

South Australia

**ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND  
OTHER PURPOSES) ACT 1986**

An Act to provide for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public; and for other purposes.

*This Act is published under the Legislation Revision and Publication Act 2002 and incorporates all amendments in force as at **24 November 2003**.*

*Please note-References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.*

(Reprint No. 5)

**2Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986**  
**ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND  
OTHER PURPOSES) ACT 1986**

being

Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986  
No. 121 of 1986 [Assented to 18 December 1986]<sup>1</sup>

as amended by

Animal and Plant Control (Agricultural Protection and Other Purposes) Act Amendment  
Act 1989 No. 14 of 1989 [Assented to 20 April 1989]

Animal and Plant Control (Agricultural Protection and Other Purposes) (Immunity from  
Liability) Amendment Act 1992 No. 61 of 1992 [Assented to 12 November 1992]  
Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996  
[Assented to 2 May 1996]<sup>2</sup>

Animal and Plant Control (Agricultural Protection and Other Purposes) (Interim  
Control Boards) Amendment Act 1996 No. 81 of 1996 [Assented to 5 December 1996]

**River Murray Act 2003 No. 35 of 2003 [Assented to 31 July 2003]<sup>3</sup>**

<sup>1</sup> Came into operation (except Parts 3-5 and Scheds. 1 and 2) 5 March 1987: *Gaz.* 26 February 1987, p. 434; remainder of Act came into operation 1 July 1987: *Gaz.* 25 June 1987, p. 1637.

<sup>2</sup> Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

<sup>3</sup> **Schedule (cl. 1) came into operation 24 November 2003: *Gaz.* 20 November 2003, p. 4203.**

*NOTE:*

ùAsterisks indicate repeal or deletion of text.

ùEntries appearing in bold type indicate the amendments incorporated since the last reprint.

ùFor the legislative history of the Act see Appendix.

**Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986 3**  
**SUMMARY OF PROVISIONS**

**Part 1-Preliminary**

1. Short title
3. Interpretation
4. Crown bound

**Part 2-Administration**

**Division 1-Animal and Plant Control Commission**

5. Establishment of the Commission
6. Commission responsible for administration of Act
7. Members of the Commission
8. Terms and conditions
9. Procedure at meetings of the Commission
10. Validity of acts of the Commission
11. Delegation by Commission
12. Staff
13. Functions of the Commission
14. Powers of Commission in relation to lands outside areas of control boards

**Division 2-Animal and plant control boards**

15. Establishment of animal and plant control boards
- 15A. Interim control boards
16. Boards to be corporate bodies
17. Appointment of members to a control board
18. Deputies of members
19. Removal from office and vacancies
20. Meetings and procedure
21. Presiding Officer
22. Secretary
23. Delegation
24. Functions of boards

**Division 3-Authorised officers**

25. State authorised officers
26. Local authorised officers
27. Powers of authorised officers

**Division 4-Financial provisions**

28. Moneys provided by Parliament
29. Animal and Plant Control Commission Fund
30. Dingo Control Fund
31. Imposition of rates for dingo control
32. Power of Commission to borrow
33. Accounts and audit
34. Annual report and audited accounts to be submitted to Minister
35. Board funds
36. Contributions by councils to board funds
37. Commission to pay subsidies
38. Accounts
39. Annual report and audited accounts to be furnished to Commission

(Reprint No. 5)

## **4Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

### **Part 3-Control of animals**

40. Declarations for the purposes of this Act
41. Movement of animals
42. Keeping or possession of animals
43. Sale of animals
44. Offence to release animals
45. Issue of permits by Commission
46. Notification of presence of animals
47. Owner of land to destroy or control animals
48. Enforcing the owner's duty to destroy or control animals
49. Native animals
50. Destruction or control of animals outside the dog fence by poison and traps

### **Part 4-Control of plants**

51. Declarations for the purposes of this Part
52. Movement of plants or produce or goods carrying such plants
53. Prohibition against transporting animals etc from certain parts of the State
54. Sale of plants or produce or goods carrying such plants
55. Issue of permits by Commission
56. Notification of presence of plants
57. Owner of land to destroy or control plants
58. Enforcing the owner's duty to destroy or control plants
59. Duty of boards to destroy or control plants on certain lands
60. Board may recover costs of controlling plants on road reserves from owners of adjoining land

### **Part 5-Miscellaneous**

61. General exemption
62. Offence to damage certain fences
63. Offence to leave gates open
64. Prohibition against destroying certain vegetation
- 64A. Immunity from liability of landowner etc
65. Surveys etc
66. Board to co-operate with Executive Officer of Commission and State authorised officers
67. Boards may enter into agreements for destruction or control of animals or plants
68. Commission may require boards to make inspections and obtain information
69. Control boards may obtain review of certain decisions etc
70. Immunity from liability
71. Statutory charge
72. Appropriation of penalties
73. Animal-proof fences
74. Evidentiary
75. Forfeiture of profits on conviction of certain offences
76. Summary offences
77. Service
78. Regulations

### **Schedule 2-Transitional provisions**

*(Reprint No. 5)*

**Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986 5**  
LEGISLATIVE HISTORY

(Reprint No. 5)

PART 1

## 6Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986

The Parliament of South Australia enacts as follows:

### Part 1-Preliminary

#### Short title

1. This Act may be cited as the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*.

\* \* \* \* \*

#### Interpretation

3. In this Act, unless the contrary intention appears-

"**animal**" means a live vertebrate animal of any species and includes the eggs or semen of such an animal, but does not include fish;

"**animal-proof fence**" means a fence that conforms to the prescribed requirements for an animal-proof fence;

"**approved plan of management**" means a plan of management approved by the Minister for Environment and Planning in relation to native animals or native animals of a particular class;

"**area**" means-

- (a) in relation to a council-the area of the council as defined in the *Local Government Act 1934*; and
- (b) in relation to a control board-the area in relation to which the board is established;

"**authorised officer**" means a State authorised officer or a local authorised officer;

"**the Commission**" means the Animal and Plant Control Commission established under Division 1 of Part 2;

"**constituent council**" means-

- (a) in relation to a control board established under Division 2 of Part 2-a council in relation to the area of which the control board is established; and
- (b) in relation to a control board that is a council vested with the powers, duties and functions of a control board-that council;

"**control**" means-

- (a) in relation to animals of a particular class-
  - (i) destroy the animals and their warrens, burrows, nests or harbours; and
  - (ii) reduce the extent to which land is inhabited or subject to infestation by the animals, as far as is reasonably achievable; and
- (b) in relation to plants of a particular class-

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986** 7

- (i) destroy the plants; and
  - (ii) reduce and inhibit the propagation of the plants,
- as far as is reasonably achievable;

"**control board**" means an animal and plant control board established under Division 2 of Part 2 and includes (except in relation to that Division) a council vested with the powers, duties and functions of an animal and plant control board;

"**council**" means a council as defined in the *Local Government Act 1934* and includes a body corporate that is by virtue of any Act deemed to be, or vested with the powers of, a council;

"**dingo**" includes an animal that is a cross of a dingo;

"**the dog fence**" means the fence established under the *Dog Fence Act 1946*;

"**the former Authority**" means the Vertebrate Pests Control Authority established under the repealed *Vertebrate Pests Act 1975*;

"**the former Commission**" means the Pest Plants Commission established under the repealed *Pest Plants Act 1975*;

"**local authorised officer**" means a person appointed to be a local authorised officer under Division 3 of Part 2;

"**Minister for Environment and Planning**" means the Minister for the time being administering the *National Parks and Wildlife Act 1972*;

"**Murray-Darling Basin**" has the same meaning as in the *Murray-Darling Basin Act 1993*;

"**native animal**" means a protected animal within the meaning of the *National Parks and Wildlife Act 1972* and any bird or reptile included in Schedule 10 of that Act, but does not include a dingo;

"**occupier**" in relation to land means a person who has, or is entitled to, possession or control of the land;

"**outside the dog fence**" in relation to land, means land that is not within the portion of the State bounded by the dog fence, the eastern border of the State and the coast of the State and "**inside the dog fence**" has a correlative meaning;

"**owner**" of land means-

- (a) in relation to land alienated from the Crown by grant in fee simple-the holder (at law or in equity) of an estate in fee simple in the land; and
- (b) in relation to land held of the Crown by lease or licence-the lessee or licensee; and
- (c) in relation to land held of the Crown under an agreement to purchase-the person who is entitled to the benefit of the agreement; and
- (d) in relation to other land-the Crown,

(Reprint No. 5)

PART 1

**8 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

and includes an occupier of the land;

"**plant**" means vegetation of any species, and includes the seeds and any part of any such vegetation, but does not include (except where reference is made to native plants or vegetation) protected native plants within the meaning of the *National Parks and Wildlife Act 1972*;

"**prescribed control body**" means a body other than the Commission or a control board that carries out animal or plant control and is prescribed for the purposes of this Act;

"**River Murray Protection Area**" means a River Murray Protection Area under the *River Murray Act 2003*;

"**road reserve**" means land set aside for the purposes of a public road, whether or not it is being used for that purpose;

"**sell**" includes barter or exchange or offer, advertise or have in possession for sale, barter or exchange;

"**State authorised officer**" means a person appointed to be a State authorised officer under Division 3 of Part 2;

"**vehicle**" includes any vessel or aircraft.

