

# A Review of Heritage Agreements

## Structure & permissible activities



### Purpose

The Malinauskas Labor Government has committed to undertake a “Review of the Structure of Heritage Agreements” under its Growing Nature Policy. Specifically “Labor will review heritage agreements to confirm they are structured in a way that best facilitates conservation outcomes and enable landholders to generate income from biodiversity and carbon farming”.

In accordance with the Election commitment, the Native Vegetation Branch (NVB) of the Department for Environment and Water has conducted an internal review of Heritage Agreements established under the *Native Vegetation Act 1991* (the Act). The review has considered the experience and information accumulated by the NVB over time, particularly in relation to feedback provided by Heritage Agreement owners, applicants and enquiries, as well as through feedback received in relation to the pilot Revitalising Private Conservation SA program. The scope of the review included the following:

- The intent of Heritage Agreements as set out in the Native Vegetation Act
- The existing structure of Heritage Agreements
- The structure in relation to identified issues or comments
- Key findings of the review

The review of the structure of Heritage Agreements relates specifically to the provisions that are contained within the standard Agreement and the effect of those provisions, rather than the broader Heritage Agreement program.

The review establishes a series of recommendations which will be further reviewed and implemented by the Native Vegetation Council. Feedback is not sought on this review, however the specific actions that arise from the recommendations will be subject to consultation where required.

### Background

The Act establishes Heritage Agreements as the primary means of providing protection and enhancement of native vegetation and revegetation on private land.

Heritage Agreements were first established in 1980 as voluntary agreements under the *South Australian Heritage Act 1978* (SAH Act). Financial incentives were provided to farmers to enter the agreements to retain and manage significant areas of native vegetation on their land with the aim of reducing the rate of vegetation clearance in South Australia.

In 1985 the *Native Vegetation Management Act 1985* (NVM Act) was introduced to regulate clearance of native vegetation in the State. During the operation of the NVM Act, Heritage Agreements were generally associated with applications to clear vegetation that were refused, which entitled the owner of the land to compensation for loss of land value subject to landowners entering into a Heritage Agreement under the SAH Act.

The NVM Act was repealed and replaced by the *Native Vegetation Act 1991*, after which time compensation was no longer payable for refused applications and Heritage Agreements became largely voluntary, with incentives provided to assist in the management of the land.

The SAH Act was repealed in 1993, with provisions relating to Heritage Agreements being incorporated into the Native Vegetation Act. Heritage Agreements established under the SAH Act that relate to the protection of native vegetation were generally transitioned to the Native Vegetation Act at that time.

Since the introduction of Heritage Agreements in 1980, through the various changes to the legislation, land subject to the agreements has continued to grow. There is now more than 2800 landholders with Heritage Agreements covering a total area of 1,850,538 ha of native vegetation across the state. There has been revived interest in the program in recent times, particularly with renewed investment from the South Australian Government. This includes the \$3 million Revitalising

Private Conservation SA program implemented between 2020 and June 2022 and the commitment of an additional \$6 million by the Malinauskas Labor Government over four years commencing in late 2022.

Since the introduction of Heritage Agreements, their intent and application has changed, as well as the broader legislative context. In particular, there are now a number of Acts in place aimed at protecting the environment that were not in existence at the inception of the Heritage Agreement Program, such as the Native Vegetation Act, Landscapes SA Act and the Pastoral Land Management and Conservation Act as well as the Commonwealth's Environment Protection and Biodiversity Conservation Act. Therefore, it is considered appropriate to review the current structure of Heritage Agreements to determine if they are still fit for purpose and maximise the benefits for conservation of native vegetation.

## Legislative framework for Heritage Agreements

This section describes the requirements relating to the establishment and management of a Heritage Agreement as set out in the Act. Refer to Part 4, Division 1 (Sections 23, 23A) and Sections 24 and 27(5) of the Act for full details of the relevant sections.

