

DEVELOPMENT ACT 1993

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[Whole Act]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

SOUTH AUSTRALIA

DEVELOPMENT ACT 1993

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **12 May 1994**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Development Act 1993 No. 55 of 1993
[Assented to 27 May 1993]¹

as amended by

Parliamentary Committees (Miscellaneous) Amendment Act 1994 No. 18 of 1994 [Assented to 12 May 1994]²

¹ Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1888.

² Came into operation 12 May 1994: *Gaz.* 12 May 1994, p. 1188.

N.B. The amendments effected to this Act by the Environment Protection Act 1993 had not been brought into operation at the date of, and have not been included in, this reprint.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

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An Act to provide for planning and regulate development in the State; to regulate the use and management of land and buildings, and the design and construction of buildings; to make provision for the maintenance and conservation of land and buildings where appropriate; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Development Act 1993*.

Commencement

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

Objects

3. The object of this Act is to provide for proper, orderly and efficient planning and development in the State and, for that purpose—

- (a) to establish objectives and principles of planning and development; and
- (b) to establish a system of strategic planning governing development; and
- (c) to provide for the creation of Development Plans—
 - (i) to enhance the proper conservation, use, development and management of land and buildings; and
 - (ii) to facilitate sustainable development and the protection of the environment; and
 - (iii) to advance the social and economic interests and goals of the community; and
- (d) to establish and enforce cost-effective technical requirements, compatible with the public interest, to which building development must conform; and
- (e) to provide for appropriate public participation in the planning process and the assessment of development proposals; and
- (f) to enhance the amenity of buildings and provide for the safety and health of people who use buildings; and
- (g) to facilitate—
 - (i) the adoption and efficient application of national uniform building standards; and
 - (ii) national uniform accreditation of buildings products, construction methods, building designs, building components and building systems.

Definitions

4. (1) In this Act, unless the contrary intention appears—

"adjacent land" in relation to other land, means land—

- (a) that abuts on the other land; or

- (b) that is no more than 60 metres from the other land and is directly separated from the other land only by—
- (i) a road, street, footpath, railway or thoroughfare; or
 - (ii) a watercourse; or
 - (iii) a reserve or other similar open space;

"**adjoining owner**" means the owner of land that abuts (either horizontally or vertically) on the land of a building owner;

"**advertisement**" means an advertisement or sign that is visible from a street, road or public place or by passengers carried on any form of public transport;

"**advertiser**" in relation to an advertisement, means the person whose goods or services are advertised in the advertisement;

"**advertising hoarding**" means a structure for the display of an advertisement or advertisements;

"**the Advisory Committee**" means the Development Policy Advisory Committee established under this Act;

"**allotment**" has the same meaning as in Part 19AB of the *Real Property Act 1886*;

"**amendment**" includes an addition, excision or substitution;

"**amenity**" of a locality or building means any quality, condition or factor that makes, or contributes to making, the locality or building harmonious, pleasant or enjoyable;

"**authorised officer**" means a person appointed to exercise the powers of an authorised officer under this Act;

"**building**" means a building or structure or a portion of a building or structure (including any fixtures or fittings which are subject to the provisions of the Building Code of Australia), whether temporary or permanent, moveable or immovable, and includes a boat or pontoon permanently moored or fixed to land, or a caravan permanently fixed to land;

"**building owner**" means the owner of land on or in relation to which building work is or is to be performed;

"**the Building Rules**" means any codes or regulations under this Act (or adopted under this Act) that regulate the performance, standard or form of building work and includes any standard or document adopted by or under those codes or regulations, or referred to in those codes or regulations;

"**building work**" means work or activity in the nature of—

- (a) the construction, demolition or removal of a building; or
- (b) the making of any excavation or filling for, or incidental to, the construction, demolition or removal of a building; or
- (c) any other prescribed work or activity,

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but does not include any work or activity that is excluded by regulation from the ambit of this definition;

"business day" means any day except—

- (a) Saturday, Sunday or a public holiday; or
- (b) any other day which falls between 25 December in any year and 1 January in the following year;

"construct" in relation to a building, includes—

- (a) to build, rebuild, erect or re-erect the building;
- (b) to repair the building;
- (c) to make alterations to the building;
- (d) to enlarge or extend the building;
- (e) to underpin the building;
- (f) to place or relocate the building on land;

"council" means a municipal or district council;

"the Court" means the Environment, Resources and Development Court;

"Crown" means the Crown in right of the State or in any of its other capacities;

"development" means—

- (a) building work; or
- (b) a change in the use of land; or
- (c) the division of an allotment; or
- (d) the construction or alteration (except by the Crown, a council or other public authority (but so as not to derogate from the operation of paragraph (e))) of a road, street or thoroughfare on land (including excavation or other preliminary or associated work); or
- (e) in relation to a State heritage place—the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place; or
- (f) in relation to a local heritage place—the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (except painting) that could materially affect the heritage value of the place; or
- (g) prescribed mining operations on land; or
- (h) an act or activity in relation to land (other than an act or activity that constitutes the continuation of an existing use of land) declared by regulation to constitute development,

(including development on or under water) but does not include an act or activity that is excluded by regulation from the ambit of this definition;

"Development Assessment Commission" means the Development Assessment Commission established under this Act;

"development authorisation" means any assessment, decision, permission, consent, approval, authorisation or certificate required by or under this Act or any other Act prescribed by the regulations for the purposes of this definition;

"Development Plan" means a Development Plan under this Act;

"division" of an allotment means—

- (a) the division, subdivision or resubdivision of the allotment (including by strata plan); or
- (b) the alteration of the boundaries of an allotment; or
- (c) the conferral or exercise of a present right to occupy part only of an allotment under a lease or licence, or an agreement for a lease or licence, the term of which exceeds six years or such longer term as may be prescribed, or in respect of which a right or option of renewal or extension exists so that the lease, licence or agreement may operate by virtue of renewal or extension for a total period exceeding six years or such longer period as may be prescribed; or
- (d) the grant or acceptance of a lease or licence, or the making of an agreement for a lease or licence, of a class prescribed by regulation,

and **"to divide"** has a corresponding meaning;

"document" means a paper or record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);

"fire authority" means the South Australian Metropolitan Fire Service or the Country Fire Service;

"Fund" means the *Planning and Development Fund* continued in existence under this Act;

"land" means, according to context—

- (a) land as a physical entity, including land covered with water and including any building on, or fixture to, the land; or
- (b) any legal estate or interest in, or right in respect of, land;

"local heritage place" means a place that is designated as a place of local heritage value by a Development Plan;

"Metropolitan Adelaide" means Metropolitan Adelaide as defined by a plan deposited in the General Registry Office by the Minister for the purposes of this definition and identified by the Minister by notice in the *Gazette*;

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"**the Mining Acts**" means the *Mining Act 1971*, the *Petroleum Act 1940* and the *Petroleum (Submerged Lands) Act 1982*;

"**mining production tenement**" means—

- (a) a mining lease or miscellaneous purposes licence under the *Mining Act 1971*; or
- (b) a petroleum licence or pipeline licence under the *Petroleum Act 1940*; or
- (c) a production licence or pipeline licence under the *Petroleum (Submerged Lands) Act 1982*;

"**owner**" of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee; or
- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;

"**party wall**" means a wall built to separate two or more buildings or a wall forming part of a building and built on the dividing line between adjoining premises for their common use and includes a common wall for the purposes of the Building Code of Australia;

"**the Planning Strategy**" means the Planning Strategy formulated under this Act;

"**prescribed mining operations**" means operations carried on in the course of—

- (a) the recovery of naturally occurring substances (except water) from the earth (whether in solid, liquid or gaseous form);
- (b) the recovery of minerals by the evaporation of water,

but does not include operations carried on in pursuance of any of the Mining Acts;

"**private certifier**" means a person who may act as a private certifier pursuant to Part 12;

"**provisional building rules consent**" means a consent in respect of the provisions of the Building Rules under this Act;

"**provisional development plan consent**" means a consent in respect of a Development Plan under this Act;

"**public notice**" means notice that complies with regulations made for the purposes of this definition;

"**public place**" includes a street, road, square, reserve, lane, footway, court, alley and thoroughfare which the public are allowed to use (whether formed on private property or not), any public watercourse, and any foreshore;

"**the Registrar-General**" includes the Registrar-General of Deeds;

"**relevant authority**" means the Development Assessment Commission or a council, subject to the operation of Parts 4 and 12;

"**the repealed Act**" means the *Planning Act 1982*;

"**the State**" includes any part of the sea—

- (a) that is within the limits of the State; or
- (b) that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

"**State Heritage Authority**" means the State Heritage Authority constituted under the *Heritage Act 1993*;

"**State heritage place**" means—

- (a) a place entered, either on a provisional or permanent basis, in the State Heritage Register; or
- (b) a place within an area established as a State Heritage Area by a Development Plan;

"**structure**" includes a fence or wall;

"**to undertake development**" means to commence or proceed with development or to cause, suffer or permit development to be commenced or to proceed.

(2) Where at the foot of a section or subsection the words "Additional Penalty" appear, those words signify that a person who undertakes development in contravention of, and thus commits an offence against, that section or subsection is liable, in addition to any other penalty prescribed for the offence, to a penalty of an amount not exceeding the cost of the development insofar as it has been undertaken in contravention of that section or subsection.

(3) Where at the foot of a section or subsection the words "Default Penalty" appear, those words signify that, where a person is convicted of an offence against the section or subsection and the offence continues after the date of the conviction, the person is guilty of a further offence against the section or subsection and liable, in addition to any other penalty prescribed for the offence, to a penalty not exceeding the amount of the default penalty for every day the offence continues after the date of the conviction.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Interpretation of Development Plans

5. (1) Subject to subsection (2), if a term defined in this Part is used in a Development Plan then the term has, unless the contrary intention appears, the defined meaning.

(2) The Governor may, by regulation, define a term used in a Development Plan, and such a definition, if inconsistent with a definition in this Part, operates to the exclusion of the latter.

(3) The Governor cannot make a regulation under subsection (2) unless the Presiding Member of the Advisory Committee has certified that the requirements of subsection (5) have been complied with in relation to that regulation.

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(4) An allegation in legal proceedings that the certificate required by subsection (3) was issued on a particular day is, in the absence of proof to the contrary, sufficient proof of that fact.

(5) The following provisions apply in relation to the making of regulations under subsection (2):

- (a) the Advisory Committee must cause to be published in the *Gazette* and in a newspaper circulating generally throughout the State an advertisement—
 - (i) containing a general explanation of the regulations that are (subject to this section) to be made; and
 - (ii) inviting interested persons to make written submissions to the Advisory Committee in relation to the proposed regulations within a specified period (being a period of not less than 28 days from the date of publication of the advertisement); and
 - (iii) appointing a place and time for the public hearing referred to in paragraph (b);
- (b) at the time and place appointed for that purpose in the advertisement, the Advisory Committee, or a committee appointed by the Advisory Committee, must hold a public hearing at which any interested person may speak in favour of, or in opposition to, the proposed regulations;
- (c) a copy of the proposed regulations must be sent to the Local Government Association of South Australia at an appropriate time determined by the Advisory Committee and the Advisory Committee must give the Local Government Association of South Australia a reasonable opportunity to make submissions in relation to the matter;
- (d) the Advisory Committee must then make recommendations to the Minister in relation to the proposed regulations (including recommendations for the modification of the proposed regulations in view of the public comment and the submissions received from the Local Government Association of South Australia) and forward with those recommendations copies of any written submissions made to the Advisory Committee under this subsection;
- (e) the Governor may then proceed to make such regulations as are appropriate.

Concept of change in the use of land

6. (1) For the purpose of determining whether a change in the use of land has occurred, the commencement or revival of a particular use of the land will, subject to subsection (2), be regarded as a change in the use of the land if—

- (a) the use supersedes a previous use of the land; or
- (b) the commencement of the use or the revival of the use follows upon a period of non-use; or
- (c) the use is additional to a previously established use of the land which continues despite the commencement of the new use.

(2) The revival of a use of land after a period of discontinuance will be regarded as the continuation of an existing use unless—

- (a) the period intervening between the discontinuance and revival of the use exceeds two years; or
- (b) during the whole or a part of the period intervening between its discontinuance and revival, the use was superseded by some other use; or
- (c) the Development Assessment Commission or a council has made a declaration under subsection (3) and the declaration remains unrevoked.

(3) Where—

- (a) a particular use of land has been discontinued for a period of six months or more (being a period that extends up to the date on which the Development Assessment Commission or a council acts under this subsection); and
- (b) the revival of that use would in the opinion of the Development Assessment Commission or council be inconsistent with the relevant Development Plan and have an adverse effect on the locality in which the land is situated,

the Development Assessment Commission or council may, by notice in writing served on the owner and the occupier of the land, declare that a revival of the use will be treated, for the purposes of this Act, as a change in the use of the land.

(4) The owner or occupier may, within one month after service of a notice under subsection (3), or such extended period as may be allowed by the Court, appeal to the Court against the declaration.

(5) On an appeal under subsection (4), the Court may confirm or revoke the declaration.

(6) For the purposes of this section, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

Application of Act

7. (1) Subject to this section, this Act applies throughout the State.

(2) This Act applies in relation to land whether or not it has been brought under the provisions of *The Real Property Act 1886*.

(3) The regulations may provide—

- (a) that a specified provision of this Act does not apply, or applies with prescribed variations, to a part of the State specified by the regulations;
- (b) that a specified provision of this Act does not apply, or applies with prescribed variations, in respect of a particular class of development, or in any circumstance or situation (or circumstance or situation of a prescribed class), specified by the regulations,

and, subject to any condition to which the regulation is expressed to be subject, the operation of this Act is modified accordingly.

(4) A regulation under subsection (3) must not provide for the modification of any provision of this Act which specifically provides for, restricts or prevents an appeal under this Act.

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**PART 2
ADMINISTRATION**

DIVISION 1—CONSTITUTION OF STATE BODIES

Subdivision 1—The Advisory Committee

The Development Policy Advisory Committee

8. (1) The *Development Policy Advisory Committee* (the "Advisory Committee") is established.

(2) The Advisory Committee consists of the following members appointed by the Governor:

(a) a person who has wide experience in urban and regional planning, or a related discipline;

(b) two persons with wide experience of local government;

(c) a person with wide experience in building design or construction;

(d) a person with wide experience in environmental conservation;

(e) a person with wide experience in commerce and industry;

(f) a person with wide experience in agricultural development;

(g) a person with wide experience in housing or urban development;

(h) a person with wide experience in planning or providing community services;

(i) a person with wide experience of the utilities and services that form the infrastructure of urban development.

(3) In making appointments to the Advisory Committee the Governor must have regard to the need for the Committee to be sensitive to cultural diversity in the population of the State.

(4) At least one member of the Advisory Committee must be a woman and at least one member must be a man.

(5) The Governor will appoint a member of the Advisory Committee to preside at its meetings.

(6) In the absence of the person appointed under subsection (5) from a meeting of the Advisory Committee, a member chosen by those present will preside.

(7) Subject to subsection (8), a member of the Advisory Committee holds office at the pleasure of the Governor.

(8) A member of the Advisory Committee ceases to hold office at the expiration of two years, or such lesser period as the Governor may determine, from the date of appointment (or last reappointment) unless the Governor reappoints the member to the Advisory Committee.

(9) The remuneration, allowances and conditions of appointment of a member of the Advisory Committee will be as determined by the Governor.

(10) On the office of a member of the Advisory Committee becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

(11) An appointment can only be made under this section after the Minister has, by notice in a newspaper circulating generally throughout the State, invited interested persons with appropriate qualifications to submit (within a period specified in the notice) expressions of interest in appointment to the relevant office.

Functions of the Advisory Committee

9. (1) The Advisory Committee has the following functions:

- (a) to advise the Minister on any matter relating to planning or development that should, in the opinion of the Advisory Committee, be brought to the Minister's attention;
- (b) to advise the Minister on any matter relating to the design or construction of buildings that should, in the opinion of the Advisory Committee, be brought to the Minister's attention;
- (c) to advise the Minister (on its own initiative or at the request of the Minister) on—
 - (i) the administration of this Act;
 - (ii) the policies that govern, or should govern, the administration of this Act;
 - (iii) proposals to make regulations under this Act, or to make amendments to this Act;
 - (iv) proposals to amend Development Plans;
- (d) to perform other functions assigned to the Advisory Committee under this Act or by the Minister.

(2) The Advisory Committee should, in the performance of its functions, take into account the provisions of the Planning Strategy.

Subdivision 2—The Development Assessment Commission

The Development Assessment Commission

10. (1) The *Development Assessment Commission* is established.

(2) The Development Assessment Commission is a body corporate.

(3) The Development Assessment Commission consists of the following members appointed by the Governor:

- (a) a Presiding Member;
- (b) a Deputy Presiding Member;
- (c) a person with practical knowledge of, and experience in, local government chosen from a panel of three such persons submitted to the Minister by the Local Government Association of South Australia;
- (d) a person with practical knowledge of, and experience in, urban or regional development, commerce, industry, building safety or landscape design;
- (e) a person with practical knowledge of, and experience in, environmental conservation or management, or the management of natural resources;

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- (f) a person with practical knowledge of, and experience in, the provision of facilities for the benefit of the community.
- (4) The Presiding Member and Deputy Presiding Member must have qualifications and experience in urban and regional planning, building, environmental management, or a related discipline that are, in the opinion of the Governor, appropriate to the Presiding Member's functions and duties under this Act.
- (5) At least one member of the Development Assessment Commission must be a woman and at least one member must be a man.
- (6) The term of office for which a member of the Development Assessment Commission is appointed will be—
- (a) in the case of the Presiding Member—a term not exceeding five years specified in the instrument of appointment; and
 - (b) in the case of other members—a term, not exceeding two years, specified in the instrument of appointment.
- (7) A member of the Development Assessment Commission is, on the expiration of a term of appointment, eligible for reappointment.
- (8) The remuneration, allowances and conditions of appointment of a member of the Development Assessment Commission—
- (a) will be as determined by the Governor; or
 - (b) will, in the case of the Presiding Member, if the Governor so decides, be determined wholly or in part in accordance with the *Government Management and Employment Act 1985*.
- (9) The Governor may remove a member of the Development Assessment Commission from office for—
- (a) breach of, or failure to comply with, the conditions of appointment;
 - (b) misconduct;
 - (c) neglect of duty;
 - (d) incapacity to carry out satisfactorily the duties of his or her office;
 - (e) failure to carry out satisfactorily the duties of his or her office.
- (10) The office of a member of the Development Assessment Commission becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office by the Governor under subsection (9).

(11) On the office of a member of the Development Assessment Commission becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

(12) In the absence of the Presiding Member from a meeting of the Development Assessment Commission the Deputy Presiding Member will preside, and in the absence of both the Presiding Member and the Deputy Presiding Member from a meeting of the Development Assessment Commission, a member chosen by those present will preside.

(13) An appointment (other than an appointment under subsection (3)(c)) can only be made under this section after the Minister has, by notice in a newspaper circulating generally throughout the State, invited interested persons with appropriate qualifications to submit (within a period specified in the notice) expressions of interest in appointment to the relevant office.

Functions of the Development Assessment Commission

11. (1) The Development Assessment Commission has the following functions:

- (a) to participate in the assessment of development proposals where appropriate;
- (b) to report to the Minister (on its own initiative or at the request of the Minister) on matters relevant to the development of land;
- (c) to make recommendations (on its own initiative or at the request of the Minister) as to the regulations that should be made under this Act;
- (d) to perform other functions assigned to the Development Assessment Commission under this Act.