**Crown bound**

4. This Act binds the Crown.

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986** 9

**Part 2-Administration**

**Division 1-Animal and Plant Control Commission**

**Establishment of the Commission**

5. (1) There shall be a commission entitled the "Animal and Plant Control Commission".

(2) The Commission-

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) shall be capable of suing and being sued; and
- (c) shall be capable of acquiring, holding, dealing with, and disposing of real and personal property; and
- (d) shall be capable of acquiring or incurring any other rights or liabilities; and
- (e) shall be an agency of the Crown and hold its property on behalf of the Crown; and
- (f) shall have the powers, authorities, duties and functions prescribed by or under this or any other Act.

(3) Where an apparently genuine document purports to bear the common seal of the Commission, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Commission was duly affixed to the document.

**Commission responsible for administration of Act**

6. The Commission is responsible, subject to the control and direction of the Minister, for the administration and enforcement of this Act.

**Members of the Commission**

7. (1) The Commission shall consist of 7 members appointed by the Governor, of whom-

- (a) six shall be nominated by the Minister; and
- (b) one shall be an employee of the Public Service of the State nominated by the Minister for Environment and Planning, being an employee who has, in the opinion of that Minister, appropriate knowledge of matters related to animal and plant control.

(2) Of the members appointed on the nomination of the Minister-

(a) one shall be an employee of the Public Service of the State who has, in the opinion of the Minister, appropriate knowledge of agriculture; and

(b) two shall be persons chosen by the Minister from a panel of not less than four persons nominated by the Local Government Association of South Australia, being persons who have, in the opinion of the Minister, appropriate experience in agriculture and matters of animal and plant control; and

(c) not less than four shall be primary producers.

(3) The Minister should, in nominating members for appointment to the Commission,

(Reprint No. 5)

PART 2

**10 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

endeavour to ensure that the various regions of the State are adequately represented.

(4) If the Local Government Association of South Australia does not nominate a panel of persons for the purposes of subsection (2) within a period of 30 days after receipt by that body of a written request by the Minister to do so, the Governor may appoint persons nominated by the Minister and such an appointment shall be deemed to have been made in accordance with subsection (2) (b).

(5) One of the members of the Commission shall be appointed by the Governor to be the Presiding Officer of the Commission.

**Terms and conditions**

8. (1) Subject to this section, a member of the Commission shall be appointed for a term of 3 years on such conditions as the Governor determines, and is, on the expiration of a term of appointment, eligible for reappointment.

(2) Of the first members of the Commission to be appointed, three shall be appointed for a term of 2 years.

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

(4) The provisions of section 7 as to the qualifications and nominations required for the appointment of members extend to the appointment of deputies.

(5) The Governor may remove a member from office for-

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

(6) The office of a member becomes vacant if that member-

- (a) dies; or
- (b) completes a term of appointment and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) ceases to satisfy any of the requirements of section 7 by virtue of which the member was eligible for appointment; or
- (e) is removed from office under subsection (5).

(7) On the office of a member becoming vacant, a person shall be appointed in accordance with this Act to the vacant office (but a person who is to fill a casual vacancy in the office of a member shall be appointed only for the balance of the term of the person's predecessor).

**Procedure at meetings of the Commission**

9. (1) Four members constitute a quorum of the Commission.

(2) The Presiding Officer shall preside at meetings of the Commission or, in the absence of the Presiding Officer from a meeting, the members present shall decide who is to preside at the meeting.

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 11**

(3) A decision carried by a majority of the votes of the members of the Commission present at a meeting shall be a decision of the Commission.

(4) Each member of the Commission shall be entitled to one vote on a matter arising for decision by the Commission, and the person presiding at the meeting of the Commission shall, in the event of an equality of votes, have a second or casting vote.

(5) The Commission shall meet for the transaction of business at least four times in each year and shall cause accurate minutes to be kept of its proceedings at meetings.

(6) Subject to this Act, the business of the Commission shall be conducted in a manner determined by the Commission.

**Validity of acts of the Commission**

10. An act or proceeding of the Commission shall not be invalid by reason of a vacancy in its membership, or by reason of a defect in the appointment of a person to the Commission.

**Delegation by Commission**

11. (1) The Commission may, by instrument in writing, delegate any of its powers, duties or functions under this Act-

- (a) to a member of the Commission; or
- (b) to an employee of the Public Service of the State or any member of the Commission's staff; or
- (c) to a committee.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be sub-delegated.

(3) Where a delegation is made to a committee under this section-

- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation; and
- (b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(4) A delegation or sub-delegation under this section-

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act personally in any matter; and
- (c) is revocable at will by the delegator.

(5) In any legal proceedings an apparently genuine document purporting to be a certificate under the seal of the Commission stating any matter with respect to a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of the matter stated.

**Staff**

12. (1) There shall be an Executive Officer of the Commission.

(Reprint No. 5)

PART 2

## **12 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

(2) The Executive Officer shall be a person employed in the Public Service of the State.

(3) The Commission shall have such staff as is necessary or expedient for the purposes of this Act.

(4) The Commission's staff may be comprised of-

- (a) persons employed in the Public Service of the State; or
- (b) persons employed outside the Public Service through appointments made by the Commission with the approval of the Minister on terms and conditions from time to time approved by the Governor; or
- (c) a combination of such persons.

(5) The Commission may, with the approval of the Minister administering a department of the Public Service of the State, on terms mutually arranged, make use of the services of an employee or use any facilities of the department.

### **Functions of the Commission**

**13.** (1) The functions of the Commission are as follows:

- (a) to make recommendations in relation to the establishment of control boards;
- (b) to make recommendations in relation to the classes of animals and plants to which this Act should apply;
- (c) to make recommendations in relation to the making of regulations under this Act;
- (d) to determine applications for permits under Parts 3 and 4 and the conditions of any such permits;
- (e) to conduct and direct research into the control of animals and plants to which this Act applies or may apply;
- (f) to collate and maintain a record of the species, population density and distribution, within the State, of animals and plants to which this Act applies or may apply;
- (g) to develop, implement and advise on co-ordinated programmes for the destruction or control of animals and plants that are required to be destroyed or controlled in pursuance of this Act;
- (h) to carry out measures for the destruction or control of animals and plants on unalienated Crown lands that are required to be destroyed or controlled in pursuance of this Act;
- (i) to consult and co-operate with the Minister for Environment and Planning and the Department of Environment and Planning in the implementation of any programmes devised by that Department with the approval of that Minister for the control of native animals;
- (j) to consult and co-operate with the Minister for Environment and Planning and the Department of Environment and Planning in the control of animals and plants for the protection of native animals and plants;
- (k) to ensure that the provisions of this Act are carried out and enforced and to perform such other functions as are assigned to the Commission by this Act or the Minister.

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 13**

(1a) Insofar as a program referred to in subsection (1) applies to any part of the Murray-Darling Basin, the program must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant).

(2) For the purpose, or in the course, of performing its functions, the Commission may-

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;
- (c) acquire or incur any other rights or liabilities;
- (d) do anything else that is necessary for, or incidental to, the performance of its functions.

(3) The regulations may make provision for the establishment of advisory committees (which may, but need not, include members of the Commission) to advise the Commission as to the performance of its functions in relation to particular matters and may require that the Commission obtains and has due regard to the advice of such a committee before performing its functions in relation to such matters.

**Powers of Commission in relation to lands outside areas of control boards**

14. The Commission shall have, and may exercise and discharge, in respect of any part of the State that is not within the area of a control board all the powers, duties and functions of a control board under this Act.

**Division 2-Animal and plant control boards**

**Establishment of animal and plant control boards**

15. (1) The Governor may, by proclamation, on the recommendation of the Commission-

- (a) establish a control board in relation to the area of a single council or the combined area of two or more councils; or
- (b) where the Governor is satisfied that the area of a council is predominately urban in character, declare that the council shall have all the powers, duties and functions of a control board in relation to its area.

(2) A proclamation establishing a control board under subsection (1) (a) must-

- (a) designate the board by a distinctive name; and
- (b) fix the number of persons each constituent council shall appoint as members.

(3) The Governor may, by proclamation, on the recommendation of the Commission-

- (a) vary or revoke a proclamation under this section; or
- (b) dissolve a control board with effect from a date specified in the proclamation and make any consequential provision necessary for the winding up of the affairs of the board and the disposition of its real and personal property.

(4) Any proclamation made under this section shall have effect according to its terms.

(Reprint No. 5)

PART 2

**14 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

(5) The Commission shall, in making a recommendation for the purposes of this section-

- (a) consult with and give due consideration to the representations of councils likely to be affected by any such proclamation; and
- (b) endeavour to develop an administrative structure consisting of control boards and councils vested with the powers, duties and functions of control boards that will enable the provisions of this Act to be carried out and enforced effectively in relation to all council areas within the State; and
- (c) have regard to such other matters as may be prescribed.