Under the Act, the Minister responsible for the Act can enter into a Heritage Agreement with a land owner if the area of land nominated:

1. Contains native vegetation which the Minister considers warrants preservation and enhancement; or
2. Has been revegetated with species indigenous to the local area that represent a naturally occurring community, and the Minister considers the vegetation warrants preservation and enhancement.

The Heritage Agreement is attached to the land and is binding on all current and future owners and occupiers of the land. It may be varied and terminated by the Minister, in agreement with the owner of the land. However, prior to entering into, varying or terminating a Heritage Agreement, the Minister must first consult and obtain the approval of the Native Vegetation Council (NVC).

A Heritage Agreement may contain any provision for the preservation or enhancement of native vegetation, which may include provisions restricting the use of the land, requiring or restricting certain works to be undertaken, providing for the development of management plans, providing for the remission of rates or taxes and allowing for financial incentives for entering into the Heritage Agreement.

Heritage Agreement owners can apply to the NVC for financial assistance for the management of land or native flora or fauna, for the protection, enhancement or revegetation of native vegetation, or for research to support these activities.

In some cases clearance of native vegetation within a Heritage Agreement is required to enable some activities such as the construction of a minor structure or clearance associated with recovery actions for a threatened species. Such clearance of native vegetation must either be granted consent by the NVC via an application under the Act, or must be permitted via an exemption under the Native Vegetation Regulations 2017 (the Regulations) which may still involve the approval of the NVC. Most clearance activities are generally provided for via the exemptions, however where land is subject to a Heritage Agreement, many of the exemptions no longer apply, particularly in relation to development activities (e.g. new buildings, dwellings and infrastructure). Therefore clearance within a Heritage Agreement is generally subject to the requirement to gain NVC consent under the Act, and also requires the consent of the Minister.

Heritage Agreements are largely voluntary in nature, where owners of land are looking to secure the long-term protection of their area of vegetation, or seeking to access assistance for vegetation management.

However, Heritage Agreements can also be mandated in association with certain obligations, such as the following:

- In relation to the achievement of a Significant Environmental Benefit Offset under the Act for approved vegetation clearance.
- As a condition of a Development Approval under the *Planning, Development and Infrastructure Act 2016* (PDI Act) to prevent or limit impacts associated with the development.
- As an obligation in relation to receiving funding for the NVC or State and Federal Governments.
- As a requirement relating to unauthorised clearance of native vegetation (e.g. a Court Order).

## Private protected areas in other States and Territories

The Heritage Agreement scheme was one of the first such schemes established in Australia and likely provided the basis for the development of similar schemes in other States and Territories.

Private land conservation covenants or agreements are now found within all States and Territories of Australia (except the ACT). A list of the relevant programs are provided below with a link providing additional details on each:

- WA - [Nature Conservation Covenant Program](#) under the *Soil and Land Conservation Act 1945*
- Queensland - [Conservation agreements](#) under the *Nature Conservation Act 1992*
- Tasmania - [Conservation covenants](#) under *Nature Conservation Act 2002*
- Victoria - [Conservation covenants](#) under *Victorian Conservation Trust Act 1972*
- NSW - [Private Land Conservation agreements](#) under *Biodiversity Conservation Act 2016*
- NT - [Conservation Covenants](#) under *Territory Parks and Wildlife Conservation Act 1976*

These agreements are generally legally binding arrangements and are typically noted on the property title and exist in perpetuity, although some also offer fixed term agreements. The covenants are generally comparable to Heritage Agreements in that they restrict the use of the land particularly in relation to grazing stock, clearing vegetation, removal of timber, rocks or other habitat elements, the introduction of non-native plants and the management of weeds and pests. The one exception is Queensland, where conservation agreements provide for multiple land uses. However, this is likely reflective of the different legislative context, in which clearance of vegetation is much more prominent and as such the conservation agreements are likely targeted at preventing vegetation removal. Most covenants also provide for funding or taxation concessions.

