



ELECTRICITY (VEGETATION CLEARANCE) AMENDMENT ACT 1997

No. 62 of 1997

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Insertion of heading to Part 5 Division 1
DIVISION 1—DUTIES IN RELATION TO VEGETATION CLEARANCE
5. Amendment of s. 55—Duties in relation to vegetation clearance
6. Insertion of Part 5 Division 2
DIVISION 2—VEGETATION CLEARANCE SCHEMES IN PRESCRIBED AREAS
SUBDIVISION 1—CONTENT AND NATURE OF SCHEMES
55A. Vegetation clearance schemes
SUBDIVISION 2—DISPUTES ABOUT SCHEMES
55B. Vegetation clearance scheme dispute
55C. Circumstances in which Technical Regulator not obliged to determine dispute
55D. Determinations
55E. Principles to be taken into account
55F. Conduct of proceedings
55G. Giving of relevant documents to Technical Regulator
55H. Power to obtain information and documents
55I. Confidentiality of information
55J. Termination of proceedings for determination
55K. Procedure for giving determination
55L. Costs
SUBDIVISION 3—ENFORCEMENT OF SCHEMES
55M. Enforcement as contract
SUBDIVISION 4—RESOLUTION OF DISPUTES UNDER SCHEMES
55N. Resolution of dispute by intervention of Technical Regulator
7. Insertion of heading to Part 5 Division 3
DIVISION 3—MISCELLANEOUS
8. Amendment of s. 56—Role of councils in relation to vegetation clearance not within prescribed areas
9. Amendment of s. 57—Power to enter for vegetation clearance purposes
10. Amendment of s. 58—Regulations in respect of vegetation near powerlines
11. Amendment of s. 74—Review of decisions by Technical Regulator
12. Amendment of s. 82—Application and issue of warrant
13. Amendment of s. 83—Urgent situations
14. Amendment of s. 96—Evidence



ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 62 of 1997

An Act to amend the Electricity Act 1996.

[Assented to 7 August 1997]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Electricity (Vegetation Clearance) Amendment Act 1997*.

(2) The *Electricity Act 1996* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "council" the following definition:

"council officer" means a person authorised by a council to exercise powers conferred on a council officer under this Act;;

(b) by striking out the definition of "powerline" and substituting the following definition:

"powerline" means—

(a) a set of cables for the transmission or distribution of electricity and their supporting or protective structures and equipment; and

(b) associated equipment for the transmission or distribution of electricity,

but does not include a telecommunications cable or associated equipment;;

- (c) by inserting after the definition of "transmission or distribution network" the following definition:

"vegetation clearance scheme" means a vegetation clearance scheme agreed or determined under Part 5.

Insertion of heading to Part 5 Division 1

4. The following heading is inserted after the heading to Part 5 of the principal Act:

DIVISION 1—DUTIES IN RELATION TO VEGETATION CLEARANCE

Amendment of s. 55—Duties in relation to vegetation clearance

5. Section 55 of the principal Act is amended—

- (a) by inserting in subsection (1)(a) "other than powerlines in relation to which the duty to keep vegetation clear is conferred on a council under a vegetation clearance scheme" after "control";

- (b) by inserting after subsection (1) the following subsection:

(1a) A vegetation clearance scheme may, in accordance with Division 2, confer on a council the duty to take reasonable steps to keep vegetation of all kinds clear of public powerlines that are—

- (a) designed to convey electricity at 11 kV or less; and
- (b) within both the council's area and an area prescribed by the regulations (a "prescribed area"); and
- (c) not on, above or under private land,

in accordance with the principles of vegetation clearance.;

- (c) by striking out from subsection (3) "the entity that has the duty under this section" and substituting "the entity or council that has the duty under this Part";

- (d) by striking out subsections (4), (5) and (6) and substituting the following subsections:

(4) If a council or occupier should have, but has not, kept vegetation clear of a powerline under an electricity entity's control in accordance with a duty of the council or occupier under this Part, the electricity entity may carry out the necessary vegetation clearance work (but the entity incurs no liability for failure to carry out such work).

(5) Any costs incurred by an electricity entity in carrying out vegetation clearance work under subsection (4) or repairs to a powerline required as a result of failure by a council or occupier to carry out the duty of the council or occupier under this Part may be recovered as a debt from the council or occupier.

(6) This Part operates to the exclusion of common law duties, and other statutory duties, affecting the clearance of vegetation from a public powerline or a private powerline, and so operates with respect to vegetation clearance work whether the work is carried out by the person having the duty under this Part to keep vegetation clear of the powerline or in pursuance of a delegation or by a contractor or other agent.

