management plans

23C—Native vegetation management plans

A native vegetation management plan required for the purposes of this Act must be prepared in the manner and form determined by the Council and may contain such provisions as the Council thinks fit including (without limiting the generality of this subsection) provisions relating to—

- (a) the planting and nurturing of specified native plants, or native plants of a specified class, on specified land; and
- (b) the management, control and destruction of introduced animal species and plants of non-endemic species; and
- (c) the management and control of native animal species; and

- (d) erecting, improving and maintaining fences or other barriers; and
- (e) the exclusion of livestock and other animals from access to native vegetation; and
- 5 (f) the monitoring and auditing of native vegetation; and
- (g) the reporting or provision of specified information; and
- (h) the review or variation of the plan,

and may specify the period for or within which specified measures, actions or requirements are to be undertaken or carried out.

10 **Division 1C—Register of heritage agreements and conservation agreements**

23CA—Register of heritage agreements and conservation agreements

- 15 (1) The Council must keep a register of heritage agreements and conservation agreements entered into under this Act and must include in the register any agreement varying or terminating a heritage agreement or a conservation agreement.
- (2) The Council must ensure that the register is kept publicly available for inspection without fee—
 - 20 (a) on a website determined by the Minister; and
 - (b) during ordinary office hours at a public office, or public offices, determined by the Minister.

12—Amendment of section 23I—Noting of Council's approval against the title to the land

25 Section 23I(1)—delete "he or she" and substitute:
the Registrar-General

13—Amendment of section 24—Assistance to landowners

- (1) Section 24, heading—delete "Assistance to landowners" and substitute:
Financial and other assistance

- 30 (2) Section 24(1) to (2)—delete subsections (1) to (2) (inclusive) and substitute:

- (1) An application may be made to the Council—
 - (a) by an owner, or a person acting on behalf of the owner, of land, for financial or other assistance for 1 or more of the following purposes:
 - 35 (i) managing the land, native vegetation growing or situated on the land or any animals living on or visiting the land;

- (ii) preserving or enhancing native vegetation growing or situated on the land;
 - (iii) establishing native vegetation on the land, including in accordance with a proposal approved by the Council under Division 2;
 - (iv) undertaking research in relation to the conservation, enhancement or management of native vegetation growing or situated on the land or of animals living on or visiting the land; or
- (b) by a person for financial or other assistance to purchase land for 1 or both of the following purposes:
 - (i) conserving, protecting, or enhancing native vegetation growing or situated on the land;
 - (ii) establishing native vegetation on the land.
- (2) An application must be made in the manner and form approved by the Council and must—
 - (a) set out the applicant's proposal for the application of the assistance requested by the applicant; and
 - (b) include any other information required by the Council.
- (3) Section 24(4)—delete subsection (4) and substitute:
 - (4) In granting an application for assistance under this section, the Council must be satisfied that—
 - (a) the land on which the native vegetation is growing or situated, or is to be established; or
 - (b) the land to be purchased,is, or will be, subject to a heritage agreement or a conservation agreement or is the subject of an approval under Division 2.
 - (4a) The Council may attach to a grant of assistance under this section such conditions as it thinks fit including (without limiting the generality of this subsection) a condition requiring 1 or more of the following:
 - (a) in the case of an application by the owner of land subject to a heritage agreement—the execution of an agreement varying the heritage agreement in a manner approved by the Council;
 - (b) in the case of an application by the owner of land subject to a conservation agreement—the execution of an agreement varying the conservation agreement in a manner approved by the Council;

- (c) that the applicant enter into a heritage agreement or a conservation agreement in respect of the land to be purchased or the land on which the native vegetation is growing or situated, or is to be established, in accordance with the requirements of the Council, within a period specified by the Council.

- (4) Section 24(8)—delete "he or she" and substitute:
the person

14—Amendment of section 25—Guidelines for the application of assistance and the management of native vegetation

- (1) Section 25(1)—delete paragraph (ba) and substitute:
(ba) the operation of Section 3C(4)(d) and (e), relating to the achievement of an environmental benefit of a higher conservation value; and
- (2) Section 25(1)(c)—delete "section 29(4a)" and substitute:
section 29(4)(a)

15—Amendment of section 25A—Credit for environmental benefits

- (1) Section 25A(1)(d)(ii)—delete subparagraph (ii) and substitute:
(ii) an amount proposed to be paid under a condition imposed under section 29(11)(b); or
- (2) Section 25A(1)(d)(iii)—delete "as an alternative to" and substitute:
for the purposes of

16—Amendment of section 25B—Assignment of credit

- (1) Section 25B(3)—delete subsection (3)
- (2) Section 25B(5)—delete subsection (5) and substitute:
(5) An approval under this section is subject to—
- (a) a condition that the assignor must, in respect of the native vegetation that is the subject of the credit to be assigned, enter into a heritage agreement under section 23 or a conservation agreement under section 23B within the period specified by the Council; and
- (b) any other conditions that the Council thinks fit.