## Other options for protecting native vegetation and revegetation

Heritage Agreements are only one option that is available to provide a level of protection or covenanting of areas of native vegetation on private land. Depending on the quality of the vegetation and the intended use of the land, Heritage Agreements may not be the most appropriate mechanism for protection. In such circumstances, landholders should consider if there are alternative options available.

In relation to revegetation projects, if the revegetation is not of an age or standard that is considered sufficient to qualify for a Heritage Agreement, there is the option of having the revegetation declared as native vegetation under the Act (Section 23E and 23F). This provides the revegetation with the same level of protection as naturally occurring native vegetation. Any clearance of this vegetation would require the approval of the NVC.

In relation to covenanting agreements, there are other instruments available under the NV Act and other Acts that may be more appropriate. This includes the following;

- Management Agreements under Section 25D of the Native Vegetation Act. Management Agreements are applied to land that is subject to a Third Party or Assignment of credit Significant Environmental Benefit Offset. Management Agreements operate in a similar manner to Heritage Agreements, but can be applied more broadly (there are no restrictions relating to the quality of vegetation or revegetation to be protected) and are generally more focussed on restoration activities.
- Management Agreements under Part 12 of the *Landscapes SA Act 2019*. The Minister responsible for the Act may enter into a Management Agreement with the owner of the land for the purpose of the protection, conservation, management, enhancement, restoration or rehabilitation of any natural resources. Management Agreements can allow for provisions similar to a Heritage Agreement, such as limiting the use of land, requiring certain actions to be taken, provision of assistance or incentives and the remission of rates and taxes.
- Land Management Agreements under Part 14 of the *Planning, Development and Infrastructure Act 2016*. A Land Management Agreement (LMA) can set out rules relating to the development, management, preservation or conservation of land. The owner of a property can enter into an LMA with the Minister for Planning and Local Government or a council, generally in relation to the proposed or approved development of land. An agreement may be set up to, amongst other things, help conserve vegetation or other things of public interest.

## Current structure and function of Heritage Agreements

### *Provisions of Heritage Agreements*

The provisions contained within most Heritage Agreements largely reflect the requirements set out in the Act and primarily relate to the following:

- Dedicating the land to conservation of native vegetation and native fauna on the land and shall not be used in a manner inconsistent with that dedication.
- Not permitting activities that would affect native vegetation or native fauna, unless approved by the Minister. Specific activities that are generally prohibited in the absence of the Minister's approval include clearing native vegetation, planting vegetation (native or exotic), constructing buildings or structures or grazing stock.
- Requirements to notify the Minister of any harm caused to native vegetation or native fauna on Heritage Agreement land.
- Providing for remission of rates and taxes.
- Providing for the Minister, at the Minister's discretion, to construct or repair fences around the Heritage Agreement.
- Requiring the owner of the land to maintain the fences.
- Allow the Minister or representative(s) to enter the land for the purpose of determining or enforcing compliance with provisions of the agreement.
- Provide for a process to address breaches of the agreement.
- Provide for incentives for entering into a Heritage Agreement at the Minister's discretion.

The matters addressed by the provisions contained in most Heritage Agreements have been largely consistent since first being established in 1980, typically relating to the matters mentioned above. However, there has been gradual refinements and improvements over time to the wording of the provisions to improve enforceability of Heritage Agreements or to reflect changes to legislation.

Prior to entering into a Heritage Agreement, applicants have the opportunity to review the draft agreement and may seek variations or additions to the clauses to address their particular circumstances and their desired use of the land.

Both the Minister and the NVC must be satisfied that any proposed changes would not undermine the primary dedication of the land for conservation.

