

South Australia

## Heritage Places Act 1993

An Act to make provision for the identification, recording and conservation of places and objects of non-Aboriginal heritage significance; to establish the South Australian Heritage Council; and for other purposes.

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2 Heritage agreement relating to Beechwood Garden

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

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

**2—Objects of Act**

The objects of the Act are:

- (a) to recognise the importance of South Australia's heritage places and related objects in understanding the course of the State's history, including its natural history; and
- (b) to provide for the identification and documentation of places and related objects of State heritage significance; and
- (c) to provide for and promote the conservation of places and related objects of State heritage significance; and
- (d) to promote an understanding and appreciation of the State's heritage; and
- (e) to encourage the sustainable use and adaptation of heritage places in a manner consistent with high standards of conservation practice, the retention of their heritage significance, and relevant development policies.

**3—Interpretation**

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

***archaeological artefact*** means any matter forming part of an archaeological deposit, or any artefact, remains or material evidence associated with an archaeological deposit, that relates to the non-Aboriginal settlement of South Australia, or to an activity undertaken by a person as part of the exploration of South Australia, but does not include the remains of a ship or an article associated with a ship;

***Council*** means the South Australian Heritage Council established under Part 2;

***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 *South Australian Heritage Fund*;

***heritage significance***—see section 16;

***land*** includes land covered with water;

***local council*** means a council constituted under the *Local Government Act 1999*;

***local heritage place*** means a place designated by a Development Plan as being a place of local heritage value;

**mining tenement** means—

- (a) a mineral claim, a lease or a licence under the *Mining Act 1971*; or
- (ab) a precious stones tenement under the *Opal Mining Act 1995*; or
- (b) a licence under the *Petroleum Act 2000*;
- (c) a permit, lease or licence under the *Petroleum (Submerged Lands) Act 1982*;  
or
- (d) a licence under the *Offshore Minerals Act 2000*;

**object** means a natural or manufactured object and includes—

- (a) an archaeological artefact; or
- (b) a geological, palaeontological or speleological specimen,

but does not include an Aboriginal object within the meaning of the *Aboriginal Heritage Act 1988*;

**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;

**place** means—

- (a) any site or area, with or without improvements;
- (b) any land;
- (c) any building, structure or other work, whether temporary or permanent or moveable or immovable (including an item or thing that is permanently fixed or moored);
- (d) any other location, item or thing that constitutes a place within the State,

and includes—

- (e) any fixtures or fittings;
- (f) any land where a place is situated;
- (g) any subsurface area;
- (h) any part of a place;

**Register** means the South Australian Heritage Register;

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

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

*specimen* includes sample;

*State Heritage Area* means an area established as a State Heritage Area by a Development Plan;

*State Heritage Place* means—

- (a) a place entered, either as a provisional or confirmed entry, in the Register under Part 4; or
- (b) a place within an area established as a State Heritage Area; or
- (c) a place taken to be entered in the Register under Schedule 1 (as enacted on the commencement of this Act);

*structure* includes a fence, wall or ruin.

- (2) For the purposes of this Act, a place of geological, palaeontological, speleological or archaeological significance is a place so designated by the South Australian Heritage Council under section 14(7).

## **Part 2—Administration**

### **Division 1—South Australian Heritage Council**

#### **4—South Australian Heritage Council**

The *South Australian Heritage Council* is established.

#### **5—Composition of Council**

- (1) The Council consists of the following members appointed by the Governor:
  - (a) not less than 6 and not more than 8 persons who, in the opinion of the Governor, have knowledge of or experience in history, archaeology, architecture, the natural sciences, heritage conservation, public administration, urban and regional planning or property development (or any combination of 2 or more of these fields), or some other relevant field; and
  - (b) 1 person with knowledge of or experience in heritage conservation chosen from a panel of 3 such persons submitted to the Minister by the Local Government Association of South Australia.
- (2) Before filling a vacancy in the membership of the Council under subsection (1)(a), 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 for the vacancy.
- (3) At least 1 member of the Council must be a woman and at least 1 member must be a man.
- (4) The Governor will designate a member of the Council to chair meetings of the Council.

- (5) The members of the Council will designate one of their members to chair meetings of the Council in the absence of the person designated under subsection (4) and that designation will apply for a period, not exceeding 12 months, determined by the members (and may then be renewed or revised as the members think fit).
- (6) The Governor may appoint a suitable person to act as a member of the Council in the absence of a member.

## **5A—Functions of the Council**

- (1) The Council has the following functions:
  - (a) to provide advice (especially from a strategic perspective) to the Minister on matters relating to—
    - (i) trends, shortcomings and opportunities with respect to heritage protection at the State and local level and, insofar as may be relevant, at the national level; and
    - (ii) the development and effectiveness of heritage conservation programs, policies, initiatives and incentives; and
    - (iii) the operation and enforcement of this Act; and
    - (iv) other issues referred to the Council by the Minister for consideration and report;
  - (b) in connection with the administration of this Act—
    - (i) to administer the *South Australian Heritage Register*; and
    - (ii) to identify places, and related objects, of State heritage significance, and to enter them in the Register; and
    - (iii) to identify areas of State heritage significance, and to promote their establishment, in appropriate cases, as State Heritage Areas under the *Development Act 1993*; and
    - (iv) to initiate or support community awareness programs that promote public understanding and appreciation of the State's heritage, taking into account the objects of this Act; and
    - (v) to promote the objects of this Act in such other manner as the Council thinks fit, including through the work of other bodies or persons;
  - (c) to provide advice (especially from a strategic perspective) to the Minister to whom the administration of the *Development Act 1993* is committed on matters relating to—
    - (i) the interpretation or application of the criteria set out in section 23(4) of that Act (and, if appropriate, the consideration of any potential amendment with respect to those criteria); and
    - (ii) other matters on which that Minister is required to consult with the Council under the provisions of that Act;
  - (d) to perform any other function assigned to the Council by or under this or any other Act.