(2) Except where the Development Assessment Commission makes or is required to make a recommendation or report, is required to give effect to an order of a court or tribunal constituted by law, or has a discretion in relation to the granting of a development authorisation, the Development Assessment Commission is, in the exercise and discharge of its powers, functions or duties, subject to the direction and control of the Minister.

Subdivision 3—Supplementary Provisions

Interpretation

12. In this subdivision—

"**statutory body**" means the Advisory Committee or the Development Assessment Commission.

Procedures

13. (1) A quorum at a meeting of a statutory body consists of a number of members of the statutory body equal to—

- (a) if the total number of members of the statutory body is even—half that number plus one;
or
- (b) if the total number of members of the statutory body is odd—the first integer that is greater than half that number,

and no business may be transacted at a meeting of the statutory body unless a quorum is present.

(2) A decision carried by a majority of the votes cast by members present at a meeting is a decision of the statutory body.

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(3) Each member present at a meeting of a statutory body is entitled to one vote on any matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.

(4) A conference between members constituting a quorum by telephone or audio-visual means is a valid meeting of a statutory body if—

- (a) a notice of the conference is given to all members in the manner determined by the statutory body for that purpose; and
- (b) the system of communication allows a participating member to communicate with any other participating member during the conference.

(5) A member of a statutory body who has a personal interest or a direct or indirect pecuniary interest in any matter before the statutory body (other than an indirect interest that exists in common with a substantial class of persons) must not take part in any deliberations or decision of the statutory body in relation to that matter.

(6) Subject to this Act, a statutory body may determine its own procedures.

(7) A statutory body must have accurate minutes kept of its proceedings.

Vacancies or defects in appointment of members

14. An act of a statutory body is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Immunity of members

15. (1) A member of a statutory body incurs no liability for an honest act done in the performance or purported performance of functions or duties under this Act.

(2) Any liability that would, but for this section, attach to a member attaches instead to the Crown.

Committees

16. (1) A statutory body—

- (a) must establish such committees or subcommittees as the regulations may require; and
- (b) may establish such other committees or subcommittees as the statutory body thinks fit,

to advise the statutory body on any aspect of its functions, or to assist the statutory body in the performance of its functions.

(2) A committee or subcommittee established under subsection (1) may, but need not consist of, or include, members of the statutory body.

(3) The procedures to be observed in relation to the conduct of the business of a committee or subcommittee will be—

- (a) as prescribed by regulation;

- (b) insofar as the procedure is not prescribed by regulation—as determined by the statutory body;
- (c) insofar as the procedure is not prescribed by regulation or determined by the statutory body—as determined by the relevant committee or subcommittee.

Staff

17. (1) There will be—

- (a) a secretary to each statutory body (or to both statutory bodies);
- (b) such other staff to assist each statutory body (or both statutory bodies) as the Governor thinks fit.

(2) A secretary or other member of staff referred to in subsection (1) will be appointed, and will hold office, subject to, and in accordance with, Part 3 of the *Government Management and Employment Act 1985*.

(3) A statutory body may, with the approval of the Minister administering a department of the Public Service, make use of the services of officers of that department.

(4) A statutory body may, with the approval of a council, make use of the services of officers or employees of that council.

DIVISION 2—AUTHORISED OFFICERS

Appointment of authorised officers

18. (1) The Minister or a council—

- (a) may appoint a person to be an authorised officer for the purposes of this Act; and
- (b) must appoint a person who holds the qualifications prescribed by the regulations to be an authorised officer for the purposes of this Act if required to do so by the regulations.

(2) An appointment of an authorised officer may be subject to conditions.

(3) Each authorised officer must be issued an identity card—

- (a) containing a photograph of the authorised officer; and
- (b) stating any conditions of appointment limiting the authorised officer's appointment.

(4) An authorised officer must produce the identity card for inspection before exercising the powers of an authorised officer under this Act in relation to any person.

(5) The Minister or a council may, at any time, revoke an appointment which he or she or it has made, or vary or revoke a condition of such an appointment or impose a further such condition.

(6) No liability attaches to an authorised officer for an act or omission by the authorised officer in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of any power, function or duty under this Act.

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Powers of authorised officers to inspect and obtain information

19. (1) An authorised officer may—

- (a) enter and inspect any land or building—
 - (i) where the authorised officer reasonably suspects that a provision of this Act is being, or has been breached; or
 - (ii) in the case of an authorised officer who holds prescribed qualifications—for the purpose of inspecting any building work; or
 - (iii) for the purposes of determining that the land or building is safe; or
 - (iv) for any other reasonable purpose connected with the administration or operation of this Act;
- (b) subject to subsection (2), where reasonably necessary—
 - (i) break into or open any part of, or anything in or on, the land or building; or
 - (ii) pull down or lay open any building or building work;
- (c) require any person to produce any documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) as reasonably required in connection with the administration or enforcement of this Act;
- (d) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information;
- (e) carry out tests, make measurements or take photographs, films or video recordings as reasonably necessary in connection with the administration or enforcement of this Act;
- (f) require a person whom the authorised officer reasonably suspects to have committed, or to be committing or about to commit, any breach of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (g) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (h) give any directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration or enforcement of this Act.

(2) An authorised officer may only exercise the power conferred by subsection (1)(b) on the authority of a warrant issued by a magistrate unless the authorised officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(3) A magistrate must not issue a warrant under subsection (2) unless satisfied, on information given on oath—

- (a) that there are reasonable grounds to suspect that a provision of this Act has been, is being, or is about to be, breached; or

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

(4) Where—

(a) a person whose native language is not English is suspected of having breached this Act; and

(b) the person is being interviewed by an authorised officer for the purposes of criminal proceedings in connection with that suspected breach; and

(c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

(5) In the exercise of powers under this Act an authorised officer may be assisted by such persons as may be necessary or desirable in the circumstances.

(6) An occupier of a building must give to an authorised officer or a person assisting an authorised officer such assistance as is reasonably required for the effective exercise of the powers conferred by this section to be exercised.

Penalty: Division 6 fine.

(7) Subject to subsection (8), a person who—

(a) without reasonable excuse, hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act; or

(b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(c) without reasonable excuse, fails to obey a requirement or direction of an authorised officer under this Act; or

(d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or

(e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Penalty: Division 6 fine.

(8) It is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or information as required under this section that to do so might tend to incriminate the person or make the person liable to a penalty.

(9) If compliance by a person with a requirement under this section might tend to incriminate the person or make the person liable to a penalty, then—

(a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or

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(b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(10) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment, or both.

(11) An authorised officer, or a person assisting an authorised officer, who—

(a) addresses offensive language to any other person; or

(b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 3—DELEGATIONS

Delegations

20. (1) The Minister, the Advisory Committee, the Development Assessment Commission or a council may delegate any power or function vested in or conferred on him, her or it under this Act.

(2) A delegation—

(a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or position; or

(iii) to a controlling authority established under the *Local Government Act 1934*; and

(b) must in prescribed circumstances be made to a committee or subcommittee of the Advisory Committee or Development Assessment Commission established by the regulations; and

(c) may be made subject to conditions and limitations specified in the instrument of appointment; and

(d) subject to the regulations, is revocable at will and does not derogate from the power of the delegator to act in a matter; and

(e) in the case of a delegation by the Advisory Committee or the Development Assessment Commission—may continue notwithstanding any vacancy in the membership of the Advisory Committee or Development Assessment Commission.

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

(4) Subject to subsection (7), a delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect private interest.

Penalty: Division 5 fine or division 5 imprisonment.

(5) It is a defence to a charge of an offence against subsection (4) to provide that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

(6) In subsection (4)—

"**delegate**" includes a member of a body to which a power or function has been delegated.

(7) Where a delegation is made—

(a) to a council, or to a body of which a member, officer or employee of a council is a member; or

(b) by a council to an officer or employee of the council, or to a body of which a member, officer or employee of the council is a member,

sections 53 to 57A (inclusive), and section 80, of the *Local Government Act 1934* apply in respect of any conflict of interest involving a member, officer or employee of the council (in his or her capacity as such) to the exclusion of subsection (4).

(8) Notice of a delegation under this section must, in prescribed circumstances, be given in the *Gazette*.

(9) In any legal proceedings an apparently genuine certificate, purportedly signed by the delegator, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

DIVISION 4—ANNUAL REPORT

Annual report

21. (1) The Minister must, on or before 30 September in each year, prepare a report on the administration of this Act during the preceding financial year.

(2) The Minister must, within six sitting days after completing the report, cause copies to be laid before both Houses of Parliament.

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**PART 3
PLANNING SCHEMES**

DIVISION 1—THE PLANNING STRATEGY

The Planning Strategy

22. (1) In this section—

"**the appropriate Minister**" means the Minister to whom the Governor has from time to time, by notice in the *Gazette*, assigned the functions of appropriate Minister for the purposes of this section.

(2) The appropriate Minister must ensure that a Planning Strategy for development within the State is prepared and maintained.

(3) The Planning Strategy may incorporate documents, plans, policy statements, proposals and other material designed to facilitate strategic planning and co-ordinated action on a State-wide, regional or local level.

(4) The appropriate Minister must, in relation to any proposal to create or alter the Planning Strategy—

- (a) prepare a draft of the proposal; and
- (b) by public advertisement, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the Minister.

(5) The appropriate Minister must—

- (a) make appropriate provision for the publication of the Planning Strategy; and
- (b) ensure that copies of the Planning Strategy are reasonably available for inspection (without charge) and purchase by the public at places determined by the Minister; and
- (c) ensure that notice of any alteration to the Planning Strategy is published in the *Gazette* within a reasonable time after the alteration is made.

(6) The appropriate Minister must, on or before 30 September of each year in respect of a preceding financial year, prepare a report on—

- (a) the implementation of the Planning Strategy;
- (b) any alteration to the Planning Strategy (including the general effect or implications of any such alteration);
- (c) community consultation on the content, implementation, revision or alteration of the Planning Strategy;
- (d) such other matters as the Minister thinks fit.

(7) The appropriate Minister must, within six sitting days after completing the report, cause copies to be laid before both Houses of Parliament.

(8) The Planning Strategy is an expression of policy formed after consultation within government and within the community and does not affect rights or liabilities (whether of a substantive, procedural or other nature).

(9) The Planning Strategy is not to be taken into account for the purposes of any application, assessment or decision under Part 4 (other than Division 2 of that Part).

(10) No action can be brought on the basis—

(a) that a Development Plan, or an amendment to a Development Plan, approved under this Act is inconsistent with the Planning Strategy; or

(b) that an assessment or decision under this Act (including an assessment or decision under Division 2 of Part 4) is inconsistent with the Planning Strategy.

DIVISION 2—DEVELOPMENT PLANS

Subdivision 1—Creation of plans

Development Plans

23. (1) Development Plans will be prepared and published for the purposes of this Act.

(2) A Development Plan may relate to any geographical part of the State (but no more than one plan may relate to a particular part of the State).

(3) A Development Plan should seek to promote the provisions of the Planning Strategy and may set out or include—

(a) planning or development objectives or principles relating to—

(i) the natural or constructed environment and ecologically sustainable development;

(ii) social or socio-economic issues;

(iii) urban or regional planning;

(iv) the management or conservation of land, buildings, heritage places and heritage areas;

(v) management, conservation and use of natural and other resources;

(vi) economic issues;

(b) provisions enabling the transfer of development rights between sites;

(c) material prescribed by the regulations;

(d) such other material relating to planning or development as may be appropriate.

(4) A Development Plan may designate a place as a place of local heritage value if—

(a) it displays historical, economic or social themes that are of importance to the local area;
or

(b) it represents customs or ways of life that are characteristic of the local area; or

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- (c) it has played an important part in the lives of local residents; or
- (d) it displays aesthetic merit, design characteristics or construction techniques of significance to the local area; or
- (e) it is associated with a notable local personality or event; or
- (f) it is a notable landmark in the area.

(5) A Development Plan may adopt, wholly or partially and with or without modification, any plan, policy, standard, document or code prepared or published under this or any other Act, or by a body prescribed by the regulations (either as in force at the time the Plan is made or as in force from time to time).

(6) A Development Plan is a public document of which a court or tribunal will take judicial notice, without formal proof of its contents.

(7) A Development Plan is created in the same manner as a Development Plan is amended (*see subdivision 2*).

Subdivision 2—Amendments to Development Plans**Council or Minister may amend a Development Plan**

24. (1) An amendment to a Development Plan may be prepared—

- (a) where it relates to the area, or part of the area, of a council—
 - (i) by the council for the relevant area; or
 - (ii) by the Minister acting at the request of the council; or
 - (iii) where the Minister has requested the council to prepare a Statement of Intent within a specified time and the council fails to do so, or the Minister and the council cannot reach an agreement on a Statement of Intent within three months after a date specified by the Minister—by the Minister; or
 - (iv) where the Minister considers that a council has demonstrated undue delay in the preparation or processing of an amendment under this subdivision, or a council has decided not to proceed with an amendment under this subdivision—by the Minister; or
 - (v) where the council has failed to comply with the requirements of subdivision 3—by the Minister; or
- (b) where it relates to the areas, or parts of the areas, of two or more councils—
 - (i) by the Minister on the basis that he or she considers that the amendment is reasonably necessary to promote orderly and proper development within the relevant areas and that, after consultation with the relevant councils, the Minister considers that it is appropriate for the Minister to undertake the amendment; or
 - (ii) by the relevant councils with the approval of the Minister (and, in such a case, section 25 will apply with any necessary modifications); or
- (c) where it relates to land that does not lie within the area of a council—by the Minister; or

- (d) where the same amendment, or substantially the same amendment, is to be made to two or more Development Plans—by the Minister; or
- (e) where the purpose of the amendment is to establish a State Heritage Area and impose development controls in relation to that area—by the Minister; or
- (f) where the purpose of the amendment is to impose controls in relation to a place that is entered, either on a provisional or permanent basis, in the State Heritage Register—by the Minister; or
- (g) where the Minister considers that an amendment to a Development Plan is appropriate because of a matter of significant social, economic or environmental importance—by the Minister.

(2) The Minister must, in relation to the preparation of an amendment under subsection (1)(e) or (f), consult with the Minister responsible for the administration of the *Heritage Act 1993* and the State Heritage Authority.

Amendments by a council

25. (1) If a council is considering an amendment to a Development Plan, the council must first reach agreement with the Minister on a "Statement of Intent" prepared by the council in accordance with the regulations.

(2) The Minister must, for the purposes of subsection (1), consult with the Advisory Committee if the Minister considers that the proposed amendment would be seriously at variance with the Planning Strategy.

(3) If or when agreement is reached, and the council decides to proceed, the council must prepare a draft Plan Amendment Report based on the outcome of investigations initiated by the council in accordance with the terms of the Statement of Intent and such other investigations (if any) as the council thinks fit, and after considering the advice of a person with prescribed qualifications appointed by the council.

- (4) A Plan Amendment Report must assess the extent to which the proposed amendment—
- (a) accords with the Statement of Intent;
 - (b) accords with the Planning Strategy;
 - (c) accords with other parts of the Development Plan;
 - (d) complements the policies in Development Plans for adjoining areas;
 - (e) satisfies the matters prescribed in the regulations,

and include—

- (f) an explanation of the intent of the proposed amendment, the relationship between that intent and the policy of the Statement of Intent, and a summary of the major policy changes (if any) that are proposed; and
- (g) a summary of the conclusions drawn from the investigations referred to above; and
- (h) a draft of the amendment, or a draft of the relevant section of the Development Plan as amended (with the amendments shown in a distinctive manner).

(5) Subject to subsection (6), a draft Plan Amendment Report must be referred to any government Department or agency that has a direct interest in the matter for comment (but, if a response is not received from a Department or agency within six weeks or such other period as may be prescribed by the regulations, it will be taken that the Department or agency does not desire to make any comment), and the council may, as a result of any comments that it receives, amend the reports.

(6) The Minister may, after consultation with the council at the time of the preparation of the Statement of Intent, permit the council to undertake the consultation required under subsection (5) during the period for which the Plan Amendment Report is released for public comment under subsection (11).

(7) Subject to subsection (8), the council may then finalise its Plan Amendment Report and submit it to the Minister, together with a statement containing the prescribed particulars.

(8) Subsection (7) does not apply if the Minister has authorised the council to release the Plan Amendment Report for public consultation without submission to the Minister under that subsection.

(9) The Minister must, on receipt of a report under subsection (7)—

- (a) accept the Plan Amendment Report, without alteration, as a basis for public submissions; or
- (b) require an alteration to the Plan Amendment Report (after consultation with the council) and accept the report, as altered, as a basis for public submissions; or
- (c) reject the Plan Amendment Report as a basis for public submissions (in which case the Minister must provide the council with written reasons for the Minister's decision).

(10) In considering a Plan Amendment Report under subsection (9) the Minister must assess the extent to which the proposed amendment satisfies the matters referred to in subsection (4)(a) to (e).

(11) Unless rejected by the Minister under subsection (9), a Plan Amendment Report may then be released for public consultation in accordance with the regulations.

(12) Where a proposed amendment designates a place as a place of local heritage value, the council must, on or before the day on which the Plan Amendment Report is released for public consultation under subsection (11), give each owner of land constituting the place proposed as a place of local heritage value a written notice—

- (a) informing the owner of the proposed amendment; and
- (b) inviting the owner to make submissions on the amendment to the council within the period that applies under subsection (11).

(13) The council must, after complying with the requirements under subsections (11) and (12)—

- (a) prepare a report on the matters raised as a result of public consultation and, if relevant, under subsection (12) and on any recommended alterations to the proposed amendment; or
- (b) if it thinks fit, by notice in writing to the Minister, decline to proceed any further with the amendment.

- (14) A report under subsection (13)(a) must be referred to the Minister, who must—
- (a) seek the advice of the Advisory Committee—
 - (i) if the Minister is of the opinion that there is substantial public opposition to the whole or part of the proposed amendment, or that the council has recommended that substantial alterations be made to the amendment; or
 - (ii) in the case of an amendment that designates a place as a place of local heritage value—if the owner of the land objects to the amendment (and, in such a case, the owner of the land must be given a reasonable opportunity to make submissions to the Advisory Committee (in such manner as the Advisory Committee thinks fit) in relation to the matter before the Advisory Committee reports back to the Minister); and
 - (b) if subsection (8) has applied, assess the extent to which the proposed amendment satisfies the matters referred to in subsection (4)(a) to (e),

and thereafter the Minister must—

- (c) approve the amendment; or
- (d) alter the amendment (after consultation with the council) and approve the amendment as altered; or
- (e) decline to approve the amendment (in which case the Minister must provide the council with written reasons for the Minister's decision).

Amendments by the Minister

26. (1) If the Minister is considering an amendment to a Development Plan, the Minister must first prepare a draft Plan Amendment Report based on investigations initiated by the Minister in relation to the matter and the advice of a person with prescribed qualifications appointed by the Minister.

- (2) A Plan Amendment Report must assess the extent to which the proposed amendment—
- (a) accords with the Planning Strategy;
 - (b) accords with other parts of the Development Plan;
 - (c) complements the policies in Development Plans for adjoining areas;
 - (d) satisfies the requirements prescribed by the regulations,

and include—

- (e) an explanation of the proposed amendment and a summary of the major policy changes (if any) that are proposed; and
- (f) a summary of the conclusions drawn from the investigations referred to above; and
- (g) a draft of the amendment, or a draft of the relevant section of the Development Plan as amended (with the amendments shown in a distinctive manner).