### *Effect of Heritage Agreements*

Heritage Agreements are primarily structured to protect and preserve native vegetation and native fauna habitat to prevent it being degraded, destroyed or its recovery inhibited, as well as providing assistance to landholders for management and enhancement of the vegetation. This is generally achieved in three ways:

#### **1. Dedicating the use of the land for conservation and requiring the Minister to approve activities that are likely to impact on native vegetation**

The primary conservation gain provided by Heritage Agreements is likely achieved through the dedication of land for conservation and the preventing or limiting certain land uses that are likely to degrade vegetation. Such land uses include grazing of stock, development of the land for agriculture, residential or industrial purposes or undertaking certain recreation activities such as motorbike riding.

It can also impose additional obligations in relation to matters not regulated by the Act, such as preventing the removal of fallen and dead timber or removal of rocks or other habitat elements. It also enables the regulation of revegetation to prevent the planting of inappropriate species, such as non-native species or planting native species in the wrong locations such as planting trees and shrubs in an area of native grassland.

The requirement for the Minister's approval provides additional oversight in relation to the use of the land to ensure that activities are consistent with the dedication of the land for conservation.

By having the agreement registered on the Title of the land, it makes the requirements more explicit to owners, can improve enforcement options and helps maintain the use of the land for conservation despite any change in ownership.

## 2. Removing access to a range of native vegetation clearance exemptions

The vast majority of authorised clearance that occurs in South Australia occurs through the exemptions to the Act that are provided for under the Regulations (see NVC Annual Report for further information relating to approved clearance). Where land is subject to a Heritage Agreement, many of these exemptions no longer apply, such as those relating to clearance for new developments (i.e. housing, buildings, residential subdivisions and infrastructure including roads, pipelines, reservoirs and power lines) as well as agricultural related activities, such as stock grazing or clearance of regrowth. Heritage Agreements also prevent clearance of vegetation for firewood collection or establishing new tracks.

As a result, clearance within a Heritage Agreement is generally subject to the process set out in the Act, which is much more restrictive than clearance permitted for via the Regulations. Therefore the establishment of a Heritage Agreement reduces the likelihood that vegetation clearance will be approved. This particularly relates to the small, incremental or linear clearance that is often provided for via the Regulations.

It should be noted mining and petroleum related activities (both exploration and operations) are still permitted on Heritage Agreement land through the Regulations and the clearance does not require the approval of the NVC or the Minister.

## 3. Support and financial assistance

Whilst Heritage Agreements seek to prevent activities that would degrade native vegetation, the condition of vegetation can still deteriorate through a lack of management and neglect. The structure of Heritage Agreements seeks to maintain and enhance the condition of vegetation by establishing a mechanism to provide technical and financial assistance to landholders. This enables the NVC and the Minister to work cooperatively with Heritage Agreement owners to enable and support the management of the land and recognises the public benefit provided by Heritage Agreement landholders. Financial assistance is provided at the discretion of the Minister and NVC.

## Review of the structure

The NVC is aware of a number of areas of concerns in relation to the structure and function of Heritage Agreements. These primarily relate to eligibility for Heritage Agreements, activities and developments that are permitted within Heritage Agreements, availability of support and financial assistance, inhibitors for establishing a Heritage Agreement, the system for tax and rate relief, the permanent nature of Heritage Agreements and effectiveness of Heritage Agreements. These issues are discussed further below with regard to the issues that have been raised, the current situation and possible changes.

### **Criteria to assess Heritage Agreements application**

Issue/comment – Heritage Agreements cannot be applied to areas of revegetation or areas of degraded vegetation.

Current situation – Generally, in assessing if an area of vegetation or revegetation is of a sufficient standard to warrant protection, the NVC will consider the following:

- If it contains remnant vegetation in good condition (i.e. high native plant species diversity and low weed abundance or cover); or
- If it contains or supports rare, threatened, vulnerable or endangered species or vegetation communities (in accordance with the *National Parks and Wildlife Act 1972* or *Environment Protection and Biodiversity Conservation Act 1999*); or
- If the site occurs in an area with low native vegetation remnancy or vegetation is under represented in the protected area network; or
- If the site is part of a larger area, or acts as a corridor or buffers to other areas of native vegetation; or
- If the site has other values the NVC or the Minister consider warrants protection.