17—Amendment of section 25C—Achievement of environmental benefit by accredited third party provider

- (1) Section 25C(3)—delete subsection (3) and substitute:
- (3) The Council must not give its approval under subsection (1) unless the accredited third party provider has complied with any requirements prescribed by the regulations for the purposes of this section.

(2) Section 25C(5)—delete subsection (5) and substitute:

(5) An approval under this section is subject to—

- (a) a condition that the accredited third party provider must, within the period specified by the Council, enter into a heritage agreement under section 23 or a conservation agreement under section 23B in respect of the native vegetation comprising the environmental benefit; and
- (b) any other conditions that the Council thinks fit, including (without limiting the generality of this paragraph), a condition providing for the payment of an amount from the Fund (which may be by instalments) to the accredited third party that has been paid into the Fund by an applicant for consent to clear native vegetation pursuant to a condition imposed on the consent as contemplated by section 30(2)(ea)(ii), on the achievement of, or for the purposes of achieving, specified measures, actions or requirements as set out in, and in accordance with, a relevant heritage agreement, conservation agreement or native vegetation management plan.

18—Repeal of section 25D

Section 25D—delete the section

19—Amendment of section 25E—Register

(1) Section 25E(2)(e)—delete paragraph (e)

(2) Section 25E(3)—delete subsection (3) and substitute:

- (3) The Council must ensure that the register is kept publicly available for inspection without fee—
- (a) on a website determined by the Minister; and
- (b) during ordinary office hours at a public office, or public offices, determined by the Minister.

20—Amendment of section 26—Offence of clearing native vegetation contrary to this Part

(1) Section 26(1), penalty provision—delete "\$100 000" and substitute:

\$500 000

(2) Section 26(1), expiation fee—delete "750" and substitute:

\$1 500

(3) Section 26(2), penalty provision—delete "\$100 000" and substitute:

\$500 000

(4) Section 26(2), expiation fee—delete "750" and substitute:

\$1 500

- (5) Section 26(2a)—delete "commenced, or an order has already been made," and substitute:

commenced in, or an order has already been made by, the ERD Court

- (6) Section 26(3), definition of *the prescribed rate*, (b)—delete "\$2 500" and substitute:

\$5 000

- (7) Section 26(4)—after "ordered" insert:

by the ERD Court

21—Amendment of section 27—Clearance of native vegetation

- (1) Section 27(1)—after paragraph (b) insert:

(ba) native vegetation may, subject to subsection (1b), be cleared in circumstances, or for the purposes of activities of a kind, specified in Schedule 1A if—

(i) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; and

(ii) an environmental benefit which, allowing for the loss of the vegetation to be cleared, outweighs any adverse impacts of the clearance will be achieved in accordance with the standard operating procedure (which may provide for this requirement to be satisfied by a payment being made into the Fund);

- (2) Section 27(1)(c)—delete ", subject to subsection (5)(c),"

- (3) Section 27—after subsection (1) insert:

(1a) A standard operating procedure determined or approved by the Council for the purposes of subsection (1)(ba)(i) must not provide for clearance of native vegetation that the Council could not consent to in accordance with section 29.

(1b) Subsection (1)(ba) does not apply to clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation.

(1c) Where native vegetation is to be cleared for the purposes of an activity of a kind specified in Schedule 1A clause 2 in accordance with a standard operating procedure, the loss of native vegetation to be taken into account, in respect of which the environmental benefit is required to be achieved under that standard operating procedure, will be taken to include any loss of native vegetation that would result from clearance that would be permitted under a regulation made pursuant to section 27(1)(b) in relation to a prescribed building or facility that is ancillary to a prescribed building (as referred to in that clause) that is to be erected (whether or not that clearance is ever undertaken or intended to be undertaken).

(4) Section 27(2)—delete subsections (2) and (3) and substitute:

(2) Subject to subsection (3), the Council cannot give its consent to the clearance of native vegetation under subsection (1)(a) if the vegetation contains, or is constituted of, a stratum of native vegetation that is substantially intact.

