Protection of Native Vegetation

This fact sheet explains some of the basic features of South Australian legislation dealing with the protection and management of native vegetation. It has been written to help people who want to clear native vegetation to better understand the process they need to go through. In addition, it provides useful information for people who are concerned that native vegetation may be being cleared illegally. The information in this sheet is not comprehensive, simply an overview. If you suspect someone of clearing native vegetation illegally, you should contact the Department of Environment and Natural Resources (DENR) or obtain independent legal advice. Contact details for DENR, the EDO and other useful organisations can be found on the back page of this fact sheet.

What is native vegetation?

The term Australian native vegetation refers to plants indigenous to Australia. South Australian native vegetation refers to plants indigenous to South Australia. Under the South Australian Native Vegetation Act 1991 (NVA) this includes plants which grow under the water or in the sea, but, in general, not a dead plant or plants sown or planted by people. (section 3 of the NVA)

Plants sown or planted by people are only included if they were planted in compliance with a condition imposed by the “Native Vegetation Council” (“Council”) under the NVA, the Native Vegetation Authority (under the old Act) or a Court order made under either Act. (section 3 of the NVA)

Why is native vegetation important?

Native vegetation is an important natural resource for South Australia. Native vegetation provides habitat for native fauna. It currently contributes to the wealth generated by many Australian industries including: farming, forestry, fisheries and tourism. Native vegetation is also a potentially important resource for the creation of new medicines and industrial products.

Aside from the economic benefits that native vegetation generates, it is also of cultural, social and educational importance for Australia’s indigenous people.

In addition it is now widely believed that independent of any value native vegetation may have to humans, it has intrinsic value. Vegetation is important in itself and so should be preserved on principle.

Why protect and manage native vegetation?

South Australia’s native vegetation (along with the rest of Australia’s native vegetation) needs protecting. When the first European settlers came to Australia over 200 years ago, there were extensive stands of native vegetation. The majority of this vegetation was cleared by the settlers for fuel and to make room for cities, towns, roads and farming land. This trend continues. Australia’s population is still growing and the cities are still growing outwards. Most people believe that the majority of this damage was done back in the early days of settlement. In fact, the damage done to Australia’s native vegetation has been greatest in the last 50 years, and damage is still continuing to be done.

The situation in South Australia is no different from elsewhere in Australia. For this reason it is important to protect and manage South Australia’s native vegetation.
Protection of Native Vegetation in South Australia

How does South Australian legislation manage and protect native vegetation?

The Native Vegetation Act 1991 (SA) (NVA) is specifically designed to protect plants native to South Australia. South Australia led the way in the protection of native vegetation when, in 1985, the South Australian government passed the Native Vegetation Act (1985). At this time South Australia was the only Australian State to have enacted a law which protected native vegetation on private property. The Native Vegetation Act 1991 updated and replaced this older Act. Other legislation which also helps to protect native vegetation in South Australia includes:

- The Natural Resources Management Act 2004
- The Development Act 1993
- The National Parks & Wildlife Act 1972

The Native Vegetation Act (NVA)

The NVA protects and manages native vegetation throughout most of South Australia. The NVA covers all areas outside of the Adelaide metropolitan area (as defined in the Metropolitan Adelaide Development Plan). However, within the Adelaide Metropolitan Area, the NVA does not precisely define which areas it covers. It is clear that it applies to the whole of the ‘Hills Face Zone’ (as defined in the Development Plan) and to those parts of local councils extending into the Mount Lofty Ranges. Where the uncertainty lies is within the local council areas of:

- Adelaide Hills
- Mitcham
- Onkaparinga
- Playford (see section 4 of the NVA)

The following questions will help you decide whether you have to comply with the NVA.

1. Is the vegetation within Metropolitan Adelaide?
   - No - the NVA does apply to you.
   - Yes - go to question 2.

2. Is the vegetation within the Hills Face Zone?
   - No - go to question 3.
   - Yes - the NVA does apply to you.

3. Is the vegetation within one of the 4 Councils listed above?
   - No - the NVA does not apply to you.
   - Yes - the NVA may apply to you - obtain legal advice!