Insertion of Part 5 Division 2

6. The following Division is inserted after section 55 of the principal Act:

**DIVISION 2—VEGETATION CLEARANCE SCHEMES
IN PRESCRIBED AREAS**

SUBDIVISION 1—CONTENT AND NATURE OF SCHEMES

Vegetation clearance schemes

55A. (1) An electricity entity may agree a vegetation clearance scheme with a council governing the way in which vegetation is to be kept clear of public powerlines on land (other than private land) within both the council's area and a prescribed area.

(2) A vegetation clearance scheme may do one or more of the following:

- (a) it may require the electricity entity to inspect and clear vegetation more frequently than is required under the principles of vegetation clearance or otherwise govern the way in which the entity will carry out its duty to clear vegetation;
- (b) it may—
 - (i) contain a delegation by the electricity entity of a function or power under this Part in relation to powerlines designed to convey electricity at 11 kV or less;
 - (ii) require that the electricity entity be indemnified for any liability arising from an act or omission of the council under the delegation;
- (c) it may confer on the council the duty to keep vegetation of all kinds clear of specified public powerlines that are designed to convey electricity at 11 kV or less;
- (d) it may exempt the council from the principles of vegetation clearance relating to the planting or nurturing of vegetation near overhead public powerlines;
- (e) it may impose obligations on the electricity entity or the council with respect to clearance work or reducing the need for clearance work;

For example, a scheme may provide for—

- specified powerlines to be moved or placed underground;
- specified vegetation to be removed or restrictions on the types of vegetation that may be planted or nurtured near powerlines;
- payments by the council to the entity or by the entity to the council.

- (f) it may make provision for other related matters.

(3) A vegetation clearance scheme cannot derogate from the principles of vegetation clearance except to the extent referred to in subsection (2)(d).

(4) A vegetation clearance scheme—

(a) must be in writing and (subject to Subdivision 2) executed by the council and the electricity entity; and

(b) may be modified by written agreement between the parties.

(5) A delegation by the electricity entity under a vegetation clearance scheme—

(a) may be subject to conditions specified in the scheme; and

(b) may be varied or revoked by the electricity entity in accordance with the terms of the scheme; and

(c) does not prevent the electricity entity from acting in any matter.

(6) If the duty to keep vegetation of all kinds clear of powerlines is conferred on a council under a vegetation clearance scheme, the principles of vegetation clearance relating to the planting or nurturing of vegetation near powerlines do not apply to vegetation planted or nurtured on land (other than private land) by the council, or on the authority of the council, near overhead public powerlines in relation to which the duty is conferred.

SUBDIVISION 2—DISPUTES ABOUT SCHEMES

Vegetation clearance scheme dispute

55B. (1) A vegetation clearance scheme dispute exists if an electricity entity and a council fail to agree on—

(a) a proposal for a vegetation clearance scheme under this Division; or

(b) a proposal for modification of such a scheme.

(2) An electricity entity or a council may, by written notice to the Technical Regulator, ask the Technical Regulator to determine a vegetation clearance scheme dispute under this Division.

(3) The notice must contain or be accompanied by the information or documents required by the Technical Regulator.

(4) The party seeking a determination must give a copy of the notice to the other party to the dispute.

Circumstances in which Technical Regulator not obliged to determine dispute

55C. (1) The Technical Regulator will not determine a vegetation clearance scheme dispute unless—

(a) at least six months have passed since the presentation by one of the parties to the other of a written proposal for a vegetation clearance scheme between the parties or for modification of such a scheme; or

- (b) less than six months have passed since the presentation of such a proposal but the other party has not negotiated reasonably and constructively, or at all, on the proposal.

(2) The Technical Regulator is not obliged to determine a vegetation clearance scheme dispute if the Technical Regulator is satisfied—

- (a) that the subject matter of the dispute is trivial, misconceived or lacking in substance; or
- (b) taking into account the particular circumstances of the dispute, that the party seeking determination of the dispute has not negotiated reasonably and constructively, or at all, on the proposal; or
- (c) on the application of a party to the dispute and taking into account the particular circumstances of the dispute, that there are good reasons why the dispute should not be determined.

Determinations

55D. (1) The Technical Regulator may, on application under this Subdivision, determine—

- (a) in the case of a dispute about a proposal for a vegetation clearance scheme—the terms of the scheme;
- (b) in the case of a dispute about a proposal for modification of a vegetation clearance scheme—whether or not the scheme is to be modified and, if it is to be modified, the terms of the modification.

