

South Australia

HERITAGE ACT 1993

An Act to conserve places of heritage value; to repeal the South Australian Heritage Act 1978; to make consequential amendments to the Aboriginal Heritage Act 1988, the Native Vegetation Act 1991, the Strata Titles Act 1988 and the Valuation of Land Act 1971; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 June 2000**.*

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.

HERITAGE ACT 1993

being

Heritage Act 1993 No. 56 of 1993
[Assented to 27 May 1993]¹

as amended by

Heritage (Delegation by Minister) Amendment Act 1999 No. 81 of 1999 [Assented to 2 December 1999]²

¹ Came into operation 15 January 1994: *Gaz.* 27 October 1993, p. 1890.

² Came into operation 15 June 2000: *Gaz.* 15 June 2000, p. 3130.

N.B. The amendments effected to this Act by the *Offshore Minerals Act 2000* 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.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

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

Commencement

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

Interpretation

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

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

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

"**Development Plan**" means a Development Plan under the *Development Act 1993*;

"**dispose of**" includes sell, part with possession or conceal;

"**Fund**" means the *State Heritage Fund*;

"**heritage value**"—*see section 16*;

"**land**" includes—

- (a) a building or structure or a portion of a building or structure, whether temporary or permanent, moveable or immovable, on the land (including a boat or pontoon which is permanently moored or fixed to the land, or a caravan that is permanently fixed to the land);
- (b) land covered with water;

"**mining tenement**" means—

- (a) a mineral claim, a lease or a licence under the *Mining Act 1971*; or
- (b) a licence under the *Petroleum Act 1940*; or
- (c) a permit, lease or licence under the *Petroleum (Submerged Lands) Act 1982*;

"**owner**" of land means—

- (a) if the land is unalienated from the Crown—the Crown;
- (b) if the land is alienated from the Crown by grant in fee simple—the owner of the estate in fee simple;
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee;

- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right of purchase,

and if the land is subject to a mining tenement a reference to the owner of the land extends to the holder of the tenement;

"Register" means the *State Heritage Register* established under this Act;

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

"registered place" means a place entered in the Register under this Act;

"specimen" includes sample;

"State Heritage Area" means an area established as a State Heritage Area by a Development Plan.

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

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**PART 2
ADMINISTRATION**

DIVISION 1—STATE HERITAGE AUTHORITY

Authority

4. (1) The *State Heritage Authority* is established.

(2) The Authority consists of eight members appointed by the Governor.

(3) Seven of the members must be persons with knowledge of or experience in history, archaeology, architecture, the natural sciences, heritage conservation, public administration, property management or some other relevant field and the other member must be a person with knowledge of or experience in heritage conservation nominated by the Local Government Association and approved by the Minister.

(4) Before filling a vacancy in the membership of the Authority (other than a vacancy to be filled by a person nominated by the Local Government Association), the Minister must, by advertisement published in a newspaper circulating throughout the State, invite interested members of the public to submit (within 14 days of the advertisement) the names of persons whom they regard as suitable candidates to fill the vacancy.

(5) The Governor will designate one member of the Authority to preside at meetings of the Authority.

(6) The Governor may appoint a suitable person to act as a member of the Authority in the absence of a member.

Functions of Authority

5. The Authority has the following functions:

- (a) administering the *State Heritage Register*;
- (b) investigating areas of heritage value and promoting their establishment, in appropriate cases, as State Heritage Areas;
- (c) negotiating, and monitoring the operation of, heritage agreements;
- (d) providing advice to the Minister in relation to—
 - (i) the application of money from the Fund in furtherance of the objects of this Act;
 - (ii) development which may affect registered places or State Heritage Areas;
 - (iii) heritage agreements;
 - (iv) any matter relating to the conservation or public use of registered places or State Heritage Areas;
 - (v) any other matter relating to heritage conservation;
- (e) providing advice and assistance to councils, planning authorities, owners of land and other persons on any matter relating to heritage conservation;

- (f) to encourage all levels of government to provide incentives (apart from financial assistance) for heritage conservation;
- (g) if, in the opinion of the Authority, a council is not acting appropriately with respect to heritage conservation of places within its area—to assist the council to do so.

Conditions of membership

6. (1) A member of the Authority will be appointed for a term of office, not exceeding three years, specified in the instrument of appointment and, on completion of a term of appointment, will be eligible for reappointment.