(3) The Council may, despite subsection (2), but subject to the other requirements of this Division, give its consent in accordance with section 29 to—

(a) the harvesting of native vegetation if, in its opinion, the harvesting will not result in any lasting damage to the plants comprising the vegetation, lead to significant soil damage or erosion, or result in any long-term loss of biodiversity; or

(b) the clearance of native vegetation if, in its opinion, the clearance is minor and the vegetation to be cleared will remain substantially intact; or

(c) the clearance of native vegetation in circumstances, or for the purposes of activities of a kind, specified in Schedule 1A.

(5) Section 27(5)—delete "under section 25D"

(6) Section 27(5)(a)—delete "his or her" and substitute:
their

(7) Section 27(6)—delete "his or her" and substitute:
their

(8) Section 27—after subsection (6) insert:

(6a) Native vegetation that is growing or is situated on land that is subject to a conservation agreement under this Act cannot be cleared under subsection (1)(b) unless a regulation prescribing a class of vegetation under paragraph (b)(i) or circumstances under paragraph (b)(ii) explicitly extends its operation to vegetation on land that is subject to such an agreement.

(6b) Native vegetation that is growing or situated on land that is subject to a heritage agreement or a conservation agreement under this Act cannot be cleared in circumstances, or for the purposes of activities of a kind, specified in Schedule 1A (as contemplated by subsection (1)(ba)) unless the provision of the Schedule specifying the circumstances or activity explicitly provides for clearance of vegetation on land that is subject to such an agreement.

(9) Section 27(7)—after the definition of *fire-control purposes* insert:

management agreement means a management agreement entered into under section 25D, as in force immediately before its repeal by the *Native Vegetation (Miscellaneous) Amendment Act 2024*;

prescribed building has the same meaning as in Schedule 1A clause 2(3);

22—Amendment of section 28—Application for consent

(1) Section 28(1)—delete subsection (1) and substitute:

(1) Subject to subsection (2), an application for consent to clear native vegetation may be made (and only be made)—

(a) by the owner of the land on which the native vegetation is growing or situated, or a person acting on the owner's behalf; or

(b) in the case of an application for consent to clear native vegetation in circumstances, or for the purposes of activities of a kind, specified in Schedule 1A—a person who has a legal or equitable right to enter the land in those circumstances, or for the purposes of undertaking the activity, specified.

(2) Section 28(3) and (4)—delete subsections (3) and (4) and substitute:

(3) An application for consent—

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

(b) must be accompanied by such information, as may be required by the Council, that establishes that—

(i) an environmental benefit has been, or will be, achieved in a manner referred to in, and in accordance with the requirements of, section 3C (as determined by the Council); and

(ii) allowing for the loss of the vegetation proposed to be cleared, the environmental benefit achieved, or to be achieved, is, or will be, of significant value; and

(c) must be accompanied by a report relating to the proposed clearance prepared by a person, and in a form, approved by the Council; and

(d) must be accompanied by such other information as the Council reasonably requires; and

(e) must be accompanied by the prescribed fee (including the fee prescribed (if any) for the report referred to in paragraph (c)).

(4) The Council may, in determining the information that is required to be included in an application for consent, make an assessment of, and have regard to, the level of risk to biological diversity presented by the proposed clearance.

(3) Section 28(5)—delete subsection (5)

(4) Section 28(6)—delete "subsection (3)(b)(ii)(A)" and substitute:

subsection (3)(c)

(5) Section 28(7)—delete subsection (7) and substitute:

- (7) The Council must ensure that a copy of the report referred to in subsection (3)(c), and of any assessment report prepared by the Minister's department in response to the making of an application under this section, is available for inspection, without fee—
- (a) on a website determined by the Minister; and
 - (b) during ordinary office hours at a public office, or public offices, determined by the Minister.

23—Amendment of section 29—Provisions relating to consent

(1) Section 29(1)—delete subsection (1) and substitute:

- (1) Subject to this section, in deciding whether to consent to an application to clear native vegetation, the Council—
- (a) must apply the mitigation hierarchy; and
 - (b) —
 - (i) must have regard to the principles of clearance of native vegetation in so far as they are relevant to that decision; and
 - (ii) must not make a decision that is seriously at variance with those principles.

(2) Section 29(4) to (4b)—delete subsections (4) to (4b) (inclusive) and substitute:

- (4) The Council may give its consent to the clearance of native vegetation that is in contravention of subsection (1)(b)(ii) if—
- (a) the clearance is in accordance with guidelines adopted by the Council under section 25 that apply in relation to the region where the native vegetation is situated; or
 - (b) the clearance is in circumstances, or for the purposes of activities of a kind, specified in Schedule 1A,
- and the Council is satisfied that—
- (c) a significant environmental benefit, which outweighs any adverse impacts that are reasonably likely to result from the proposed clearance, has been, or is to be, achieved in a manner referred to in, and in accordance with the requirements of, section 3C and through the imposition of such conditions and the taking of other action by the applicant as the Council thinks fit; and
 - (d) the particular circumstances justify the giving of consent.