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(3) The Plan Amendment Report may incorporate any material prepared by a council under section 25 in relation to an amendment which was proposed under that section.

(4) Subject to section 28, the Minister must consult with any council which has a direct interest in the matter on the content of a Plan Amendment Report.

(5) The Plan Amendment Report must then be released for public consultation in accordance with the regulations.

(6) Where a proposed amendment designates a place as a place of local heritage value, the Minister must, on or before the day on which the Plan Amendment Report is released for public consultation under subsection (5), give each owner of land constituting the place proposed as a place of local heritage value a written notice—

- (a) informing the owner of the proposed amendment; and
- (b) inviting the owner to make submissions on the amendment within the period that applies under subsection (5).

(7) The Minister must seek the advice of the Advisory Committee—

- (a) on the matters raised as a result of public consultation under subsection (5); and
- (b) on any submissions made under subsection (6); and
- (c) on any proposed alterations to the amendment.

(8) The Minister may then—

- (a) approve the amendment; or
- (b) alter the amendment and approve the amendment as altered; or
- (c) decline to approve the amendment.

Operation of an amendment and Parliamentary scrutiny

27. (1) An amendment approved by the Minister under this subdivision must be referred to the Governor and the Governor may, by notice in the *Gazette*—

- (a) declare the amendment to be an authorised amendment under this Act; and
- (b) fix a day on which the amendment will come into operation (and the relevant Development Plan (or Plans) will then be taken, from that day, to be amended in the manner set out in the amendment).

(2) When the Governor has declared an amendment to be an authorised amendment under this Act, the Minister must, within 28 days, refer the amendment to the Environment, Resources and Development Committee of the Parliament.

(3) The Environment, Resources and Development Committee must, after receipt of an amendment under subsection (2)—

- (a) resolve that it does not object to the amendment; or
- (b) resolve to suggest amendments to the relevant Development Plan (as amended); or

(c) resolve to object to the amendment.

(4) If, at the expiration of 28 days from the day on which the amendment was referred to the Environment, Resources and Development Committee, the Committee has not made a resolution under subsection (3), it will be conclusively presumed that the Committee does not object to the amendment and does not itself propose to suggest any amendments to the Development Plan.

(5) If an amendment is suggested under subsection (3)(b)—

(a) the Governor, may, on the recommendation of the Minister, by notice in the *Gazette*, proceed to make such an amendment; or

(b) the Minister must report back to the Committee that the Minister is unwilling to recommend that the relevant Development Plan be amended in the manner suggested by the Committee (in which case the Committee may resolve that it does not object to the amendment as originally authorised by the Governor, or may resolve to object to that amendment).

(6) If the amendment was proposed by a council, the Minister must consult with the council before a recommendation is made under subsection (5)(a).

(7) If the Environment, Resources and Development Committee resolves to object to an amendment, copies of the amendment must be laid before both Houses of Parliament.

(8) If either House of Parliament passes a resolution disallowing an amendment laid before it under subsection (7) then the amendment ceases to have effect (and the Development Plan will, from that time, apply as if it had not been amended by that amendment).

(9) A resolution is not effective for the purposes of subsection (8) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the amendment was laid before the House.

(10) Where a resolution is passed under subsection (8), notice of that resolution must forthwith be published in the *Gazette*.

Interim development control

28. (1) Where the Governor is of the opinion that it is necessary in the interests of the orderly and proper development of an area of the State that an amendment to a Development Plan should come into operation without delay, the Governor may, at the same time as, or at any time after, a Plan Amendment Report in relation to the amendment is released for public consultation under this subdivision, and without the need for prior consultation with any council or other authority, by notice in the *Gazette*, declare that the amendment will come into operation on an interim basis on a day specified in the notice.

(2) Where a notice has been published under subsection (1), the amendment comes into operation on the day specified in the notice.

(3) The Minister must, as soon as practicable after the publication of a notice under subsection (1), prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

(4) An amendment that has come into operation under this section ceases to operate—

(a) if the Governor, by notice published in the *Gazette*, terminates the operation of the amendment; or

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- (b) if either House of Parliament passes a resolution disallowing the amendment after copies of the amendment have been laid before both Houses of Parliament under section 27(7); or
- (c) if the amendment has not been authorised by the Governor under this subdivision within 12 months from the day on which it came into operation; or
- (d) if the amendment is superseded by another amendment that comes into operation under this subdivision.

(5) If an amendment ceases to operate by virtue of subsection (4)(b) or (c), notice of that cessation must forthwith be published in the *Gazette*.

(6) If an amendment ceases to operate by virtue of subsection (4)(a), (b), or (c), the Development Plan will, from the date of cessation, apply as if it had not been amended by that amendment.

Certain amendments may be made without formal procedures

29. (1) The Minister may, by notice in the *Gazette*, amend a Development Plan by including in the plan any plan, policy, standard, document or code which—

- (a) is prepared, adopted or applied under any other Act; and
- (b) falls within a class prescribed by the regulations for the purposes of this provision.

(2) The Minister may, by notice in the *Gazette*, amend a Development Plan—

- (a) in order to correct an error in the plan; or
- (b) in order to make a change of form (not involving a change of substance) in the plan.

(3) The Minister may, by notice in the *Gazette*, amend a Development Plan—

- (a) in order to include a State heritage place in the plan; or
- (b) in order to remove a place that is no longer a State heritage place from the plan.

(4) An amendment under this section takes effect as from a time stated in the notice of amendment.

Subdivision 3—Review of plans by councils**Review of plans by council**

30. (1) A council must carry out periodic reviews for the purpose of determining—

- (a) the appropriateness of any Development Plan that applies in relation to its area (or a part of its area); and
- (b) the consistency of any such Development Plan with the Planning Strategy.

(2) A council must give public notice of a review to be carried out under this section and the notice must contain an invitation to interested persons to make written submissions to the council on the subject of the review within two months of the date of the notice or such longer period as may be allowed by the notice.

(3) A council must give any person who makes written submissions in response to an invitation under subsection (2) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.

(4) The Advisory Committee may, at the request of a council, furnish advice on any matters arising in the course of a review under this section.

(5) On completing a review, the council must—

- (a) prepare a report on the review and send a copy of the report to the Minister; or
- (b) proceed to the preparation of a Statement of Intent for the purpose of effecting an amendment to the Development Plan under this Act.

(6) The first review to be carried out by a council under this section must be completed within three years after the commencement of this section, and each subsequent review must be completed within five years of the completion of the previous review.

(7) A failure of a council to comply with this section cannot be taken to affect the validity of a Development Plan that applies in relation to the area (or a part of the area) of the council.

Subdivision 4—Supplementary provision

Copies of plans to be made available to the public

31. (1) The Minister must make appropriate provision for the publication and distribution of Development Plans under this Act.

(2) The Minister must ensure that copies of every Development Plan, and of every authorised amendment to a Development Plan, are reasonably available for inspection (without charge) and purchase by the public at places determined by the Minister.

(3) A council must make copies of a Development Plan published under subsection (1) that applies in relation to any part of its area available for inspection (without charge) and purchase by the public at an office of the council.

(4) The Minister must, within a reasonable time after an amendment is made to a Development Plan, ensure that a consolidation of the Development Plan, as amended, is prepared and that copies of the consolidation are made available for inspection (without charge) and purchase by the public at places determined by the Minister.

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**PART 4
DEVELOPMENT CONTROL**

DIVISION 1—GENERAL CONTROL

Subdivision 1—Approvals

Development must be approved under this Act

32. Subject to this Act, no development may be undertaken unless the development is an approved development.

Matters against which a development must be assessed

33. (1) A development is an approved development if, and only if, a relevant authority has assessed the development against, and granted a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):

- (a) the provisions of the appropriate Development Plan ("provisional development plan consent");
- (b) the provisions of the Building Rules ("provisional building rules consent");
- (c) in relation to a proposed division of land (otherwise than by strata plan)—the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):
 - (i) the allotments resulting from the division may be lawfully used for the purposes proposed by the applicant;
 - (ii) open space will be provided, or a payment will be made in accordance with the requirements imposed under this Act;
 - (iii) adequate provision is made for the creation of appropriate easements and reserves for the purposes of drainage, electricity supply, water supply and sewerage services;
 - (iv) the requirements of the relevant Minister relating to the provision of water supply and sewerage services are satisfied;
 - (v) requirements set out in regulations made for the purposes of this provision are satisfied;
- (d) in relation to a division of land by strata plan—the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):
 - (i) each unit that would be created or affected by the development is appropriate for separate occupation;
 - (ii) any encroachment of a unit over other land has been dealt with in a satisfactory manner;
 - (iii) where land is to be vested in a council or other authority—the council or authority consents to the vesting;

- (iv) the building or buildings shown on the plan as forming part of a unit or units are of sufficient substance and quality, and are structurally sound and in good condition;
- (v) the division of the land by strata plan is, having regard to the relevant Development Plan, appropriate;
- (vi) open space will be provided, or a payment will be made in accordance with the requirements imposed under this Act;
- (e) the requirement that any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) has been dealt with in a satisfactory manner;
- (f) such other matters as may be prescribed.

(2) An application may be made for all or any of the consents required for the approval of a proposed development, or for any one or more of those consents.

(3) A relevant authority may, in granting a provisional development plan consent, reserve its decision on a specified matter until further assessment of the relevant development under this Act.

Determination of relevant authority

34. (1) Subject to this Act, the relevant authority, in relation to a proposed development, is ascertained as follows:

- (a) where the proposed development is to be undertaken within the area of a council, then, subject to paragraph (b), the council is the relevant authority;
- (b) where—
 - (i) the Development Assessment Commission is constituted by the regulations as the relevant authority in relation to a class of development in which the proposed development is comprised; or
 - (ii) the proposed development is to be undertaken by a council; or
 - (iii) the Minister, acting at the request of the relevant council, declares, by notice in writing served personally or by post on the proponent, that the Minister desires the Development Assessment Commission to act as the relevant authority in relation to the proposed development; or
 - (iv) the proposed development is to be undertaken in a part of the State that is not (wholly or in part) within the area of a council; or
 - (v) the Development Assessment Commission and a council would, apart from this provision, both be constituted as relevant authorities in relation to a particular development,

then the Development Assessment Commission is, subject to subsection (2), the relevant authority.

(2) Where—

- (a) a proposed development involves the performance of building work; and

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- (b) the Development Assessment Commission is constituted as a relevant authority under subsection (1),

the Development Assessment Commission may—

- (c) refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or
- (d) require that the assessment of the development in respect of the Building Rules be undertaken by a private certifier, or by some other person of a class determined by the Development Assessment Commission for the purposes of this provision,

and in that case (unless the proposed development is not to be undertaken in the area of a council) the council for the area in which the development is to be undertaken will, subject to the regulations and any condition or limitation imposed by the Development Assessment Commission, be taken to be a relevant authority for the purposes of this Act.

Special provisions relating to assessment against a Development Plan

35. (1) If a proposed development is of a kind described as a *complying* development under the regulations or the relevant Development Plan, the development must be granted a provisional development plan consent (subject to such conditions or exceptions as may be prescribed by the regulations or the relevant Development Plan).

(2) Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent.

(3) A development that is of a kind described as a *non-complying* development under the relevant Development Plan must not be granted a provisional development plan consent unless—

- (a) where the relevant authority is the Development Assessment Commission—the Minister and, if the development is to be undertaken in the area of a council, that council, concur in the granting of the consent;
- (b) in any other case—the Development Assessment Commission concurs in the granting of the consent.

(4) If a development is of a kind described as a *non-complying* development under the relevant Development Plan, no appeal lies against—

- (a) a refusal of consent or concurrence under this section; or
- (b) a condition attached to a consent or approval that is expressed to apply by virtue of that non-compliance under the Development Plan,

except in relation to a proposed development that has, or will, become necessary by reason of—

- (c) a change, or a proposed change, in the law regulating an existing use of land; or
- (d) an order under Division 5 or 6 of Part 6.

Special provisions relating to assessment against the Building Rules

36. (1) If the regulations provide that a form of building work complies with the Building Rules, any such building work must be granted a provisional building rules consent (subject to such conditions or exceptions as may be prescribed by the regulations or the Development Plan).

(2) Subject to subsection (3), a development that is assessed by a relevant authority as being at variance with the Building Rules must not be granted a provisional building rules consent unless the relevant authority determines, on the application or with the concurrence of the applicant, to modify the application of the Building Rules to the particular development on the basis that it is satisfied—

- (a) that the provisions of the Building Rules are inappropriate to the particular building or building work; or
- (b) that the adoption of a particular modification would achieve the objects of this Act as effectually, or more effectually, than if the modification were not to occur; or
- (c) that the proposed building work fails to conform with the Building Rules only in minor respects; or
- (d) that the adoption of a particular modification is warranted having regard to the objects of the Development Plan or the performance criteria of the Building Code of Australia; or
- (e) in a case where the consent is being sought after the development has occurred—that the adoption of a particular modification is justifiable in the circumstances of the particular case,

(and, in that event, the Building Rules as so modified will apply to the development).

(3) Where an inconsistency exists between the Building Rules and a Development Plan in relation to a State heritage place or a local heritage place—

- (a) the Development Plan prevails; and
- (b) the relevant authority must modify the application of the Building Rules to avoid the inconsistency but so as also to ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved in respect of the development that are as good as can reasonably be achieved in the circumstances.

(4) Subject to this Act, a relevant authority must accept that proposed building work complies with the Building Rules to the extent that—

- (a) such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; or
- (b) such compliance is certified by a private certifier.

(5) No act or omission by a relevant authority in good faith in connection with the operation of subsections (3) or (4) subjects the relevant authority to any liability.

(6) The relevant authority may refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of the Building Rules for a building of that classification.

Consultation with other authorities or agencies

37. (1) The regulations may provide that where an application for the consent or approval of a proposed development of a prescribed class is to be assessed by a relevant authority—

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- (a) the relevant authority must refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, where the relevant authority is a council, the Development Assessment Commission); and
 - (b) the relevant authority must not make its decision until it has received a response from that prescribed body in relation to the matter or matters for which the referral was made (but if a response is not received from the body within a period prescribed by the regulations, it will be presumed, unless the body notifies the relevant authority within that period that the body requires an extension of time because of subsection (3) (being an extension equal to that period of time that the applicant takes to comply with a request under subsection (2)), that the body does not desire to make a response, or concurs (as the case requires)).
- (2) A prescribed body may, before it gives a response under this section, request the applicant—
- (a) to provide such additional documents or information (including calculations and technical details) as the prescribed body may reasonably require to assess the application; and
 - (b) to comply with any other requirements or procedures of a prescribed kind.
- (3) Where a request is made under subsection (2)—
- (a) the prescribed body may specify a time within which the request must be complied with; and
 - (b) the prescribed body may, if it thinks fit, grant an extension of the time specified under paragraph (a).
- (4) The regulations may, in relation to the operation of subsection (1)—
- (a) provide that the relevant authority cannot consent to or approve the development—
 - (i) without having regard to the response of the prescribed body; or
 - (ii) without the concurrence of the prescribed body (which concurrence may be given by the prescribed body on such conditions as it thinks fit);
 - (b) empower the prescribed body to direct the relevant authority—
 - (i) to refuse the application; or
 - (ii) if the relevant authority decides to consent to or approve the development—subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body, to impose such conditions as the prescribed body thinks fit,
- (and the relevant authority must comply with any such direction).
- (5) Where a relevant authority acting by direction of a prescribed body refuses an application or imposes conditions in respect of a development authorisation—
- (a) the relevant authority must notify the applicant that the application was refused, or the conditions imposed, by direction under this section; and
 - (b) if the regulations so provide, no appeal lies against that refusal or those conditions.

(6) Where a refusal or condition referred to in subsection (5) is the subject of an appeal under this Act, the prescribed body will be a party to the appeal.

Subdivision 2—Consultation

Public notice and consultation

38. (1) There will be three categories of development for the purposes of this section—

- (a) *Category 1 development*; and
- (b) *Category 2 development*; and
- (c) *Category 3 development*.

(2) The following provisions apply in relation to the assignment of developments to those categories:

- (a) the regulations or a Development Plan may assign a form of development to Category 1 or to Category 2 and if a particular form of development is assigned to a category by both the regulations and a Development Plan, the assignment provided by the Development Plan will, to the extent of any inconsistency, prevail within the area to which the Development Plan relates; and
- (b) any development that is not assigned to a category under paragraph (a) will be taken to be a Category 3 development for the purposes of this section.

(3) Where a person applies for a consent in respect of the Development Plan for a Category 1 development, the following provisions of this section do not apply.

(4) Where a person applies for a consent in respect of the Development Plan for a Category 2 development, notice of the application must be given, in accordance with the regulations, to—

- (a) an owner or occupier of each piece of adjacent land; and
- (b) any other person of a prescribed class.

(5) Where a person applies for a development assessment of a Category 3 development, notice of the application must be given, in accordance with the regulations, to—

- (a) the persons referred to in subsection (4); and
- (b) any other owner or occupier of land which, according to the determination of the relevant authority, would be directly affected to a significant degree by the development if it were to proceed; and
- (c) the public generally.

(6) Except as otherwise provided by the regulations—

- (a) any notice required under this section; and
- (b) the extent of representations under this section; and
- (c) any appeal under this section,

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will only relate to whether or not a provisional development plan consent should be granted.

(7) Where notice of an application for consent in respect of a Category 2 or Category 3 development has been given under this section, any person who desires to do so may, in accordance with the regulations, make submissions in writing to the relevant authority in relation to the granting or refusal of consent.

(8) The relevant authority to which the application is made must forward to the applicant a copy of the representations made and allow the applicant an opportunity to respond, in writing, to those representations.

(9) The response referred to in subsection (8) must be made within the prescribed number of days after the relevant material is forwarded to the applicant.

(10) In addition to the requirements of subsections (7), (8) and (9)—

(a) in the case of a Category 2 development—the relevant authority may, in its absolute discretion, allow a person who made a submission to appear personally or by representative before it to be heard on his or her submission; and

(b) in the case of a Category 3 development—the relevant authority must allow a person who made a submission and who, as part of that submission, indicated an interest in appearing before the authority, a reasonable opportunity to appear personally or by representative before it to be heard on his or her submission.

(11) If a person appears before the relevant authority under subsection (10), the relevant authority must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative before it in order to respond to any relevant matter.

(12) Where representations have been made under this section, the relevant authority must—

(a) give to each person who made a representation notice of its decision on the application and of the date of the decision and, in the case of a Category 3 development, of the person's appeal rights under this Act; and

(b) in the case of a Category 3 development—give notice to the Court—

(i) of its decision on the application and of the date of the decision; and

(ii) of the names and addresses of persons who made representations to the relevant authority under this section.

(13) A notice under subsection (12) must be given within five business days from the date of the decision on the application.

(14) An appeal under this section must be commenced within fifteen business days after the date of the decision on the application.

(15) If an appeal is lodged against a decision on a Category 3 development by a person who is entitled to be given notice of a decision under subsection (12), the applicant for the relevant development authorisation—

(a) must be notified by the Court of the appeal; and

(b) is a party to the appeal.