- (2) The Council may—
- (a) establish criteria that are to be taken into account when determining whether an area should be established as a State Heritage Area; and
  - (b) establish guidelines that are to be used in the interpretation or application of—
    - (i) the criteria that apply under paragraph (a);
    - (ii) the criteria set out in section 16.
- (3) The Council must establish and maintain a list of persons who are recognised by the Council as being appropriately qualified (including by virtue of their skills or experience) for the purposes of this Act, or for the purposes of those provisions of the *Development Act 1993* that are relevant to heritage.

## 6—Conditions of membership

- (1) A member of the Council 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 Council from office for—
  - (a) mental or physical incapacity; or
  - (b) neglect of duty; or
  - (c) misconduct.
- (3) The office of a member of the Council 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) An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

## 7—Proceedings of Council

- (1) The member designated by the Governor to chair meetings of the Council will preside at a meeting of the Council or, in the absence of that member, the appropriate member designated by the members of the Council will preside or, in the absence of both of them, a member chosen by those present will preside.
- (2) The prescribed number of members of the Council constitutes a quorum of the Council.
- (3) A decision carried by a majority of the votes of the members present at a meeting of the Council is a decision of the Council.
- (4) Each member present at a meeting of the Council 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 Council must, subject to subsection (6), be held in a place that is open to the public.
- (6) The Council may order that the public be excluded from a meeting in order to enable the Council 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 significance.
- (7) The minutes of meetings of the Council must be available for public inspection without charge.
- (8) In this section, the prescribed number of members of the Council is a number ascertained by dividing the total number of members of the Council for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

### **7A—Committees**

- (1) The Council—
  - (a) must establish the committees required by the regulations; and
  - (b) may establish such other committees as the Council thinks fit, to advise or assist the Council.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the Council.
- (3) The procedures to be observed in relation to the conduct of business of a committee will be—
  - (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the Council; or
  - (c) insofar as the procedure is not prescribed by regulation or determined by the Council—as determined by the committee.

### **8—Delegation**

- (1) Subject to this section, the Council may delegate a power or function under this Act—
  - (a) to a member of the Council; or
  - (b) to a committee established by the Council; or
  - (c) to a person for the time being holding or acting in a particular office or position; or
  - (d) to any other person or body.
- (2) A delegation under this section is revocable at will and does not derogate from the power of the Council to act itself in any matter.
- (3) The Council 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 or alter an entry in the Register relating to a State Heritage Place under section 23.



## **9—Remuneration**

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

## **Division 2—South Australian Heritage Fund**

### **10—South Australian Heritage Fund**

- (1) The State Heritage Fund continues in existence as the *South Australian Heritage Fund*.
- (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 Council 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; and
  - (f) any other money that is required or authorised by or under this Act to be paid into 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.

### **11—Accounts and audit**

- (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.

### **12—Application of money from Fund**

- (1) The Minister may apply money from the Fund in furtherance of the objects of this Act.
- (2) The Minister must, in relation to the management and application of the Fund, seek and consider any advice (provided from a strategic perspective) from the Council.

## Part 3—South Australian Heritage Register

### 13—The Register

- (1) The State Heritage Register continues in existence as the *South Australian Heritage Register*.
- (2) The Register is to be maintained by the Council in accordance with this Act.

### 14—Content of Register

- (1) The Register will contain a description or notes with respect to—
  - (a) any place entered (either as a provisional or confirmed entry) in the Register under Part 4; and
  - (b) any place taken to be entered in the Register under Schedule 1 (as enacted on the commencement of this Act); and
  - (c) any local heritage place designated by a Development Plan; and
  - (d) any State Heritage Area; and
  - (e) any local heritage zone or local heritage policy area established by a Development Plan; and
  - (f) any place within the State—
    - (i) entered in any register of places of natural or historic significance; or
    - (ii) declared to be a *World Heritage Property*, under a law of the Commonwealth; and
  - (g) any heritage agreement; and
  - (h) any other matter prescribed by the regulations.
- (2) The Council may, in relation to a place or area entered in the Register—
  - (a) include as part of the entry for the place any tree, component or other item, feature or attribute that, in the opinion of the Council, forms part of, or contributes to, the heritage significance of the place or area; or
  - (b) include as part of the Register any object (not necessarily being located at the relevant place or area) that is, in the opinion of the Council, an object of heritage significance.
- (3) Anything included or entered under subsection (2) will be taken to form part of the relevant place or area for the purposes of this Act, and this Act will apply to it in the same way as it applies to the place or area (subject to any provision made by this Act or any necessary modifications, or any modifications prescribed by the regulations in connection with the operation of this section).
- (4) If there is an inconsistency between the Register and a Development Plan—
  - (a) in a case involving an entry in the Register under subsection (1)(a) or (b)—the entry in the Register will prevail to the extent of the inconsistency;

- (b) in a case involving a place or area that may be entered in the Register under subsection (1)(c), (d), or (e)—any provision of the Development Plan will prevail to the extent of the inconsistency.
- (5) For the purposes of this section, the Council may—
  - (a) alter the Register at any time to reflect any change effected under this Act or the *Development Act 1993* that is relevant to information on the Register;
  - (b) note any variation to a heritage agreement under this Act;
  - (c) take such other steps as the Council thinks fit to keep the Register up-to-date.
- (6) The Council may include other information in the Register, or hold other information in association with the Register, as the Council thinks fit.
- (7) The Council may designate a State Heritage Place as—
  - (a) a place of geological, palaeontological or speleological significance; or
  - (b) a place of archaeological significance.