(3) Section 29(11)—delete subsection (11) and substitute:

(11) Subject to subsection (12), the Council may give its consent to clearance of native vegetation under this section if, and only if—

(a) in a case where the Council determines that the requirement for the achievement of a significant environmental benefit is to be satisfied, or satisfied in part, by measures, actions or requirements to be undertaken by the applicant—

(i) it attaches to the consent such conditions as the Council thinks fit, to ensure that a significant environmental benefit will be achieved in a manner referred to in, and in accordance with the requirements of, section 3C; and

(ii) it attaches to the consent a condition that any measures, actions or requirements undertaken to achieve the significant environmental benefit are undertaken in accordance with a native vegetation management plan in accordance with section 23C; and

(iii) it attaches to the consent a condition requiring that the land on, or in relation to which, a significant environmental benefit will be achieved—

(A) is subject to a heritage agreement or a conservation agreement (as determined by the Council), on such terms as the Council thinks fit; or

(B) will be subject to a heritage agreement or a conservation agreement (as determined by the Council), on such terms as the Council thinks fit, within a period required by the Council, not being more than 2 years from the day on which consent for the clearance of the native vegetation is granted; and

(b) in a case where the Council determines that the requirement for the achievement of a significant environmental benefit is to be satisfied, or satisfied in part, by payment into the Fund as referred to in section 3C(5)(d)—it attaches to the consent a condition requiring the applicant to make a payment into the Fund of an amount considered by the Council to be sufficient to achieve that environmental benefit.

(4) Section 29(12a)—delete subsection (12a) and substitute:

(12a) Subsections (11) and (12) do not apply in relation to a consent where the Council determines that a requirement to achieve a significant environmental benefit under this section is to be satisfied by application of a credit under section 25A, an assignment of credit in accordance with section 25B or by an accredited third party provider in accordance with section 25C.

(12ab) However, despite subsection (12a), where the Council determines that a requirement to achieve a significant environmental benefit under this section is to be satisfied by application of a credit under section 25A the Council must attach to the consent a condition requiring that the land on, or in relation to which, the environmental benefit credited to the person has been achieved—

- (a) is subject to a heritage agreement or a conservation agreement (as determined by the Council), on terms to the satisfaction of the Council; or
- (b) will be subject to a heritage agreement or a conservation agreement (as determined by the Council), on terms to the satisfaction of the Council, within a period required by the Council, not being more than 2 years from the day on which consent for the clearance of the native vegetation is granted.

(5) Section 29(17)—delete subsection (17) and substitute:

(17) The provisions of subsections (1) to (4) (inclusive), (11) and (12) also apply to circumstances where the Council is considering an application referred to it under the *Planning, Development and Infrastructure Act 2016* as if the Council were considering an application for consent under this Act, subject to such modifications, additions or exclusions as the Council considers may be necessary for the purpose.

(18) Subsection (17) does not limit the matters that the Council may take into account in considering such an application.

24—Amendment of section 29A—Avoidance of duplication of procedures etc

(1) Section 29A(2)(b)—delete "referred to in section 28(3)(b)(i)(C)" and substitute:

required to be provided in relation to an application for consent to clear native vegetation

(2) Section 29A(3)—delete "his or her" and substitute:

their

(3) Section 29A(4)(a)—delete "his or her" and substitute:

their

25—Amendment of section 30—Conditions of consent

Section 30(2)—after paragraph (e) insert:

(ea) a condition requiring the applicant to pay into the Fund an amount determined by the Council—

- (i) in the case of a significant environmental benefit determined by the Council to be achieved in a manner contemplated by section 3C(5)(a)—for the purposes of being repaid from the Fund (which may be by instalments) to the applicant in accordance with specified requirements; or

- (ii) in the case of a significant environmental benefit determined by the Council to be achieved in a manner contemplated by section 3C(5)(c)—for the purposes of being paid from the Fund to the accredited third party provider in accordance with the conditions of an approval under section 25C,

on the achievement of, or for the purposes of achieving, specified measures, actions or requirements as set out in, and in accordance with, a relevant heritage agreement, conservation agreement or native vegetation management plan;

- (eb) a condition requiring the applicant to pay into the Fund an amount, determined by the Council, to support the administration, monitoring and enforcement of measures, actions or requirements that relate to the satisfaction of a requirement to achieve a significant environmental benefit in relation to the clearance of native vegetation;