(16) A decision of a relevant authority in respect of a Category 3 development in respect of which representations have been made under this section does not operate—

- (a) until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
- (b) where an appeal is commenced—
 - (i) until the appeal is dismissed, struck out or withdrawn; or
 - (ii) until the questions raised by the appeal have been finally determined (other than any question as to costs).

Subdivision 3—Procedural issues

Application and provision of information

39. (1) An application to a relevant authority for the purposes of this Division must—

- (a) be in a form determined by the Minister for the purposes of this Act; and
- (b) include any information reasonably required by the relevant authority; and
- (c) be lodged in the manner and accompanied by such plans, drawings, specifications or other documents as may be prescribed; and
- (d) be accompanied by the appropriate fee.

(2) A relevant authority may request an applicant—

- (a) to provide such additional documents or information (including calculations and technical details) as the relevant authority may reasonably require to assess the application;
- (b) to remedy any defect or deficiency in any application or accompanying document or information required by or under this Act;
- (c) to consult with an authority or body prescribed by the regulations;
- (d) if the regulations so provide, to prepare a statement of effect in accordance with the regulations in relation to a development of a kind that is expressed to be a *non-complying* development under the relevant Development Plan;
- (e) to comply with any other requirement prescribed by the regulations.

(3) Where a request is made under subsection (2)—

- (a) any period between the date of the request and the date of compliance is not to be included in the time within which the relevant authority is required to decide the application; and
- (b) if the request is not complied with within the time specified by the regulations, the relevant authority may refuse the application.

(4) A relevant authority may—

- (a) permit an applicant—

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- (i) to vary an application;
- (ii) to vary any plans, drawings, specifications or other documents that accompanied an application,

(provided that the essential nature of the proposed development is not changed);

- (b) permit an applicant to lodge an application without the provision of any information or document required by the regulations;
- (c) to the extent that the fee is payable to that relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);
- (d) refuse an application that relates to a development of a kind that is described as a *non-complying* development under the relevant Development Plan without proceeding to make an assessment of the application.

(5) A relevant authority may grant a permission under subsection (4) unconditionally or subject to such conditions as the relevant authority thinks fit.

(6) Subject to subsection (7), a person may seek the variation of a development authorisation previously given under this Act.

(7) An application to which subsection (6) applies—

- (a) may only be made if the relevant authorisation is still operative; and
- (b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations, to the extent of the proposed variation, be treated as a new application for development authorisation (but, unless otherwise approved by the relevant authority, the application for variation cannot relate to any condition imposed with respect to the original authorisation nor extend the period for which the relevant authorisation remains operative).

(8) An application, or a consent, may provide for, or envisage the undertaking of development in stages, with separate consents or approvals for the various stages.

(9) An applicant may withdraw an application (but, unless the relevant authority otherwise determines, the applicant is not entitled to a refund of the application fee in such a case).

Determination of application

40. (1) A relevant authority must, on making a decision on an application under this Division, give notice of the decision in accordance with the regulations (and, in the case of a refusal, the notice must include the reasons for the refusal and any appeal rights that exist under this Act).

(2) A development authorisation under this Division remains operative for a period prescribed by the regulations.

(3) A relevant authority may, on its own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under subsection (2).

Time within which decision must be made

41. (1) A relevant authority should deal with an application as expeditiously as possible and within the time prescribed by the regulations.

(2) If a relevant authority does not decide an application within the time prescribed under subsection (1), the applicant may, after giving 14 days notice in writing to the relevant authority, apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court.

(3) In proceedings under subsection (2), the Court may order the relevant authority to pay the applicant's costs of the proceedings.

Conditions

42. (1) A decision under this Division is subject to such conditions (if any)—

- (a) as a relevant authority thinks fit to impose in relation to the development; or
- (b) as may be prescribed by the regulations or otherwise imposed under this Act.

(2) Any such condition—

- (a) is binding on, and enforceable against—
 - (i) the person by whom the development is undertaken; and
 - (ii) any person who acquires the benefit of the decision or the development; and
 - (iii) the owners and occupiers of the land on which the development is undertaken; and
- (b) may continue to apply in relation to the development unless or until it is varied or revoked by the relevant authority in accordance with an application under this Division.

(3) A relevant authority may, for example, approve a development subject to a condition—

- (a) that regulates or restricts the use of any land or building subject to development; or
- (b) that provides for the management, preservation or conservation of any land or building subject to development; or
- (c) that regulates maintenance of any land or building subject to development; or
- (d) where the applicant is seeking approval for a temporary development—that provides that, at a future time specified in the condition—
 - (i) the previous use of the land will revive, or a use of the land will cease; and
 - (ii) any person who has the benefit of the development will restore the land to the state in which it existed immediately before the development.

Cancellation by a relevant authority

43. (1) A relevant authority may, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.

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(2) A cancellation under this section is subject to such conditions (if any) as the relevant authority thinks fit to impose.

General offences

44. (1) A person must not undertake development contrary to this Division.

Penalty: Division 3 fine.

Additional penalty.

Default Penalty: \$500.

(2) A person must not undertake development contrary to a development authorisation under this Division.

Penalty: Division 3 fine.

Additional penalty.

Default Penalty: \$500.

(3) A person who has the benefit of a development must ensure that the development is used, maintained and operated in accordance with—

- (a) any development authorisation under this Division; and
- (b) any plans, drawings, specifications or other documents submitted to a relevant authority for the purposes of this Division that are relevant to any such approval.

Penalty: Division 4 fine.

(4) A person must not contravene, or fail to comply with, a condition imposed under this Division.

Penalty: Division 3 fine.

Additional penalty.

Default penalty: \$500.

Offences relating specifically to building work

45. (1) A person must not perform building work, or cause it to be performed, except in accordance with technical details, particulars, plans, drawings and specifications approved in accordance with this Division.

Penalty: Division 4 fine.

Default penalty: \$200.

(2) A person must, in performing any building work, comply with the Building Rules (unless modified under this Part), and any other requirements imposed by or under this Division in respect of that work.

Penalty: Division 4 fine.

Default penalty: \$200.

(3) In so far as any charge for an offence against a preceding subsection relates to a failure to comply with the Building Rules (including the Building Rules as modified under this Act), it is a defence to prove that the failure to comply was only of a minor nature and had no adverse effect on the structural soundness or safety of the building in respect of which the relevant building work was performed.

DIVISION 2—MAJOR DEVELOPMENTS OR PROJECTS

Environmental impact statements

46. (1) In this section—

"**environmental impact statement**", in relation to a development or project, means a statement of—

- (a) the expected social, economic and environmental effects of the development or project;
- (b) the extent to which the expected effects of the development or project are consistent with the provisions of—
 - (i) any relevant Development Plan; and
 - (ii) the Planning Strategy; and
 - (iii) any matters prescribed by the regulations;
- (c) the conditions (if any) that should be observed in order to avoid or satisfactorily manage and control any potentially adverse effects of the development or project on the environment;
- (d) any other particulars in relation to the development or project required—
 - (i) by the regulations; or
 - (ii) by the Minister.

(2) Where the Minister is of the opinion that a proposed development or project is of major social, economic or environmental importance—

- (a) the Minister may, in consultation with the proponent, have prepared, or arrange for the preparation of, an environmental impact statement in relation to the proposed development or project; or
- (b) the Minister may require the proponent to prepare an environmental impact statement in relation to the proposed development or project in accordance with guidelines determined by the Minister.

(3) The Minister must, in considering whether an environmental impact statement should be prepared, take into account criteria prescribed by the regulations.

(4) The Minister must, in formulating the guidelines referred to in subsection (2)(b), undertake such public consultation as the regulations may require.

(5) The Minister—

- (a) must refer the environmental impact statement to any prescribed authority or body; and
- (b) may refer the environmental impact statement to such other authorities or bodies as the Minister thinks fit,

for comment and report.

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- (6) The Minister must, by public advertisement—
- (a) give notice of the place or places at which copies of the environmental impact statement are available for inspection and purchase; and
 - (b) invite interested persons to make written submissions to the Minister on the environmental impact statement within a specified period of not less than six weeks, from the date of publication of the advertisement.
- (7) The Minister must, after the expiration of the period referred to in subsection (6), give to the proponent copies of all submissions made within that period.
- (8) The proponent must then prepare a written response, to the satisfaction of the Minister, to—
- (a) any matters raised by the Minister, and any authority or body specified by the Minister, for consideration by the proponent; and
 - (b) all submissions referred to the proponent under subsection (7).
- (9) The Minister must then prepare a report (an "Assessment Report") that sets out or includes—
- (a) the Minister's assessment of the development or project; and
 - (b) the Minister's comments (if any) on—
 - (i) the environmental impact statement; and
 - (ii) any submissions made under subsection (6); and
 - (iii) the proponent's response under subsection (8); and
 - (c) any comments provided by any prescribed authority or body for inclusion in the report; and
 - (d) any other comments or matter as the Minister thinks fit.
- (10) The Minister must—
- (a) notify any person who made a written submission under subsection (6) of the availability of the Assessment Report; and
 - (b) by public advertisement, give notice of the place or places at which copies of the Assessment Report are available for inspection and purchase.
- (11) Copies of the environmental impact statement, the proponent's response under subsection (8), and the Assessment Report must be available for inspection and purchase at a place determined by the Minister.
- (12) Where a proposed development or project to which an environmental impact statement relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the statement, the proponent's response under subsection (8), and the Assessment Report to the council.

(13) The Minister may recover reasonable costs incurred in relation to the preparation and publication of material under this section as a debt due from the proponent.

(14) The Minister may amend an Assessment Report as or when he or she thinks fit.

Amendment of environmental impact statement

47. (1) The proponent may, and must at the direction of the Minister, amend or make additions to an environmental impact statement in order—

- (a) to correct an error; or
- (b) to take account of more accurate or complete data or technological or other developments not contemplated when the statement was prepared; or
- (c) to take account of an alteration to the original proposal; or
- (d) to make such other provision as may be necessary or appropriate given the content or purpose of the particular statement,

but, where a proposed amendment or addition would in the opinion of the Minister significantly affect the substance of the statement, it must not be made before interested persons have been invited, by public advertisement, to make written submissions on the amendment or addition and the Minister has considered the submissions (if any) received in response to the advertisement.

(2) The Minister may amend or make additions to the relevant Assessment Report in order to take into account amendments or additions made by the proponent to the environmental impact statement under subsection (1).

(3) If an environmental impact statement or an Assessment Report is amended or added to under this section, the Minister must, by public advertisement, give notice of the place or places at which copies of the statement or report (with the amendments or additions) are available for inspection and purchase.

Governor to give decision on development

48. (1) This section applies to a proposed development—

- (a) that is the subject of an environmental impact statement under this Division; or
- (b) that is within the ambit of a declaration under subsection (2).

(2) The Governor may, if of the opinion that a declaration under this section is necessary to obtain adequate control of development of major social, economic or environmental importance, by notice in the *Gazette*, declare that this section applies, or applies to the extent specified in the notice, to—

- (a) a development specified in the notice; or
- (b) —
 - (i) development generally within a specified part of the State; or
 - (ii) a form of development specified in the notice (either in any part of the State, or in a specified part of the State).

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(3) The Governor may, by subsequent notice in the *Gazette*, vary or revoke a declaration under subsection (2).

(4) Subject to the regulations and any declaration under subsection (2)—

- (a) Division 1 does not apply to any development to which this section applies; and
- (b) any application under Division 1 that relates to a development to which this section applies automatically lapses; and
- (c) any development authorisation previously given under another section in relation to a development to which this section applies ceases to have effect; and
- (d) a person must not undertake any development to which this section applies without the consent of the Governor.

(5) This section does not apply in relation to a development lawfully commenced by substantial work on the site of the development before the Minister requires the preparation of an environmental impact statement or before publication of the notice under which the development would otherwise be subject to the application of this section (as the case may be).

(6) Where a development is within the ambit of a declaration under subsection (2), an environmental impact statement and an Assessment Report must be prepared in relation to the development in accordance with the requirements of this Division unless—

- (a) the Governor indicates that he or she intends to refuse consent to the development; or
- (b) the Governor is satisfied that an appropriate environmental impact statement and Assessment Report that encompass the proposed development have already been prepared.

(7) The Governor may, in relation to a development to which this section applies—

- (a) give any development authorisation required under this Act, subject to such conditions (if any) as the Governor thinks fit; or
- (b) refuse approval to the development.

(8) The Governor must, in making a decision under subsection (7) in relation to a particular development, have regard to—

- (a) the provisions of the appropriate Development Plan and the regulations (so far as they are relevant); and
- (b) if relevant, the Building Rules; and
- (c) the Planning Strategy; and
- (d) if an environmental impact statement has been prepared—that statement and the relevant Assessment Report.

(9) The Governor may grant a provisional consent under this section, reserving a decision on a specified matter until further assessment of the development for the purposes of this Act.

(10) A person—

- (a) who undertakes development to which this section applies without the consent of the Governor; or
- (b) who contravenes, or fails to comply with, a condition on which a consent was granted,

is guilty of an offence.

Penalty: Division 2 fine.

Additional penalty.

Default penalty: \$1 000.

(11) No appeal lies against a decision under this section.

(12) The Governor may—

- (a) when determining what conditions should be attached to his or her consent to a development under this section, attach conditions that must be complied with in the future;
- (b) —
 - (i) in relation to matters specified by him or her when granting consent to a development under this section; or
 - (ii) on application of a person who has the benefit of a consent under this section, vary or revoke conditions to which the consent is subject or attach new conditions to the consent.

(13) The Governor may, by notice in the *Gazette*, delegate any power or function under this section (other than a power under subsection (2) or (3)) to the Development Assessment Commission.

(14) A delegation—

- (a) may be made subject to conditions and limitations specified in the notice of delegation; and
- (b) unless the instrument of delegation otherwise provides, allows for subdelegation of the delegated power or function; and
- (c) is revocable by further notice in the *Gazette* and does not derogate from the power of the Governor to act in the matter.

DIVISION 3—CROWN DEVELOPMENT BY STATE AGENCIES

Crown development

49. (1) In this section—

"**the Crown**" means the Crown in right of the State;

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"State agency" means—

- (a) the Crown or a Minister of the Crown;
- (b) an agency or instrumentality of the Crown (including a Department or administrative unit of the State);
- (c) any other prescribed person or prescribed body acting under the express authority of the Crown,

but does not include a person or body excluded from the ambit of this definition by regulation.

(2) Subject to subsection (3), where a State agency proposes to undertake development, other than in partnership or joint venture with a person or body that is not a State agency, the State agency must—

- (a) lodge an application for approval containing prescribed particulars with the Development Assessment Commission; and
- (b) where the land in relation to which the development is proposed is within the area of a council—give notice containing prescribed particulars of the proposal to that council in accordance with the regulations.

(3) No application for approval is required (either under this section or any other provision of this Act), and no notice to a council is required under subsection (2), if the development is of a kind excluded from the provisions of this section by regulation.

(4) The Development Assessment Commission may request the State agency to provide additional documents or information (including calculations and technical details) in relation to the application.

(5) A council may report to the Development Assessment Commission on any matters contained in a notice under subsection (2).

(6) Where a notice is given to a council under subsection (2), and a report from the council is not received by the Development Assessment Commission within two months of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.

(7) The Development Assessment Commission must assess an application lodged with it under this section and then prepare a report to the Minister on the matter.

(8) If it appears to the Development Assessment Commission that the proposal is seriously at variance with—

- (a) the provisions of the appropriate Development Plan (so far as they are relevant); or
- (b) any code or standard prescribed by the regulations for the purposes of this provision,

specific reference to that fact must be included in the report.

(9) If a council has, in relation to any matters referred to the council under subsection (2), expressed opposition to the proposed development in its report under subsection (5), a copy of the report must be attached to the Development Assessment Commission's report (unless the council has, since providing its report, withdrawn its opposition).

(10) The Development Assessment Commission must, unless the Minister grants an extension of time, furnish its report within three months of its receipt of the relevant application.

(11) Where a request is made under subsection (4), any period between the date of request and the date of compliance is not to be included in the calculation of the three-month period under subsection (10).

(12) The Minister may, after receipt of the report of the Development Assessment Commission under this section (and after taking such action (if any) as the Minister thinks fit)—

- (a) approve the development; or
- (b) refuse to approve the development.

(13) An approval may be given—

- (a) for the whole or part of a proposed development;
- (b) subject to such conditions as the Minister thinks fit.

(14) An approval under this section will be taken to be given subject to the condition that, before any building work is undertaken, the building work be certified by a private certifier, or by some person determined by the Minister for the purposes of this provision, as complying with the provisions of the Building Rules (or the Building Rules as modified according to criteria prescribed by the regulations).

(15) If—

- (a) a council has, in a report under this section, expressed opposition to a development that is approved by the Minister (and the council has not, since providing its report, withdrawn its opposition); or
- (b) the Minister approves a development that is, according to the report of the Development Assessment Commission, seriously at variance with a Development Plan, or a prescribed code or standard,

the Minister must, as soon as practicable, prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

(16) If the Minister approves a development under this section, no other procedure or requirement relating to the assessment of the development under this Act applies and no other development authorisation (including a certificate or approval under Part 6) is required under this Act, although the Minister may, if necessary for the purposes of any other Act, issue any other development authorisation under this Act (which will then be taken, for the purposes of that other Act, to have been issued by a relevant authority under this Act).

(17) No appeal lies against a decision of the Minister under this section.

DIVISION 4—SUPPLEMENTARY PROVISIONS

Open space contribution system

50. (1) Where an application under this Part provides for the division of land into more than 20 allotments (except by strata plan), and one or more allotments is less than one hectare in area—

- (a) the council in whose area the land is situated; or

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- (b) if the land is not situated within the area of a council—the Development Assessment Commission,

may require—

- (c) that up to 12.5 per cent in area of the relevant area be vested in the council or the Crown (as the case requires) to be held as open space; or
- (d) that the applicant make the prescribed contribution under this section; or
- (e) that land be vested in the council or the Crown under paragraph (c) and that the applicant make a contribution determined in accordance with subsection (7),

and, in so acting, the council or the Development Assessment Commission must have regard to any relevant provision of the Development Plan that designates any land as open space and, in the case of a council, must not take any action that is at variance with that Development Plan without the concurrence of the Development Assessment Commission.

- (2) Where an application under this Part provides for—

- (a) the division of land into 20 allotments or less, and one or more allotments is less than one hectare in area; or
- (b) the division of land by strata plan,

then, unless the division is of a kind excluded from the operation of this section by the regulations—

- (c) the Development Assessment Commission may require the applicant to pay to the Development Assessment Commission the prescribed contribution under this section; or
- (d) the Development Assessment Commission may enter into an agreement with the applicant under which—
 - (i) certain land described by the relevant plan will be vested (as a separate allotment) in the council in whose area the land is situated or, where the land is not situated within the area of a council, in the Crown, to be held as open space; and
 - (ii) the applicant will make a contribution under this section.

(3) Where land referred to in subsection (2) is in the area of a council, the council must be a party to an agreement referred to in subsection (2)(d).

(4) The council and the Development Assessment Commission must ensure that there is consistency between—

- (a) a requirement imposed under subsection (1) or (2), or an agreement entered into under subsection (2); and
- (b) the terms of any development authorisation given under this Act.