**Interim control boards**

**15A.** If a constituent council of a control board amalgamates with another council, the following provisions apply:

- (a) the control board remains in existence until dissolved under section 15; and
- (b) the area of the control board remains unchanged; and
- (c) despite the provisions of the proclamation that established the control board, a council the area of which falls wholly or partly within the area of the control board is (except for the purposes of this Division) a constituent council of the control board; and
- (d) the persons holding office as members of the control board at the time of the amalgamation will, subject to this Act, remain in office until the board is dissolved; and
- (e) if a vacancy occurs in the office of such a member during that period, the Commission may appoint a suitable person to fill that vacancy.

**Boards to be corporate bodies**

**16.** (1) A control board-

- (a) shall be a body corporate with perpetual succession and a common seal; and
- (b) shall be capable of suing and being sued in its corporate name; and
- (c) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property; and
- (d) shall be capable of acquiring or incurring any other rights or liabilities.

(2) Where an apparently genuine document purports to bear the common seal of a control board, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the board was duly affixed to the document.

**Appointment of members to a control board**

**17.** (1) A constituent council shall appoint the number of persons fixed by proclamation to be members of the control board established in relation to the area of the council.

(2) A person appointed by a council under subsection (1) must be a member of, or reside in the area of, the council.

(3) A member shall be appointed for a term of 12 months and is, on the expiration

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 15**

of a term of appointment, eligible for reappointment.

(4) A member of a control board shall be entitled to receive from the council appointing the member such expenses as may be determined by that council.

(5) If a constituent council fails to appoint a person to a vacant office on a control board required to be filled by appointment of that council, the Commission may appoint to the vacant office a person who is a member of, or resides in the area of, that council.

(6) An act or proceeding of a control board shall not be invalid by reason of a vacancy in its membership, or by reason of a defect in the appointment of a member.

**Deputies of members**

18. Where-

- (a) a council has appointed a person to be a member of a control board-the council may appoint a person to be a deputy of that member; or
- (b) the Commission has appointed a person to be a member of a control board-the Commission may appoint a person to be a deputy of that member,

and the deputy may, in the absence of that member, act as a member of the control board.

**Removal from office and vacancies**

19. (1) A member of a control board may be removed from office by the council that appointed the member, or by the Commission, on the grounds of-

- (a) mental or physical incapacity to carry out official duties satisfactorily; or
- (b) neglect of duty; or
- (c) dishonourable conduct.

(2) The office of a member becomes vacant if that member-

- (a) dies; or
- (b) completes a term of appointment and is not reappointed; or
- (c) resigns by written notice addressed-
  - (i) where appointed by a council-to that council; or
  - (ii) where appointed by the Commission-to the Commission; or

(d) is removed from office under subsection (1).

(3) Subject to this section, on the office of a member of a control board becoming vacant, the council by or in relation to which the member was appointed shall appoint a person to the vacant office in accordance with this Act.

(4) Where the Commission removes a member of a control board, the Commission shall appoint to the vacant office a person who is a member of, or resides in the area of, the council by or in relation to which the former member was appointed.

(5) Where the office of a member of a control board becomes vacant before the expiration of the term for which the member was appointed, a person appointed to

(Reprint No. 5)

PART 2

## 16 **Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

the vacant office shall be appointed only for the balance of that term.

### **Meetings and procedure**

20. (1) Subject to this Act, each control board shall conduct its business in such manner as it may determine.

(2) A number of members of a board equal to half the total number of members for the time being appointed to the board, plus one, constitutes a quorum of the board.

(3) Each board shall-

- (a) hold a meeting within 2 months from the completion in each year of the annual appointments made for the purpose of establishing its membership; and
- (b) hold at least 4 meetings for the transaction of business in each 12 month period; and
- (c) admit to any of its meetings a person authorised by the Commission to attend meetings of control boards; and
- (d) keep proper minutes of its proceedings at meetings and, when requested by the Commission to do so, furnish a copy of its minutes to the Commission.

### **Presiding Officer**

21. (1) At the first meeting of a control board held after the completion in each year of the annual appointments made for the purpose of establishing its membership, the members present shall elect one of their number to be the presiding officer of the board for the balance of their terms of appointment.

(2) If the member elected to be the presiding officer of the board ceases to be a member of the board before the expiration of the term for which the member was appointed, the members present at the next meeting of the board shall elect one of their number to be the presiding officer for the balance of their terms of appointment.

(3) The presiding officer shall preside at meetings of the board, but, in the absence of the presiding officer from a meeting, the members present shall decide who is to preside at that meeting.

(4) A decision carried by a majority of the votes of the members of the board present at a meeting shall be a decision of the board.

(5) Each member of the board shall be entitled to one vote on a matter arising for decision by the board, and the person presiding at a meeting of the board shall, in the event of an equality of votes, have a second or casting vote.

### **Secretary**

22. Each control board shall appoint a person to be secretary of the board.

### **Delegation**

23. (1) A control board may, with the approval of the Commission, by instrument in writing, delegate any of its powers, duties or functions under this Act-

- (a) to a member of the board; or
- (b) to any other person approved by the Commission.

(2) A delegation under this section-

- (a) may be absolute or conditional; and

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 17**

(b) does not derogate from the power of the delegator to act personally in any matter; and

(c) is revocable at will by the delegator.

(3) In any legal proceedings an apparently genuine document purporting to be a certificate under the seal of a control board stating particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of those particulars.

**Functions of boards**

24. (1) The functions of a control board are-

(a) to ensure that the provisions of this Act are carried out and enforced within the area of the board; and

(b) to co-operate with the Commission, other control boards and any prescribed control body in the development and implementation of co-ordinated programmes for the destruction or control of animals and plants that are required to be destroyed or controlled in pursuance of this Act; and

(c) to carry out inspections within the area of the board in order to determine whether the provisions of this Act are being complied with; and

(d) to collate and maintain records of the species, population density and distribution within the area of the board of animals and plants that are required to be destroyed or controlled in pursuance of this Act; and

(e) to discharge the duties and obligations imposed on the board by or under this Act; and

(f) to perform other functions necessary or incidental to the foregoing.

(2) Insofar as a program referred to in subsection (1) applies to any part of the Murray-Darling Basin, the program must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant).

**Division 3-Authorised officers**

**State authorised officers**

25. (1) The Minister may appoint a person, subject to such conditions as the Minister thinks fit, to be a State authorised officer.

(2) The powers conferred on a State authorised officer by this Act may be exercised in the whole of the State or such part or parts of the State as may be specified in the instrument of appointment.

(3) The Minister may vary or revoke an appointment at any time.

(4) A State authorised officer shall be provided with a certificate of appointment.

**Local authorised officers**

26. (1) Each control board shall appoint one or more local authorised officers as required under this section.

(2) The Commission may, by notice in writing addressed to a control board-

(Reprint No. 5)

PART 2

**18 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

- (a) require the board to appoint one or more local authorised officers as specified in the notice; and
- (b) specify in the notice the qualifications or experience that a person must possess in order to be appointed to be a local authorised officer.

(3) The powers conferred on a local authorised officer by this Act may be exercised within the area of the control board by which the local authorised officer is appointed, or, if directed by the Commission, in any other area subject to any conditions imposed by the Commission.

(4) A local authorised officer shall be provided with a certificate of appointment by the appointing control board.

**Powers of authorised officers**

**27.** (1) An authorised officer may, subject to the conditions of the authorised officer's appointment-

- (a) enter and inspect any land, premises, vehicle or place where the authorised officer reasonably suspects that an offence against this Act is being or has been committed or where necessary for the purpose of determining whether a provision of this Act is being or has been complied with;
- (b) where reasonably necessary for that purpose, break into or open any part of, or anything in or on, the land, premises, vehicle or place, or, in the case of a vehicle, give directions with respect to the stopping or moving of the vehicle;
- (c) where the authorised officer finds any animals or plants that are required or liable to be destroyed or controlled under this Act, seize and remove the animals or plants or take measures for their destruction or control;
- (d) require a person who the authorised officer reasonably suspects has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;
- (e) require a person who the authorised officer reasonably suspects has knowledge concerning any matter relating to the administration of this Act to answer questions in relation to those matters;
- (f) require a person who has custody of an animal or plant in contravention of this Act, by notice in writing, to deliver the animal or plant to an authorised officer at a place and within a period specified in the notice;
- (g) require a person who has custody of records or documents of, or relating to, any matter dealt with by this Act to produce those records or documents;
- (h) inspect and take copies of, or extracts from, records or documents produced under this section;
- (i) remove and examine or test any animal, plant, vehicle, equipment, cage or other thing, or cause it to be examined or tested, for the purpose of determining whether a provision of this Act is being or has been complied with;
- (j) where the authorised officer reasonably suspects that an offence against this Act has been committed, seize and remove any animal, plant, vehicle, equipment, cage or other thing that, in the opinion of the authorised officer, affords evidence of the offence;

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 19**

(k) require a person holding or required to hold a permit to produce the permit for inspection.