(2) The Governor may remove a member of the Authority from office for—

- (a) mental or physical incapacity; or
- (b) neglect of duty; or
- (c) misconduct.

(3) The office of a member of the Authority becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is removed from office by the Governor under subsection (2).

(4) On the occurrence of a vacancy in the membership of the Authority, a person will be appointed in accordance with this Act to the vacant office, but the validity of acts and proceedings of the Authority is not affected by the existence of a vacancy or vacancies in its membership.

Proceedings of Authority

7. (1) A meeting of the Authority will be chaired by the member appointed to preside, or, in the absence of that member, a member chosen by those present.

(2) A quorum of the Authority consists of five members of the Authority.

(3) A decision carried by a majority of the votes of the members present at a meeting of the Authority is a decision of the Authority.

(4) Each member present at a meeting of the Authority is entitled to one vote on any matter arising for decision at that meeting and, if the votes are equal, the person chairing the meeting is entitled to a second or casting vote.

(5) Meetings of the Authority must, subject to subsection (6), be held in a place that is open to the public.

(6) The Authority may order that the public be excluded from a meeting in order to enable the Authority to consider in confidence any matter that it considers to be confidential or if it considers that exclusion necessary to protect a place that is or may be of heritage value.

(7) The minutes of meetings of the Authority must be available for public inspection without charge.

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Delegation

8. (1) Subject to this section, the Authority may delegate powers and functions under this Act to—

- (a) a committee established by the Authority; or
- (b) a member of the Authority; or
- (c) any other person.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Authority to act itself in any matter.

(3) The Authority may not delegate the following powers or functions:

- (a) to confirm a provisional entry in the Register;
- (b) to decide not to confirm a provisional entry in the Register;
- (c) to remove an entry from the Register;
- (d) to alter an entry in the Register by excluding part of the place to which the entry applies.

Remuneration

9. A member of the Authority is entitled to such fees and allowances as may be determined by the Governor.

DIVISION 2—STATE HERITAGE FUND

State Heritage Fund

10. (1) The *State Heritage Fund* continues in existence.

(2) The Fund consists of—

- (a) any money appropriated by Parliament for the purposes of the Fund; and
- (b) any money provided by the Government of the Commonwealth for the purposes of this Act; and
- (c) any money received by the Authority for the purposes of this Act by way of fees, gift, bequest or in any other way; and
- (d) any money received by the Minister for the purposes of this Act by way of gift, bequest or in any other way; and
- (e) any income derived from investment of the Fund.

(3) The Minister may invest money standing to the credit of the Fund that is not immediately required for the purposes of this Act in such manner as may be approved by the Treasurer.

(4) The Minister may, with the consent of the Treasurer, borrow money for the purposes of the Fund.

(5) A liability incurred with the consent of the Treasurer under subsection (4) is guaranteed by the Treasurer.

Accounts and audit

11. (1) The Minister must cause proper accounts to be kept of the receipts and payments from the Fund.

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

Application of money from Fund

12. The Minister may, after seeking and considering the advice of the Authority, apply money from the Fund in furtherance of the objects of this Act.

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**PART 3
STATE HERITAGE REGISTER**

State Heritage Register

13. (1) There is to be a register known as the *State Heritage Register*.

(2) The Register is to be maintained by the Authority in accordance with this Act.

Inventory

14. (1) The Register must have attached to it an inventory containing descriptions of and notes relating to—

- (a) places designated in any Development Plan as places of local heritage value; and
- (b) places within the State entered in any register of places of historical interest kept under the law of the Commonwealth; and
- (c) State Heritage Areas; and
- (d) heritage agreements and any variations to those agreements.

(2) The inventory attached to the Register must be indexed and capable of being searched together with the Register.

(3) The inventory does not form part of the Register and a place entered in the inventory is not, because of its entry in the inventory, a registered place for the purposes of this Act.

Register to be available for public inspection

15. (1) The Register, together with the inventory attached to the Register, must be kept available for public inspection at the office of the Authority during ordinary office hours.

(2) The Authority must, on application by a member of the public, and payment of a fee fixed by the regulations, provide the applicant with a certified copy of an entry in the Register, or in the inventory attached to the Register.