(5) Subject to subsection (6), the prescribed contribution for the purposes of this section is—

- (a) where the land to which the plan applies is within Metropolitan Adelaide—\$1 100 for each new allotment or unit delineated on the plan that does not exceed one hectare in area; and
- (b) where the land to which the plan applies is outside Metropolitan Adelaide—\$580 for each new allotment or unit delineated on the plan that does not exceed one hectare in area.

(6) The Minister may, on the advice of the Valuer-General, by notice published in the *Gazette*, vary (to the nearest multiple of 5) the contributions payable under subsection (5) in proportion to the average variation in the market value of land during the financial year that ended on the thirtieth day of June last preceding the publication of the notice, but not more than one such variation may be made in any one year.

(7) The contribution that may be required under subsection (1)(e) will be determined in accordance with the following formula:

$$P = PC \left[\frac{(12.5 - OS)}{12.5} \times NA \right]$$

where—

- P = the contribution payable
- PC = the rate of contribution prescribed by subsection (5)
- OS = the area of land (expressed as a percentage of the relevant area) to be vested in the council or the Crown as open space
- NA = the number of new allotments or units delineated on the plan that do not exceed one hectare in area.

(8) For the purposes of this section, where a plan divides a number of existing allotments or units into an equal or lesser number of allotments or units, the allotments or units into which the land is divided will not be regarded as being new allotments or units, and where a plan divides a number of existing allotments or units into a greater number of allotments or units, the number by which the greater number of allotments or units exceeds the existing number of allotments or units will be taken to be the number of new allotments or units created by the plan and, for the purpose of determining the area of the new allotments or units, the smallest allotment or unit delineated on the plan will be regarded as the first of the new allotments or units, the next to smallest will be regarded as the second, and so on.

(9) Payment by the applicant under subsection (1) must be made—

- (a) to the council in whose area the land is situated;
- (b) if the land is not situated within the area of a council—to the Development Assessment Commission.

(10) Money received under this section—

- (a) in the case of money received by a council—must be paid into a trust fund and applied by the council for the purpose of acquiring or developing land as open space;

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- (b) in the case of money received by the Development Assessment Commission—must be paid into the Fund.

(11) Where a council or the Development Assessment Commission is satisfied that the division of land is being undertaken in stages, this section does not apply to an application for development authorisation to the extent that an earlier application in respect of the same development has addressed the requirements of this section in respect of the area of land as a whole.

(12) This section does not apply to a development approved under Division 3 unless—

- (a) the approval provides for the division of land into five or more allotments; and
- (b) the Minister, at the time that the approval is given under that Division, by notice in writing to the relevant State agency, the Development Assessment Commission and the council in whose area the land is situated, determines that this section will apply.

(13) In this section—

"allotment" does not include a road, street, thoroughfare, reserve or other similar open space delineated on the relevant plan;

"the relevant area" means the area of land delineated on the relevant plan, excluding any allotment that exceeds one hectare in area other than a road, street, thoroughfare, reserve or similar open space delineated on the relevant plan;

"unit" means a strata unit.

Certificate in respect of the division of land

51. (1) Subject to any exclusion prescribed by the regulations, the following certificate is required in relation to a development that involves the division of land under this Act, namely a certificate from the Development Assessment Commission that it is satisfied that the prescribed conditions as to development have been satisfied, or that the applicant has, by virtue of an entitlement under the regulations, entered into a binding agreement, supported by adequate security and, if the regulations so require, in a form prescribed by the regulations, for the satisfaction of any such condition.

(2) Before the Development Assessment Commission issues a certificate it may require the applicant, the council for the area in which the land is situated (if any), or any other person or body, to furnish it with appropriate information as to compliance with a particular condition, or to comply with any requirement prescribed by the regulations.

(3) A certificate will be issued in the prescribed manner and form.

(4) The Development Assessment Commission must, as soon as practicable after issuing a certificate under subsection (1) that relates to land within the area of a council, furnish the council with such information as the regulations may require.

(5) The Development Assessment Commission may give a certificate under subsection (1) in relation to a particular stage of a development constituted by the division of land.

(6) A certificate issued under this section will, unless extended by the Development Assessment Commission within the period prescribed by the regulations, lapse at the end of that prescribed period.

Saving provisions

52. (1) A development for which development authorisation has been granted may be undertaken and completed in accordance with that authorisation notwithstanding an amendment to a Development Plan or the Building Rules that takes effect after the date on which the application for the development authorisation was made (insofar as the application relates to an assessment in respect of the Development Plan or Building Rules).

(2) An activity that becomes a development by virtue of an amendment to this Act, but was lawfully commenced within three years before the amendment took effect, may be continued and completed, without any development authorisation, within three years after the date on which the amendment took effect.

(3) Where—

- (a) a consent, approval or authorisation is required under an Act or Acts (but not this Act) for a proposed activity or development; and
- (b) an amendment is made to this Act that requires approval to be obtained for a development of that kind, or an amendment is made to the relevant Development Plan so that development of that kind becomes a *non-complying* development; and
- (c) on the date on which the amendment to the Act or the Development Plan takes effect, all the required, consents, approvals and authorisations had been obtained but the activity or development had not been commenced,

the activity or development will, for the purposes of this section, be presumed to have commenced on the date of the consent, approval or authorisation or, where more than one was required, the date of the consent, approval or authorisation that was last obtained.

(4) A relevant authority may, in order to avoid or reduce hardship, extend the limitation period referred to in subsection (2).

(5) A reference in this section to an amendment to this Act extends to the making of a regulation declaring an activity to constitute development and the variation of such a regulation.

(6) In this section—

"**activity**" means an act or activity.

Law governing proceedings under this Act

53. (1) Where an application is made for a development authorisation under this Act, the law to be applied in deciding the application and the law to be applied in resolving any issues arising from the decision in any proceedings (whether brought under this Act or not) is the law in force as at the time the application was made.

(2) The provisions of a Development Plan that are relevant to the consideration of an application for a provisional development plan consent and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the relevant Development Plan as in force at the time the application was made.

(3) The provisions of the Building Rules that are relevant to the consideration of an application for a provisional building rules consent and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the Building Rules as in force at the time the application was made.

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(4) Where a place that is the subject of an application for development authorisation under this Act becomes a State heritage place within the meaning of this Act, the place will be taken to have been a State heritage place for the purposes of this section at the time the application was made.

(5) Where a place that is subject of an application for development authorisation under this Act becomes subject to an order under the *Heritage Act 1993* that requires a person to stop any work or activity, or prohibits any work or activity, the order will be taken to have been in force for the purposes of this section at the time the application was made.

Urgent building work

54. (1) Where building work must be performed as a matter of urgency—

- (a) to protect any person or building; or
- (b) to provide accommodation for students at an educational institution; or
- (c) in any other circumstance of a prescribed kind,

a person may, despite any other provision of this Part (but subject to subsection (2)), perform the building work.

(2) If building work is undertaken under subsection (1)—

- (a) the person who undertakes the work must immediately notify the relevant authority in accordance with the regulations; and
- (b) where the work affects a State heritage place or a local heritage place, the work must, so far as is reasonably practicable, be undertaken to conserve its heritage value; and
- (c) the owner of the land on which the work is carried out must, as soon as practicable after the commencement of the work and in any event within the prescribed period, apply for the appropriate development authorisation under this Act; and
- (d) if that development authorisation is refused, the person who undertakes the work must, subject to any direction issued by a relevant authority, within a period specified by a relevant authority, ensure that any land or building affected by the work is reinstated, so far as is practicable, to the state or condition that existed immediately before the commencement of the work.

Penalty: Division 4 fine.

(3) If building work is lawfully undertaken under subsection (1) by the Crown (or an agency or instrumentality of the Crown), the Crown (or agency or instrumentality) is not liable for any costs incurred by any person in complying with subsection (2).

Removal of work if development not substantially completed

55. (1) Where—

- (a) an approval is granted under this Part; but
- (b) the development to which the approval relates has been commenced but not substantially completed within the period prescribed by the regulations for the lapse of the approval,

a relevant authority may apply to the Court for an order under this section.

(2) The Court must give the following persons a reasonable opportunity to be heard at the hearing of an application under this section:

- (a) the applicant; and
- (b) any owner or occupier of the relevant land; and
- (c) any other person who satisfies the Court that he or she has a material interest in the proceedings.

(3) The Court may, on the hearing of the application—

- (a) require the removal or demolition of any building;
- (b) require the reinstatement, so far as is practicable, of any land or building to the state or condition that land or building was in immediately before the commencement of the development;
- (c) extend, on such conditions (if any) as the Court thinks fit, the period within which the development may be completed;
- (d) make any further or other order the Court thinks fit.

(4) A person contravenes, or fails to comply with, an order under this section is guilty of an offence.

Penalty: Division 4 fine.

Default penalty: \$200.

(5) Where the Court makes an order under subsection (3)(a) or (b) and a person fails to comply with the order within the period specified by the Court, the relevant authority may cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt from the person.

(6) Where an amount is recoverable from a person by a relevant authority under subsection (5)—

- (a) the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the relevant authority on any land owned by the person.

Completion of work

56. (1) Where—

- (a) an approval is granted under this Part; but
- (b) the development to which the approval relates has been substantially but not fully completed within the period prescribed by the regulations for the lapse of the approval,

a relevant authority may, by notice in writing, require the owner of the relevant land to complete the development within a period specified in the notice.

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(2) If an owner fails to carry out work as required by a notice under subsection (1), the relevant authority may cause the necessary work to be carried out.

(3) The reasonable costs and expenses incurred by the relevant authority (or any person acting on behalf of the relevant authority) under this section may be recovered by the relevant authority as a debt due from the owner.

(4) Where an amount is recoverable from a person by a relevant authority under this section—

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

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

(5) A person who has been served with a notice under this section may appeal to the Court against the notice.

(6) An appeal against a notice under this section must be commenced within 14 days after the order is given to the appellant unless the Court allows a longer time for the commencement of the appeal.

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PART 5
LAND MANAGEMENT AGREEMENTS

Land management agreements

57. (1) The Minister may enter into an agreement relating to the management, preservation or conservation of land with the owner of the land.

(2) A council may enter into an agreement relating to the management, preservation or conservation of land within the area of the council with the owner of the land.

(3) The Minister or a council has power to carry out on private land any work for which provision is made by agreement under this section.

(4) An owner of land must not enter into an agreement under this section unless all other persons with a legal interest in the land consent.

(5) The Registrar-General must, on an application of a party to an agreement made for the purposes of this section, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.

(6) An agreement under this section has no force or effect under this Act until a note is made under subsection (5).

(7) Where a note has been entered under subsection (5), the agreement is binding on the current owner of the land whether or not the owner was the person with whom the agreement was made.

(8) The Registrar-General must, if satisfied on the application of the Minister, the council or the owner of the land that an agreement in relation to which a note has been made under this section has been rescinded or amended, enter a note of the rescission or amendment against the instrument of title, or against the land.

(9) An agreement under this section may record the fact that development rights have been transferred from the land pursuant to a Development Plan.

(10) An agreement under this section may provide for remission of rates or taxes on the land but, except as so provided, such an agreement does not affect the obligations of an owner of land under any other Act.

(11) An agreement under this section entered into by a council must not provide for the remission of rates or taxes payable to the Crown unless the Minister consents to the remission, and such an agreement entered into by the Minister must not provide for the remission of rates or taxes payable to a council unless the council consents to the remission.

(12) The existence of an agreement under this section may be taken into account when assessing an application for a development authorisation under this Act.

(13) In this section—

"owner" of land includes a person who has the care, control or management of a reserve.

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**PART 6
REGULATION OF BUILDING WORK**

DIVISION 1—PRELIMINARY

Interpretation

58. In this Part—

"**council**" means, in relation to any development or building that is not within the area of a council, a person or body, or a person or body of a class, prescribed by the regulations for the purposes of this definition.

DIVISION 2—NOTIFICATIONS

Notifications during building work

59. (1) A person who is carrying out building work or who is in charge of carrying out building work within the area of a council must notify the council within the prescribed period of the commencement or completion of a prescribed stage of work (a mandatory notification stage).

Penalty: Division 6 fine.

(2) The notification must, if the regulations so require, be accompanied or supported by a statement from a person who holds prescribed qualifications that the building work has been carried out in accordance with the requirements of this Act.

Penalty: Division 6 fine.

(3) Subject to subsection (4), a person who is carrying out building work must, if directed to do so by the council, stop building work when a mandatory notification stage has been reached pending an inspection by an authorised officer who holds prescribed qualifications.

Penalty: Division 6 fine.

(4) An authorised officer must carry out an inspection under subsection (3) within 24 hours after a direction is given under that subsection and, if such an inspection is not carried out within that time, the person may proceed with the building work.

DIVISION 3—BUILDING WORK AFFECTING OTHER LAND

Work that affects stability

60. (1) Where a building owner proposes to carry out building work of a prescribed nature that is, in accordance with the regulations, to be treated for the purposes of this section as building work that affects the stability of other land or premises ("the affected land or premises"), the following provisions apply:

- (a) the building owner must, at least 28 days before the building work is commenced, cause to be served on the owner of the affected land or premises a notice of intention to perform the building work and the nature of that work; and
- (b) the building owner must (in addition to complying with any condition imposed by a relevant authority at the time of approval) take such precautions as may be prescribed to protect the affected land or premises and must, at the request of the owner of the affected land or premises, carry out such other building work in relation to that land or premises as that adjoining owner is authorised by the regulations to require; and

- (c) nothing in this section relieves the building owner from liability for injury resulting from the performance of any building work.

(2) A building owner who fails to comply with a provision under subsection (1) is guilty of an offence.

Penalty: Division 6 fine.

(3) A building owner may apply to the Court for a determination of what proportion (if any) of the expense incurred by the building owner in the performance of the building work requested by the owner of affected land or premises under subsection (1) should be borne by the owner of that land or premises, and the building owner may recover an amount determined by the Court from the owner of the affected land or premises as a debt.

Construction of party walls

61. (1) If the owner of any land proposes to build a party wall, or to convert an existing structure into a party wall, on any part of the line of junction between the land and the land of another, the following provisions apply:

- (a) the owner (being the building owner) must serve notice on the adjoining owner, describing the proposed wall; and
- (b) if the adjoining owner consents to the building of the party wall, the wall must be built in the position agreed between the two owners; and
- (c) the cost of building the party wall is to be borne by the two owners in due proportion, taking into account the use that is likely to be made of the wall by each owner; and
- (d) a party wall cannot be built by the building owner without the consent of the adjoining owner; and
- (e) the owners must create easements of support in respect of the party wall over their respective land and cause the easements to be registered under the *Real Property Act 1886* or lodged under the *Registration of Deeds Act 1935* (as the case may require) and the building owner is, in the absence of contrary agreement, liable for the expenses of, and incidental to, the registration.

(2) Where a party wall was lawfully built before 1 January 1974 and conforms with the law of this State as in force at the time of its erection, either owner may require the adjoining owner to create, and cause to be registered under the *Real Property Act 1886* or lodged under the *Registration of Deeds Act 1935* (as the case may require), an easement of support over his or her land in respect of the party wall, and the adjoining owner must comply with that requirement.

Rights of building owner

62. (1) Subject to obtaining any appropriate approval under this Act (and otherwise complying with this Act), a building owner has the following rights in addition to, and without prejudice to, any rights under any other Act or at common law:

- (a) a right to make good, underpin or repair any party wall that is defective or out of repair; and
- (b) a right to pull down and rebuild any party wall that is so defective or out of repair that it is necessary or expedient to pull it down; and
- (c) a right to raise and underpin a party wall; and

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- (d) a right to pull down a party wall that is of insufficient strength for a proposed building (but the building owner must then rebuild a party wall of sufficient strength); and
- (e) a right to cut into a party wall; and
- (f) a right to perform any other building work in relation to the party wall prescribed by the regulations.

(2) The building owner is liable to make good any damage to adjacent premises, and the contents of adjacent premises, caused by the exercise of a right under this section.

(3) The building owner cannot, except with the consent in writing of the adjoining owner, exercise any right under this section unless, at least six weeks before doing so, he or she has served personally or by post on the adjoining owner a notice in writing stating the nature and particulars of the proposed building work and when it is to commence.

(4) Where a building owner proposes to exercise a right conferred under this section, the adjoining owner may, by notice in writing served personally or by post on the building owner, require the building owner to carry out such other building work on, or in relation to, the party wall as may be reasonably necessary for the convenience of the adjoining owner, and the building owner must comply with that requirement except where to do so would cause loss or damage to the building owner, or would cause undue inconvenience or delay.

(5) The adjoining owner is liable for all expenses incurred by the building owner under subsection (4).

(6) The building owner must, in the exercise of any right under this section, take reasonable steps to protect any adjoining land or premises.

(7) A building owner must not exercise any right under this section in such manner, or at such time, as will cause unnecessary inconvenience to the adjoining owner or occupier, and must perform any building work with due diligence.

Power of entry

63. (1) A building owner, or an authorised agent or employee, may, at any reasonable time, enter and remain on the land or premises of the adjoining owner for the purpose of performing any building work in accordance with sections 60, 61 or 62, and may perform any act that the nature of the building work requires.

(2) The building owner must serve, personally or by post, on the adjoining owner, at least 14 days before entering on the land or premises of the adjoining owner or, in the case of an emergency, as early as possible, notice of intention to enter the land or premises of the adjoining owner, stating the time at which the building owner proposes to enter the land or premises.

(3) The building owner, or an authorised agent or employee, accompanied by a member of the police force, may break into the premises of the adjoining owner.

Appropriation of expense

64. (1) The expense of building a party wall, or carrying out any building work in relation to a party wall, is to be borne in due proportion by the adjoining owners, having regard to the use that each owner is to make of the party wall.

(2) The building owner must, within 28 days after the completion of any building work in respect of which a contribution is payable by the adjoining owner, serve, personally or by post, on the adjoining owner an account showing the cost of the building work and the proportion of that cost that the building owner claims to be payable by the adjoining owner.

(3) If after the expiration of 28 days from the service of the account the account remains unpaid, the building owner may, by action in any court of competent jurisdiction, seek a determination of the amount payable to him or her by the adjoining owner, and recover that amount as a debt.

DIVISION 4—CLASSIFICATION AND OCCUPATION OF BUILDINGS

Buildings owned or occupied by the Crown

65. This Division does not apply in respect of any building owned or occupied by the Crown (or an agency or instrumentality of the Crown), or to any building work carried on by the Crown (or by an agency, instrumentality, officer or employee of the Crown).

Classification of buildings

66. (1) A building erected after 1 January 1974 must have a classification determined in accordance with the regulations.

(2) The council may assign to any building erected in its area before 1 January 1974, and must, at the direction of the Minister, assign to such a building, a classification that conforms with the regulations.

(3) Where the Minister directs a council to assign a classification under subsection (2) and the council fails to comply with the direction, the Minister may, subject to this section, assign a classification to the building.

(4) Where a council or the Minister assigns a classification under this section, the council or the Minister, as the case may be, must give notice in writing to the owner of the building to which the classification has been assigned, of the classification assigned to the building.

(5) Except with the consent of the owner, a classification cannot be assigned to a building erected before 1 January 1974 if, as a result of the classification being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

(6) The owner of a building must not permit the building to be occupied unless the building is constructed, maintained and operated in accordance with the classification appropriate to its use.

Penalty: Division 6 fine.

Default penalty: \$100.

Certificates of occupancy

67. (1) A person must not—

(a) occupy a building on which building work is carried out after the commencement of this section unless an appropriate certificate of occupancy has been issued for the building, or the building is of a type excluded by the regulations from the requirements as to certificates of occupancy; or

(b) occupy a building in contravention of a certificate of occupancy.