(2) An authorised officer shall not exercise the power conferred by subsection (1) (a) or (b) in relation to any house or other building except on the authority of a warrant issued by a justice.

(3) A justice shall not issue a warrant under subsection (2) unless satisfied, on information given on oath-

(a) that there are reasonable grounds to suspect that an offence against this Act is being or has been committed in a house or other building; and

(b) that a warrant is reasonably required in the circumstances.

(4) A person may, at the request of an authorised officer, accompany and assist the authorised officer in the exercise of powers conferred by this section.

(5) A person who, without reasonable excuse-

(a) hinders an authorised officer in the exercise of powers conferred by this section;

(b) fails to comply with a requirement of an authorised officer under this section;

(c) fails to answer, to the best of the person's knowledge, information and belief, a question put to the person by an authorised officer, is guilty of an offence.

Penalty: \$500.

(6) A person is not required to answer a question under this section if the answer would tend towards self-incrimination.

(7) An animal seized by or delivered into the custody of an authorised officer pursuant to subsection (1) (c) or (f) may be destroyed or disposed of in such manner as the Commission approves.

(8) Where anything has been seized under subsection (1) (j) the following provisions apply:

(a) if-

(i) proceedings are not instituted for an offence against this Act related to the thing seized within 6 months after its seizure; or

(ii) proceedings having been so instituted, the thing seized is not ordered to be forfeited to the Crown,

the person from whom it was seized or any person with legal title to it shall be entitled to recover it, or, if it has been destroyed or damaged or has deteriorated, to recover from the Minister by action in any court of competent jurisdiction compensation for the loss suffered;

(b) a court convicting a person of an offence against this Act related to the thing seized may, in addition to imposing a penalty, order that it be forfeited to the Crown;

(c) where anything is ordered to be forfeited to the Crown, it shall be disposed

(Reprint No. 5)

PART 2

**20 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

of in such manner as the Minister directs, and, if sold, the proceeds of the sale shall be paid to the Treasurer for the credit of the Consolidated Account.

(9) An authorised person shall, at the request of a person in relation to whom the authorised person has exercised, or intends to exercise, any power under this Act, produce for the inspection of the person, the certificate of appointment provided to the authorised person under this Act.

**Division 4-Financial provisions**

**Moneys provided by Parliament**

28. Subject to this Act, the moneys required for the purposes of this Act shall be paid out of moneys appropriated by Parliament for those purposes.

**Animal and Plant Control Commission Fund**

29. (1) There shall be a Fund kept in a separate account at the Treasury to be called the "Animal and Plant Control Commission Fund".

(2) The Fund shall consist of-

- (a) the money provided by Parliament under this Division; and
- (b) the money in the fund kept by the former Commission immediately before the commencement of this Act; and
- (c) any income paid into the Fund under subsection (4); and
- (d) money borrowed by the Commission; and
- (e) all other money that is required or authorised by law to be paid into the Fund.

(3) Any money in the Fund that is not for the time being required for the purposes of this Act may be invested by the Treasurer.

(4) Any income from investment of money belonging to the Fund shall, at the discretion of the Treasurer, be paid into the Fund or the Consolidated Account.

(5) The Commission may apply any part of the Fund-

- (a) in defraying the expenses incurred by the Commission in the administration of this Act; and
- (b) in paying subsidies or making grants to control boards or any prescribed control body; and
- (c) in making any other payment required or authorised by law.

**Dingo Control Fund**

30. (1) The Dingo Control Fund established under the repealed *Vertebrate Pests Act 1975* shall continue in existence and be kept in a separate account at the Treasury.

(2) The Fund shall consist of-

- (a) the moneys recovered by way of rates imposed under section 31; and
- (b) the money paid by the Treasurer by way of subsidy under this section; and

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 21**

(c) any income paid into the Fund under subsection (4); and

(d) all other money that is required or authorised by law to be paid into the Fund.

(3) Any money in the Fund that is not for the time being required for the purposes of this Act may be invested by the Treasurer.

(4) Any income from investment of money belonging to the Fund shall, at the discretion of the Treasurer, be paid into the Fund or the Consolidated Account.

(5) The Treasurer shall in each financial year, out of money appropriated by Parliament for the purpose, pay to the Commission a subsidy equivalent in amount to the money payable to the Commission by way of rates under section 31 for that financial year.

(6) The Fund shall be applied by the Commission-

(a) in the payment of rewards for the destruction of dingoes under this section; and

(b) for any other purpose relating to the control of dingoes deemed appropriate by the Commission; and

(c) in making any other payment required or authorised by law.

(7) The Commission shall, subject to the prescribed conditions, pay out of the Fund such sum, if any, as is from time to time fixed under this section, as a reward for the destruction of a dingo.

(8) The Commission may, after consultation with the Chairman of the Dog Fence Board constituted under the *Dog Fence Act 1946*, from time to time, by notice published in the *Gazette*, fix the sum payable as a reward for the destruction of a dingo, which sum may vary according to the age of the dingo destroyed and according to the locality in which it is destroyed.

**Imposition of rates for dingo control**

**31.** (1) The Commission may, by notice published in the *Gazette*, declare that any separate holding of more than 10 square kilometres of land that is situated within the area specified in the notice shall be ratable land and, by further notice, amend or vary that notice.

(2) The Commission may, by notice published in the *Gazette*, in respect of each financial year, declare a rate upon ratable land and the minimum amount payable by way of rates by any person.

(3) The rate shall be expressed as an amount per square kilometre of ratable land not exceeding 10 cents per square kilometre.

(4) Where the amount payable by any person by way of rates would, but for this subsection, be less than the minimum amount for the time being declared under this section, the amount payable by that person shall be that minimum amount.

(5) The Commission shall as soon as practicable after declaration of a rate serve on the owner or occupier of ratable land a notice setting forth the amount the owner or occupier is liable to pay by way of rates under this section.

(6) The rates become due and payable on the expiration of 28 days from the day on which the notice is served under subsection (5).

(Reprint No. 5)

PART 2

## **22 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

(7) Subject to subsection (8), where a person fails to pay the rates payable by the person on or before the expiration of 28 days from the day on which they become due and payable, the person is liable to pay, in addition to the amount of the rates unpaid, a fine of 10 per cent of the amount unpaid.

(8) The Commission may, in its discretion, remit the whole or part of any fine payable by any person under subsection (7).

(9) Any rates or fine imposed under this section shall, when due and payable, be a debt due to the Commission and may be recovered in a court of competent jurisdiction.

(10) A document executed by the Commission stating the amount of any rates or fine payable by a person shall, in the absence of proof to the contrary, be accepted as proof of that amount in any legal proceedings for its recovery.

### **Power of Commission to borrow**

**32.** (1) The Commission may borrow money from the Treasurer, or with the consent of the Treasurer, from any other person for the purpose of carrying out its functions under this Act.

(2) A liability incurred with the consent of the Treasurer under subsection (1) is guaranteed by the Treasurer.

(3) A liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) shall be satisfied out of the Consolidated Account, which is, to the necessary extent, appropriated accordingly.

### **Accounts and audit**

**33.** (1) The Commission shall cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Commission.

### **Annual report and audited accounts to be submitted to Minister**

**34.** (1) The Commission shall, within 3 months after the thirty-first day of December in each year, submit to the Minister a report on its operations during the year ending on that day together with the audited accounts of the Commission for that year.

(2) The Minister shall, within 12 sitting days after receipt of the report and the audited accounts, cause copies of the report and accounts to be laid before each House of Parliament.

### **Board funds**

**35.** (1) Each control board shall establish, maintain and administer a fund to be called by a distinctive name.

(2) The fund of a control board shall consist of-

- (a) contributions received from the constituent council or councils; and
- (b) subsidies and grants paid by the Commission under this Act; and
- (c) income from investment of money belonging to the fund; and
- (d) penalties paid to the board under this Act; and
- (e) money borrowed by the board; and

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 23**

(f) all other money that is required or authorised by law to be paid into the fund.

(3) Any money in the fund of a control board that is not for the time being required for the purposes of this Act may, with the consent of the Commission, be invested by the board in any investments authorised by law for the investment of trust funds.

(4) A control board may apply any part of its fund-

(a) in defraying the expenses incurred by the board in the administration of this Act; and

(b) in the purchase or hire of any land, building, plant or equipment required by the board for the purposes of this Act; and

(c) in making any other payment required or authorised by law.

(5) A control board may, with the consent of the Commission, borrow money from such sources and on such terms as the Commission may approve.

**Contributions by councils to board funds**

**36.** (1) Each control board shall lodge with the Commission, not later than 31 October in each year, a written estimate of the expenditure to be incurred by the board in the discharge of its duties and the performance of its functions under this Act during the following year.

(2) The Commission shall, on the basis of an estimate received from a board under subsection (1), determine in respect of the constituent council or each constituent council of that board the sum of money (if any) to be contributed by the council to the board's fund in respect of the following year.

(3) Before making a determination under subsection (2) the Commission shall have regard to any representations made by the control board, or the constituent council or councils, in the matter.