**PART 4
REGISTRATION OF PLACES**

DIVISION 1—CRITERIA FOR REGISTRATION

Heritage value

16. A place is of heritage value if it satisfies one or more of the following criteria:

- (a) it demonstrates important aspects of the evolution or pattern of the State's history; or
- (b) it has rare, uncommon or endangered qualities that are of cultural significance; or
- (c) it may yield information that will contribute to an understanding of the State's history, including its natural history; or
- (d) it is an outstanding representative of a particular class of places of cultural significance; or
- (e) it demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics; or
- (f) it has strong cultural or spiritual associations for the community or a group within it; or
- (g) it has a special association with the life or work of a person or organisation or an event of historical importance.

DIVISION 2—REGISTRATION PROCESS

Proposal to make entry in Register

17. (1) The Authority may, on its own initiative or on application by any person, consider whether a particular place within the State should be entered in the Register.

(2) If the Authority is of the opinion—

- (a) that a place is of heritage value; or
- (b) that a place should be protected while an assessment of its heritage value is carried out,

it may provisionally enter the place in the Register.

(3) The Authority may designate a place provisionally entered in the Register as—

- (a) a place of geological or palaeontological significance; or
- (b) a place of archaeological significance.

(4) If a place is provisionally entered in the Register, the Authority must—

- (a) give each owner of land constituting the place a written notice—
 - (i) stating the reasons for provisional registration of the place and, if the Authority has designated the place as a place of geological or palaeontological significance or archaeological significance, stating the reasons for that designation; and

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- (ii) explaining that the owner has a right to make written submissions, within three months of the date of the notice, on whether the registration should be confirmed; and
- (b) give notice by advertisement published in a newspaper circulating throughout the State—
 - (i) that the Authority has provisionally entered the place in the Register; and
 - (ii) if the Authority has designated the place as a place of geological or palaeontological significance or archaeological significance—that the place has been so designated; and
 - (iii) explaining that any person has a right to make written submissions, within three months of the date of the notice, on whether the registration should be confirmed; and
- (c) give written notice to the Minister of the entry; and
- (d) if the place is within the area of a council—give written notice to the council of the entry.

Submissions and confirmation or removal of entries

18. (1) If the Authority gives notice that it has provisionally entered a place in the Register, any person may, within three months after notice is given of the provisional entry of the place in the Register, make written representations to the Authority on whether the entry should be confirmed.

(2) If a person who makes written representations under this section seeks to appear personally before the Authority to make oral representations, the Authority must, unless the submission is frivolous, allow that person a reasonable opportunity to do so.

(3) The Authority must consider all written and oral representations made under this section.

(4) If, after considering the representations (if any) made under this section, the Authority is of the opinion that the entry of the place in the Register should be confirmed, the Authority may, subject to any direction by the Minister under subsection (5), confirm the entry.

(5) If the Minister is of the opinion that the confirmation of a provisional entry in the Register would be contrary to the public interest, the Minister may, after consultation with the Authority, direct that the entry be removed from the Register.

(6) If—

(a) the Authority, after considering the representations (if any) made under this section, is of the opinion that the provisional entry of the place in the Register should not be confirmed; or

(b) the Minister directs the removal of the provisional entry of a place from the Register,

the Authority must remove the provisional entry of the place from the Register.

(7) Notice of the confirmation or removal of the provisional entry of a place in the Register must be given—

(a) by written notice to the owners of land constituting the place; and

- (b) by advertisement published in a newspaper circulating throughout the State; and
- (c) by written notice to the Minister; and
- (d) if the place is within the area of a council—by written notice to the council.

(8) Written notice to the owners of land constituting the place of a decision to confirm an entry of the place must explain to what extent (if any) development of the place is controlled under the Development Plan relating to the area in which the place is situated.

(9) The Authority must take all reasonable steps to make a decision about whether a provisional entry should or should not be confirmed within 12 months after the date on which the entry was made and if the Authority fails to make a decision within that period or such longer period as is allowed by the Minister in the particular case, the provisional entry must be removed from the Register.

Registration in Lands Titles Registration Office

19. Where a provisional entry in the Register is made, the Registrar-General must, on application by the Authority, note the entry 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.

Appeals

20. (1) If an owner of land provisionally entered in the Register makes representations to the Authority with respect to that entry, the owner may appeal to the Court against a decision to confirm or not to confirm the provisional entry of the land in the Register.

(2) The appeal must be commenced within two months after notice is given of the decision under appeal or such longer period as the Court may allow.