Where areas of revegetation are sufficiently developed to enable an assessment of its value, if it meets one or more of the criteria mentioned above, then it can be eligible for protection under a Heritage Agreement. Similarly, if areas of degraded vegetation provide sufficient conservation values, such as habitat for threatened species and there is a management plan for the improvement for the vegetation, then it would be eligible. Areas of proposed revegetation which are currently bare paddocks do not meet the requirements of the Act and are not eligible. While areas of relatively immature revegetation

(i.e. <3 years old) are generally not considered suitable for inclusion in a Heritage Agreement as the long term viability of the revegetation is not yet certain.

Possible changes – Native vegetation, including revegetation, is generally eligible for Heritage Agreements where it contains sufficient conservation values. It is considered that ensuring these criteria are met is important to ensure Heritage Agreements are meaningful. Areas that are degraded, very young or proposed revegetation may be appropriate for inclusion into a Heritage Agreement at a later point in time, after an appropriate level of management has been undertaken to bring them up to an acceptable standard. Information relating to eligibility should be made more readily available to the public.

### **Activities or developments permitted within a Heritage Agreement**

Issue/Comment – Various activities are not permitted within Heritage Agreements such as revegetation, ecological or cultural burning vegetation, building houses and sheds, engaging in carbon farming and biodiversity markets or undertaking recreational and ecotourism activities and developments.

Current situation – The Act does not explicitly prohibit particular activities from occurring within a Heritage Agreement area. However, the agreements themselves generally limit certain activities from occurring within the area unless approved by the Minister. In determining if approval should be given, the Minister would generally consider the particular matters of the proposed activities and if it would be at odds with the dedication of the land for conservation.

Where approval or advice is required from the NVC in relation to such activities, consideration must be given to determine if the activity would be Seriously at variance with *the Principles of native vegetation clearance* under the Act (referred to in Schedule 1 of the Act) or at odds with the Objects of the Act. Both the *Principles of native vegetation clearance* and the Objects of the Act seek to protect and enhance native vegetation and fauna habitat, with particular regard to matters of conservation significance.

Below are examples of some of the activities that could be allowed within a Heritage Agreement:

- **Revegetation** – revegetation can be undertaken in Heritage Agreements if an NVC approved revegetation management plan is in place for the property.
- **Recreation activities** – clearance of vegetation for the construction of a small private walking track is permitted. Other recreational activities such as mountain bike riding, public walking tracks and horse riding are generally not supported due to the potential impacts on native vegetation. However, this will depend on the extent of any clearance required for such activities and actions that might be taken to mitigate the impacts, including limiting the spread of weeds and pests.
- **Eco Cabins / camping facilities** – the Minister can approve the construction of buildings or structures within a Heritage Agreement. These activities are likely to be permitted where it does not involve clearance or only relatively minor clearance of native vegetation. Where more substantial clearance is required, it would depend on the extent and significance of the clearance and whether the NVC could approve such clearance under the Act.
- **Grazing stock** – the grazing of stock would be allowed where it is specifically for the purpose of ecological enhancement and it is subject to an NVC approved management plan. As an example, this might relate to the management of native grasslands, which can require periodic and strategic grazing to maintain or improve its condition.
- **Ecological burning** – burning vegetation for ecological enhancement is allowed where it is subject to an NVC approved management plan.
- **Aboriginal cultural burning** – burning vegetation for the purpose of Aboriginal Cultural practices on Heritage Agreements is enabled under the Act. This requires submission of a simple management plan for approval by the NVC prior to undertaking burning.
- **Fuel management** – the fuel management exemptions under the Regulations apply to Heritage Agreements. This includes the ability to clear vegetation within 20m of a dwelling or 10m of a building. The Chief Officer of the CFS can also approve clearance for fuel hazard reductions, fuel breaks and fire access tracks. Where this relates to land subject to a Heritage Agreement, the approval of the CFS Chief Officer and, depending on the provisions of the Heritage Agreement, the Minister, is needed.
- **Carbon farming or other market based incentives** – Heritage Agreements do not prevent or preclude land to be used for carbon farming or biodiversity market based incentives, particularly where such programs will result in