### **15—Register to be available for public inspection**

- (1) The Register must be kept available for public inspection during ordinary office hours at an office designated by the Minister.
- (1a) The Register may be kept in the form of a computer record.
- (2) The Council 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.
- (3) The Council may make the Register available on a website established or approved by the Council.
- (4) Despite a preceding subsection, if the Council considers that the public disclosure of the location of a particular place or object would put the protection or conservation of the place or object at risk, the Council may exclude the location of the place or object from public inspection or access under this section.

## **Part 4—Registration of places**

### **Division 1—Criteria for registration**

#### **16—Heritage significance**

- (1) A place is of heritage significance 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.
- (2) An object is of heritage significance if—
- (a) it is an archaeological artefact, or any other form of artefact that satisfies 1 or more of the criteria set out in subsection (1); or
  - (b) it is a geological, palaeontological or speleological specimen that satisfies 1 or more of the criteria set out in subsection (1); or
  - (c) it is an object that is intrinsically related to the heritage significance of a State Heritage Place or a State Heritage Area.

## **Division 2—Registration process**

### **17—Proposal to make entry in Register**

- (1) The Council 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 Council is of the opinion—
  - (a) that a place is of heritage significance; or
  - (b) that a place should be protected while an assessment of its heritage significance is carried out,it may provisionally enter the place in the Register.
- (2a) Provisional entry of a place in the Register takes effect—
  - (a) if the decision to provisionally enter the place in the Register is made by resolution of the Council—from the making of the resolution; or
  - (b) if the decision to provisionally enter the place in the Register is made by a person or body authorised to make the decision pursuant to a delegation under section 8—from the authorisation of the entry in writing by the person or body.
- (4) If a place is provisionally entered in the Register, the Council must—
  - (a) give each owner of land constituting the place a written notice—
    - (i) stating the reasons for provisional entry of the place and, if the Council has designated the place as a place of geological, palaeontological or speleological significance or archaeological significance, stating the reasons for that designation; and
    - (ii) explaining that the owner has a right to make written submissions, within three months of the date of the notice, on whether the entry should be confirmed; and

- (b) give notice by advertisement published in a newspaper circulating throughout the State—
    - (i) that the Council has provisionally entered the place in the Register; and
    - (ii) if the Council has designated the place as a place of geological, palaeontological or speleological 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 entry 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 local council—give written notice to the local council of the entry.
- (5) If the Council has, in relation to a place or area entered in the Register, also entered in the Register an object under section 14(2)(b), the Council must—
- (a) give the owner of the object a written notice—
    - (i) stating the reasons for entering the object in the Register; and
    - (ii) explaining that the owner has a right to make submissions, within 3 months from the date of the notice, in relation to the entry; and
  - (b) give written notice to the Minister of the entry.
- (6) The entry of an object under section 14(2)(b)—
- (a) if the entry is in relation to a place, may occur on or after the provisional entry of the place in the Register (or after the confirmation of that entry); and
  - (b) will, at first instance, be taken to be a provisional entry.

## **18—Submissions and confirmation or removal of entries**

- (1) Subject to this section, if the Council gives notice that it has made a provisional entry in the Register, any person may, within 3 months after the notice is given, make written representations to the Council on whether the entry should be confirmed.
- (1a) If the Minister is of the opinion that the period that applies under subsection (1) should be extended in the public interest, the Minister may, by notice in the Gazette, extend that period for a further period of up to 3 months.
- (2) If a person who makes written representations under this section seeks to appear personally before the Council to make oral representations, the Council must, unless the submission is frivolous, allow that person a reasonable opportunity to do so.
- (3) The Council must consider all written and oral representations made under this section.
- (4) If, after considering the representations (if any) made under this section, the Council is of the opinion that the entry in the Register should be confirmed, the Council may, subject to any direction of the Minister under this section, confirm the entry.
- (5) Confirmation of an entry in the Register takes effect from the making of the resolution by the Council to confirm the entry.

- (6) If the Minister is of the opinion that the confirmation of a provisional entry in the Register may be contrary to the public interest, the Minister may, by instrument in writing, direct the Council to defer making a decision on whether or not to confirm the entry until the Minister determines the matter (and the Council must comply with any direction of the Minister under this subsection).
- (7) If the Minister is of the opinion that the confirmation of a provisional entry in the Register would be contrary to the public interest (whether or not the Minister has acted under subsection (6)), the Minister may, after consultation with the Council, by instrument in writing, direct that the entry be removed from the Register.
- (7a) The Minister must, when acting under subsection (7), set out the grounds on which he or she considers that the confirmation of the provisional entry would be contrary to the public interest.
- (7b) The Minister may act under subsection (6) or (7) at any time after the provisional entry has been made in the Register.
- (7c) If—
- (a) the Council, after considering the representations (if any) made under this section, is of the opinion that a provisional entry should not be confirmed; or
  - (b) the Minister directs the removal of a provisional entry from the Register,
- the Council must remove the provisional entry from the Register.
- (7d) Notice of the confirmation or removal of a provisional entry must be given—
- (a) by written notice to the owner of land constituting the relevant place and, if the entry relates to or includes an object under section 14(2)(b), to the owner of the object; and
  - (b) by advertisement published in a newspaper circulating throughout the State; and
  - (c) by written notice to the Minister; and
  - (d) if the relevant place is within the area of a local council—by written notice to the local 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 Council 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 Council fails to make a decision within that period or such longer period as is allowed by the Minister under this subsection in the particular case, the provisional entry must be removed from the Register.

## **19—Registration in Lands Titles Registration Office**

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

## 20—Appeals

- (1) If an owner of land constituting a place provisionally entered in the Register makes written representations to the Council with respect to that entry, the owner may, subject to this section, appeal to the Court against a decision to confirm or not to confirm the provisional entry.
- (1a) If an owner of an object provisionally entered in the Register makes written representations to the Council with respect to that entry, the owner may, subject to this section, appeal to the Court against a decision to confirm or not to confirm the provisional entry.
- (1b) No appeal lies under this section against the removal of a provisional entry at the direction of the Minister under this Division.
- (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 Council for further consideration or for reconsideration; and
  - (c) make consequential or ancillary orders.