(3) On an appeal under this section, the Court may—

- (a) confirm, vary or reverse a decision under appeal; and
- (b) remit the matter to the Authority for further consideration or for reconsideration; and
- (c) make consequential or ancillary orders.

Correction of errors

21. The Authority may correct any inaccuracies in an entry in the Register, or in an inventory attached to the Register, that come to its attention.

DIVISION 3—CERTIFICATE OF EXCLUSION

Certificate of exclusion

22. (1) The owner of land may apply to the Authority for a certificate of exclusion in respect of that land.

(2) An application must be accompanied by the fee fixed in the regulations (which may be fixed according to the value of the land concerned).

(3) The Authority must give notice of the application by advertisement published in a newspaper circulating throughout the State inviting representations on the question whether a certificate of exclusion should be granted on the application within three months of the date of the notice.

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(4) Before granting a certificate of exclusion the Authority must consider any representations made in response to an advertisement published under subsection (3).

(5) If a certificate of exclusion is issued in respect of land, the land may not be entered in the Register within five years after the date of the certificate.

DIVISION 4—REMOVAL FROM REGISTER

Removal from Register if registration not justified

23. (1) If the Authority is of the opinion that registration of a place under this Act is no longer justified, or that an entry in the Register should be altered by excluding part of the place to which the entry applies, it may give notice of its intention to alter the Register by removing or altering the entry and invite written representations on the proposal—

- (a) by notice in writing to the owner or owners of land constituting the registered place; and
- (b) by advertisement in a newspaper circulating throughout the State; and
- (c) if the registered place is within the area of a council—by notice in writing to the council.

(2) The Authority must consider any representations made in response to the notice within three months of the date of the notice.

(3) If the Authority, after considering the representations (if any) made in response to the notice, remains of the opinion that the entry should be removed or altered, it may remove or alter the entry accordingly.

(4) Written notice of the removal or alteration of an entry under this section must be given to the Minister, the Registrar-General, the owner or owners of the land constituting the place and, if the place is within the area of a council, the council.

Removal from Register if place designated as of local heritage value

24. (1) The Authority may remove an entry from the Register, or alter an entry in the Register by excluding part of the place to which the entry applies, if that place or that part of the place is designated in a Development Plan as a place of local heritage value.

(2) Written notice of the removal or alteration of an entry under this section must be given to the Minister, the Registrar-General, the owner or owners of the land constituting the place and the council in whose area the place is situated.

**PART 5
SPECIAL PROTECTION**

**DIVISION 1—PLACES OF GEOLOGICAL,
PALAEOONTOLOGICAL OR ARCHAEOLOGICAL SIGNIFICANCE**

Places of geological or palaeontological significance

25. A person must not, without a permit from the Authority—

- (a) excavate or disturb a registered place designated as a place of geological or palaeontological significance; or
- (b) remove geological or palaeontological specimens from such a place.

Penalty: Division 4 fine.

Places of archaeological significance

26. A person must not, without a permit from the Authority—

- (a) excavate or disturb a registered place designated as a place of archaeological significance; or
- (b) remove cultural artefacts from such a place.

Penalty: Division 4 fine.

Excavation of registered place in search of cultural artefacts

27. A person must not, without a permit from the Authority, excavate or disturb a registered place (not designated as a place of archaeological significance) for the purpose of searching for or recovering cultural artefacts.

Penalty: Division 4 fine.

Damage to or disposal of specimen or artefact

28. (1) A person must not, without a permit from the Authority, damage, destroy or dispose of—

- (a) a geological or palaeontological specimen removed from a registered place designated as a place of geological or palaeontological significance (whether removed before or after that registration); or
- (b) a cultural artefact removed from a registered place designated as a place of archaeological significance (whether removed before or after that registration).

Penalty: Division 4 fine.

(2) It is a defence to a charge of an offence against subsection (1) if it is proved that the defendant did not know, and could not by the exercise of reasonable diligence be expected to have known, that the specimen or artefact came from a registered place designated as a place of geological or palaeontological significance or archaeological significance.

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Permits

29. A permit may be granted on such conditions as the Authority thinks fit and those conditions may, for example—

- (a) require that the operations to be carried out in pursuance of the permit be supervised by a person with appropriate professional qualifications and experience specified in the permit;
- (b) provide that geological or palaeontological specimens or cultural artefacts recovered in the course of the operations are to belong to the Crown;
- (c) make provision for the protection and curation of any such geological or palaeontological specimens or cultural artefacts.