26—Amendment of heading to Part 5 Division 2

Heading to Part 5 Division 2—delete "proceedings"

27—Amendment of section 31A—Application to ERD Court for enforcement

- (1) Section 31A(1)(c)—after "heritage agreement" insert:

or a conservation agreement

- (2) Section 31A(6)(b)—delete "himself or herself" and substitute:

themselves

- (3) Section 31A(11), definition of *breach*—delete "or a heritage agreement" and substitute:

, a heritage agreement or a conservation agreement

28—Amendment of section 31B—Order where native vegetation has been cleared

- (1) Section 31B(1)(b)—after "section" insert:

29(11) or

- (2) Section 31B(4)—delete "him or her" wherever occurring and substitute in each case:

the respondent

- (3) Section 31B(10)—delete "owned by the respondent" and substitute:

specified by the Court

29—Amendment of section 31D—Enforcement of orders

- (1) Section 31D, heading—after "of" insert:

ERD Court

- (2) Section 31D(1)—after "order" first occurring insert:

of the ERD Court

30—Substitution of sections 31E and 31EA

Sections 31E and 31EA—delete the sections and substitute:

31E—Compliance orders issued by Council or authorised officer

- (1) The Council, or an authorised officer who has been expressly authorised by the Minister to issue orders under this section, may issue a compliance order for the purposes of securing compliance with—
- (a) section 26; or
 - (b) a heritage agreement; or
 - (c) a conservation agreement under section 23B; or
 - (d) a management agreement; or
 - (e) a requirement imposed by the regulations; or
 - (f) any other requirement imposed by or under this Act, or the repealed Act, and prescribed by the regulations for the purposes of this section.
- (2) A compliance order—
- (a) must be in the form of a written notice served on the person to whom the notice is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must, in the case of an order issued by an authorised officer, identify the officer issuing the order; and
 - (d) must state the grounds on which it is made with reasonable particularity; and
 - (e) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Council or an authorised officer;
 - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or subject to specified conditions;

- 5 (iv) a requirement that the person enter into a bond in such sum and subject to such terms and conditions specified in the order, or enter into some other arrangement specified in the order (which may include payment of a sum of money into the Fund), to ensure that money is available to address the costs of any damage, or threatened damage, to specified native vegetation;
- 10 (v) a requirement that the person take action to prevent or minimise any damage to specified native vegetation, or to control any specified activity;
- (vi) a requirement that the person undertake specified tests or monitoring;
- 15 (vii) a requirement that the person furnish to the Minister specified results or reports;
- (viii) a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and
- 20 (f) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.
- 25 (3) An authorised officer may, if of the opinion that urgent action is required for the protection of particular native vegetation, issue an emergency compliance order imposing requirements of a kind referred to in subsection (2)(e), other than a requirement for payment into the Fund, as reasonably required for the protection of the native vegetation.
- 30 (4) An emergency compliance order may be issued orally by an authorised officer but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.
- 35 (5) If an emergency compliance order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- 40 (6) The Council or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other compliance order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.
- 45 (7) The Council or an authorised officer may, by written notice served on a person to whom a compliance order has been issued, vary or revoke the order.

- (8) A person to whom a compliance order is issued must comply with the order.

Maximum penalty: \$70 000.

Expiation fee: \$1 000.

- (9) A person must not hinder or obstruct a person complying with a compliance order.

Maximum penalty: \$10 000.

- (10) A person is not obliged to provide information in response to a requirement imposed by a compliance order if to do so might incriminate the person or make the person liable to a penalty (including through the taking of further action under this Act).

- (11) In this section—

heritage agreement means a heritage agreement under section 23 or a heritage agreement entered into in compliance with a condition of a consent to clear native vegetation under the repealed Act;

management agreement means a management agreement entered into under section 25D, as in force immediately before its repeal by the *Native Vegetation (Miscellaneous) Amendment Act 2024*.

31EA—Action on non-compliance with compliance order

- (1) If the requirements of a compliance order are not complied with, the Council may take any action required by the order.
- (2) Action to be taken by the Council under subsection (1) may be taken on the Council's behalf by an authorised officer or another person authorised by the Council for that purpose.
- (3) A person taking action under this section may enter any relevant land at any reasonable time.
- (4) The reasonable costs and expenses incurred by the Council in taking action under this section may be recovered by the Council as a debt from the person who failed to comply with the requirements of the compliance order.
- (5) If an amount is recoverable from a person by the Council under this section—
- (a) the Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and
 - (b) the amount together with any interest so payable is, until paid, a first charge in favour of the Council on all land owned by the person.