(2) The Technical Regulator may not, in determining a scheme or modification of a scheme, confer on a council the duty to keep vegetation clear of public powerlines except—

- (a) with the council's consent; or
- (b) in a case where the Technical Regulator is satisfied that it is appropriate to do so in view of significant failure by the council or the electricity entity to carry out properly, or at all, vegetation clearance work in relation to powerlines in the area and in view of the reasons for the failure.

(3) The Technical Regulator may confer a duty on a council in accordance with subsection (2) only in respect of particular powerlines in respect of which the Technical Regulator is satisfied the conferral of the duty is appropriate.

(4) If the Technical Regulator proposes to confer on a council a duty to keep vegetation clear of public powerlines in circumstances in which there has been failure by the electricity entity to carry out properly, or at all, vegetation clearance work in relation to those powerlines, the Technical Regulator must consider whether the council should be given an indemnity for any liability arising from the entity's failure or whether the conferral of the duty should be postponed for a period designed to allow any necessary work to be carried out.

(5) The Technical Regulator may—

- (a) stipulate that a scheme or modification of a scheme is to have effect at a specified future time;
- (b) stipulate that parts of a scheme or modification of a scheme have effect at different future times.

(6) A scheme or modification of a scheme determined by the Technical Regulator under this Division has effect according to its terms and need not be executed by the parties.

Principles to be taken into account

55E. (1) In determining a vegetation clearance scheme dispute, the Technical Regulator must take into account—

- (a) the nature of the vegetation, including its expected rate of growth;
- (b) the impact that the clearance work would be likely to have on the amenity of the area;
- (c) the historical or biological significance (if any) of the vegetation;
- (d) the long term effect that the clearance work would be likely to have on the health and appearance of the vegetation;
- (e) the controls on the planting and nurturing of vegetation applicable in the area;
- (f) the need to prevent damage to the powerlines and interruption to the supply of electricity and to safeguard the public against electric shock and damage to property;
- (g) the extent and frequency of past vegetation clearance in the area;
- (h) whether requirements with respect to vegetation clearance and the planting and nurturing of vegetation have been complied with in the area and, if not, the reasons for the non-compliance;
- (i) the existence and terms of other vegetation clearance schemes;
- (j) any proposal to alter, remove or underground powerlines in the area;
- (k) the costs of the proposals (including insurance premiums) to the council and to the electricity entity and the financial resources of the council and entity;
- (l) the limits on the financial and other resources of the electricity entity that may be devoted to the scheme and the schemes for the areas of other councils;

- (m) the desirability of preserving so far as practicable terms agreed between the parties;
- (n) any other matters prescribed by the regulations.

(2) The Technical Regulator may take into account other matters the Technical Regulator considers appropriate.

Conduct of proceedings

55F. (1) The Technical Regulator must conduct proceedings for the determination of a dispute with a view to ensuring—

- (a) a fair and reasonable exchange of the parties' views; and
- (b) the proper investigation and consideration of all matters relevant to the fair determination of the dispute; and
- (c) the speedy resolution of the dispute.

(2) The Technical Regulator—

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) may obtain information on matters relevant to the dispute in any way the Technical Regulator thinks fit.

(3) The Technical Regulator may require the presentation of evidence or argument in writing and may decide matters on which the Technical Regulator will hear oral evidence or argument.

(4) If the Technical Regulator decides to hear oral evidence or argument—

- (a) the proceedings must be conducted in public unless—
 - (i) both parties agree to have the proceedings (or part of the proceedings) conducted in private; or
 - (ii) the Technical Regulator orders the public to be excluded from attendance in accordance with subsection (5); and
- (b) the parties may not be represented in the proceedings by lawyers except by leave of the Technical Regulator.

(5) The Technical Regulator may order the public to be excluded from attendance at proceedings in order—

- (a) to consider in confidence information that has commercial value to a person or relates to the commercial or financial affairs of a person (the Technical Regulator being satisfied that it is reasonably foreseeable that public disclosure of the information could cause significant damage to a person or the interests of a person or confer an unfair commercial or financial advantage on a person); or

- (b) to ensure that the Technical Regulator does not—
 - (i) breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty; or
 - (ii) unreasonably expose himself or herself to any legal process or liability.

(6) The Technical Regulator may give directions about who may be present at proceedings during any period when the public is excluded from attendance having regard to the wishes of the parties and the need for commercial confidentiality.