DIVISION 2—EMERGENCY PROTECTION

Stop orders

30. (1) If the Authority is of the opinion—

- (a) that a place has sufficient heritage value to justify its preservation, or that a place should be evaluated in order to determine whether its heritage value justifies its preservation; and
- (b) that an order under this section is necessary to protect the place,

the Authority may make an order requiring a person to stop any work or activity, or prohibiting a person from starting any work or activity, that may destroy or reduce the heritage value of that place.

(2) An order under subsection (1) takes effect on service of notice of the order on the person and ceases to have effect four working days after that service unless confirmed by the Court under this section.

(3) If the Authority makes an order under subsection (1)—

- (a) the Authority must forthwith apply to the Court for an order under this section; and
- (b) if the place is not entered in the Register, provisionally enter the place in the Register.

(4) On application under subsection (3) the Court may—

- (a) —
 - (i) confirm the Authority's order; or
 - (ii) make, in substitution for the Authority's order, any other order that the Court thinks necessary to protect the place; or
 - (iii) revoke the Authority's order; and
- (b) make any consequential or ancillary order.

(5) If a place that is subject to an order under this section is removed from the Register, the order ceases to have any effect.

Contravention of stop order

31. A person who contravenes or fails to comply with an order under this Division is guilty of an offence.

Penalty: Division 1 fine.

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**PART 6
HERITAGE AGREEMENTS****Heritage agreements**

32. (1) The Minister may, after seeking and considering the advice of the Authority, enter into a heritage agreement with the owner of land constituting a registered place or State Heritage Area.

(2) A heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.

(3) The Minister may, after seeking and considering the advice of the Authority, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the agreement.

(4) A heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.

Effect of heritage agreement

33. (1) A heritage agreement may contain any provision to promote the conservation of registered places and State Heritage Areas and public appreciation of their importance to South Australia's cultural heritage.

(2) A heritage agreement may, for example—

- (a) restrict the use of land to which it applies;
- (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;
- (c) restrict the nature of work that may be carried out on the land;
- (d) provide for the management of the land, or any place, specimens or artefacts on or in the land, in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
- (e) provide for financial, technical or other professional advice or assistance to the owner with respect to the maintenance or conservation of the land or any place, specimens or artefacts on or in the land;
- (f) provide for remission of rates or taxes in respect of the land;
- (g) provide that specified regulations made under section 37 of the *Development Act 1993* do not apply to the land.

(3) A heritage agreement may not provide for the remission of rates payable to a council unless the council is a party to the agreement.

Registration of heritage agreements

34. (1) A heritage agreement or an agreement varying or terminating a heritage agreement must be entered in the inventory attached to the Register.

(2) When the Minister enters into a heritage agreement, or an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, 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.

Enforcement of heritage agreements

35. (1) If—

- (a) a party to a heritage agreement fails to comply with it; or
- (b) there is reason to apprehend that a party to a heritage agreement may fail to comply with it,

any other party to the agreement may apply to the Court for an order under this section.

(2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.

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**PART 7
MISCELLANEOUS**

Intentional damage of registered place

36. (1) A person who intentionally damages a registered place so as to destroy or reduce its heritage value is guilty of an offence.

Penalty: Division 1 fine.

(2) This section does not apply to damage resulting from action authorised by an approval or authorisation under the *Development Act 1993* or from operations authorised under the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982*.

Restoration orders

37. (1) If a person is convicted of an offence against this Act, the Court may, in addition to imposing a penalty for the offence, order the person to make good, to the satisfaction of the Minister, any damage caused through the commission of the offence.

(2) A person must not fail to comply with an order under this section.

Penalty: Division 1 fine.

(3) If the person fails to comply with the order, the Minister may cause the necessary work to be carried out and recover the cost of doing so, as a debt, from the person against whom the order was made.

No development orders

38. (1) If the owner of a place is convicted of an offence against section 31 or 36 the Court may, in addition to imposing a penalty for the offence, order that no development of the place may be undertaken during a period (not exceeding 10 years) fixed by the Court except for the purpose of making good any damage caused through the commission of the offence or restoring or maintaining the heritage value of the place.

(2) Before making an order under this section the Court must give—

(a) any person with a registered interest in the land constituting the place; and

(b) if the land is within the area of a council—the council,

a reasonable opportunity to make submissions on whether the order should be made and, if made, the term of the order.