## 21—Correction of errors

- (1) The Council may correct any inaccuracies or errors in an entry in the Register that come to its attention.
- (2) If the Council takes action under subsection (1), the Council must give written notice of the correction to any person who, in the opinion of the Council, has a direct interest in the matter.
- (3) Subsection (2) does not apply if the Council determines that the correction is only of minor significance.

## Division 3—Certificate of exclusion

### 22—Certificate of exclusion

- (1) The owner of land may apply to the Council 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 Council may (in its discretion) determine whether or not to invite public submissions on the question of whether the application should be granted (but must, in deciding whether or not to invite public submissions, take into account the extent to which the criteria set out in Division 1 may apply to the relevant land).
- (5) If a certificate of exclusion is issued in respect of land, any place within the land may not be entered in the Register under this Part within five years after the date of the certificate.

## **Division 4—Removal or alteration of designation**

### **23—Council may act if registration at State level not justified**

- (1) If the Council (after taking into account the criteria set out in Division 1) is of the opinion that an entry relating to a place in the Register as a State Heritage Place is no longer justified, or that an entry relating to a State Heritage Place 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 of land constituting the place and, if the entry relates to or includes an object under section 14(2)(b), to the owner of the object; and
  - (b) by advertisement in a newspaper circulating throughout the State; and
  - (c) if the place is within the area of a local council—by notice in writing to the local council.
- (2) The Council must consider any representations made in response to the notice within three months of the date of the notice.
- (3) If the Council, 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 relevant, the owner or owners of any object) and, if the place is within the area of a local council, the local council.

### **24—Alteration of Register if place to be designated as place of local heritage value**

- (1) If the Council is of the opinion that a place, or a part of a place, entered in the Register as a State Heritage Place should instead be designated as being a place of local heritage value, the Council must invite written representations on the matter—
  - (a) from the owner of the land constituting the place; and
  - (b) from the local council in whose area the place is situated (if the place is within the area of a local council),within a period (being a period of at least 28 days) specified by the Council.
- (2) The Council must also, on the basis of a request made within the period that applies under subsection (1) (or within such longer period as the Council may allow), allow the owner of the land or, in the case of a local council, a representative of the local council, to appear personally before the Council to make oral representations.



- (3) If, after considering the representations (if any) made under this section, the Council is of the opinion that the relevant place should be designated as being a place of local heritage value, the Council may—
- (a) recommend to the Minister to whom the administration of the *Development Act 1993* is committed that an amendment be made to a Development Plan under section 29 of that Act so that the place or part of the place (as the case may be) is designated as a place of local heritage value; and
  - (b) if or when the amendment is made to the Development Plan, make any alteration to the Register as it thinks fit.
- (4) Written notice of an alteration to the Register under this section must be given to the Minister, the Registrar-General, the owner or owners of land constituting the place and, if the place is within the area of a local council, the local council.

## **Part 5—Special protection**

### **Division 1—Places or objects of particular significance**

#### **25—Places of geological, palaeontological or speleological significance**

A person must not, without a permit from the Council—

- (a) excavate or disturb a State Heritage Place designated as a place of geological, palaeontological or speleological significance; or
- (b) remove geological, palaeontological or speleological specimens from such a place.

Maximum penalty: \$75 000.

#### **26—Places of archaeological significance**

A person must not, without a permit from the Council—

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

Maximum penalty: \$75 000.

#### **27—Protection of archaeological artefacts**

- (1) A person must not, without a permit from the Council—

- (a) excavate or disturb any land (not designated as a place of archaeological significance) for the purpose of searching for or recovering archaeological artefacts of heritage significance; or
- (b) excavate or disturb any land (not designated as a place of archaeological significance) knowing or having reasonable cause to suspect that the excavation or disturbance will or is likely to result in an archaeological artefact of heritage significance being discovered, exposed, moved, damaged or destroyed.

Maximum penalty: \$75 000.

- (2) A person who is aware or believes that he or she may have discovered or located an archaeological artefact of heritage significance (other than a person acting under the authority of a permit) must—
- (a) cease to excavate or disturb the place where the relevant object has been discovered (if relevant);
  - (b) within the period specified by the regulations—
    - (i) notify the Council of the location of the relevant object, unless the person has reasonable grounds to believe that the Council is aware of the location of the relevant object; and
    - (ii) furnish the Council with such information as the Council may reasonably require;
  - (c) take no further action in relation to the recovering of the relevant object without a permit or other authorisation from the Council;
  - (d) if required by the Council, surrender the relevant object to the Crown.
- Maximum penalty: \$25 000.
- (3) The Council may, by notice in the Gazette, create exceptions to this section, either conditionally or unconditionally, in respect of any of the following:
- (a) any object of a specified kind or description;
  - (b) any excavation or disturbance of a specified kind or description;
  - (c) any excavation or disturbance of land in a specified location or having specified features or attributes;
  - (d) any excavation or disturbance of land in respect of which an archaeological assessment approved by the Council indicates—
    - (i) that there is little likelihood of there being any archaeological artefacts in the land; or
    - (ii) that any archaeological artefacts in the land are unlikely to be of heritage significance;
  - (e) any other circumstance determined to be appropriate by the Council.
- (4) Subsection (2) does not apply in relation to a person who discovered the relevant object before the commencement of this section.
- (5) This section does not prevent a person from excavating or disturbing land in accordance with an authority or permit under—
- (a) the *Aboriginal Heritage Act 1988*; or
  - (b) the *Historic Shipwrecks Act 1981*; or
  - (c) any other Act prescribed by the regulations for the purposes of this subsection.