the enhancement of the vegetation. Further information should be sought from the Australian Government's Emission Reduction Fund regarding eligibility requirements under the schemes they administer.

- **Offsetting vegetation clearance** – Heritage Agreements do not prevent or preclude land to be used for offsetting programs. However, where such offsets are required under the Act, Heritage Agreements are generally not considered suitable due to the lack of additionality that can be provided on such land (i.e. offsets need to provide additional environmental benefits over and above any existing obligation). Where offsets are required under another framework, such as the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*, the suitability to use a Heritage Agreement would be dependent on the particular rules relating to eligibility of that framework.

Where the Heritage Agreement itself does not allow for an activity to occur, there is also the potential that an area can be excluded from the Heritage Agreement, either when the Heritage Agreement is established or via an application to vary an existing agreement.

Exclusion zones should be located in areas cleared of vegetation or of lower quality. The exclusion zones are effectively unencumbered by the Heritage Agreement and any proposed activities will be considered in accordance with the normal provisions of the Act or Regulations. Exclusion zones are commonly used to allow for the construction of houses or ecotourism accommodation within the boundary of Heritage Agreements.

Activities that will have a significant impact on the native vegetation, native fauna or that are detrimental to the conservation values of the Heritage Agreement area are generally not permitted. In particular, if a proposal involves the clearance of native vegetation and the NVC determines that clearance is Seriously at variance with the *Principles of native vegetation clearance*, then consent for the clearance cannot be granted.

Possible changes – The current legislation and Heritage Agreement structure provides for a broad range of activities to occur within Heritage Agreements, particularly where they do not conflict with the primary purpose for the agreement being conservation. There is also a level of discretion provided to the Minister to permit activities where appropriate considering each application on its merit. Given that Heritage Agreements are established for conservation on private land, the current framework is considered appropriate. Providing a greater range of activities which may impact those conservation values would undermine the integrity and purpose of the agreements. Greater clarity could be provided in relation to permitted activities, likely via a formal policy arrangement, with improved information available for the public.

#### **Availability of support and financial assistance**

Issue/Comment – There is a lack of funding to support activities for the management of Heritage Agreement and the Minister and NVC have not fulfilled their obligations in relation to particular activities such as replacing fences.

Current situation – The Act and Heritage Agreement provides for financial assistance to be provided to owners of Heritage Agreements at the discretion of the Minister and NVC. Under the Act, funding awarded to the owner of the land is paid from the Native Vegetation Fund (the Fund). The Fund is made up of a range of sources including State appropriations, fees, fines, payments made as a condition of clearance consent or Court Orders, and interest. Money that is paid into the Fund associated with clearance of vegetation must be used in the region from which it is paid and is generally only permitted to be used in relation to new conservation related activities (i.e. new Heritage Agreements). Therefore the money that is available to be provided to current or prospective Heritage Agreement owners will vary over time and across the State, with the funding provided based on factors such as value for money and likely conservation benefits.

As a result there has been inconsistencies in funding availability for Heritage Agreement owners. There has been periods of no or very little funding available. This has resulted in landholder discontent and likely reduced management of vegetation during these times. However, in recent times, there has been renewed investment into Heritage Agreements from the State Government which seeks to address this issue.

Possible changes – Providing funding to support the management of Heritage Agreements is often viewed as a primary benefit of having a Heritage Agreement. Consistent and ongoing funding is critical to ensure environmental gains are maintained and landholders are supported. There is a need to seek and support new and sustainable sources of funding for Heritage Agreement owners.