The NVA aims to help preserve, enhance and manage South Australia’s native vegetation. In order to do this the NVA limits the clearance of native vegetation and encourages the planting of native vegetation in cleared areas. This will help to slow land degradation and the decrease in biodiversity (biological diversity). (section 6 of the NVA)

Preservation, Enhancement and Management

One way in which the NVA aims to help preserve, enhance and manage vegetation is by providing the opportunity for the Minister for Environment to enter into “heritage agreements” with landowners who have native vegetation growing on their properties. (section 23 of the NVA)
Heritage Agreements

Under a “heritage agreement” a land owner may, for example, agree to restrict his/her use of the land, or agree to manage his/her land in a certain way. Once established, a heritage agreement attaches to the land. Therefore, when the land is sold, the land is still covered by the same “heritage agreement”. This has the potential to reduce the value of the land. For this reason, under a “heritage agreement” the Minister for Environment may reduce the rates or taxes payable on that land, pay the owner an amount of money equivalent to the devaluation and/or pay the landowner an incentive to enter a heritage agreement. (section 23A of the NVA) Parties to a “heritage agreement” can apply to the District Court for orders that a “heritage agreement” be complied with. (section 23C of the NVA)

Limits on the clearance of Native Vegetation

A person wanting to clear native vegetation must apply to the Native Vegetation Council (“The Council”) for permission unless exempted by the Native Vegetation Regulations (see below). “The Council” may grant consent, refuse consent or grant consent subject to certain conditions. A person who clears native vegetation without the permission of “The Council” or ignores any conditions for clearing set down by “The Council” could face a fine of more than $40,000. (section 26 of the NVA) “The Council” can also take civil enforcement proceedings in the District Court for an order that the native vegetation be re-instated. (section 31 of the NVA)

Consent of the Native Vegetation Council

“The Council” is bound by a number of principles. These principles must be considered in deciding if or how to grant a consent. In making this decision “The Council” must have regard to many factors including: the diversity of plant species, the significance of the vegetation as a habitat, the presence of rare, vulnerable or endangered species, amenity of the area, soil erosion and salinity, underground water and flooding. In addition “The Council” will rarely consent to the clearing of vegetation in wetlands areas or to the broad acre clearance of native vegetation. (section 29 of the NVA)

Exemptions to the requirements of consent by “The Council”

The Native Vegetation Regulations (1991) (Regs.) specify an extensive range of circumstances in which native vegetation may be cleared without approval. Although too numerous to list them all here, these circumstances include:

- native vegetation clearance necessary for the construction of buildings or dams;
- clearance by ETSA necessary for maintenance or repair work;
- clearance within 20m of a house; and
- clearing to prevent or reduce the risk of injury to people or damage to property, including by fire.

This is by no means an exhaustive list. (Regulation 3) Before you consider clearing any vegetation you should consult the legislation and / or Department of Environment and Natural Resources, the EDO or a solicitor.

Applying for consent to clear Native Vegetation

Any application to “The Council” to remove native vegetation must include a plan of the land and a vegetation management plan. (section 28 of the NVA) In addition you must pay an application fee of (Regulation 5.)

The Development Act

The Development Act (SA) 1993 provides for the making of “Land Management Agreements” between the Minister for Urban Development and Planning and a landowner. These “Agreements” can cover the management, preservation and conservation of the land, which in turn provides for the protection of native vegetation. (section 57 of the Development Act) In addition, the provisions of the Development Plan for the particular council area may require that the preservation of native vegetation be taken into account in determining a development application.
Protection of Native Vegetation in South Australia

The Natural Resources Management Act

This is the subject of EDO fact sheet No. 22

For more information:
South Australian legislation can be purchased at Service SA 108 North Tce, Adelaide. Ph: 13 2324. Legislation is also available at www.austlii.edu.au.

For information on endangered species you can access the South Australian Threatened Species web site at www.denr.sa.gov.au. The Department of Environment and Natural Resources can be contacted for information about native vegetation management on 8204 1910 or via the internet www.environment.sa.gov.au

The Environmental Defenders Office (SA) inc, (EDO) is a non-profit community legal centre offering free advice to individuals and groups on all matters of environmental law. The EDO operates an advisory on Thursday evenings between 6-8PM at:

408 King William St
Adelaide SA 5000 Fax +61 (08) 8410 3855
Appointments are necessary and must be made by ringing 8410 3833 or freecall 1800 337 566

This guide is not a substitute for proper legal advice. Important legal details have been omitted to provide a brief overview of this law. Contact the EDO or your solicitor for more detailed legal advice about your specific problem.

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ENVIRONMENTAL DEFENDERS OFFICE (SA) INC