Penalty: Division 6 fine.

(2) A certificate of occupancy will be issued by a council.

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(3) An application for a certificate of occupancy must—

- (a) include any information required by the council; and
- (b) be accompanied by such certificates, reports or other documentation as the regulations may require; and
- (c) be accompanied by the appropriate fee.

(4) The regulations may provide that a report or consent from a prescribed agency or authority must be obtained in accordance with the regulations before the application can be granted (but if a report or consent is not received from the agency or authority within a period prescribed by the regulations, it will be presumed, unless the agency or authority indicates otherwise, that the agency or authority does not desire to make a report or consents (as the case requires)).

(5) The council must consider any report supplied under subsection (4) before deciding the application.

(6) The council must issue the certificate if it is satisfied (in accordance with procedures set out in the regulations and on the basis of information provided or obtained under this section) that the relevant building is suitable for occupation and complies with such requirements as may be prescribed by the regulations for the purposes of this provision.

(7) A certificate of occupancy does not constitute a certificate of compliance with the Building Rules.

(8) The regulations may specify the time within which an application should be decided under this section.

(9) An application will be taken to have been refused if not decided within the time specified by the regulations.

(10) A council which refuses an application must notify the applicant in writing of—

- (a) the refusal; and
- (b) the reasons for the refusal; and
- (c) the applicant's right of appeal under this Act.

(11) Any appeal under this section must be commenced within 28 days after a notice is given to the appellant under subsection (11) unless the Court allows an extension of time.

(12) A certificate of occupancy may apply to the whole or part of a building.

(13) A council may, in accordance with the regulations, revoke a certificate of occupancy in prescribed circumstances.

Temporary occupation

68. (1) A person may, with the approval of a council, occupy a building on a temporary basis without a certificate of occupancy.

(2) An approval under subsection (1) may be given on such conditions (if any) as the council thinks fit to impose.

(3) A council which refuses an application must notify the applicant in writing of—

- (a) the refusal; and
- (b) the reasons for the refusal; and
- (c) the applicant's right of appeal under this Act.

(4) Any appeal under this section must be commenced within 28 days after a notice is given to the applicant under subsection (3) unless the Court allows an extension of time.

DIVISION 5—EMERGENCY ORDERS

Emergency orders

69. (1) An authorised officer who holds prescribed qualifications may make an emergency order under this section if the authorised officer is of the opinion that the order is necessary—

- (a) because of a threat to safety arising out of the condition or use of a building or an excavation; or
- (b) because of a threat to any State heritage place or local heritage place.

(2) An emergency order may require the owner of any building or land to do any one or more of the following things:

- (a) evacuate the building or land;
- (b) not to conduct or not to allow the conduct of a specified activity or immediately terminate a specified activity;
- (c) carry out building work or other work.

(3) An emergency order may also prohibit the occupation of a building or land or the use of a building or land for a specified activity, or an activity of a specified class.

(4) If an owner fails to carry out work as required by an emergency order, the council may cause the necessary work to be carried out.

(5) The reasonable costs and expenses incurred by the council (or any person acting on behalf of the council) under this section may be recovered by the council as a debt due from the owner.

(6) Where an amount is recoverable from a person by the council under this section—

- (a) the council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the council on any land owned by the person.

(7) On completion of any work required to be carried out by an emergency order, the owner must notify the authorised officer in writing.

Penalty: Division 7 fine.

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(8) An order under this section must be given in writing unless the authorised officer considers that urgent action is required, in which case it may be given orally.

(9) If the direction is given orally under subsection (8), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 p.m. on the next business day.

(10) An appeal against an order under this section must be commenced within 14 days after the order is given to the appellant unless the Court allows a longer time for the commencement of the appeal.

(11) Subject to an order of the Court to the contrary, the operation of an order under this section is not suspended pending the determination of an appeal.

(12) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Penalty: Division 5 fine.

Default Penalty: \$50.

(13) It is a defence to a prosecution under subsection (12) if the defendant satisfies the court that he or she was unaware of the fact that an activity in respect of which the offence arose was the subject of an order under this section.

(14) In this section—

"**building**" includes a building in the course of construction;

"**excavation**" includes a well or hole.

DIVISION 6—BUILDING SAFETY

Buildings owned or occupied by the Crown

70. Except as otherwise provided by the regulations, this Division does not apply in respect of—

(a) any building owned or occupied by the Crown (or an agency or instrumentality of the Crown), or to any building work carried on by the Crown (or by any agency, instrumentality, officer or employee of the Crown);

(b) any building erected after the commencement of this Division.

Fire safety

71. (1) An authorised officer who holds prescribed qualifications may, at any reasonable time, and must, at the request of a fire authority, enter and inspect any building for the purpose of determining whether the fire safety of a building is adequate.

(2) If an appropriate authority, acting on the advice of an authorised officer who holds prescribed qualifications, is satisfied that the fire safety of a building is not adequate, the appropriate authority may cause a notice to be served on the owner of the building.

(3) A notice under subsection (2) may—

(a) require the owner to report to the appropriate authority on the work or other measures necessary to ensure that the fire safety of the building is adequate; or

- (b) in the case of an emergency—
 - (i) require the owner to carry out a programme of work, or to take any other measure, to overcome any fire hazard; or
 - (ii) require the evacuation of the building; or
 - (iii) prohibit the occupation of the building until the appropriate authority is satisfied that the fire hazard no longer exists; or
 - (iv) require the owner to take such other action prescribed by the regulations.

(4) A report under subsection (3)(a) must be provided to the appropriate authority within two months, or within such longer period as the appropriate authority may allow.

Penalty: Division 7 fine.

(5) The owner may, during the period referred to in subsection (4), make representations to the appropriate authority about the fire safety of the building and the work or other measures to be carried out or taken.

(6) An appropriate authority may, after receiving a report under subsection (3) (or, in the event of a failure to provide a report in accordance with this section), by notice given to the owner of the building—

- (a) require the owner to seek an appropriate development authorisation under this Act and, if granted, to carry out a programme of work or to take other measures to ensure that the fire safety of the building is adequate; or
- (b) prohibit the occupation of the building until the appropriate authority is satisfied that any fire hazard no longer exists; or
- (c) require the owner to take such other action prescribed by the regulations.

(7) If the owner of a building fails to comply with a notice under this section within the time specified by the notice, the appropriate authority may cause the necessary work to be carried out.

(8) The reasonable costs and expenses incurred by the appropriate authority (or any person acting on behalf of the appropriate authority) under this section may be recovered by the appropriate authority as a debt from the owner of the building.

(9) Where an amount is recoverable from a person by an appropriate authority under this section—

- (a) the appropriate authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the appropriate authority on any land owned by the person.

(10) On completion of any work required to be carried out by a notice under this section, the owner must notify the appropriate authority in writing.

Penalty: Division 7 fine.

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(11) An appropriate authority may, at the request of the owner, vary a notice under this section or may, on its own initiative, revoke a notice if satisfied that it is appropriate to do so.

(12) An appeal against a notice under this section must be commenced within 14 days after the notice is given unless the Court allows longer time for the commencement of the appeal.

(13) Subject to any order of the Court to the contrary, the operation of a notice under this section is not suspended pending the determination of an appeal.

(14) A person who contravenes or fails to comply with a notice under subsection (3)(b) or (6) is guilty of an offence.

Penalty: Division 5 fine.

(15) This section does not authorise any action inconsistent with the *Heritage Act 1993* or a provision of the relevant Development Plan that relates to heritage.

(16) Any action taken under this section should seek to achieve, in the following order of priority—

- (a) firstly, a reasonable standard of fire safety for the occupiers of the relevant building;
- (b) secondly, the minimal spread of fire and smoke;
- (c) thirdly, an acceptable fire fighting environment,

in accordance with the fire safety objectives and performance criteria of the Building Code of Australia.

(17) No matter or thing done or omitted to be done by an appropriate authority in good faith in connection with the operation of this section subjects the authority to any liability.

(18) In this section—

"the appropriate authority" means—

- (a) a council; or
- (b) a committee or authority established by a council, or of which a council is a member or on which the council is represented, and which is designated by the council as an appropriate authority for the purposes of this section.

DIVISION 7—LIABILITY

Negation of joint and several liability in certain cases

72. (1) If—

- (a) building work is defective; and
- (b) the defect or defects arise from the wrongful acts or defaults of two or more persons; and
- (c) those persons would, apart from this section, be jointly and severally liable for damage or loss resulting from the defective work; and

- (d) an action is brought against any one or more of those persons to recover damages for that damage or loss,

the court may only give judgment against a defendant, or each defendant, for such amount as may be just and equitable having regard to the extent to which the act or default of that defendant contributed to the damage or loss.

(2) An act or default for which a person is vicariously liable will be taken to be an act or default of that person for the purposes of this section.

Limitation on time when action may be taken

73. (1) Despite the *Limitation of Actions Act 1936*, or any other Act or law, no action for damages for economic loss or rectification costs resulting from defective building work (including an action for damages for breach of statutory duty) can be commenced more than 10 years after completion of the building work.

(2) This section does not affect an action to recover damages for death or personal injury resulting from defective building work.

(3) The period prescribed by subsection (1) cannot be extended.

Development Act 1993

PART 7
REGULATION OF ADVERTISEMENTS

Advertisements

74. (1) Where, in the opinion of the Development Assessment Commission or a council, an advertisement or advertising hoarding—

- (a) disfigures the natural beauty of a locality or otherwise detracts from the amenity of a locality; or
- (b) is contrary to the character desired for a locality under the relevant Development Plan,

the Development Assessment Commission or council may, by notice in writing served on the advertiser or the owner or occupier of the land on which the advertisement or advertising hoarding is situated, whether or not a development authorisation has been granted in respect of the advertisement or advertising hoarding, order that person to remove or obliterate the advertisement or to remove the advertising hoarding (or both) within a period specified in the notice (which must be a period of at least 28 days from the date of service of the notice).

(2) An order under subsection (1) may not be made in relation to—

- (a) an advertisement the display of which is authorised under the *Local Government Act 1934* or the *Electoral Act 1985*; or
- (b) an advertisement required to be displayed under the provisions of some other Act; or
- (c) an advertisement for the sale or lease of land situated on the land concerned.

(3) Where a person on whom a notice is served under subsection (1) fails to comply with a notice within the time allowed in the notice—

- (a) the Development Assessment Commission or council may itself enter on the land and take the necessary steps for carrying out the requirements of the notice and may recover the costs of so doing, as a debt, from the person on whom the notice was served; and
- (b) the person on whom the notice was served is guilty of an offence.

Penalty: Division 6 fine.

Default Penalty: \$50.

(4) A notice under this section—

- (a) need not name the person to whom it is addressed; and
- (b) may be served—
 - (i) personally; or
 - (ii) by post; or
 - (iii) where the identity or whereabouts of the person on whom it is to be served is not readily ascertainable—by affixing it in a prominent position on the advertisement or advertising hoarding to which it relates.

(5) Where a development authorisation has been given under this Act for the erection or display of an advertisement, no further licence or other authorisation in respect of the erection or display of the advertisement is required under the *Local Government Act 1934*.

(6) A person against whom an order is made under this section may, within one month after service of the notice or such longer period as may be allowed by the Court, appeal against the order and, on an appeal, the Court may confirm, vary or quash the order subject to the appeal and make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

Development Act 1993

**PART 8
SPECIAL PROVISIONS RELATING TO MINING**

Applications for mining production tenements to be referred in certain cases to the Minister

75. (1) In this section—

"**the appropriate Authority**" or "**the Authority**" means the Minister of the Crown for the time being administering the Mining Acts.

(2) The appropriate Authority may refer any application for a mining production tenement to the Minister for advice and, where an application is such that it is required by the regulations to be referred to the Minister, the Authority must refer the application to the Minister for advice.

(3) Copies of any submissions received under the Mining Acts as a result of public consultation on the application must be forwarded to the Minister for the purposes of subsection (2).

(4) Where, in the opinion of the Minister or of the appropriate Authority, operations to be conducted in pursuance of a mining production tenement are of major social, economic or environmental importance—

(a) the Minister or the Authority may exercise the powers conferred on the Minister under this Act in relation to environmental impact statements; but

(b) any such statement must cover matters determined by the Minister after consultation with the Authority.

(5) The Minister, after obtaining and considering a report from the Development Assessment Commission on an application referred for advice under this section and after considering the terms of any relevant environmental impact statement, must advise the appropriate Authority whether the application should or should not be granted and, if so, what conditions should be included in the tenement in order to avoid, or manage and control, any potentially adverse effects on the environment that may result from the conduct of mining operations in pursuance of the tenement.

(6) Where the appropriate Authority does not agree with advice tendered under subsection (5) (either as to the granting of the tenement or the conditions that should be included in the tenement), it must refer the matter to the Governor and the Governor will determine whether the Authority should adhere to the advice.

This Act not to affect operations carried on in pursuance of Mining Acts except as provided in this Part

76. (1) Except as provided in this Part, this Act does not prevent, or otherwise affect, operations carried on in pursuance of any of the Mining Acts.

(2) Subject to subsection (3), this Act does not prevent, or otherwise affect, the operation of a private mine.

(3) Where mining operations have not been carried on at a private mine for a period of 12 months or more (including a period commencing not more than 12 months before the commencement of this Act), this Act applies in respect of mining operations carried on at the mine.

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(4) The operation of subsections (1) and (2) is subject to any provision made by the regulations as to the application of the Building Rules to any building work carried out in connection with operations carried on in pursuance of any of the Mining Acts.

Development Act 1993

**PART 9
ACQUISITION OF LAND**

Purchase of land by agreement

77. (1) The Minister may purchase land by agreement for the purpose of development or redevelopment of that land or for any public purpose.

(2) The *Land Acquisition Act 1969* does not apply to the acquisition of land in pursuance of this section.

Compulsory acquisition of land

78. (1) The Minister may acquire land under this section where he or she considers that the acquisition of the land is reasonably necessary for the operation or implementation of a Development Plan, or to further the objects of this Act.

(2) The *Land Acquisition Act 1969* applies to the acquisition of land in pursuance of this section.

Development Act 1993

**PART 10
THE FUND**

Continuance of the Fund

79. (1) The Fund at the Treasury known as the *Planning and Development Fund* continues in existence.

(2) The following amounts must be paid into the Fund:

- (a) money made available by the Treasurer out of appropriations authorised by Parliament for the purposes of the Fund; and
- (b) all money derived by the Minister from the sale, leasing or other disposal of land by the Minister of land vested in the Minister; and
- (c) all loans raised by the Minister for the purposes of this Act; and
- (d) all other money that is required to be paid into the Fund by, or under this or any other Act.

Borrowing

80. The Minister may borrow money for the purposes of this Act on terms and conditions approved by the Treasurer.

Application of the Fund

81. The money standing to the credit of the Fund may be used by the Minister for all or any of the following purposes:

- (a) the acquisition, management and development of land, or any purpose related to the acquisition, management and development of land, under this Act;
- (b) the payment of money (by way of compensation or in other ways) which the Minister becomes liable to pay under this Act;
- (c) the payment of rates, taxes and other charges due and payable by the Minister in respect of land vested in or held by the Minister;
- (d) the transfer to any reserve for the repayment of money borrowed by the Minister for the purposes of this Act;
- (e) the payment of principal, interest and expenses in respect of money borrowed by the Minister for the purposes of this Act;
- (f) the management and development of property vested in the Minister;
- (g) any purposes authorised by or under this Act as a purpose for which the Fund may be applied;
- (h) assistance to councils in the provision and development of public land for conservation and recreation.

Accounts and audit

82. (1) The Minister must cause proper accounts to be kept in relation to the Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Development Act 1993

**PART 11
ENFORCEMENT, DISPUTES AND APPEALS**

DIVISION 1—ENFORCEMENT

Interpretation—Breach of Act

83. In this Division, a reference to a breach of this Act is a reference to—

- (a) a contravention, or threatened contravention, of this Act, other than, in relation to the Crown, or an agency, instrumentality, officer or employee of the Crown, the Building Rules; or
- (b) a contravention, or threatened contravention, of an agreement under Part 5.

Enforcement notices

84. (1) In this section—

"**relevant authority**" means—

- (a) the Development Assessment Commission; or
- (b) a council; or
- (c) the State Heritage Authority.

(2) If a relevant authority has reason to believe on reasonable grounds that a person has breached this Act or the repealed Act, the relevant authority may do such of the following as the relevant authority considers necessary or appropriate in the circumstances:

- (a) direct a person to refrain, either for a specified period or until further notice, from the act, or course of action, that constitutes the breach;
- (b) direct a person to make good any breach in a manner, and within a period, specified by the relevant authority;
- (c) take such urgent action as is required because of any situation resulting from the breach.

(3) A direction under subsection (2) must be given by notice in writing unless the relevant authority considers that the direction is urgently required, in which case it may be given orally by an authorised officer.

(4) If a direction is given orally under subsection (3), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 p.m. on the next business day.

(5) A written notice under subsection (3) or (4) must set out any appeal rights that the person may have under this Act.

(6) If a person fails to comply with a direction under subsection (2)(b) within the time specified in the notice, the relevant authority may cause the necessary action to be taken.

(7) The reasonable costs and expenses incurred by a relevant authority (or any person acting on behalf of the relevant authority) under this section may be recovered by the relevant authority as a debt due from the person whose failure gave rise to the action.

(8) Where an amount is recoverable from a person by a relevant authority under this section—

- (a) the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the relevant authority on any land owned by the person.

(9) An appeal against a notice under this section must be commenced with 14 days after the direction is given to the appellant unless the Court allows a longer time for the commencement of the appeal.

(10) Subject to any order of the Court to the contrary, the operation of a direction is not suspended pending the determination of an appeal.

(11) A person who contravenes or fails to comply with a direction under this section is guilty of an offence.

Penalty: Division 5 fine.

Default penalty: \$500.

(12) A direction cannot be given under this section if it appears that the breach occurred more than 12 months previously.

Applications to the Court

85. (1) Any person may apply to the Court for an order to remedy or restrain a breach of this Act or the repealed Act (whether or not any right of that person has been or may be infringed by or as a consequence of that breach).

(2) Proceedings under this section may be brought in a representative capacity (but, if so, the consent of all persons on whose behalf the proceedings are brought must be obtained).

(3) If proceedings under this section are brought by a person other than a relevant authority, the applicant must serve a copy of the application on the relevant authority within three days after filing the application with the Court.

(4) An application may be made *ex parte* and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant leave to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(5) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.

(6) If—

(a) after hearing—

- (i) the applicant and the respondent; and
- (ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

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the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act or the repealed Act; or

- (b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,

the Court may, by order, exercise any of the following powers:

- (c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the breach;
- (d) require the respondent to make good the breach in a manner, and within a period, specified by the Court, or to take such other action as may appear appropriate to the Court;
- (e) cancel or vary any development authorisation (other than an authorisation granted by the Governor);
- (f) require the respondent to pay to any person who has suffered loss or damage as a result of the breach, or incurred costs or expenses as a result of the breach, compensation for the loss or damage or an amount for or towards those costs or expenses;
- (g) if the Court considers it appropriate to do so, require the respondent to pay an amount, determined by the Court, in the nature of exemplary damages—
- (i) if the applicant is a council and the Crown has not become a party to the proceedings—to the council;
- (ii) in any other case—into the General Revenue of the State.