(4) Subject to subsection (5), the contribution to be paid by a constituent council under this section shall be-

(a) in respect of such portion of the council area as is comprised of rural land, such percentage, not exceeding 4 per cent, of the general rate revenue to be derived by the council during the current financial year in respect of that rural land, as the Commission determines; and

(b) in respect of such portion of the council area as is comprised of urban land, such percentage, not exceeding 1 per cent, of the general rate revenue to be derived by the council during the current financial year in respect of that urban land, as the Commission determines.

(5) Notwithstanding subsection (4), the Commission may, with the agreement of a control board, determine that no contribution shall be payable by a constituent council in respect of a year.

(6) The Commission shall, not later than the thirty-first day of December in each year, give a notice in writing to each control board and the constituent council or councils of that board of the determination made by the Commission as to the contributions to be paid by the constituent council or councils, and shall cause that determination to be published in the *Gazette*.

(7) A constituent council shall pay the contribution determined by the Commission

(Reprint No. 5)

PART 2

## **24 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

under this section into the board's fund not later than the thirty-first day of May next following the making of the determination and shall, on payment of the contribution, notify the Commission in writing of the payment.

(8) If a constituent council fails to pay its contribution into the board's fund in accordance with subsection (7), the Minister may deduct the whole, or part, of the sum due by the council from any money payable to the council by way of subsidy or Government grant, and may pay the amount so deducted into the board's fund in full, or part, satisfaction of the liability of the constituent council.

(9) In this section-

(a) "**rural land**" means any ratable property that does not lie within a municipality or township; and

(b) "**urban land**" means any ratable property that lies within a municipality or township; and

(c) the expressions "**municipality**", "**ratable property**" and "**township**" have the meanings assigned to those expressions in the *Local Government Act 1934*.

### **Commission to pay subsidies**

**37.** (1) Subject to this section, the Commission shall, each year, pay a subsidy to each control board at the rate of 50 cents for every dollar of the total contribution paid by the constituent council or councils under section 36.

(2) The subsidy under subsection (1) shall be paid by the Commission in 2 instalments, half of the Commission's estimate of the subsidy being paid before the thirty-first day of January in each year, and the balance of the subsidy being paid before the thirtieth day of June in each year.

(3) The Commission may, in such circumstances as it thinks fit, make a special grant to a control board or a prescribed control body.

### **Accounts**

**38.** Each control board shall-

(a) cause proper accounts to be kept of its financial affairs; and

(b) appoint an auditor for the purpose of auditing those accounts.

### **Annual report and audited accounts to be furnished to Commission**

**39.** Each control board shall, as soon as practicable after the thirty-first day of December in each year, submit to the Commission a report on its operations during the year ending on that day together with the audited accounts of the board for that year.

**Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986 25**

**Part 3—Control of animals**

**Declarations for the purposes of this Act**

40. (1) The Governor may, by proclamation—

- (a) on the recommendation of the Commission, declare that a specified provision of this Part applies to a specified class of animals; and
- (b) in addition, if so recommended by the Commission, do either or both of the following:
  - (i) declare that a specified area (which may be the whole or a part of the State) is a control area for that class of animals for the purposes of that provision;
  - (ii) declare that a prohibition contained in that provision operates as an absolute prohibition in relation to that class of animals and that control area (if any).

(2) The Governor may, by proclamation, on the recommendation of the Commission, vary or revoke a declaration under this section.

(3) A proclamation shall not be made under this section in relation to native animals except as authorised by an approved plan of management for the purpose of applying section 47(2) (and making any additional declaration under subsection (1)(b)) in relation to a class of native animals.

**Movement of animals**

41. Subject to this Act, a person shall not bring an animal of a class to which this section applies, or cause or permit an animal of that class to be brought, into a control area for that class of animals.

Penalty: \$2 000 or 6 months imprisonment.

**Keeping or possession of animals**

42. Subject to this Act, a person shall not keep an animal of a class to which this section applies, or have an animal of that class in the person's possession or control, within a control area for that class of animals.

Penalty: \$2 000 or 6 months imprisonment.

Expiation fee: \$100.

**Sale of animals**

43. Subject to this Act, a person shall not sell an animal of a class to which this section applies.

Penalty: \$2 000 or 6 months imprisonment.

Expiation fee: \$100.

**Offence to release animals**

44. (1) A person shall not release an animal of a class to which this section applies, or cause or permit an animal of that class to be released, in a control area for that class of animals.

Penalty: \$2 000 or 6 months imprisonment.

(2) It shall be a defence to a charge of an offence against subsection (1) if the defendant proves that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.

(Reprint No. 5)

PART 3

## 26 **Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

(3) Any costs and expenses incurred by the Commission, or a control board, in the capture or destruction, or attempted capture or destruction, of an animal released in contravention of subsection (1) may, by action in a court of competent jurisdiction, be recovered as a debt from the owner of the animal or from the person who released it or caused or permitted it to be released.

(4) An apparently genuine document purporting to be a certificate of the Commission or a control board (as the case may be) stating the amount of any costs and expenses referred to in subsection (3) shall, in the absence of proof to the contrary, be accepted as proof of the amount of those costs or expenses in any legal proceedings for their recovery.

### **Issue of permits by Commission**

45. (1) The Commission may issue, subject to such conditions as may be specified by the Commission, a permit to any person-

- (a) authorising the movement of a specified animal or animals of a specified class; or
- (b) authorising the keeping of a specified animal or animals of a specified class; or
- (c) authorising the sale of a specified animal or animals of a specified class.

(2) A permit may not be issued under this section where a provision of this Part operates (by virtue of a declaration under section 40) as an absolute prohibition of the conduct for which the permit is sought.

(2a) The Commission must, in issuing a permit under this section that applies to an activity that is to be, or may be, undertaken within the Murray-Darling Basin, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant).

(2b) If an application for a permit under this section relates to an activity that is to be, or may be, undertaken within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Commission must, before making its decision on the application-

- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
- (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the permit be subject to conditions specified by the Minister).

(3) A person seeking a permit under this section may be required by the Commission, before the issue of the permit, to pay an amount not exceeding the prescribed amount as security for compliance with the conditions of the permit.

(4) An amount paid to the Commission pursuant to subsection (3) shall be paid into the Animal and Plant Control Commission Fund and shall, on the expiration or revocation of the permit, be repaid to the person by whom it was paid unless the person failed to comply with a condition of the permit, in which case, it is forfeited to the Fund.

(5) The Commission may, by notice in writing to the holder of a permit, vary or

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 27**

revoke the permit, or a condition of the permit or impose a further condition of the permit.

(6) A person affected by a decision of the Commission relating to a permit under this section may, within 14 days after the making of the decision, apply to the Minister for a review of the decision.

(7) The Minister may, on application made under subsection (6), confirm, vary or set aside the decision.

**Notification of presence of animals**

**46.** (1) Where an owner of land within a control area for a class of animals to which this section applies becomes aware of the presence of an animal of that class on that land, the owner shall, within 7 days, notify-

- (a) the control board for the area in which the land is situated; or
- (b) if there is no control board for the area-the Commission,

of the species of animal and the locality in which it was last seen.

Penalty: \$1 000.

(2) Where a control board becomes aware of the presence of an animal of a class to which this section applies on land situated within both a control area for that class of animals and the area of the board, the board must, within 7 days, notify the Commission of the species of animal and the locality in which it was last seen.

**Owner of land to destroy or control animals**

**47.** (1) An owner of land within a control area for a class of animals to which this subsection applies must destroy all animals of that class on that land.

(2) An owner of land within a control area for a class of animals to which this subsection applies must control and keep controlled all animals of that class on that land.

(3) An owner of land within a control area for a class of animals to which this subsection applies must take prescribed measures for the control of all animals of that class on that land.

(4) In this section, a reference to land of an owner includes, where the land adjoins a road reserve, the section of the road reserve adjoining the owner's land up to the middle of the road reserve.

**Enforcing the owner's duty to destroy or control animals**

**48.** (1) Where a local authorised officer considers that an owner of land has not adequately discharged the duty imposed on the owner under section 47, the local authorised officer may issue a warning notice, in a form approved by the Minister, to that owner.

(2) A local authorised officer must forward to the Commission a duplicate copy of any warning notice issued under this section.

(3) Subject to section 49, a State authorised officer may, by notice in a form approved by the Minister, require an owner of land to discharge the duty imposed on the owner under section 47.

(3a) A State authorised officer must, in issuing a notice that applies to an area within the Murray-Darling Basin, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under

(Reprint No. 5)

PART 3

**28 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

that Act (insofar as may be relevant).

(4) A notice under subsection (3)-

(a) must specify a period, being not less than 14 days from the giving of the notice, within which the requirements of the notice are to be carried out; and

(b) may specify any of the following matters:

(i) the class of animals to which the notice applies;

(ii) the area of land to which the notice applies;

(iii) the measures to be taken for the destruction or control of animals.

(5) An owner of land may, within 14 days after receiving a notice under subsection (4), apply to the Minister for a review of the notice.

(6) The Minister may, on an application under subsection (5), confirm, vary or set aside the notice.