(3) A person must not undertake development contrary to this section.

Penalty: Division 1 fine.

(4) In this section—

"**development**" has the same meaning as in the *Development Act 1993*.

Right of entry

39. (1) If the Authority considers it necessary, a person authorised by the Authority may enter and inspect a place, or specimens or artefacts in a place, for the purpose of determining or recording the heritage value of the place or determining whether a heritage agreement entered into under this Act is being, or has been, complied with.

(2) The authorised person may make photographic or other records of the place or specimens or artefacts.

(3) An authorised person may exercise powers under this section—

(a) with the consent of the occupier of the place; or

(b) by warrant under this section.

(4) An authorised person may apply to a Magistrate for a warrant under this section.

(5) The Magistrate may issue the warrant if satisfied that there are reasonable grounds for authorising the entry and examination of the place or specimens or artefacts in the place without the consent of the occupier.

Erection of signs

40. The Authority may erect such signs or notices as it considers necessary in order to draw attention to the entry of a place in the Register or to an order made under this Act or to the terms or effect of such registration or order.

Obstruction

41. A person must not, without reasonable excuse, hinder or obstruct a person acting in the administration of this Act.

Penalty: Division 6 fine.

Delegation by Minister

41A. (1) The Minister may delegate to any body or person (including a person for the time being holding or acting in a specified office or position)—

(a) any of his or her duties, functions or powers (except this power of delegation) under this Act; or

(b) any duties, functions or powers that are, under any other Act or statutory instrument, assigned to the Minister for the time being administering this Act.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the Minister to act in any matter; and

(d) is revocable at will.

(3) A duty or function performed, or power exercised, by a delegate pursuant to an instrument of delegation under this section is taken to have been performed or exercised by the Minister.

(4) If a delegate under this section—

(a) is not an employee within the meaning of the *Public Sector Management Act 1995*; and

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- (b) has a direct or indirect personal or pecuniary interest in any matter in relation to which it is proposed that he or she perform a duty or function, or exercise a power,

the delegate must disclose the nature of the interest in writing to the Minister and not perform the duty or function, or exercise the power, until the Minister responds to the disclosure.

- (5) The Minister must cause a register to be kept, at a place determined by the Minister, of—

- (a) all delegations made under this section; and
- (b) all disclosures of interest made under this section and copies of any responses to those disclosures by the Minister.

(6) The register must be made available for inspection (without charge) during normal office hours by members of the public and copies of any item in the register may be taken.

General provisions relating to criminal liability

42. (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) 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, subject to subsection (4), 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 or offences of the same or a similar nature.

(3) In proceedings for any offence against this Act (except an offence against subsection (2)), it will be a defence if it is proved that the alleged offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or a similar nature.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence but for the operation of subsection (1) or (2),

the person is not liable to be punished by imprisonment for the offence.

Service of notices

43. A notice required or authorised by this Act to be given to a person may be given as follows:

- (a) by personal service on the person or an agent of the person;

- (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years;
- (c) by serving it by post on the person or an agent of the person;
- (d) if the whereabouts of the person is unknown—by affixing it in a prominent position on the land to which it relates or publishing a copy of it in a newspaper circulating throughout the State.

Evidence

44. (1) A certified copy of an entry in the Register, or inventory attached to the Register, is admissible in legal proceedings and, in the absence of evidence to the contrary, is to be taken as proof of the entry to which it relates and its contents.

(2) In any legal proceedings, an apparently genuine document appearing to be a copy of a heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

(2a) In any legal proceedings, an instrument of delegation apparently signed by the Minister will be accepted, in the absence of proof to the contrary, as proof of the delegation.

(3) In any legal proceedings, a certificate as to a delegation apparently signed by the Authority will be accepted, in the absence of proof to the contrary, as proof of the delegation.

Regulations

45. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example, fix and regulate fees for the provision of information or other services by the Authority or the making of applications to the Authority.

(3) A regulation may impose a fine, not exceeding a division 7 fine, for contravention of the regulation.

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SCHEDULE 1

Repeal and Transitional Provisions

Repeal

1. The *South Australian Heritage Act 1978* is repealed.

Transitional provisions

2. (1) Any land, building or structure registered under the repealed Act immediately before the commencement of this Act will be taken to be registered as a place in the Register for the purposes of this Act.