## 28—Damage to or disposal of objects

- (1) A person must not, without a permit from the Council, damage, destroy or dispose of—
  - (a) a geological, palaeontological or speleological specimen removed from a State Heritage Place designated as a place of geological, palaeontological or speleological significance (whether removed before or after the entry of that place in the Register); or
  - (b) an archaeological artefact removed from a State Heritage Place designated as a place of archaeological significance (whether removed before or after the entry of that place in the Register).

Maximum penalty: \$75 000.

- (2) A person must not, without a permit from the Council, damage, destroy or dispose of an object entered in the Register (either as a provisional or confirmed entry) under section 14(2)(b).

Maximum penalty: \$75 000.

- (3) A person must not, without a permit from the Council, alter an object entered in the Register (either as a provisional or confirmed entry) under section 14(2)(b) in a way that would materially affect the heritage significance of the object.

Maximum penalty: \$75 000.

- (4) It is a defence to a charge of an offence under subsection (1), (2) or (3) 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 State Heritage Place with the relevant designation, or that the object was entered in the Register (as the case may be).

## 29—Permits

- (1) A permit may be granted on such conditions as the Council 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 for the notification of the discovery or recovery of any specified classes of specimens, artefacts or other objects under the permit;
  - (c) provide that geological, palaeontological or speleological specimens, archaeological artefacts or other objects recovered or removed in the course of the operations are to belong to the Crown;
  - (d) make provision for the protection and curation of any such specimens, artefacts or other objects.
- (2) If an application for a permit under this Act relates to an area within a River Murray Protection Area, the Council must, in considering the application, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

- (3) If an application for a permit under this Act relates to an area within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Council must, before making its decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the permit be subject to conditions specified by the Minister).
- (4) The Council may, at any time by notice given to the holder of a permit—
- (a) vary or revoke the permit; or
  - (b) vary or revoke a condition of a permit.
- (5) A person must not contravene or fail to comply with a condition of a permit.  
Maximum penalty: \$75 000.
- (6) A person who is dissatisfied with a decision of the Council—
- (a) with respect to his or her application for a permit; or
  - (b) in the exercise of a power under subsection (1) or (4),
- may appeal to the Minister.
- (7) On an appeal, the Minister may—
- (a) confirm, vary or reverse the decision under appeal; or
  - (b) remit the matter to the Council for further consideration or reconsideration.
- (8) A decision of the Minister under subsection (7)(a) will have effect as if it were a decision of the Council.

### **29A—Related matters—objects**

- (1) A person must not, without the consent of the Council, buy or sell an object that the person knows, or has reasonable grounds to believe, has been recovered in contravention of this Division.  
Maximum penalty: \$10 000.
- (2) If the Council believes on reasonable grounds that a person has possession of an object that has been recovered in contravention of this Division, the Council may, by notice in writing, require the person to surrender the object to the Crown.
- (3) A person must not fail to comply with a requirement under subsection (2).  
Maximum penalty: \$10 000.
- (4) No compensation is payable to a person as a consequence of the surrender of an object to the Crown under this Division.

## Division 2—Emergency protection

### 30—Stop orders

- (1) If the Council is of the opinion—
  - (a) that a place has sufficient heritage significance to justify its preservation, or that a place should be evaluated in order to determine whether its heritage significance justifies its preservation; and
  - (b) that an order under this section is necessary to protect the place,the Council 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 significance 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 12 working days after that service unless confirmed by the Court under this section.
- (3) If the Council makes an order under subsection (1)—
  - (a) the Council 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 Council's order; or
    - (ii) make, in substitution for the Council's order, any other order that the Court thinks necessary to protect the place; or
    - (iii) revoke the Council'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.
- (6) A person who contravenes or fails to comply with an order under this section is guilty of an offence.  
Maximum penalty: \$120 000.

## Part 6—Heritage agreements

### 32—Heritage agreements

- (1) The Minister may, after seeking and considering the advice of the Council, enter into a heritage agreement with the owner of land constituting a State Heritage Place.
- (2) A heritage agreement attaches to the land and is binding on—
  - (a) the current owner of the land, whether or not that owner was the person with whom the heritage agreement was made; and

- (b) to the extent specified in the agreement—the current occupier of the land (as may be the case from time to time).
- (3) Subject to Schedule 2, the Minister may, after seeking and considering the advice of the Council, by agreement with the owner of the land to which a heritage agreement applies, vary or terminate the heritage agreement.
- (4) An agreement varying or terminating a heritage agreement must be made in a manner and form determined by the Minister.
- (5) The Minister must take reasonable steps to ensure that the occupier of the land is consulted before a heritage agreement is entered into or varied so as to bind the occupier in the manner contemplated by subsection (2)(b).

### **33—Effect of heritage agreement**

- (1) A heritage agreement may contain any provision to promote the conservation of State Heritage Places 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 local council unless the local council is a party to the agreement.

### **34—Registration of heritage agreements**

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

### 35—Enforcement of heritage agreements

- (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.

## Part 7—Miscellaneous

### 36—Damage or neglect

- (1) A person who—
  - (a) intentionally or recklessly damages a State Heritage Place; or
  - (b) engages in conduct knowing that it will or might, or being recklessly indifferent as to whether it will or might, destroy or reduce the heritage significance of a State Heritage Place,is guilty of an offence.  
Maximum penalty: \$120 000.
- (2) A person who undertakes any action that—
  - (a) damages a State Heritage Place; or
  - (b) destroys or reduces the heritage significance of a State Heritage Place,is guilty of an offence.  
Maximum penalty: \$50 000.
- (3) A person who—
  - (a) fails to take reasonable care of a State Heritage Place; or
  - (b) fails to comply with any prescribed requirement concerning—
    - (i) the protection of a State Heritage Place; or
    - (ii) the state of repair of a State Heritage Place,is guilty of an offence.  
Maximum penalty: \$25 000.
- (4) It is a defence for a charge against subsection (3) if it is proved that the defendant did not know, and could not reasonably be expected to know, that a place was a State Heritage Place.
- (5) 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 *Opal Mining Act 1995*, the *Petroleum Act 2000*, the *Petroleum (Submerged Lands) Act 1982* or the *Offshore Minerals Act 2000*.