(7) Where an owner of land given a notice under subsection (4) (which has not been set aside by the Minister) fails to carry out the requirements of the notice-

(a) the owner shall be guilty of an offence and liable to a penalty of \$1 000; and

(b) the Commission may-

(i) cause the requirements of the notice to be carried out; and

(ii) by action in a court of competent jurisdiction, recover from the owner as a debt the amount of costs and expenses incurred by the Commission in carrying out the requirements of the notice together with any interest charge payable under this section.

(8) Where the Commission has incurred costs and expenses in carrying out the requirements of a notice in pursuance of this section, the Commission may, by notice in writing to the owner of the land in question, fix a period, being not less than 28 days from the date of the notice, within which the amount of those costs and expenses must be paid by the owner, and if the amount is not paid by the owner within that period, the owner is liable to pay interest charged at the rate of 10 per cent per annum on the amount unpaid.

(9) An apparently genuine document purporting to be a certificate of the Commission stating the amount of any costs and expenses referred to in subsection (7) shall, in the absence of proof to the contrary, be accepted as proof of the amount of those costs or expenses in any legal proceedings for their recovery.

(10) Where the Commission is empowered to cause the requirements of a notice to be carried out in pursuance of this section, any person authorised in writing by the Commission may enter the land in question and carry out the measures specified in the authorisation.

(11) No person shall hinder or obstruct a person acting in the exercise of powers conferred by subsection (10).

Penalty: \$1 000.

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 29**

**Native animals**

49. Where an owner of land is required to discharge the duty imposed on the owner under section 47 in relation to native animals-

- (a) a notice shall not be issued pursuant to section 48 in relation to those animals except by a State authorised officer and as authorised by an approved plan of management; and
- (b) an owner shall, if the owner takes any measures for the control of the animals other than measures specified in a notice issued by a State authorised officer, be guilty of an offence and liable to a penalty not exceeding \$2 000 or imprisonment for a term not exceeding 6 months.

**Destruction or control of animals outside the dog fence by poison and traps**

50. (1) An owner of land bounded by and inside the dog fence may, for the purpose of the destruction or control of animals required to be destroyed or controlled in pursuance of this Act, lay poison or set traps on adjoining land immediately outside the dog fence in accordance with the terms of approved proposals and shall have such access to the adjoining land as is necessary for that purpose.

(2) In this section-

**"approved proposals"** means-

- (a) proposals contained in a notice given under subsection (3) to which no notice of objection has been given under subsection (4); or
- (b) proposals contained in a notice given under subsection (3) as confirmed or varied by the Minister under subsection (6).

(3) Where an owner of land proposes to lay poison or set traps pursuant to this section, the owner must first give notice, in a form approved by the Minister, of the proposals to the owner of the adjoining land.

(4) The owner of the adjoining land may, if not in agreement with any proposals contained in a notice given under subsection (3), within 14 days of the receipt of that notice, give notice of objection to the other owner.

(5) Where a notice of objection is given under subsection (4), an application for review of the proposals may be made to the Minister within 14 days of the giving of that notice.

(6) The Minister may, on application made under subsection (5), confirm, vary or set aside the proposals.

(Reprint No. 5)

PART 4

**30 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

**Part 4-Control of plants**

**Declarations for the purposes of this Part**

51. (1) The Governor may, by proclamation-

- (a) on the recommendation of the Commission, declare that a specified provision of this Part applies to a specified class of plants; and
- (b) in addition, if so recommended by the Commission, do either or both of the following:
  - (i) declare that a specified area (which may be the whole or a part of the State) is a control area for that class of plants for the purposes of that provision; or
  - (ii) declare that a prohibition contained in that provision operates as an absolute prohibition in relation to that class of plants and control area (if any).

(2) The Governor may, on the recommendation of the Commission, vary or revoke a declaration under this section.

**Movement of plants or produce or goods carrying such plants**

52. (1) Subject to this Act, a person shall not bring a plant of a class to which this subsection applies, or cause or permit a plant of that class to be brought, into a control area for that class of plants.

Penalty: \$2 000 or 6 months imprisonment.

(2) Subject to this Act, a person shall not transport or move, or cause or permit to be transported or moved, on a public road within a control area for a class of plants to which this subsection applies-

- (a) a plant of that class; or
- (b) any animal, plant, soil, vehicle, farming implement or other produce or goods carrying a plant of that class.

Penalty: \$2 000 or 6 months imprisonment.

(3) It shall be a defence to a charge of an offence against subsection (2) if the defendant proves-

- (a) that the defendant acted in accordance with the terms of a written approval given by an authorised officer; or
- (b) that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.

**Prohibition against transporting animals etc from certain parts of the State**

53. (1) For the purpose of preventing the spread of a plant that is required to be destroyed or controlled in pursuance of this Act, the Commission may, by notice published in the Gazette and in a newspaper, or newspapers, circulating throughout the State, prohibit as from a day specified in the notice the transportation or movement of any animals, plants, soil, or any other specified thing, from any part of the State specified in the notice to any other part of the State.

(2) A notice under this section shall be published not later than 7 days before the day specified in the notice as the day from which the prohibition is to apply.

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 31**

(3) The Commission may, by subsequent notice, vary or revoke any notice under this section.

(4) Subject to this section, a person shall not contravene or fail to comply with a notice under this section.

Penalty: \$1 000.

(5) It shall be a defence to a charge of an offence against subsection (4) if the defendant proves that the defendant acted in accordance with the terms of a written approval given by an authorised officer.

**Sale of plants or produce or goods carrying such plants**

**54.** (1) Subject to this Act, a person shall not sell a plant of a class to which this subsection applies.

Penalty: \$2 000 or 6 months imprisonment.

Expiation fee: \$100.

(2) Subject to this Act, a person shall not sell any animal, plant, soil, vehicle, farming implement or other produce or goods carrying a plant of a class to which this subsection applies.

Penalty: \$2 000 or 6 months imprisonment.

Expiation fee: \$100.

(3) It shall be a defence to a charge of an offence against subsection (2) if the defendant proves-

(a) that the defendant acted in accordance with the terms of a written approval given by an authorised officer; or

(b) that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.

**Issue of permits by Commission**

**55.** (1) The Commission may issue, subject to such conditions as may be specified by the Commission, a permit to any person-

(a) authorising the movement of a specified plant or plants of a specified class; or

(b) authorising the sale of a specified plant or plants of a specified class.

(2) A permit may not be issued under this section where a provision of this Part operates (by virtue of a declaration under section 51) as an absolute prohibition of the conduct for which the permit is sought.

(2a) The Commission must, in issuing a permit under this section that applies to an activity that is to be, or may be, undertaken within the Murray-Darling Basin, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant).

(2b) If an application for a permit under this section relates to an activity that is to be, or may be, undertaken within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Commission must, before finalising its decision on the application-

(Reprint No. 5)

PART 4

### **32 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

(a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and

(b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the permit be subject to conditions specified by the Minister).

(3) The Commission may, by notice in writing to the holder of a permit, vary or revoke the permit, or a condition of the permit, or impose a further condition of the permit.

(4) A person affected by a decision of the Commission relating to a permit under this section may, within 14 days after the making of the decision, apply to the Minister for a review of the decision.

(5) The Minister may, on application made pursuant to subsection (4), confirm, vary or set aside the decision.

#### **Notification of presence of plants**

**56.** (1) Where an owner of land within a control area for a class of plants to which this section applies becomes aware of the presence of plants of that class on that land, the owner shall, within 7 days, notify-

(a) the control board for the area in which the land is situated; or

(b) if there is no control board for the area-the Commission,

of the species of plant and its location.

Penalty: \$1 000.

(2) Where a control board becomes aware of the presence of a plant of a class to which this section applies on land situated within both a control area for that class of plants and the area of the board, the board must, within 7 days, notify the Commission of the species of plant and its location.

#### **Owner of land to destroy or control plants**

**57.** (1) Subject to subsection (3), an owner of land within a control area for a class of plants to which this subsection applies must destroy all plants of that class on that land.

(2) Subject to subsection (3), an owner of land within a control area for a class of plants to which this subsection applies must control and keep controlled all plants of that class on that land.

(3) The Commission may, subject to such conditions as the Commission thinks fit, exempt a person from the requirements of subsection (1) or (2).

(4) The Commission may, by notice in writing given to a person to whom it has granted an exemption under subsection (3), vary or revoke the exemption, or a condition of the exemption, or attach a further condition to the exemption.

#### **Enforcing the owner's duty to destroy or control plants**

**58.** (1) An authorised officer may, by notice in a form approved by the Minister, require an owner of land to discharge the duty imposed on the owner under section 57.

(1a) An authorised officer must, in issuing a notice that applies to land within

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 33**

the Murray-Darling Basin, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as may be relevant).

(2) A notice under subsection (1)-

(a) must specify a period, being not less than 14 days from the giving of the notice, within which the requirements of the notice are to be carried out; and

(b) may specify any of the following matters:

(i) the class of plants to which the notice applies;

(ii) the area of land to which the notice applies;

(iii) the measures to be taken for the destruction or control of plants.