## **Tax and rates relief**

Issue/comment - Some Heritage Agreement owners have expressed concerns regarding the rating system used to determine the land value for the purpose of rates and taxes, arguing that it is complicated and a disincentive for Heritage Agreement owners. As an example, issues have been raised in relation to ratings on exclusion areas (areas not covered by the agreement) which may or may not feature development such as sheds. Where exclusion areas are greater than 1 ha, the land valuation has been based on the sites best potential land use (residential) and not its actual land use (keeping tools, camping and conservation). In this case the rating may then be calculated from a residential housing perspective and substantially decrease the discount Heritage Agreement owners expect when using the land for conservation.

Current situation – Heritage Agreements allow for the remission of rates and taxes on the land to which it applies. The Attorney General's Department through the Office of the State Valuer-General determine the rating system and the valuation process in accordance with the *Valuation of Land Act 1971*. When determining the value of the land, which is then used to determine things such as Council rates, land subject to a Heritage Agreement will generally be given a notional value, thereby reducing the value of the land overall. Whereas, areas that are not subject to the Agreement, including exclusion zones within the agreement area, are valued as normal.

In locations where residential use of the land is the primary driver of land value, if there is an exclusion zone or areas not subject to the agreement, on which a house could be built, then the Heritage Agreement may have only modest impacts on the land value.

In some cases, Heritage Agreement owners have expressed concern regarding sudden increases in rates, which has been compounded by consistent and substantial increases in land value over the last 3 years.

Possible changes – The Act and Heritage Agreements allows for the remission of taxes and rates but does not stipulate how that will occur. This is addressed through other processes. There is a need to better communicate how this is applied and ensure consistency across agreements. This needs to be made clear at the point of someone entering into an agreement.

## **Inhibitors for establishing a Heritage Agreement**

Issue/comment – Heritage Agreements cannot be established on land subject to the *Pastoral Land Management and Conservation Act 1987* (the Pastoral Act).

Current situation – The Pastoral Act establishes in its Objects that land subject to that Act must primarily be used for pastoral purposes. Whilst the Pastoral Act includes provisions allowing land to be set aside for conservation, if it affects the primary use of the land, it may considered at odds with the Objects and therefore not permitted. In accordance with *Pastoral Board Guideline – Use of Pastoral Land for Non-Pastoral Purposes*, approval will not be given by the Pastoral Board to set aside land for conservation if it would “exclude the use of pastoral land for pastoral purposes over an extensive portion of the pastoral lease and/or for a significant period of time”. This has generally been taken as greater than 5% of a property or more than 10 years. This requirement is at odds with the obligations under the Native Vegetation Act in which Heritage Agreements apply indefinitely and it severely limits the extent of land that agreements could be established within the rangelands in the State. Currently these restrictions are effectively preventing Heritage Agreements from being established over an area of nearly half the State.

The Malinauskas Labor Government have identified sustainable rangelands as a policy objective under the Growing Nature Policy. This includes the following commitment; “Labor will confirm that carbon offsets can be used on pastoral properties and that conservation and primary production are legally supported. These would be changes, if needed, to the Pastoral Land Management and Conservation Act.”

Possible changes – Support and contribute to any amendments to the Pastoral Act to ensure that it adequately supports the establishment of Heritage Agreements on land in the Pastoral estate.

## **Permanent nature of Heritage Agreements**

Issue/comment – Owners of Heritage Agreements not permitted to remove an Agreement from the land, including both people who entered the agreement and others who have purchased land with an existing agreement. Generally the reasons provided in relation to applications to terminate the agreement relate to it becoming a hindrance or it not providing sufficient benefit due to lack of funding.



Current Situation – Heritage Agreements attach to the land and are binding on all current and future owners of the land and can only be terminated with joint agreement of the Minister and the owner of the land, with the approval of the NVC.