(2) Any land, building or structure on the interim list under the repealed Act immediately before the commencement of this Act will be taken to be provisionally registered in the Register on the commencement of this Act and, if the period for receiving objections under the repealed Act has not expired—

- (a) notice must be given of the provisional registration in accordance with this Act; and
- (b) submissions may be made on whether the registration should be confirmed in accordance with this Act.

(3) An area that was immediately before the commencement of this Act a State Heritage Area continues to be a State Heritage Area for all purposes, whether or not it is established as a State Heritage Area by a Development Plan.

(4) Subject to this clause, a heritage agreement in force under the repealed Act immediately before the commencement of this Act remains in force, subject to this Act, for the purposes of this Act.

(5) A heritage agreement entered into by the Minister responsible for the administration of the *Aboriginal Heritage Act 1988* in force under the repealed Act immediately before the commencement of this Act remains in force and becomes, for the purposes of and subject to that Act, an Aboriginal heritage agreement under that Act.

(6) A heritage agreement entered into by the Minister responsible for the administration of the *Native Vegetation Act 1991* in force under the repealed Act immediately before the commencement of this Act remains in force and becomes, for the purposes of and subject to that Act, a heritage agreement under that Act.

(7) A heritage agreement entered into pursuant to Schedule 2 of the *Native Vegetation Act 1991* becomes, for the purposes of and subject to the *Native Vegetation Act 1991*, a heritage agreement under that Act.

- (8) In this clause—

"**repealed Act**" means the *South Australian Heritage Act 1978*.

SCHEDULE 2
Consequential Amendments

Provision Amended	How Amended
<i>Aboriginal Heritage Act 1988</i>	
s. 8(1)(a)(iia)	Insert the following subparagraph after subparagraph (iii): (iia) Aboriginal heritage agreements;
s. 17(1)(ba)	Insert the following paragraph after paragraph (b): (ba) at any reasonable time enter and inspect land for the purposes of determining whether an Aboriginal heritage agreement entered into under this Act is being, or has been, complied with;
s. 19(7)(c)	Strike out "a heritage agreement entered into by the Minister under the <i>South Australian Heritage Act 1978</i> " and substitute "an Aboriginal heritage agreement entered into by the Minister under this Act".
Part 3 Division 6	The following Division is inserted after Division 5 of Part 3: DIVISION 6—ABORIGINAL HERITAGE AGREEMENTS Aboriginal heritage agreements 37A. (1) The Minister may enter into an Aboriginal heritage agreement with the owner of land on which any Aboriginal site, object or remains is situated. (2) An Aboriginal heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made. (3) The Minister may, by agreement with the owner of the land to which an Aboriginal heritage agreement applies, vary or terminate the agreement. (4) An Aboriginal heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land. (5) Before entering into, varying or terminating an Aboriginal heritage agreement the Minister must take all reasonable steps to consult with— (a) the Committee; and (b) any Aboriginal organisation that, in the opinion of the Minister, has a particular interest in the matter; and (c) any— (i) traditional owners; and (ii) other Aboriginal persons, who, in the opinion of the Minister, have a particular interest in the matter. (6) Before entering into an Aboriginal heritage agreement the Minister must take all reasonable steps to give any traditional owners of an Aboriginal site or object on the land (or a representative of those traditional owners) an opportunity to become parties to the agreement.

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Effect of Aboriginal heritage agreement

37B. (1) An Aboriginal heritage agreement may contain any provision for the protection or preservation of Aboriginal sites, objects or remains.

(2) An Aboriginal heritage agreement may, for example—

- (a) restrict the use of land to which it applies;
- (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;
- (c) restrict the nature of work that may be carried out on the land;
- (d) provide for the management of the land or any Aboriginal site, object or remains in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
- (e) provide for financial, technical or other professional advice or assistance to the owner of the land with respect to the maintenance or conservation of the land or the protection or preservation of any Aboriginal site, object or remains;
- (f) provide for remission of rates or taxes in respect of the land.

(3) An Aboriginal heritage agreement may not provide for the remission of rates payable to a council unless the council is a party to the agreement.

(4) Any money required by the Minister to meet his or her obligations under an Aboriginal heritage agreement entered into under this section must be paid to the Minister from the Fund.

Registration of Aboriginal heritage agreements

37C. When the Minister enters into an Aboriginal heritage agreement, or an agreement varying or terminating an Aboriginal heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, 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.