(3) An owner of land may within 14 days after receiving a notice under subsection (2), apply to the Commission for a review of the notice.

(4) The Commission may, on application under subsection (3), confirm, vary or set aside the notice.

(5) Where an owner of land given a notice under subsection (1) (which has not been set aside by the Commission) fails to carry out the requirements of the notice-

(a) the owner shall be guilty of an offence and liable to a penalty of \$1 000; and

(b) the Commission or the control board for the area in which the land is situated may-

(i) cause the requirements of the notice to be carried out; and

(ii) by action in a court of competent jurisdiction recover from the owner as a debt the amount of costs and expenses incurred by the Commission or the board in carrying out the requirements of the notice together with any interest charge payable under this section.

(6) Where the Commission or a control board has incurred costs and expenses in carrying out the requirements of a notice in pursuance of this section, the Commission or board may, by notice in writing to the owner of the land in question, fix a period, being not less than 28 days from the date of the notice, within which the amount of those costs and expenses must be paid by the owner, and if the amount is not paid by the owner within that period, the owner is liable to pay interest charged at the rate of 10 per cent per annum on the amount unpaid.

(7) An apparently genuine document purporting to be a certificate of the Commission or a control board stating the amount of any costs and expenses referred to in subsection (5) shall, in the absence of proof to the contrary, be accepted as proof of the amount of those costs and expenses in any legal proceedings for their recovery.

(8) Where the Commission or a control board is empowered to cause the requirements of a notice to be carried out in pursuance of this section, any person authorised in writing by the Commission or the board may enter the land in question and carry out the measures specified in the authorisation.

(9) No person shall hinder or obstruct a person acting in the exercise of powers

(Reprint No. 5)

PART 4

**34 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

conferred by subsection (8).

Penalty: \$1 000.

**Duty of boards to destroy or control plants on certain lands**

**59.** (1) Each control board shall carry out proper measures for the destruction of all plants of a class to which section 57(1) applies and for the control of all plants of a class to which section 57(2) applies on road reserves situated within both the area of the board and the control areas for those classes of plants.

(2) Where the Commission is satisfied that a control board has failed to carry out proper measures under subsection (1), the Commission may, by notice in writing to the board, require it to carry out such measures for the destruction or control of plants as are specified in the notice within the period specified in the notice.

**Board may recover costs of controlling plants on road reserves from owners of adjoining land**

**60.** (1) Where a control board carries out on road reserve measures for the destruction or control of plants of a class to which this section applies, the board must, within 3 months, give notice in writing to each owner of land adjoining the road reserve requiring the owner to pay to the board an amount specified in the notice within a period specified in the notice, being not less than 28 days from the date of the notice.

(2) Subject to subsection (3), the amount specified in a notice under subsection (1) directed to an owner of land must be the amount determined by the board to be the costs and expenses incurred by the board in carrying out the measures referred to in subsection (1) on the section of road reserve adjoining the owner's land up to the middle of the road reserve.

(3) Notwithstanding subsection (2), a control board may, from time to time, fix a standard charge and determine the circumstances in which the standard charge is to apply (being a standard charge not exceeding an amount determined on the basis for the time being fixed by the Commission), and, where those circumstances apply in relation to an owner of land, the amount specified in a notice under subsection (1) directed to that owner shall be the standard charge.

(4) Where an amount is not paid by an owner of land within the period within which it is required to be paid under this section, the owner is liable to pay interest charged at the rate of 10 per cent per annum on the amount unpaid.

(5) Any amount payable to a control board by an owner of land under this section (including any interest charge) may be recovered by the board as a debt by action in a court of competent jurisdiction.

(6) A control board may, if it is satisfied that just and proper grounds exist for it to do so, remit the whole, or part, of any amount payable by a person under this section.

**Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986 35**

**Part 5-Miscellaneous**

**General exemption**

61. (1) The Governor may, on the recommendation of the Commission, make regulations making provision for the exemption of persons, animals or plants of a class specified in the regulations from compliance with this Act or any provision of this Act specified in the regulations.

(2) The regulations may make provision for conditions or limitations to which an exemption under this section is to be subject.

(3) A person having the benefit of an exemption under this section shall not breach, or fail to comply with, a condition of the exemption.

Penalty: \$2 000 or 6 months imprisonment.

**Offence to damage certain fences**

62. (1) A person shall not interfere with an animal-proof fence except with permission of the owner of the land on which the fence is situated.

Penalty: \$1 000 or 3 months imprisonment.

(2) A court may, on the conviction of a person of an offence against subsection (1), order the person to pay compensation to the owner of the land on which the fence is situated.

(3) In this section-

"animal-proof fence" includes any gate or ramp pertaining to the fence.

**Offence to leave gates open**

63. A person shall not leave open a gate in an animal-proof fence except-

- (a) for so long as is reasonably necessary for passage through the opening;  
or
- (b) with the permission of the owner of land on which the fence is situated.

Penalty: \$200.

**Prohibition against destroying certain vegetation**

64. (1) A person shall, in taking measures for the destruction or control of animals or plants, take all reasonable steps to ensure-

- (a) that no native trees or shrubs are destroyed or unnecessarily damaged; and
- (b) that damage to or destruction of native vegetation (other than trees or shrubs) is kept to a minimum; and
- (c) in addition, in the case of measures taken on road reserve, that damage to or destruction of non-native vegetation (other than plants subject to destruction or control under this Act) is kept to a minimum.

Penalty: \$2 000.

\* \* \* \* \*

**Immunity from liability of landowner etc**

64A. (1) Notwithstanding any other Act or law to the contrary an owner of land, the Commission, a control board or any other person who-

(Reprint No. 5)

PART 5

**36 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

- (a) destroys an animal or plant; or
- (b) captures or removes an animal from land; or
- (c) takes any other action that is a prescribed measure for the control of animals; or
- (d) after an animal has been removed from land, sells or otherwise disposes of the animal,

pursuant to this Act, is not subject to any criminal or civil liability in relation to that action.

(2) The immunity provided by subsection (1) to an owner of land, the Commission or a control board extends to a person who acts on behalf of the owner, the Commission or the control board.

**Surveys etc**

**65.** (1) For the purposes of conducting any survey of, or research into, the control of animals or plants, or investigating any matter relating to the administration of this Act, any of the following persons may enter and inspect any land and erect a peg or place a mark on that land:

- (a) a member of the Commission; or
- (b) a member of a control board; or
- (c) an authorised officer; or
- (d) any other person authorised in writing by the Commission.

(2) A person shall not hinder or obstruct any of the persons referred to in subsection (1) in the exercise of the powers conferred on those persons by this section.

Penalty: \$1 000.

(3) A person shall not, without reasonable excuse, interfere with any peg or mark erected or placed on land under subsection (1).

Penalty: \$500.

**Board to co-operate with Executive Officer of Commission and State authorised officers**

**66.** A control board shall permit the Executive Officer of the Commission or a State authorised officer to assist and advise the board in the discharge of its duties and obligations under this Act and shall carry out any written instructions that the Executive Officer or a State authorised officer may, with the approval of the Commission, give to the board.

**Boards may enter into agreements for destruction or control of animals or plants**

**67.** A control board may enter into an agreement-

- (a) with an owner of land; or
- (b) with another control board; or
- (c) with a prescribed control body,

to take measures for the destruction or control of animals or plants required to

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 37**

be destroyed or controlled under this Act (whether the measures relate to land inside or outside the area of the board).

**Commission may require boards to make inspections and obtain information**

**68.** (1) The Commission may, by notice in writing, require a control board-

- (a) to cause inspections to be made of land within the area of the board for the purpose of determining whether the provisions of this Act are being complied with; or
- (b) to provide information of a kind specified in the notice relating to the population density and distribution of animals and plants of specified classes on land within the area of the board.

(2) A notice given under subsection (1) may specify a period, commencing on the expiration of 14 days from the giving of the notice, within which the requirements to the notice are to be carried out.

**Control boards may obtain review of certain decisions etc**

**69.** (1) A control board or council may apply to the Minister for a review of any direction, instruction, decision or order given or made by, or with the approval of, the Commission in respect of that board or council.

(2) An application under subsection (1) must be made no later than 14 days after the direction, instruction, decision or order was given or made.

(3) The Minister may, on application made under this section, confirm, vary or set aside any direction, instruction, decision or order given or made by, or with the approval of, the Commission.

**Immunity from liability**

**70.** (1) No liability attaches to-

- (a) a member of the Commission or its staff; or
- (b) a State authorised officer; or
- (c) a person who accompanies and assists a State authorised officer at the request of the officer; or
- (d) a person acting at the direction of the Commission; or
- (e) a member of a control board; or
- (f) a local authorised officer or other person appointed or employed by a control board; or
- (g) a person who accompanies and assists a local authorised officer at the request of the officer; or
- (h) a person acting at the direction of a control board,

for an honest act or omission in the exercise or purported exercise of a power or function under this Act.