31EB—Reparation orders issued by Council or authorised officer

- (1) If the Council, or an authorised officer who has been expressly authorised by the Minister to issue orders under this section, is satisfied that a person has caused harm to native vegetation by contravention of—
- (a) section 26; or
 - (b) a heritage agreement; or
 - (c) a conservation agreement under section 23B; or
 - (d) a management agreement; or
 - (e) a requirement imposed by the regulations; or
 - (f) any other requirement imposed by or under this Act, or the repealed Act, and prescribed by the regulations for the purposes of this section,

the Council or authorised officer may issue a reparation order requiring the person to do 1 or more of the following:

- (g) to take specified action within a specified period to make good any resulting damage to native vegetation;
- (h) without limiting paragraph (g), to take specified action to achieve a significant environmental benefit, which outweighs the impact of any damage to native vegetation caused by the alleged contravention, which may include specifying that the environmental benefit is to be achieved by—
 - (i) application of the value of an environmental benefit credited to the person under section 25A or assigned to the person under section 25B; or
 - (ii) measures, actions or requirements undertaken by an accredited third party provider, on behalf of the person, in accordance with section 25C; or
 - (iii) payment into the Fund of an amount, determined by the Council, to be sufficient for the purpose of achieving a significant environmental benefit (whether in respect of the land on which the native vegetation that was damaged was growing or situated or other land);
- (i) to make a payment into the Fund of an amount determined by the Council to be appropriate in the circumstances (which may be in addition to an amount that may be required under paragraph (h)(iii)) on account of any benefit that the person has gained, or can reasonably expect to gain, from the alleged contravention;

- (j) to discontinue, or not commence, a specified activity, or to take specified action in a specified way, to ensure that the person does not gain an ongoing benefit from the alleged contravention.

5 (2) A reparation order—

- (a) must be in the form of a written notice served on the person to whom it is issued; and
- (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
- 10 (c) must, in the case of an order issued by an authorised officer, identify the officer issuing the order; and
- (d) must state the grounds on which it is made with reasonable particularity; and
- 15 (e) may include requirements for action to be taken to prevent or mitigate further harm to any native vegetation, or for a plan of action to be prepared to the satisfaction of the Council or authorised officer; and
- 20 (f) may include requirements for specified monitoring of actions taken in accordance with a requirement imposed under subsection (1)(g), (h)(i), (h)(ii) or (j); and
- (g) may include requirements for providing specified information or reports to the Council or authorised officer; and
- 25 (h) may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a native vegetation management plan or report or to undertake monitoring required by the order; and
- 30 (i) in the case of an order requiring payment into the Fund, may provide that payments must occur in accordance with a scheme approved by the Minister (either at the time of the making of the order or at a later time when the extent or impact of any action has been assessed or finally determined); and
- 35 (j) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.

- 40 (3) An authorised officer may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2), other than a requirement for payment into the Fund.

(4) An emergency reparation order may be issued orally by an authorised officer, but, in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.

(5) If an emergency reparation order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity by written notice given to the person to whom it applies.

(6) The Council or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

(7) The Council or an authorised officer may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.

(8) A person to whom a reparation order is issued must comply with the order.

Maximum penalty: \$70 000.

Expiation fee: \$1 000.

(9) In this section—

heritage agreement means a heritage agreement under section 23 or a heritage agreement entered into in compliance with a condition of a consent to clear native vegetation under the repealed Act;

management agreement means a management agreement entered into under section 25D, as in force immediately before its repeal by the *Native Vegetation (Miscellaneous) Amendment Act 2024*.

31EC—Action on non-compliance with reparation order

(1) If the requirements of a reparation order are not complied with, the Council may take any action required by the order.

(2) Action to be taken by the Council under subsection (1) may be taken on the Council's behalf by an authorised officer or another person authorised by the Council for that purpose.

(3) A person taking action under this section may enter any relevant land at any reasonable time.

(4) The reasonable costs and expenses incurred by the Council in taking action under this section may be recovered by the Council as a debt from the person who failed to comply with the requirements of the reparation order.

(5) If an amount is recoverable from a person by the Council under this section—

(a) the Council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and

(b) the amount together with any interest so payable is, until paid, a first charge in favour of the Council on all land owned by the person.

31ED—Registration of orders by Registrar-General

(1) If—

(a) the Council or an authorised officer has issued a compliance order under section 31E or a reparation order under section 31EB; and

(b) the order is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,

the Council may apply to the Registrar-General for the registration of the order in relation to that land.