(7) In assessing damages under subsection (6)(g), the Court must have regard to—

- (a) any detriment to the public interest resulting from the breach; and
- (b) any financial or other benefit that the respondent sought to gain by committing the breach; and
- (c) any other matter it considers relevant.

(8) The power conferred under subsection (6)(g) can only be exercised by a Judge of the Court.

(9) A relevant authority, and any person with a legal or equitable interest in land to which an application under this section relates, is entitled to appear, before a final order is made, and be heard in proceedings based on the application.

(10) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(11) An interim order—

- (a) may be made on an *ex parte* application; and

- (b) may be made whether or not the proceedings have been referred to a conference under subsection (5); and
- (c) will be made subject to such conditions as the Court thinks fit; and
- (d) will not operate after the proceedings in which it is made are finally determined.

(12) Where the Court makes an order under subsection (6)(d) and the respondent fails to comply with the order within the period specified by the Court, a relevant authority may cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.

(13) Where an amount is recoverable from a person by a relevant authority under subsection (12)—

- (a) the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the relevant authority on any land owned by the person.

(14) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a development authorisation that should have been but was not made, or to remedy any other default.

(15) The Court may order an applicant in proceedings under this section to provide security for—

- (a) the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
- (b) the payment of any amount that may be awarded against the applicant under subsection (16).

(16) If on an application under this section the Court is satisfied—

- (a) that the respondent has not breached this Act or the repealed Act; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage which the respondent has suffered.

(17) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

(18) Proceedings under this section may be commenced at any time within three years after the date of the alleged breach or, with the authorisation of the Attorney-General, at any later time.

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(19) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

DIVISION 2—DISPUTES AND APPEALS

General right to apply to Court

86. (1) The following applications may be made to the Court—

- (a) a person who has applied for a development authorisation may appeal to the Court against—
 - (i) a refusal to grant the authorisation; or
 - (ii) the imposition of conditions in relation to the authorisation; or
 - (iii) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation;
- (b) a person who is entitled to be given a notice of a decision in respect of a Category 3 development under section 38 may appeal to the Court against that decision (to the extent that it relates to the assessment of the relevant development against a Development Plan);
- (c) a person who has applied to a council for a certificate of occupancy or an approval to occupy a building on a temporary basis may appeal to the Court against a refusal by the council to grant the certificate or to give the approval;
- (d) a person who has—
 - (i) been served with an order under section 55 or 56; or
 - (ii) been served with an enforcement notice under section 84; or
 - (iii) been served with a notice or order under Part 6,may appeal to the Court against the notice or order;
- (e) a person who is a party to a dispute relating to—
 - (i) the effect of the Building Rules in specific circumstances; or
 - (ii) the manner in which the provisions of the Building Rules are, or ought to be, carried into effect; or
 - (iii) whether or not the application of the Building Rules should be modified in a particular case; or
 - (iv) whether the requirements of the Building Rules in any matter relating to building work have been satisfied in a particular case, or what is necessary for the satisfaction of those requirement; or
 - (v) the construction of a party wall or the proportion or amount of the expense to be borne by the respective owners of premises separated by a party wall; or

(vi) any other prescribed matter,

may apply to the Court for determination of the dispute.

(2) Subsection (1) does not—

(a) derogate from any other provision of this Act that confers a right to apply to the Court in specified circumstances;

(b) derogate from any other provision of this Act that prevents or restricts a right to apply to the Court in specified circumstances.

(3) Where an application relates to the decision, direction, act, consent, approval, order or determination of a person or body acting in pursuance of delegated powers, the respondent is the principal and not the delegate.

(4) An application must be made in a manner and form determined by the Court, setting out the grounds of the application, and, unless otherwise specifically provided under another provision of this Act, must be made within two months after the applicant receives notice of the decision to which the application relates unless the Court, in its discretion, allows an extension of time.

(5) An application that involves a dispute relating to any matter referred to in subsection (1)(c) or (e) (and no other dispute) must, in accordance with Rules of the Court, be referred to a commissioner or commissioners of the Court for resolution under section 87.

(6) Any other application, other than an application of a prescribed class, must be referred in the first instance to a conference under section 16 of the *Environment Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).

Building referees

87. (1) The commissioner or commissioners to whom a dispute is referred under section 86(5) will, for the purpose of resolving the dispute, determine the matter as a building referee or as building referees, who will, subject to the Rules of the Court, for the purposes of this provision, have the powers of arbitrators under the *Commercial Arbitration Act 1986*.

(2) In addition to the other powers that a commissioner may exercise as a member of the Court under this Act, the commissioner or commissioners may—

(a) refer any question of law to a Judge of the Court for determination;

(b) require a party to the dispute to furnish—

(i) particulars of his or her case;

(ii) documentary or other material relevant to the determination of the matter;

(iii) such other information as the commissioner thinks fit;

(c) give summary judgment (with costs) against any party who obstructs or delays the proceedings or who fails to attend or participate in the proceedings;

(d) make a declaration as to the effect of the Building Rules in the particular case (which declaration will have effect according to its terms);

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(e) order that building work be carried out in a specified manner (being a manner that accords with the Building Rules or, if the commissioner or commissioners think fit, modifies the effect of the Building Rules but effectively attains the objects of this Act);

(f) settle any dispute relating to a party wall.

(3) No appeal lies from a decision of a commissioner under this section on a question of fact.

Powers of Court on determination of a matter

88. The Court may, on hearing any proceedings under this Act—

(a) confirm, vary or reverse any decision, assessment, consent, approval, direction, act, order or determination to which the proceedings relate;

(b) affirm, vary or quash any order, notice or other authority that has been issued;

(c) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;

(d) if appropriate to the subject matter of the proceedings, order—

(i) that a building (or any part of a building) be altered, reinstated or rectified in a manner specified by the Court;

(ii) that a party to the dispute remove or demolish a building (or any part of a building);

(e) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

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**PART 12
PRIVATE CERTIFICATION**

Preliminary

89. (1) Subject to this Part, a private certifier may exercise the powers of a relevant authority to make any assessment, give any consent or approval or make any other decision in relation to a proposed development or a particular aspect of a proposed development.

(2) A private certifier may only exercise a power under subsection (1) to the extent prescribed or authorised by the regulations.

(3) A private certifier cannot grant a provisional development plan consent.

(4) Subject to this Part, a decision of a private certifier in relation to a proposed development has the same effect and is subject to appeal in the same way as a decision of the relevant authority that would otherwise be exercising the relevant function under this Act.

(5) A private certifier is subject to the same duties and requirements as the relevant authority that would otherwise be exercising the function under this Act.

(6) No act or omission by a relevant authority in good faith in reliance on a certificate given by a private certifier under this Part subjects the relevant authority to any liability.

When may a private certifier be used?

90. A person (including a public authority) may, in accordance with the regulations, engage a private certifier to give any consent or approval or make any assessment or decision that the private certifier is authorised to give or make under this Part.

Who may act as a private certifier?

91. (1) A person may act as a private certifier if (and only if)—

(a) in the case of a natural person—the person—

(i) holds the appropriate qualifications prescribed by the regulations; and

(ii) has the necessary experience prescribed by the regulations; or

(b) in the case of a company—the company acts through an officer or employee who—

(i) holds the appropriate qualifications prescribed by the regulations; and

(ii) has the necessary experience prescribed by the regulations.

Penalty: Division 4 fine.

(2) A person must not act as a private certifier if he or she—

(a) is disqualified from acting as a private certifier by virtue of the regulations; or

(b) is disqualified from acting as a private certifier by the Minister by notice in the *Gazette*.

Penalty: Division 4 fine.

Circumstances in which private certifier may not act

92. (1) A private certifier must not exercise any functions of a private certifier in relation to a development—

- (a) if he or she has been involved in any aspect of the planning or design of the development (other than through the provision of preliminary advice of a routine or general nature); or
- (b) if he or she has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development; or
- (c) if he or she is employed by any person or body associated with any aspect of the development.

(2) Subsections (1)(b) and (c) do not apply to an officer or employee of the Crown (when acting in his or her capacity as such).

(3) A person must not act as a private certifier in relation to development in the area of a council if he or she is employed by the council of that area.

(4) A person who contravenes a provision of this section is guilty of an offence.

Penalty: Division 4 fine.

Authority to be advised of certain matters

93. A private certifier must—

- (a) notify the relevant authority as soon as practicable after being engaged to perform a function under this Act; and
- (b) on making a decision of a prescribed kind in relation to any aspect of building work—
 - (i) notify the relevant authority in writing of the decision; and
 - (ii) furnish the relevant authority with a certificate that evidences the taking out of a policy of insurance of a kind prescribed by the regulations; and
 - (iii) provide such other information or documentation as may be prescribed by the regulations or as the relevant authority may require.

Penalty: Division 5 fine.

Referrals

94. (1) A private certifier may, at any time and with the consent of a relevant authority, refer a particular matter to the relevant authority for exercise by that authority of any function under this Act.

(2) A referral may be made without the consent of the person who proposes to undertake the development.

(3) The private certifier must pay to the relevant authority any fees, costs or expenses agreed with the relevant authority for the referral.

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Referrals to other private certifiers

95. (1) Subject to subsection (2), a private certifier may refer a particular matter to another private certifier for exercise by that other certifier of the certifier's functions under this Act.

(2) A referral may not be made under subsection (1) unless it is consented to by—

- (a) the Minister; and
- (b) the other private certifier; and
- (c) the person who proposes to undertake the development.

Penalty: Division 5 fine.

Removal, etc., of private certifier

96. (1) A private certifier who has not completed the functions of a private certifier in relation to a particular development may not be removed from his or her engagement as a private certifier unless the Minister consents to that removal.

Penalty: Division 5 fine.

(2) If a private certifier resigns from an engagement or dies or becomes incapable for any other reason of carrying out the functions of a certifier in respect of a particular development for which the private certifier has been engaged, the matter may be referred to a relevant authority or, with the consent or at the direction of the Minister, to another private certifier.

Duties of private certifiers

97. (1) A private certifier must—

- (a) act in accordance with the public interest and the objects of this Act; and
- (b) ensure that any development authorisation given by the private certifier is consistent with any other development authorisation that has already been given in respect of the same proposal.

Penalty: Division 4 fine.

(2) A private certifier must not—

- (a) perform any act or make any omission that results in a failure to comply with this Act; or
- (b) seek, accept or agree to accept a benefit from another person (whether for himself or herself or for a third person) as a reward or inducement to act against a provision of this Act; or
- (c) act in a manner contrary to any other duty prescribed by the regulations.

Penalty: Division 4 fine.

(3) The Minister may, for the purposes of this Part, by notice in the *Gazette*, establish or vary a code of practice to be observed by private certifiers under this Act.

(4) A private certifier who contravenes or fails to comply with a provision of the code of practice is guilty of an offence.

Penalty: Division 4 fine.

(5) A person who improperly gives, offers or agrees to give a benefit to a private certifier or to a third person as a reward or inducement for an act done or to be done, or an omission made or to be made, by the private certifier in the performance of a function under this Act is guilty of an offence.

Penalty: Division 4 fine.

(6) In this section—

"**benefit**" does not include a benefit that consists of remuneration or any condition of appointment or employment properly attaching or incidental to the work of a private certifier under this Act.

Appeals

98. No appeal lies from a decision of a private certifier in relation to the assessment of a development against the Building Rules (including a condition imposed by the private certifier for the purposes of the Building Rules).

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**PART 13
MISCELLANEOUS**

Exemption from certain action

99. No act or omission in good faith in relation to a particular development by—

- (a) the Minister, the Development Assessment Commission, a council or other authority under this Act; or
- (b) an authorised officer; or
- (c) a private certifier,

after the development has been approved under this Act subjects that person or body to any liability.

Insurance requirements

100. The regulations may require prescribed classes of persons to have professional indemnity or other insurance of a kind prescribed by the regulations.

Professional advice to be obtained in relation to certain matters

101. (1) A relevant authority, authorised officer or private certifier may, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.

(2) A relevant authority, authorised officer or private certifier must seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to a matter arising under this Act that is declared by regulation to be a matter on which such advice should be sought.

(3) A person may be approved by the Minister for the purposes of subsection (2) subject to such conditions as the Minister thinks fit, and the Minister may vary or withdraw such an approval at any time.

(4) No act or omission by a person or body in good faith on reliance on a certificate given under subsection (1) or advice given under subsection (2) subjects the person or body to any liability.

(5) A person must not undertake an engagement to provide a certificate or advice for the purposes of this section in relation to a particular development if the person—

- (a) has been involved for remuneration in any aspect of the planning or design of the development; or
- (b) has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development.

Penalty: Division 4 fine.

Confidential information

102. (1) A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless—

- (a) the disclosure is necessary for the proper performance of that function; or
- (b) the disclosure is made to another who is also performing a function under this Act; or
- (c) the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or
- (d) the disclosure is authorised or required under any other Act or law; or
- (e) the disclosure is authorised or required by a court or tribunal constituted by law; or
- (f) the disclosure is authorised by the regulations.

Penalty: Division 5 fine or division 5 imprisonment.

False or misleading information

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

Penalty: Division 5 fine.

Accreditation of building products, etc.

104. (1) Any building product, building method, design, component, equipment or system accredited by a person or body prescribed for the purposes of this section is accredited for the purposes of this Act.

(2) The accreditation is subject to any conditions or variations imposed by the person or body from time to time and remains in force until the accreditation is revoked by the person or body.

(3) A relevant authority must not refuse to approve a development on the ground that any building product, building method, design, component, equipment or system connected with any building work is unsatisfactory if the product, method, design, component, equipment or system is accredited by a prescribed person or body and it complies with any such accreditation.

General provisions relating to offences

105. (1) For the purposes of proceedings for an offence against this Act—

- (a) the conduct or state of mind of a director, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
- (b) the conduct or state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person.

(2) For the purposes of subsection (1), a reference to conduct includes a reference to failure to act.

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(3) Where a body corporate is guilty of an offence against this Act, the directors and the chief executive officer of the body corporate are each guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless it is proved that the principal offence did not result from any failure on his or her part to take all reasonable and practicable measures to prevent the commission of the offence.

(4) The offences constituted by this Act lie within the criminal jurisdiction of the Court.

(5) A prosecution for an offence against this Act may be commenced at any time within three years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within ten years after the date of the alleged commission of the offence.

(6) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(7) Where—

(a) proceedings for an offence against this Act relating to land wholly within the area of a council are commenced by the council; and

(b) a fine is imposed by a court for the offence; and

(c) the fine is paid to the clerk of the court,

the clerk must pay the amount of the fine to the council.

Order to rectify breach

106. Where, in proceedings for an offence against this Act, the court finds that the defendant has contravened, or failed to comply with, this Act, the court may, in addition to any penalty that it may impose, do one or more of the following:

(a) order the person to take specified action to make good the contravention or default in a manner, and within a period, specified by the court (including an order that the person make application for a development authorisation that should have been, but has not been made, under this Act);

(b) order the person to pay to a relevant authority costs or expenses incurred by the authority in taking action on account of any situation that resulted from that contravention or failure;

(c) cancel any development authorisation (other than an authorisation granted by the Governor);

(d) order the person to pay to any person who has suffered loss or damage as a result of the contravention or failure, or incurred costs or expenses as a result of the contravention or failure, compensation for the loss or damage or an amount for or towards those costs or expenses.

Charges on land

107. (1) If a charge on land is created under a provision of this Act, the person in whose favour the charge is created may deliver to the Registrar-General notice, in a form determined by the Registrar-General, setting out the amount of the charge and the land over which the charge is claimed.

(2) On receipt of a notice under subsection (1), the Registrar-General must, in relation to any land referred to in the notice, enter a note of the charge against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.

(3) Where a note has been entered under subsection (2), the Registrar-General must not register an instrument affecting the land to which the entry relates unless—

(a) the instrument—

(i) was executed before the entry was made; or

(ii) has been executed under or pursuant to an agreement entered into before the entry was made; or

(iii) relates to an instrument registered before the entry was made; or

(b) the instrument is an instrument of a prescribed class; or

(c) the instrument is expressed to be subject to the operation of the charge; or

(d) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance in existence before the entry was made.

(4) An instrument registered under subsection (3)(a) or (b) has effect, in relation to the entry, as if it had been registered before the entry was made.

(5) If an instrument is registered under subsection (3)(d), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must make the appropriate entries to give effect to the cancellation.

(6) The person in whose favour a charge exists must, if the amount to which the charge relates is paid, by notice to the appropriate authority in a form determined by the Registrar-General, apply for the discharge of the charge.

(7) The Registrar-General must then cancel the relevant entry.

Regulations

108. (1) The Governor may make regulations for the purposes of this Act.

(2) Those regulations may, for example, be made with respect to any of the matters specified in the schedule.

(3) A regulation made for the purposes of this Act may operate subject to prescribed conditions.

(4) The regulations may adopt, wholly or partially and with or without modification—

(a) a code relating to matters in respect of which regulations may be made under this Act or otherwise relating to any aspect of development; or

(b) an amendment to such a code.

(5) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.

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(6) The regulations or a code adopted by the regulations may—

- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
- (b) be of general or limited application; and
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Development Assessment Commission, a council, an authorised person or any other prescribed authority.

(7) Where a code, standard or other document is adopted under subsection (4) or (6) as it is in force from time to time, any alteration to the code, standard or other document will not take effect for the purposes of this Act before a day on which notice of that alteration is published by the Minister in the *Gazette*.

(8) Where—

- (a) a code is adopted by the regulations; or
- (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,

then—

- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (e) the code, standard or other document has effect as if it were a regulation made under this Act.