### 38—No development orders

- (1) If the owner of a place is convicted of an offence against section 30 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 significance 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 local council—the local 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.  
Maximum penalty: \$120 000.
- (4) In this section—  
*development* has the same meaning as in the *Development Act 1993*.

### 38A—ERD Court orders

- (1) If a person has engaged in conduct in contravention of this Act, an application may be made to the Court for 1 or more of the following orders:
  - (a) an order restraining the person, or an associate of the person, from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person, or an associate of the person, to take such action as may appear appropriate to the Court in the circumstances (including an order to rectify the consequences of any conduct (including an order to make good, to the satisfaction of the Minister, any damage caused by any conduct), or to ensure that a further contravention does not occur);
  - (b) an order that the person pay into the Fund an amount, determined by the Court to be appropriate in the circumstances, on account of any financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the contravention;
  - (c) an order that the person pay into the Fund an amount as a monetary penalty on account of the contravention.
- (2) Any question that falls to be determined for the purposes of an application under subsection (1) will be determined on the balance of probabilities.
- (3) The power conferred by subsection (1) may only be exercised by a Judge of the Court.
- (4) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised whether or not it appears to the Court that the person intends to continue to engage in conduct of that kind.



- (5) The following additional provisions apply in connection with the operation of paragraph (c) of subsection (1):
- (a) an application may not be made under that paragraph to recover an amount from a person as a civil penalty in respect of a contravention of a provision that constitutes an offence—
    - (i) unless the Minister has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Minister, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Minister's notice to make such an election; or
    - (ii) if the person serves written notice on the Minister, before the making of such an application, that the person elects to be prosecuted for the contravention;
  - (b) the maximum amount that may be required to be paid under that paragraph in respect of a contravention of a provision that constitutes an offence is the amount specified by this Act as the criminal penalty in relation to that contravention;
  - (c) if conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered in relation to the contravention of any one or more of those provisions (provided that the person is not liable to pay more than one amount under that paragraph in respect of the same conduct);
  - (d) in determining the amount to be paid by a person, regard must be had to the following matters:
    - (i) the nature and extent of the contravention;
    - (ii) the heritage significance of any place or object affected by the contravention and any detriment to the public interest resulting from the contravention;
    - (iii) whether the relevant person has previously been found, in proceedings under this Act, to have engaged in similar conduct;
    - (iv) any other matter considered to be relevant;
  - (e) the recovery of an amount under that paragraph constitutes an alternative to any relevant criminal proceedings and accordingly:
    - (i) if an amount is paid under that paragraph, criminal proceedings may not be initiated against the relevant person for an offence constituted by conduct that is the same (or substantially the same) as the conduct alleged to constitute the contravention in relation to which the amount has been paid; and

- (ii) proceedings for an order under that paragraph, or for the enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the relevant person for an offence constituted by conduct that is the same (or substantially the same) as the conduct alleged to constitute the contravention to which the proceedings relate, and may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person;
  - (f) evidence of information given or evidence of the production of documents by a person in the course of discussions or proceedings with respect to the making of an order under that paragraph in relation to a contravention of this Act is not admissible in criminal proceedings against the relevant person if the conduct alleged to constitute the offence is the same (or substantially the same) as the conduct alleged to constitute the contravention, other than where the criminal proceedings relate to the making of a false or misleading statement.
- (6) An application under this section may be made—
- (a) by the Minister; or
  - (b) by a local council; or
  - (c) by any other person acting with the permission of the Court.
- (7) 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.
- (8) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (9) A person who fails to comply with an order under subsection (1)(a) is guilty of an offence.  
Maximum penalty: \$120 000.
- (10) If a person fails to carry out any work required by an order under subsection (1), 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.
- (11) For the purposes of this section, a person is an associate of another if—
- (a) they are partners; or
  - (b) one is a spouse, domestic partner, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(g) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(12) In this section—

*beneficiary* of a trust includes an object of a discretionary trust;

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*spouse*—a person is the spouse of another if they are legally married.

### **39—Right of entry**

- (1) If the Minister considers it necessary, a person authorised by the Minister may enter and inspect a place, or specimens or artefacts in a place, for the purpose of determining or recording the heritage significance of the place or determining whether a heritage agreement entered into under this Act is being, or has been, complied with.
- (1a) A person authorised by the Minister may enter and inspect a place, or inspect any object in a place—
  - (a) for the purpose of determining whether a provision of this Act is being, or has been, complied with; or
  - (b) for the purpose of investigating any alleged contravention of this Act.
- (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.