(7) A person must comply with a direction under subsection (6).

Maximum penalty: \$10 000.

- (8) The Technical Regulator may—
 - (a) give procedural directions;
 - (b) make orders requiring—
 - (i) the delivery of documents clarifying the issues between the parties;
 - (ii) the discovery and inspection of documents;
 - (c) sit at any time or place;
 - (d) adjourn the proceedings from time to time and from place to place;
 - (e) refer a matter to an expert for report, and accept the expert's report in evidence;
 - (f) appoint a mediator to facilitate resolution of the dispute by conciliation;
 - (g) fix and enforce time limits for steps in the proceedings and do anything else necessary for the expeditious and fair hearing and determination of the dispute.

(9) The Technical Regulator may proceed in the absence of a party or on failure by a party to provide written evidence or argument if the party has been given notice of the proceedings or of the requirement to provide written evidence or argument.

(10) The Technical Regulator may engage or appoint a lawyer to provide advice on the conduct of the proceedings and assist the Technical Regulator in drafting the determination.

Giving of relevant documents to Technical Regulator

55G. A party to the dispute may give the Technical Regulator a copy of documents (including confidential documents) the party considers to be relevant to the dispute.

Power to obtain information and documents

55H. (1) If the Technical Regulator has reason to believe that a person is in a position to give information, or to produce documents, that may be relevant to the dispute, the Technical Regulator may, by written notice—

- (a) require the person within a period stated in the notice—
 - (i) to give the Technical Regulator a written statement of specified information; or
 - (ii) to produce to the Technical Regulator specified documents or copies of specified documents; or
- (b) require the person to appear before the Technical Regulator at a specified time and place to give evidence.

(2) A written statement must, if the Technical Regulator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.

(3) If documents (whether originals or copies) are produced to the Technical Regulator, the Technical Regulator may—

- (a) take possession of, make copies of, and take extracts from, the documents; and
- (b) keep the documents for as long as is reasonably necessary for the purposes of the determination.

(4) A person must—

- (a) comply with a requirement of the Technical Regulator under subsection (1) or (2); and
- (b) if the person is required to appear as a witness before the Technical Regulator—comply with further requirements to make an oath or affirmation, or to answer questions.

Maximum penalty: \$10 000.

(5) However, a person need not give information or produce a document if—

- (a) the information or the contents of the document is the subject of legal professional privilege, or would tend to incriminate the person of an offence; and
- (b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the Technical Regulator or, if the person is appearing as a witness before the Technical Regulator, by an oral statement of the ground of objection.

Confidentiality of information

55I. (1) A person who gives the Technical Regulator information, or produces documents, may ask the Technical Regulator to keep the information or the contents of the documents confidential.

(2) The Technical Regulator may, after considering representations from the parties (or the other party), impose conditions limiting access to, or disclosure of, the information or documentary material in order—

- (a) to consider in confidence information that has commercial value to a person or relates to the commercial or financial affairs of a person (the Technical Regulator being satisfied that it is reasonably foreseeable that public disclosure of the information could cause significant damage to a person or the interests of a person or confer an unfair commercial or financial advantage on a person); or
- (b) to ensure that the Technical Regulator does not—
 - (i) breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty; or
 - (ii) unreasonably expose himself or herself to any legal process or liability.

(3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: \$10 000.

Termination of proceedings for determination

55J. The Technical Regulator may terminate proceedings for a determination if—

- (a) the parties request or consent to the termination; or
- (b) the Technical Regulator forms the opinion that—
 - (i) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
 - (ii) the party seeking determination of the dispute has refused or failed to negotiate reasonably and constructively with the other party.

Procedure for giving determination

55K. (1) Before the Technical Regulator makes a determination, the Technical Regulator must give each party to the dispute a copy of the draft determination and may take into account representations that either of them may make on the proposed determination.

(2) A determination must be in writing.

(3) If the Technical Regulator does not give reasons in writing for a determination under this Division when the determination is made, the Regulator must do so on request made by a party affected by the determination within one month of the making of the determination.

(4) The Technical Regulator must, within seven days after a determination is made give a copy of the determination to the parties to the dispute.

Costs

55L. (1) The Technical Regulator's costs in determining a vegetation clearance scheme dispute are to be borne by the parties to the dispute in proportions decided by the Technical Regulator and, in the absence of a decision by the Technical Regulator, in equal proportions.

(2) The costs will include the costs of any mediation or expert's report.