(2) An application under this section must—

(a) define the land to which it relates; and

(b) comply with any requirements imposed by the Registrar-General for the purposes of this section.

(3) The Registrar-General must on—

(a) due application under subsection (2); and

(b) the lodgement of a copy of the relevant order,

register the order in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.

(4) The Council must, in accordance with the regulations, furnish to the Registrar-General notice of any variation to an order registered under this section.

(5) An order registered under this section (as varied from time to time) is binding on each owner and occupier from time to time of the land.

- 5 (6) The Registrar-General must, on application by the Council, cancel the registration of an order in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (7) The Council may, if the Council thinks fit, apply to the Registrar-General for cancellation of the registration of an order under this section in relation to land, and must do so—
- 10 (a) on revocation of the order; or
- (b) on full compliance with the requirements of the order; or
- (c) if the Council has taken action under this Division—on payment to the Council of any amount recoverable by the Council under this Division in relation to the action so taken.
- 15 (8) The Council must, as soon as is reasonably practicable, notify each owner or occupier of the relevant land by notice in writing if—
- (a) an order is registered under subsection (3); or
- (b) the cancellation of the registration of an order is given effect to under subsection (7).

20 **31EF—Appeal to ERD Court**

- (1) A person to whom an order has been issued under section 31E or 31EB may appeal to the ERD Court against the order or any variation of the order.
- 25 (2) Subject to subsection (3), an appeal must be made within 21 days after the order or variation of the order is served.
- (3) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period referred to in subsection (2).
- 30 (4) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (5) Subject to subsection (6), the making of an appeal to the ERD Court does not affect the operation of an order or any variation of an order to which the appeal relates or prevent the taking of action to implement the order or the order as varied.
- 35 (6) The ERD Court, or the Council or authorised officer that issued the order may, on its own initiative or on application by a party to an appeal, suspend the operation of the order or variation of the order until the determination of an appeal.
- 40 (7) A suspension under subsection (6) may be made subject to specified conditions, and may be varied or revoked by the ERD Court, the Council or the authorised officer that granted the suspension at any time.

(8) The ERD Court may, on hearing an appeal, do 1 or more of the following:

- (a) confirm, vary or revoke the order or any variation of an order appealed against;
- (b) remit the subject matter of the appeal to the Council or authorised officer who issued the order or variation of the order for further consideration;
- (c) order or direct a person or body to take such action as the Court thinks fit, or to refrain, either temporarily or permanently, from such action or activity as the Court thinks fit;
- (d) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

31—Amendment of section 31F—Miscellaneous provisions

Section 31F(5)—delete "or 31E(6)(a)" and substitute:

, 31EA(5)(a) or 31EC(5)(a)

32—Amendment of section 32—Appeals

Section 32, heading—after "Appeals" insert:

to Supreme Court

33—Amendment of section 33A—Appointment of authorised officers

(1) Section 33A(5)—delete "his or her" wherever occurring and substitute in each case:
their

(2) Section 33A(6)—delete "he or she" and substitute:
the Minister

34—Amendment of section 33B—Powers of authorised officers

(1) Section 33B(1)(b)—delete "stopping or movement of a vehicle" and substitute:
stopping, securing or movement of a vehicle, plant, equipment or other thing

(2) Section 33B(1)(i)—delete "may constitute evidence of" and substitute:
has been used in, or may constitute evidence of,

(3) Section 33B(2)—before "heritage agreement" insert:
a conservation agreement or

(4) Section 33B(4)—delete "his or her" and substitute:
their

(5) Section 33B(5)(a)—delete "him or her" and substitute:
the owner or occupier

(6) Section 33B(8)—delete "his or her" and substitute:
their

(7) Section 33B(10)—delete "he or she" and substitute:
the authorised officer

5 (8) Section 33B(12)—delete "he or she" and substitute:
the person

35—Amendment of section 33C—Issue of warrants

(1) Section 33C(6)(a)—delete "his or her" and substitute:
their

10 (2) Section 33C(6)(a)—delete "himself or herself" and substitute:
themselves

(3) Section 33C(6)(b)—delete "he or she" and substitute:
the applicant

15 (4) Section 33C(6)(c)—delete "he or she" and substitute:
the magistrate

(5) Section 33C(6)(d)—delete "he or she" and substitute:
the magistrate

(6) Section 33C(8)(a)(i)—delete "his or her" and substitute:
the authorised officer's

20 (7) Section 33C(8)(a)(i)—delete "he or she is" and substitute:
they are

36—Amendment of section 33E—Offence to hinder etc authorised officer

Section 33E(1)(e)—delete "he or she is" and substitute:
they are

37—Amendment of section 33H—Interest

25 Section 33H(1)—delete "and 31E" and substitute:
, 31EA and 31EC

38—Amendment of section 33I—Sale of land for non-payment

(1) Section 33I(8)—delete "he or she" and substitute:
30 the Minister

(2) Section 33I(10)—delete "his or her" and substitute:
their

39—Amendment of section 34—Evidentiary

Section 34(7)—delete "management agreement under section 25D certified by the Minister" and substitute:

conservation agreement under section 23B certified by the Council

40—Amendment of section 35—Proceedings for an offence

Section 35(5)—delete subsection (5)

41—Insertion of section 37

After section 36 insert:

37—False and misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under the Act.