### **39A—Protection orders**

- (1) The Minister may issue an order under this section if the Minister believes that the order is reasonably necessary to ensure or secure compliance with any requirement imposed by or under this Act.
- (2) An order under this section—
  - (a) must be in the form of a written notice served on the person to whom the notice is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and
  - (d) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:

- (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister or a person specified by the Minister;
  - (ii) a requirement that the person take specified action to protect any place or object from damage or deterioration;
  - (iii) a requirement that the person secure any place or object to a standard specified by the Minister;
  - (iv) a requirement that the person take specified action, including action to make good, to the satisfaction of the Minister, any damage or situation caused, or apparently caused, by the person;
  - (v) a requirement that a person control any specified activity; and
- (e) must state that the person may, within 21 days, appeal to the Court against the order or any subsequent variation of the order.
- (3) The Minister may, by written notice served on a person to whom an order has been issued under this section, vary or revoke the order.
- (4) A person to whom an order is issued must comply with the order.  
Maximum penalty: \$50 000.
- (5) If a person fails to comply with the requirements of an order, the Minister may cause any action contemplated by the order to be carried out and recover the cost of doing so, as a debt, from the person against whom the order was made.
- (6) A person taking action under subsection (5) may enter any relevant land at any reasonable time.
- (7) A person to whom an order has been issued under this section may appeal to the Court against the order, or any variation of the order, within 21 days after the order is issued or the variation is made.
- (8) The Court may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed under subsection (7).
- (9) Subject to subsection (10), the making of an appeal does not affect the operation of the order to which the appeal relates or prevent the taking of action to implement or enforce the order.
- (10) The Court or the Minister may, on its or the Minister's own initiative or on application by a party to the appeal, suspend the operation of an order until the determination of an appeal.
- (11) A suspension under subsection (10) may be made subject to specified conditions, and may be varied or revoked by the Court or the Minister (as the case requires) at any time.
- (12) The Court may, on hearing an appeal—
  - (a) confirm, vary or revoke the order appealed against, or substitute any order that should have been made in the first instance;
  - (b) remit the subject matter of the appeal to the Minister;

- (c) order or direct a person 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) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

#### **40—Erection of signs**

The Council 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.

#### **41—Obstruction**

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

Maximum penalty: \$5 000.

#### **41A—Delegation by Minister**

- (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
  - (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.

#### **41B—Immunity from personal liability**

- (1) No personal liability attaches to a member of the Council or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

#### **42—General provisions relating to offences**

- (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.
- (5) The offences constituted by this Act lie within the criminal jurisdiction of the Court.

### 43—Service of notices

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;
- (ca) by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the document will be taken to have been given or served at the time of transmission);
- (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.

### 44—Evidence

- (1) A certified copy of an entry in 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 Council will be accepted, in the absence of proof to the contrary, as proof of the delegation.

### 45—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require that a person seek and consider the advice of a person with prescribed qualifications, or a person recognised by the Council for that purpose, in relation to a matter arising under this Act that is declared by the regulations to be a matter on which such advice should be sought; and
  - (b) fix or regulate fees (which may be differential fees) for the provision of information or other services by the Council or the making of applications to the Council; and
  - (c) be of general or limited application; 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 Council or another prescribed authority; and

- (e) impose penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

## Schedule 1—Transitional provisions

### 2—Transitional provisions

- (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—Heritage agreement relating to Beechwood Garden

### 1—Interpretation

In this Schedule—

*the prescribed land* means—

- (a) Certificate of Title Register Book Volume 5862 Folio 262 (formerly Volume 4175 Folio 187);



- (b) Certificate of Title Register Book Volume 5133 Folio 747 (formerly Volume 4175 Folio 188).

## 2—Heritage agreement relating to Beechwood Garden

- (1) A heritage agreement entered into in relation to the whole or any part of the prescribed land must not be—
- (a) varied so as to provide for a significant variation; or
  - (b) terminated,
- unless the variation or termination (as the case may be) has been authorised by a resolution of both Houses of Parliament.
- (2) Notice of a motion for a resolution referred to in subclause (1) must be given not less than 14 sitting days before the motion is passed.
- (3) For the purposes of subclause (1), a **significant variation** is a variation of a heritage agreement that makes provision with respect to—
- (a) the division of the prescribed land (being a division of land within the meaning of the *Development Act 1993*); or
  - (b) the granting of any lease, licence, easement or other right relating to the use, occupation or control of the prescribed land (but not including a case that only involves a transfer of the prescribed land to a new owner).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Heritage Act 1993*

### Legislation repealed by principal Act

The *Heritage Places Act 1993* repealed the following:

*South Australian Heritage Act 1978*

### Legislation amended by principal Act

The *Heritage Places Act 1993* amended the following:

*Aboriginal Heritage Act 1988*

*Native Vegetation Act 1991*

*Strata Titles Act 1988*

*Valuation of Land Act 1971*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	56	<i>Heritage Act 1993</i>	27.5.1993	15.1.1994 ( <i>Gazette 27.10.1993 p1890</i> )
1999	81	<i>Heritage (Delegation by Minister) Amendment Act 1999</i>	2.12.1999	15.6.2000 ( <i>Gazette 15.6.2000 p3130</i> )
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	Sch 2—4.5.2002 (s 7(5) Acts Interpretation Act 1915)
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 9)—24.11.2003 ( <i>Gazette 20.11.2003 p4203</i> )
2005	38	<i>Heritage (Beechwood Garden) Amendment Act 2005</i>	14.7.2005	14.7.2005
2005	39	<i>Heritage (Heritage Directions) Amendment Act 2005</i>	14.7.2005	Pt 2 (ss 4—55) & Sch 1 (cl 11)—17.11.2005 ( <i>Gazette 17.11.2005 p3972</i> )