(2) A liability that would, but for subsection (1)-

- (a) lie against a person referred to in subsection (1) (a), (1) (b), (1) (c) or (1) (d), lies against the Crown;

(Reprint No. 5)

PART 5

**38 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

- (b) lie against a person referred to in subsection (1) (e), (1) (f), (1) (g) or (1) (h), lies against the control board-
- (i) of which the person is a member; or
  - (ii) which appointed or employed-
    - (A) the local authorised officer or other person; or
    - (B) the local authorised officer who requested the person to accompany and assist him or her; or
  - (iii) at whose direction the person was acting.

**Statutory charge**

71. Where, by virtue of this Act, any pecuniary liability attaches to an owner of land, that liability shall, until discharged-

- (a) be a charge on the land; and
- (b) be enforceable in a court of competent jurisdiction as a debt due jointly and severally from all the owners of the land, including subsequent owners of the land.

**Appropriation of penalties**

72. A penalty for an offence against this Act that is recovered on the complaint of a control board, or a person appointed or employed by a control board, shall be paid into the board's fund.

**Animal-proof fences**

73. Where a court is exercising jurisdiction conferred on it under the *Fences Act 1975* an apparently genuine document purporting to be a certificate of the Commission stating-

- (a) that-
  - (i) a fence conforms, or a proposed fence would conform, with the prescribed requirements for an animal-proof fence; or
  - (ii) fencing work has made, or proposed fencing work would make, a fence animal-proof; and
- (b) that such a fence or such fencing work is necessary or desirable for the control of animals in the locality that are liable to be controlled under this Act,

shall be admissible as proof that the nature of such fence or fencing work is adequate and appropriate in the circumstances.

**Evidentiary**

74. (1) In any proceedings for an offence against this Act, an allegation in a complaint that, at any specified time-

- (a) an animal was an animal of a specified class;
- (b) a plant was a plant of a specified class;
- (c) a person was a State authorised officer;
- (d) a person was a local authorised officer;
- (e) a person was the owner of any land;

**Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986 39**

- (f) any land was within a specified control area;
- (g) a person had failed to carry out the requirements of a notice given under Part 3 or Part 4;
- (h) a fence was an animal-proof fence,

shall, in the absence of proof to the contrary, be proof of the matter so alleged.

(2) A certificate of the Minister for Environment and Planning certifying that a specified action was an action authorised under an approved plan of management shall, in the absence of proof to the contrary, be accepted as proof of the matter so certified.

**Forfeiture of profits on conviction of certain offences**

75. Where a person is convicted of an offence against section 41, 43, 52(2) (b), 53(4) or 54(2), the court by which the conviction is recorded shall order the person to pay to the Crown an amount estimated by the Court to be the amount of the profit that has accrued to the convicted person, or any other person with whom the convicted person has a business or personal association, in consequence of the commission of the offence.

**Summary offences**

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

(2) A prosecution for an offence against this Act must be commenced within 1 year after the date on which the offence is alleged to have been committed.

**Service**

77. (1) A notice or other document required or authorised to be given to an owner of land under this Act may be given to the owner-

- (a) by serving it on the owner personally; or
- (b) by sending it by post to the last known postal address of the owner; or
- (c) where the land appears to be unoccupied-by affixing it to some conspicuous part of the land.

(2) A notice or document required or authorised to be given to an owner of land may, where it is served personally, be served on the owner, one of any joint owners, or the agent of the owner.

(3) A notice or other document sent to a person by post under subsection (1) (b) shall be presumed to have been given to the person at the time when it would, in the ordinary course of the post, reach the address to which it was posted unless it is proved that it was not delivered there at that time or at all.

**Regulations**

78. (1) The Governor may, on the recommendation of the Commission, make such regulations as are contemplated by or necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations-

- (a) prescribing the methods that may, or shall, be employed in the destruction or control of any animal or plant; and

(Reprint No. 5)

PART 5

**40 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

- (b) prohibiting either absolutely or conditionally, the sale, possession or use of any substance, or the employment of any method, for the destruction or control of any animal or plant; and
  - (c) fixing expiation fees for alleged offences against the regulations; and
  - (d) prescribing penalties not exceeding \$2 000 for breach of, or non-compliance with, any regulation.
- (3) A regulation-
- (a) may be of general or limited application and may vary in operation according to factors stated in the regulation;
  - (b) may leave any matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Commission, either generally or in a particular case or class of cases.

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**Animal and Plant Control (Agricultural Protection and Other  
Purposes) Act 1986 41**  
**Schedule 2-Transitional provisions**

1. (1) The real and personal property of the former Authority and the former Commission shall, on the commencement of this Act become property of the Commission.

(2) All rights and liabilities of the former Authority and the former Commission (whether vested or contingent) shall, on the commencement of this Act, become rights and liabilities of the Commission.

(3) A reference in an instrument (whether or not of a statutory nature) to the former Authority or the former Commission shall, where the context admits, be construed as a reference to the Commission.

(4) Any employee or officer of the former Commission or former Authority, employed or holding office immediately before the commencement of this Act, shall, on the commencement of this Act, become an employee or officer of the Commission.

(5) The transfer of the employment of a person under subclause (4) shall be effected without reduction in salary or status, and without loss of accrued or accruing leave entitlements.

2. (1) Where a pest plant control board was established under the repealed *Pest Plants Act 1975* in relation to the area of a single council, or the combined areas of two or more councils, and in existence immediately before the commencement of this Act, a control board shall be established by proclamation under this Act in relation to the area of that single council, or the combined areas of those two or more councils.

(2) On the establishment of a control board pursuant to subclause (1) in relation to a former pest plant control board, the following provisions apply:

- (a) all the real and personal property of the former pest plant control board shall become property of the control board; and
- (b) all the rights and liabilities of the former pest plant control board shall become rights and liabilities of the control board; and
- (c) all the members of the former pest plant control board shall be deemed to have been appointed under this Act as members of the control board for the remainder of their terms; and
- (d) any person employed by the former pest plant control board shall become an employee of the control board; and
- (e) the transfer of the employment of a person under paragraph (d) shall be effected without reduction in salary or status, and without loss of accrued or accruing leave entitlements.

(3) On the establishment of a control board under this Act in relation to an area that comprises or includes the area of a board established under section 40 of the repealed *Vertebrate Pests Act 1975* and in existence immediately before the commencement of this Act, the following provisions apply:

- (a) all the real and personal property of the former board shall become property of the control board; and
- (b) all the rights and liabilities of the former board shall become rights and liabilities of the control board; and
- (c) any person employed by the former board shall become an employee of the control board; and
- (d) the transfer of the employment of a person under paragraph (c) shall be effected without reduction in salary or status, and without loss of accrued or accruing leave entitlements.

(Reprint No. 5)

APPENDIX

**42 Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986**

**APPENDIX**

**LEGISLATIVE HISTORY**

**Repeals**

The *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* repealed the following:

*Pest Plants Act 1975*  
*Vertebrate Pests Act 1975*

**Transitional Provisions**

(*Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5*)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

**Legislative History**

(*entries in bold type indicate amendments incorporated since the last reprint*)

Long title:	amended under <i>Legislation Revision and Publication Act 2002</i> 24.11.03
Section 2:	omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.03
<b>Section 3:</b>	<b>definition of "Murray-Darling Basin" inserted by 35, 2003, Sched. cl. 1(a)</b>
	<b>definition of "River Murray Protection Area" inserted by 35, 2003, Sched. cl. 1(b)</b>
<b>Section 13(1a):</b>	<b>inserted by 35, 2003, Sched. cl. 1(c)</b>
Section 15A:	inserted by 81, 1996, s. 2
<b>Section 24:</b>	<b>redesignated as s. 24(1) by 35, 2003, Sched. cl. 1(d)</b>
<b>Section 24(2):</b>	<b>inserted by 35, 2003, Sched. cl. 1(d)</b>
Section 36(1):	amended by 14, 1989, s. 2
Sections 42 and 43:	amended by 34, 1996, s. 4 (Sched. cl. 3)
<b>Section 45(2a) and (2b):</b>	<b>inserted by 35, 2003, Sched. cl. 1(e)</b>
<b>Section 48(3a):</b>	<b>inserted by 35, 2003, Sched. cl. 1(f)</b>
Section 54(1) and (2):	amended by 34, 1996, s. 4 (Sched. cl. 3)
<b>Section 55(2a) and (2b):</b>	<b>inserted by 35, 2003, Sched. cl. 1(g)</b>
Section 57(1):	amended by 14, 1989, s. 3(a)
Section 57(2):	amended by 14, 1989, s. 3(b)
Section 57(3) and (4):	inserted by 14, 1989, s. 3(c)
<b>Section 58(1a):</b>	<b>inserted by 35, 2003, Sched. cl. 1(h)</b>
Section 64(2):	repealed by 14, 1989, s. 4
Section 64A:	inserted by 14, 1989, s. 5
Section 70:	substituted by 14, 1989, s. 6; 61, 1992, s. 2
Section 78(2):	amended by 34, 1996, s. 4 (Sched. cl. 3)
Section 78(4):	repealed by 34, 1996, s. 4 (Sched. cl. 3)
Schedule 1:	omitted under <i>Legislation Revision and Publication Act 2002</i> 24.11.03