Enforcement of Aboriginal heritage agreements

37D. (1) If—

- (a) a party to an Aboriginal heritage agreement fails to comply with it; or
- (b) there is reason to apprehend that a party to an Aboriginal heritage agreement may fail to comply with it,

any other party to the agreement may apply to the District Court for an order under this section.

(2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.

s. 43(2)

Insert the following subsection after the present contents of section 43 (now to be designated as subsection (1)):

(2) In any legal proceedings, an apparently genuine document appearing to be a copy of an Aboriginal heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

Native Vegetation Act 1991

s. 3
definition of
"heritage agreement"

Strike out this definition.

s. 23

Strike out this section and substitute:

Heritage agreements

23. (1) The Minister may enter into a heritage agreement with the owner of land on which native vegetation is growing or is situated.

(2) A heritage agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.

(3) The Minister may, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the agreement.

(4) A heritage agreement is, to the extent specified in the agreement, binding on the occupier of the land.

(5) The Minister must not enter into, vary or terminate a heritage agreement under this section without first consulting and obtaining the approval of the Council.

Effect of heritage agreement

23A. (1) A heritage agreement may contain any provision for the preservation or enhancement of native vegetation.

(2) A heritage agreement may, for example—

- (a) restrict the use of land to which it applies;
- (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;
- (c) restrict the nature of work that may be carried out on the land;
- (d) provide for the management of the land, native vegetation on the land or any animals living on or visiting the land in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
- (f) provide for remission of rates or taxes in respect of the land;
- (g) provide for the Minister to pay to the owner of the land an amount in respect of the decrease in the value of the land resulting from the execution of the heritage agreement and noting by the Registrar-General of the fact that it has come into force;
- (h) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the heritage agreement.

(3) A term of a heritage agreement providing for the remission of rates or taxes has effect notwithstanding any law to the contrary.

(4) The amount that the Minister agrees to pay in respect of the decrease in the value of the land referred to in subsection (2) must not exceed the amount of the decrease determined by the Valuer-General.

(5) Any money required by the Minister to meet his or her obligations under a heritage agreement entered into under this section must be paid to the Minister from the Fund.

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Registration of heritage agreements

23B. (1) The Council must keep a register of heritage agreements entered into under this Act and must include in the register any agreement varying or terminating a heritage agreement.

(2) The register must be kept available for public inspection at the office of the Council during ordinary office hours.

(3) When the Minister enters into a heritage agreement, or an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant instrument of title or, in the case of land not under the *Real Property Act 1886*, against the land.

Enforcement of heritage agreements

23C. (1) If—

- (a) a party to a heritage agreement fails to comply with it; or
- (b) there is reason to apprehend that a party to a heritage agreement may fail to comply with it,

any other party to the agreement may apply to the District Court for an order under this section.

(2) On such an application, the Court may make such orders as are necessary to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matters.

s. 34(4)

After subsection (3) insert:

(4) In any legal proceedings, an apparently genuine document appearing to be a copy of a heritage agreement certified by the Minister, is, in the absence of proof to the contrary, proof of the agreement and its terms.

s. 36(2a)

After subsection (2) insert:

(2a) An authorised officer may, at any reasonable time, enter and inspect land for the purposes of determining whether a heritage agreement entered into under this Act is being, or has been, complied with.

Strata Titles Act 1988

s. 3(1)
definition of "**statutory
encumbrance**"

Strike out paragraph (d) of this definition and substitute:

- (d) a heritage agreement entered into under the *Heritage Act 1993*;
- (da) a heritage agreement entered into under the *Native Vegetation Act 1991*;
- (db) an Aboriginal heritage agreement entered into under the *Aboriginal Heritage Act 1988*;

Valuation of Land Act 1971

s. 22B(6)(a)

Strike out this paragraph and substitute:

- (a) the land, or any building or structure on the land, is registered in the *State Heritage Register* under the *Heritage Act 1993*;

s. 22B(7)
definition of "**item of
the State heritage**"

Strike out this definition.

definition of "**State
Heritage Area**"

Strike out this definition and substitute:

"**State Heritage Area**" means an area established as a State Heritage Area by a Development Plan under the *Development Act 1993*;

Heritage Act 1993

APPENDIX 1

LEGISLATIVE HISTORY

Section 41A:
Section 44(2a):

inserted by 81, 1999, s. 3
inserted by 81, 1999, s. 4

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.