(3) The amount of the costs will be as determined by the Technical Regulator.

(4) The Technical Regulator may, but is not required to, hear submissions from the parties as to apportionment of the costs.

(5) The Technical Regulator may recover the costs as a debt.

(6) In any proceedings—

(a) a document signed by the Technical Regulator certifying as to the amount of the costs of a determination payable by a specified electricity entity or council constitutes proof of the matters so certified; and

(b) an apparently genuine document purporting to be such a certificate of the Technical Regulator is to be presumed to be such a certificate in the absence of proof to the contrary.

SUBDIVISION 3—ENFORCEMENT OF SCHEMES

Enforcement as contract

55M. A vegetation clearance scheme agreed or determined under this Division has effect, and may be enforced, as a contract between the electricity entity and the council concerned.

SUBDIVISION 4—RESOLUTION OF DISPUTES UNDER SCHEMES

Resolution of dispute by intervention of Technical Regulator

55N. (1) A party to a vegetation clearance scheme agreed or determined under this Division may ask the Technical Regulator to assist in the resolution of a dispute that has arisen under the scheme.

(2) The Technical Regulator has a discretion whether to assist in, or to continue to assist in, the resolution of the dispute and may impose conditions that must be satisfied if assistance is to be given or continued.

(3) If the Technical Regulator proceeds under this section, the Regulator may do one or more of the following to resolve the dispute:

(a) appoint a mediator to facilitate resolution of the dispute by conciliation;

(b) give directions to either or both parties;

- (c) determine that the vegetation clearance scheme is to be modified in a specified way.

(4) The provisions of Subdivision 2 apply (with necessary or prescribed modifications) to proceedings under this section in the same way as to proceedings for determination of a vegetation clearance scheme dispute.

Insertion of heading to Part 5 Division 3

7. The following heading is inserted before section 56 of the principal Act:

DIVISION 3—MISCELLANEOUS

Amendment of s. 56—Role of councils in relation to vegetation clearance not within prescribed areas

8. Section 56 of the principal Act is amended by inserting in subsection (1) "that are not within a prescribed area" after "powerlines".

Amendment of s. 57—Power to enter for vegetation clearance purposes

9. Section 57 of the principal Act is amended—

- (a) by inserting in subsection (1) "or council officer" after "electricity entity";
- (b) by inserting in subsection (1) "or council" after "the entity";
- (c) by inserting in subsection (2) "or council officer" after "electricity officer";
- (d) by inserting after subsection (2) the following subsection:

(2a) Subsection (2) does not apply if the clearance work to be carried out is subject to a vegetation clearance scheme.;

- (e) by inserting in subsection (3) "or council officer" after "electricity officer";
- (f) by inserting in subsection (4) "or council officer" after "electricity officer";
- (g) by inserting in subsection (5) "or council officer" after "electricity officer";
- (h) by inserting after subsection (6) the following subsection:

(7) When entering a place under a warrant or by force in an emergency, a council officer may be accompanied by a member of the police force.

Amendment of s. 58—Regulations in respect of vegetation near powerlines

10. Section 58 of the principal Act is amended—

- (a) by inserting in subsection (2)(b) "or councils" after "electricity entities";
- (b) by striking out paragraph (c) of subsection (2) and substituting the following paragraph:

- (c) provide for a process under which vegetation clearance schemes with respect to public powerlines within council areas but not within the prescribed areas are negotiated, from time to time, between electricity entities and councils; and.

Amendment of s. 74—Review of decisions by Technical Regulator

11. Section 74 of the principal Act is amended by inserting in subsection (1)(c) "(other than a direction given by the Technical Regulator under Part 5)" after "authorised officer".

Amendment of s. 82—Application and issue of warrant

12. Section 82 of the principal Act is amended—

- (a) by striking out from subsection (1) "or electricity officer" and substituting ", electricity officer or council officer";
- (b) by striking out from subsection (3) "or electricity officer" and substituting ", electricity officer or council officer".

Amendment of s. 83—Urgent situations

13. Section 83 of the principal Act is amended—

- (a) by striking out from subsection (1) "or electricity officer" and substituting ", electricity officer or council officer";
- (b) by striking out from subsection (6) "or electricity officer" and substituting ", electricity officer or council officer".

Amendment of s. 96—Evidence

14. Section 96 of the principal Act is amended by inserting after paragraph (a) of subsection (2) the following paragraph:

- (ab) as to the existence and contents of a vegetation clearance scheme;.

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

E. J. NEAL Governor