Maximum penalty: \$20 000.

42—Insertion of section 39A

After section 39 insert:

39A—Recovery from related bodies corporate

(1) If—

(a) an amount is payable by a body corporate pursuant to this Act or an order of a court made under this Act; and

(b) at the time of the contravention giving rise to that liability, that body and another body were related bodies corporate, the related bodies corporate are jointly and severally liable to make the payment.

(2) In this section—

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

43—Amendment of section 40A—Register of applications

Section 40A(3) and (4)—delete subsections (3) and (4) and substitute:

(3) The Council must ensure that the register is available for inspection, without fee—

(a) on a website determined by the Minister; and

(b) during ordinary office hours at a public office, or public offices, determined by the Minister.

44—Amendment of section 41—Regulations

Section 41(3)—after "Schedule 1" insert:

and Schedule 1A by—

- (a) inserting a provision into, substituting a provision in, or deleting a provision from Schedule 1 or Schedule 1A; or
- (b) inserting material into, substituting material in, or deleting material from a provision of Schedule 1 or Schedule 1A

45—Amendment of Schedule 1—Principles of native vegetation clearance

Schedule 1, clause 2, definition of *plant community*—delete the definition

46—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Specified activities (section 27(3)(c))**1—Works on behalf of Commissioner of Highways**

Clearance of vegetation incidental to work being undertaken by or on behalf of the Commissioner of Highways.

2—New dwelling or building

- (1) Clearance of vegetation required in order to erect a prescribed building or other facility that is ancillary to a prescribed building, provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained.
- (2) Subclause (1) does not apply to clearance of vegetation undertaken in connection with subdivision of the land on which the vegetation is growing or is situated.
- (3) In this clause—

Building Code has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

prescribed building means—

- (a) a building within the meaning of the *Planning, Development and Infrastructure Act 2016* (other than a fence or a Class 7A or 10B building under the Building Code) that is permanently fixed to land; or
- (b) a building of a kind contemplated by paragraph (a) that is in the course of construction if the foundations, a concrete slab, or other footings have been completed; or
- (c) any other building or structure of a class declared by the Minister by notice in the Gazette to be included in the ambit of this definition,

but does not include any building or structure of a class declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition.

3—Infrastructure

(1) Clearance of vegetation—

(a) incidental to the construction or expansion of a building or infrastructure where the Minister has, by instrument in writing, declared that the Minister is satisfied that the clearance is in the public interest; or

(b) required in connection with the provision of infrastructure or services to a building or proposed building, or to any place,

provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained.

(2) In this clause—

infrastructure includes—

(a) flood mitigation works; and

(b) an airstrip; and

(c) a shipping channel; and

(d) a public reservoir.

4—Residential subdivision

Clearance of vegetation in connection with the division of land for use for residential purposes (including clearance for the construction of roads and other infrastructure), provided that any development authorisation for the division of the land and for the use of the land for residential purposes required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained.

5—Recreation track

(1) Clearance of vegetation for the purpose of establishing or maintaining a track for recreational activity, other than recreational activity involving the use of a motorised vehicle.

(2) For the purposes of section 27(6b), subclause (1) applies to vegetation that is growing or is situated on land that is subject to a heritage agreement or a conservation agreement if the terms of the heritage agreement or the conservation agreement permit clearance for the purpose set out in that subclause.

(3) In this clause—

motorised vehicle does not include a power-assisted pedal cycle;

power-assisted pedal cycle means a power-assisted pedal cycle within the meaning of vehicle standards determined under the *Motor Vehicle Standards Act 1989* of the Commonwealth, but does not include such a pedal cycle if it has an auxiliary propulsion motor comprised (in whole or in part) of an internal combustion engine.

47—Amendment of Schedule 2—Transitional provisions

Schedule 2—after clause 4 insert:

- (1) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the enactment of the *Native Vegetation (Miscellaneous) Amendment Act 2024*.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this subclause or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.