Heritage Agreements have only been terminated in very rare occasions, where the land will be provided with a higher level of protection generally in the reserve system, or where all the vegetation will be destroyed in relation to mining operations. Therefore Heritage Agreements are generally considered to be in perpetuity.

Possible changes – The long term nature of Heritage Agreements, which applies despite any changes of ownership, is considered a primary benefit of the Agreements. It ensures that conservation benefits provided by Heritage Agreements are sustained and provides owners of land with certainty for the ongoing protection of the land, which is often a driver behind landholders entering agreements. Noting that applications to terminate Agreements are at the discretion of the Minister with the approval of the NVC, which means terminations can occur where justified and will not result in unacceptable harm to the environment. Therefore, it is not considered that any changes are necessary.

### ***Effectiveness of Heritage Agreements***

Issue/Comment – The benefits to biodiversity conservation provided by Heritage Agreements is unknown.

Current situation – There has been a lack of ongoing and repeated biological assessments and surveys of land subject to Heritage Agreements. This limits the data available to determine the current condition of vegetation within the Heritage Agreements and the level of success in protecting and improving vegetation over time. This limits the information that is available to enable improvements to the Heritage Agreement program.

Possible changes – Support and undertake improved assessment, monitoring and review of vegetation and native fauna habitat with Heritage Agreements to enable analysis and reporting on the success of Heritage Agreements or areas of possible improvements.

### **Efficiency and ease of applying for Heritage Agreements**

Issue/Comment – It is too hard to apply and it takes too long.

Current situation – Applicants are able to apply via a short and simple form, available both online and hard copy. There is no cost associated with the application and the Department for Environment and Water is responsible to collecting the necessary information to complete an assessment.

The process can take up to 12 months to finalise an agreement, including being registered on property title, although it can be completed much quicker than that. Delays in finalising Heritage Agreements are often associated with negotiations with landholders regarding the area that the agreement will apply to and the administrative process of having agreements registered.

Possible changes – Consider process improvements to make the application process quicker and easier.

## **Outcome of the “Review of the Structure of Heritage Agreements”**

The outcomes of the review include the following findings;

- The current structure meets the requirements of the Act and is a sound and strong basis for the protection and conservation of native vegetation on private land.
- Heritage Agreements do not unreasonably limit activities that can occur on the land, ensuring that activities contribute to or are consistent with the dedication for conservation.
- The NVC and the Minister has sufficient flexibility to allow other complementary activities to occur with Heritage Agreements.
- NVC and Minister has sufficient discretion to permit Heritage Agreements to be placed on land that contain matters of conservation value, including areas of revegetation.
- There are no limitations contained within Heritage Agreements or within the Act that would prevent the land being used for carbon farming and biodiversity markets activities. However, these schemes may have requirements that land subject to a Heritage Agreement may not meet.
- There is a lack of clarity and available information in relation to the criteria the NVC apply when assess applications to establish Heritage Agreement, the use of the land or for applications for financial assistance.

- Information needs to be systematically collected relating to the condition of vegetation and change over time within Heritage Agreements to determine the level of success and for target improvements for the conservation outcomes.

## Recommendations

1. A Heritage Agreement policy to be developed by the NVC in order to provide greater clarity and consistency in relation to matters such as eligibility criteria, permitted uses, variations, terminations and incentives. A draft Policy has been prepared by the NVC for public consultation.
2. Improve information available to current and prospective Heritage Agreement owners, particularly relating to permitted use of the land, applications for incentives and remission of rates and taxes. The NVC is releasing draft Guidelines – *Applications for financial assistance* for public consultation and have developed a Frequently Asked Questions factsheet.
3. Increased financial and technical support available to Heritage Agreement owners, building on the pilot Revitalising Private Conservation SA program.
4. A program to be established for the monitoring and reporting on the conservation outcomes of Heritage Agreements.