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SCHEDULE

Regulations

1. The procedures to be followed when a Development Plan amendment is proposed.
2. The procedures to be followed in relation to an application for any form of development authorisation under this Act (whether by the applicant or any other person or body), and the ability of a relevant authority to lapse an application in prescribed circumstances.
3. The provision of any report, statement, document, plan, drawing, specification, or other form of information to any person or body that performs a function under or pursuant to this Act.
4. The giving of public notice and public consultation in relation to any prescribed class of matter.
5. The form, manner and mode of giving other forms of notice under this Act.
6. The provision of returns, documents and other forms of information to the Minister or any other prescribed person or body for the purposes of this Act.
7. The giving of notice before any prescribed class of activity or procedure is commenced, and the notification of the occurrence of any prescribed class of event.
8. The form and content of any application, certificate, statement or other document required or issued under this Act.
9. The qualifications that must be held by a person who exercises a prescribed power or function under this Act, and the training, examination, registration or accreditation of any person in prescribed circumstances.
10. The regulation, restriction or prohibition of the performance of any function of a prescribed class.
11. Insurance requirements for prescribed classes of persons in prescribed circumstances.
12. The registration and retention of any application, report, document, plan, specification or other material lodged or provided under this Act.
13. The definition of words and expressions in a Development Plan (or Development Plans generally).
14. The incorporation of material into any Development Plan (or Development Plans generally).
15. The classification of various forms of development for the purposes of this Act.
16. The formulation and classification of zones for the purposes of this Act.
17. The regulation of the design, construction, quality, safety, amenity or upkeep of buildings, including, for example:
 - (a) the siting of buildings;
 - (b) the fixing of building lines in relation to public roads or thoroughfares;
 - (c) the height of buildings;
 - (d) the minimum height or dimensions of any room or area within buildings;
 - (e) the fire safety of buildings, and the provision and maintenance of fire-fighting equipment and other precautions;
 - (f) the heating, cooling and air-conditioning of buildings;
 - (g) the moisture resistance of buildings;

- (h) the prevention of flooding of buildings;
 - (i) the noise-resistant construction of buildings;
 - (j) the environmental efficiency of buildings;
 - (k) the maintenance of buildings;
 - (l) the health, safety or welfare of the occupants of any building.
- 18. The regulation, control, restriction or prohibition of building work, including, for example:
 - (a) the preparation of land for building work;
 - (b) the structural strength of building work, products and materials;
 - (c) the use of public space and other forms of open space for building work;
 - (d) safety in relation to the performance of building work.
- 19. The classification of buildings and the application of the regulations to different classes of buildings.
- 20. The regulation, restriction or prohibition of the occupation of buildings.
- 21. The restriction or prohibition of building work in prescribed circumstances.
- 22. The regulation, restriction or prohibition of building work over a public place (including the requirement to obtain any necessary licence or consent), and the standards to which a building over a public place must conform.
- 23. Utility, safety and hygiene services located in, or related to, buildings.
- 24. The regulation of projections from buildings and dangers arising from projections from building work.
- 25. Access to and within buildings, and egress from buildings.
- 26. The manner of alteration and demolition of, and additions to, buildings.
- 27. The creation of registers of certificates of occupancy under this Act and other matters relating to such certificates.
- 28. The inspection or testing of buildings, building work, fixtures, fittings, plant, materials, products, components, equipment or systems.
- 29. The accreditation of building products, building methods, designs, components, equipment or systems (including the issue of certificates of accreditation in prescribed circumstances).
- 30. The form and content of plans and specifications under this Act.
- 31. The availability for public inspection of any information or document for the purposes of this Act and the provision of copies of any such information or document to the public (whether on payment of a prescribed fee, on payment of a reasonable fee fixed by an authority of a prescribed class, or without charge).
- 32. The prescription, and payment, of fees (including differential fees), and the recovery of expenses and the distribution of fees between relevant authorities.
- 33. The ability of any prescribed class of person or body to remit, reduce, waive or refund a fee payable under this Act.
- 34. The application of any amount payable under this Act.

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35. Exemptions under this Act.
36. The prescription of time limits for the purposes of this Act.
37. The inspection of any place or work relevant to the assessment of any proposal, application or work under this Act, or to which this Act applies.
38. The registration of private certifiers by the Minister under this Act (whether on terms or conditions prescribed by the regulations, or on such terms or conditions as the Minister thinks fit).
39. The provision of a notice to a person or body in prescribed circumstances.
40. The service of any notice or document under this Act.
41. The transfer of development rights between sites.
42. The practice and procedure of the Court when exercising the jurisdiction under this Act.
43. The fees and costs that are payable in respect of proceedings before the Court under this Act.
44. The payment of money into the Fund.
45. The imposition of penalties, not exceeding a division 6 fine, for breaches of the regulations.

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

*(Transitional provisions from Statutes Repeal and Amendment (Development)
Act 1993, ss. 3, 15 - 29)*

Interpretation

3. In this Act—

"**the relevant day**" means a day fixed by proclamation as the relevant day for the purposes of this Act.

[N.B. The relevant day has been fixed as 15 January 1994 (see Gazette 27 October 1993, p. 1889)]

General

15. (1) A reference in any Act, regulation, rule, by-law or other instrument to the *Planning Act 1982*, or to the *Real Property Act 1886* (insofar as the reference relates to Part 19AB of that Act (as repealed by this Act)), will, unless the contrary intention appears, be taken to include a reference to the *Development Act 1993*.

(2) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Act, apply to any repeal or amendment effected by this Act.

(3) For the purpose of the application of the *Acts Interpretation Act 1915*, this Act and the *Development Act 1993* will be read together and construed as if the two Acts constituted a single Act.

Development Plans

16. (1) The following are adopted and applied as Development Plans under the *Development Act 1993*:

- (a) for each area of a council (other than the City of Adelaide)—that Council portion of the Development Plan under the *Planning Act 1982*, together with the relevant regional part of the Development Plan under that Act, in effect immediately before the relevant day;
- (b) for the City of Adelaide—the Principles established under Part 2 of the *City of Adelaide Development Control Act 1976* in effect immediately before the relevant day;
- (c) for any part of the State outside an area of a council—the relevant "out-of-Council" part of the Development Plan under the repealed Act, together with the relevant regional part of the Development Plan under the repealed Act, in effect immediately before the relevant day.

(2) Subject to this section, a Supplementary Development Plan which, before the relevant day, is prepared or accepted by the Minister as a basis for public submissions under section 41 of the *Planning Act 1982* will continue to be subject to the provisions of the *Planning Act 1982* (as if that Act had not been repealed) until it is approved or laid aside by the Minister under section 41(11b) of that Act, and then will be subject to the *Development Act 1993*.

(3) A Supplementary Development Plan which before the relevant day has been approved by the Minister under section 41(11b) of the *Planning Act 1982* will continue to be subject to the provisions of the *Planning Act 1982* (as if that Act had not been repealed) until the plan is disallowed or brought into action (and, where the plan is brought into action, it will be taken that the amendments effected by the Supplementary Development Plan are amendments to the relevant Development Plan under the *Development Act 1993*).

(4) A Supplementary Development Plan prepared or accepted by the Minister more than three years before the relevant day that has not been approved by the Minister under section 41(11b) of the *Planning Act 1982* before the relevant day has no further effect.

(5) A Supplementary Development Plan given interim effect under section 43 of the *Planning Act 1982* before the relevant day will be considered part of the Development Plan for the purposes of subsection (1) (but will continue to be subject to the operation of sections 41 and 43 of the *Planning Act 1982* until it ceases to operate under section 43 of that Act or, if relevant, is superseded by an amendment to a Development Plan under the *Development Act 1993*).

(6) An amendment to the Principles given notice under section 7(3) of the *City of Adelaide Development Control Act 1976* before the repeal of that Act may continue to the approval stage under section 10 of that Act (as if that Act had not been repealed), and any amendment effected under section 10 of that Act will, for the purposes of this Act, be considered to be an authorised amendment to a Development Plan under the *Development Act 1993*.

(7) A regulation (whether under the *Planning Act 1982* or any other Act) in effect immediately before the relevant day may be made as a regulation under the *Development Act 1993* without the need to comply with Part 1 of the *Development Act 1993*.

(8) An advertisement published before the relevant day under section 42A(5) of the *Planning Act 1982* in relation to a proposed regulation will be taken to be a notice published by the Advisory Committee under Part 1 of the *Development Act 1993*.

(9) Where a regulation has been publicly exhibited under section 44(3)(a) of the *City of Adelaide Development Control Act 1976* before the relevant day, the proposed regulation (with or without modification) may, with the approval of the Minister, be incorporated into the Development Plan that applies in the area of the City of Adelaide without complying with any procedure set out in the *Development Act 1993*.

(10) A reference in the Development Plan under the *Planning Act 1982*, or in any Act, regulation, rule, by-law or other instrument, to development which is "permitted" or "prohibited" under section 47 of the *Planning Act 1982* will be taken respectively as a reference to *complying* or *non-complying* development under the *Development Act 1993*.

(11) A reference in the Development Plan under the *Planning Act 1982*, or in any Act, regulation, rule, by-law or other instrument, to development which is "permitted" subject to a certificate will be taken as a reference to a *complying* development under the *Development Act 1993* subject to the relevant authority under that Act being satisfied as to those matters to which the certificate relates.

(12) A reference to development or use of land as "prohibited" in the Principles made under Part 2 of the *City of Adelaide Development Control Act 1976* will be taken as a reference to *non-complying* development under the *Development Act 1993*, and development that would contravene the requirements of a diagram in the Principles made under Part 2 of the *City of Adelaide Development Control Act 1976* will also be classified as *non-complying* development under the *Development Act 1993*.

(13) The Schedule entitled the Register of City of Adelaide Heritage Items set out in the *City of Adelaide Development Control Regulations 1987* is, subject to amendment under the *Development Act 1993*, declared to be a part of the Development Plan that applies in the area of the City of Adelaide, and a reference to the Register in the Principles in that Plan will be construed accordingly.

(14) In the event of any inconsistency between the Principles under Part 2 of the *City of Adelaide Development Control Act 1976* and a regulation under the *Development Act 1993*, the Principles will prevail.

(15) If any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day sets out, provides for or otherwise affects any procedure relating to the formulation, consideration, amendment or approval of a Supplementary Development Plan, it will be taken that that Act, regulation, rule, by-law or other instrument also operates in the same manner with respect to any relevant amendment to a Development Plan under the *Development Act 1993*.

(16) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the referral of a Supplementary Development Plan, or any report relating to a Supplementary Development Plan, to the Advisory Committee under that Act will be taken to include a reference to the referral of a Plan Amendment Report, or any other report relating to an amendment to a Development Plan, to the Advisory Committee under the *Development Act 1993*.

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(17) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the public display of, or public consultation on, a Supplementary Development Plan will be taken to include a reference to the public display of, or public consultation on, a Plan Amendment Report (and the relevant Development Plan amendment) under the *Development Act 1993*.

(18) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the referral of a Supplementary Development Plan to the Environment, Resources and Development Committee under that Act will be taken to include a reference to the referral of an amendment to a Development Plan to the Environment, Resources and Development Committee under the *Development Act 1993*.

(19) A reference in any Act, regulation, rule, by-law or other instrument—

(a) to the Development Plan under the *Planning Act 1982*; or

(b) to a Supplementary Development Plan that has been approved under the *Planning Act 1982*,

will be taken to be a reference to the relevant Development Plan under the *Development Act 1993*.

Division of land

17. (1) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to a "Statement of Requirements" issued by a council under the *Real Property Act 1886* will be taken to include a reference to any conditions imposed under section 33(1)(c) of the *Development Act 1993*.

(2) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to a "Statement of Requirements" issued by the South Australian Planning Commission under the *Real Property Act 1886* will be taken to include a reference to any conditions imposed under section 33(1)(c) of the *Development Act 1993*, and to any conditions or terms imposed or required under section 51 of the *Development Act 1993*.

(3) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to any Certificate of Approval under Part 19AB of the *Real Property Act 1886* will be taken to include a reference to a certificate under section 51 of the *Development Act 1993*.

(4) Subject to subsection (5), a division proposal lodged or granted approval under the *Planning Act 1982* prior to the relevant day may be the subject of applications for Certificates of Approval under Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988* (as in force immediately before the relevant day as if the *Development Act 1993* and this Act had not been enacted), provided that any approval under the *Planning Act 1982* has not lapsed.

(5) Subsection (4) is subject to the qualification that section 50 of the *Development Act 1993* will apply in relation to the proposal instead of the relevant provision of Part 19AB of the *Real Property Act 1886*.

(6) A Certificate of Approval under Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988* in force immediately before the relevant day will continue in force and effect notwithstanding any repeal or amendment effected by this Act, and may be dealt with as if the *Development Act 1993* and this Act had not been enacted.

Environmental impact statements

18. (1) An environmental impact statement officially recognised under the *Planning Act 1982* will be taken to be an environmental impact statement under the *Development Act 1993* (but not so as to impose any additional or other procedure that is inconsistent with a procedure under the *Planning Act 1982*).

(2) A requirement for an environmental impact statement under the *Planning Act 1982* or the *City of Adelaide Development Control Act 1976* will be taken to be a requirement imposed under the *Development Act 1993*, and an environmental impact statement which was the subject of notice under the *Planning Act 1982* or the *City of Adelaide Development Control Act 1976* before the relevant day may, provided that such notice was given not more than three years prior to the relevant day, continue to the stage of official recognition under either Act (as if the Act had not been repealed), and then will be taken to be an environmental impact statement under the *Development Act 1993*.

Declarations

19. A declaration made under section 50 of the *Planning Act 1982* will continue in force and effect as if it were a declaration of the Governor under the corresponding provision of the *Development Act 1993*.

Agreements

20. An agreement in force under section 61 of the *Planning Act 1982* immediately before the relevant day will be taken to be an agreement under the corresponding provision of the *Development Act 1993* (and will have the same force and effect as it had immediately before the relevant day).

Proclamation of open space

21. A proclamation made under section 62 of the *Planning Act 1982* (or made under section 61 of the *Planning and Development Act 1966* or section 29 of the *Town Planning Act 1929*) will continue in force and effect as if the *Planning Act 1982* had not been repealed (and that Act will be taken to continue to apply in relation to any such proclamation).

Development schemes

22. A scheme in force under section 63 of the *Planning Act 1982* immediately before the relevant day will continue in force and effect as if that Act had not been repealed (and that Act will be taken to continue to apply in relation to any such scheme).

Approved qualifications

23. An approval under section 73 of the *Planning Act 1982* will be taken to be an approval under the corresponding provision of the *Development Act 1993* (subject to the conditions (if any) that applied to the approval under the *Planning Act 1982*).

Existing procedures, etc.

24. (1) A reference in any Act, regulation, rule, by-law or other instrument to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to a Building Referee, will be taken to be a reference to the Environment, Resources and Development Court.

(2) Except as otherwise provided by this Act, an application, appeal or other proceeding commenced under the *Planning Act 1982*, any Act that was repealed by the *Planning Act 1982*, the *City of Adelaide Development Control Act 1976*, the *Building Act 1971*, Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988*, or regulations under those Acts, but which had not been finally determined at the relevant day, may be continued and completed as if the *Development Act 1993* and this Act had not been enacted, except that a reference to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to a Building Referee, will be taken as a reference to the Environment, Resources and Development Court.

(3) A right of appeal in existence before the relevant day may be exercised as if the *Development Act 1993* and this Act had not been enacted, except that a reference to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to or a Building Referee, will be taken as a reference to the Environment, Resources and Development Court.

(4) Any proceedings before the Planning Appeal Tribunal, the City of Adelaide Planning Appeals Tribunal or a Building Referee immediately before the relevant day will, subject to such directions as the Presiding Member of the Court thinks fit, be transferred to the Environment, Resources and Development Court where they may proceed as if they had been commenced before that Court.

(5) The Environment, Resources and Development Court may—

- (a) receive in evidence any transcript of evidence in proceedings before the tribunal or referee before which the proceedings were commenced, and draw any conclusions of fact from that evidence that appear proper; and
- (b) adopt any findings or determinations of that tribunal or referee that may be relevant to the proceedings.

(6) A development application lodged or approved under the *Planning Act 1982* or *City of Adelaide Development Control Act 1976* for building work prior to the relevant day may be the subject of application for approval under the *Building Act 1971* following its repeal, provided that any approval under the *Planning Act 1982* or *City of Adelaide Development Control Act 1976* has not lapsed.

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(7) A condition attached to, or applying in relation to, an approval or authorisation granted under the *Planning Act 1982*, the *City of Adelaide Development Control Act 1976* or the *Building Act 1971* will remain in force as if granted under the *Development Act 1993* and bind the owners and occupiers of the land to which the condition relates.

(8) The repeal of any Act by this Act does not affect any rights that accrued under the Act so repealed, the validity of any decision or authorisation made or granted under the Act so repealed, or any notice or order given or made under the Act so repealed.

Administrative arrangements

25. (1) Any power, duty, function or obligation vested in the South Australian Planning Commission or the City of Adelaide Planning Commission immediately before the relevant day (other than in respect of Part 2 of the *City of Adelaide Development Control Act 1976*) is exercisable by, or attaches to, the Development Assessment Commission under the *Development Act 1993*.

(2) Any power, duty, function or obligation vested in the Advisory Committee on Planning, the Building Advisory Committee or the City of Adelaide Planning Commission in respect of Part 2 of the *City of Adelaide Development Control Act 1976* immediately before the relevant day is exercisable by, or attaches to, the Advisory Committee under the *Development Act 1993*.

(3) A reference in any Act, regulation, rule, by-law or other instrument to the Metropolitan Planning Area, or to Metropolitan Adelaide, as constituted or defined under the *Planning Act 1982* will, unless the contrary intention appears, be taken as a reference to Metropolitan Adelaide under the *Development Act 1993*.

(4) A reference in any Act, regulation, rule, by-law or other instrument to a planning authority or planning authorisation under the *Planning Act 1982* will, unless the contrary intention appears, be taken to include a reference to a relevant authority or development authorisation (as the case may be) under the *Development Act 1993*.

Lapse of approvals under the Planning and Development Act

26. Any development approval granted and current at the relevant day under the *Planning and Development Act 1966* will lapse at the expiration of 12 months from commencement of this Act unless—

- (a) the approval is, as at the relevant day, subject to any proceedings before a court or tribunal constituted by law; or
- (b) the development had substantially commenced prior to that time; or
- (c) if land division, application for division has been lodged with the Registrar-General; or
- (d) application for extension is granted in response to application under the *Development Act 1993*; or
- (e) the approval has been specifically granted for a longer specific period.

Certificates of classification

27. A certificate of classification issued under the *Building Act 1971* in force immediately before the relevant day will be taken to be a certificate of occupancy under the *Development Act 1993*.

Buildings specifically

28. (1) Except as otherwise expressly provided by the *Development Act 1993* or the regulations under that Act, a building that was lawfully erected or constructed before the relevant day or was taken pursuant to the *Building Act 1971* to conform with the provisions of that Act will be taken to conform with the *Development Act 1993* if—

- (a) it conformed with the law of this State as in force at the time of its erection or construction; or
- (b) where it has been altered since the time of its erection or construction, the alteration has been made pursuant to the law of this State as in force at the time of the alteration, or pursuant to the *Development Act 1993*.

(2) Any building work in the nature of an alteration to a building erected or constructed before the relevant day must conform with the provisions of the *Development Act 1993*, but, where the general safety and structural standard of the building or structure would not be impaired, an authority under the *Development Act 1993* may permit the building work to be carried out otherwise than in conformity with the provisions of that Act.

(3) Where approval is sought pursuant to the *Development Act 1993* of any building work in the nature of an alteration to a building erected or constructed before the relevant day and the building is, in the opinion of an authority under the *Development Act 1993*, unsafe or structurally unsound, that authority may require, as a condition of its approval of the building work, that the entire building be brought into conformity with the requirements of that Act in all respects as if it were a building erected or constructed after the commencement of that Act, or with so many of those requirements as will, in the opinion of the authority, ensure that the building will be rendered safe and will conform to a proper structural standard.

(4) Where—

(a) approval is sought pursuant to the *Development Act 1993* of any building work in the nature of an alteration of a kind prescribed by regulations under that Act to a building erected or constructed before 1 January 1980; and

(b) an authority under that Act is of the opinion that the facilities for access to or within the building for persons with disabilities are inadequate,

the authority may, as a condition of its approval of the building work, require such building work or other measures to be carried out as may be reasonably necessary to ensure that the facilities for such access will be adequate.

Existing appointments

29. (1) Subject to subsection (2), a person who was, immediately before the relevant day, a full-time commissioner of the Tribunal under the *Planning Act 1982* will continue in office as a commissioner of the Environment, Resources and Development Court on the same terms and conditions as applied to the person immediately before the relevant day.

(2) A person to whom subsection (1) applies must retire—

(a) on or before the retirement age that applied to the person immediately before the relevant day; or

(b) if no such retirement age applied—on or before the person attains the age of 65 years or, if he or she has attained that age before the relevant day, on the relevant day.

Legislative History

Section 108(9): repealed by 18, 1994, Sched. cl. 1

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APPENDIX 2**DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.