2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 39 (s 141)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 44 (s 125)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)</b>
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 76 (ss 181 & 182)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	24.11.2003
	substituted by 39/2005 s 4	17.11.2005
Pt 1		
s 1	amended by 39/2005 s 5	17.11.2005
s 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	24.11.2003
	inserted by 39/2005 s 6	17.11.2005
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 39/2005 s 7(11)	17.11.2005
archaeological artefact	inserted by 39/2005 s 7(1)	17.11.2005
<i>Authority</i>	<i>deleted by 39/2005 s 7(1)</i>	<i>17.11.2005</i>
Council	inserted by 39/2005 s 7(1)	17.11.2005
Fund	substituted by 39/2005 s 7(2)	17.11.2005
<i>heritage value</i>	<i>deleted by 39/2005 s 7(3)</i>	<i>17.11.2005</i>
heritage significance	inserted by 39/2005 s 7(3)	17.11.2005
land	substituted by 39/2005 s 7(4)	17.11.2005
local council	inserted by 39/2005 s 7(4)	17.11.2005
local heritage place	inserted by 39/2005 s 7(4)	17.11.2005
mining tenement	amended by 11/2000 Sch 2	4.5.2002
	amended by 39/2005 s 7(5)	17.11.2005
object	inserted by 39/2005 s 7(6)	17.11.2005
place	inserted by 39/2005 s 7(7)	17.11.2005
Register	substituted by 39/2005 s 7(8)	17.11.2005
<i>registered place</i>	<i>deleted by 39/2005 s 7(9)</i>	<i>17.11.2005</i>
River Murray Protection Area	inserted by 35/2003 Sch cl 9(a)	24.11.2003
State Heritage Place	inserted by 39/2005 s 7(10)	17.11.2005
structure	inserted by 39/2005 s 7(10)	17.11.2005

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s 3(2)	inserted by 39/2005 s 7(11)	17.11.2005
Pt 2		
Pt 2 Div 1	heading substituted by 39/2005 s 8	17.11.2005
ss 4 and 5	substituted by 39/2005 s 9	17.11.2005
s 5A	inserted by 39/2005 s 9	17.11.2005
s 6		
s 6(1)	amended by 39/2005 s 10(1)	17.11.2005
s 6(2)	amended by 39/2005 s 10(2)	17.11.2005
s 6(3)	amended by 39/2005 s 10(3)	17.11.2005
s 6(4)	substituted by 39/2005 s 10(4)	17.11.2005
s 7		
s 7(1) and (2)	substituted by 39/2005 s 11(1)	17.11.2005
s 7(3)	amended by 39/2005 s 11(2)	17.11.2005
s 7(4)	amended by 39/2005 s 11(3)	17.11.2005
s 7(5)	amended by 39/2005 s 11(4)	17.11.2005
s 7(6)	amended by 39/2005 s 11(5), (6)	17.11.2005
s 7(7)	amended by 39/2005 s 11(7)	17.11.2005
s 7(8)	inserted by 39/2005 s 11(8)	17.11.2005
s 7A	inserted by 39/2005 s 12	17.11.2005
s 8		
s 8(1)	substituted by 39/2005 s 13(1)	17.11.2005
s 8(2)	amended by 39/2005 s 13(2)	17.11.2005
s 8(3)	amended by 39/2005 s 13(3), (4)	17.11.2005
	(d) deleted by 39/2005 s 13(4)	17.11.2005
s 9	amended by 39/2005 s 14	17.11.2005
Pt 2 Div 2	heading substituted by 39/2005 s 15	17.11.2005
s 10		
s 10(1)	substituted by 39/2005 s 16(1)	17.11.2005
s 10(2)	amended by 39/2005 s 16(2), (3)	17.11.2005
s 12		
s 12(1)	s 12 amended and redesignated as s 12(1) by 39/2005 s 17(1), (2)	17.11.2005
s 12(2)	inserted by 39/2005 s 17(2)	17.11.2005
Pt 3	heading substituted by 39/2005 s 18	17.11.2005
s 13		
s 13(1)	substituted by 39/2005 s 19(1)	17.11.2005
s 13(2)	amended by 39/2005 s 19(2)	17.11.2005
s 14	substituted by 39/2005 s 20	17.11.2005
s 15		
s 15(1)	substituted by 39/2005 s 21(1)	17.11.2005
s 15(1a)	inserted by 39/2005 s 21(1)	17.11.2005
s 15(2)	amended by 39/2005 s 21(2), (3)	17.11.2005
s 15(3) and (4)	inserted by 39/2005 s 21(4)	17.11.2005

Pt 4		
Pt 4 Div 1		
s 16		
s 16(1)	s 16 amended and redesignated as s 16(1) by 39/2005 s 22(1), (2)	17.11.2005
s 16(2)	inserted by 39/2005 s 22(2)	17.11.2005
Pt 4 Div 2		
s 17		
s 17(1)	amended by 39/2005 s 23(1)	17.11.2005
s 17(2)	amended by 39/2005 s 23(2)—(4)	17.11.2005
s 17(2a)	inserted by 39/2005 s 23(5)	17.11.2005
s 17(3)	<i>deleted by 39/2005 s 23(6)</i>	17.11.2005
s 17(4)	amended by 39/2005 s 23(7)—(13)	17.11.2005
s 17(5) and (6)	inserted by 39/2005 s 23(14)	17.11.2005
s 18		
s 18(1)	substituted by 39/2005 s 24(1)	17.11.2005
s 18(1a)	inserted by 39/2005 s 24(1)	17.11.2005
s 18(2)	amended by 39/2005 s 24(2)	17.11.2005
s 18(3)	amended by 39/2005 s 24(3)	17.11.2005
s 18(4)—(7)	substituted by 39/2005 s 24(4)	17.11.2005
s 18(7a)—(7d)	inserted by 39/2005 s 24(4)	17.11.2005
s 18(9)	amended by 39/2005 s 24(5), (6)	17.11.2005
s 19	amended by 39/2005 s 25	17.11.2005
s 20		
s 20(1)	substituted by 39/2005 s 26(1)	17.11.2005
s 20(1a) and (1b)	inserted by 39/2005 s 26(1)	17.11.2005
s 20(3)	amended by 39/2005 s 26(2)	17.11.2005
s 21		
s 21(1)	s 21 amended and redesignated as s 21(1) by 39/2005 s 27(1)—(4)	17.11.2005
s 21(2) and (3)	inserted by 39/2005 s 27(4)	17.11.2005
Pt 4 Div 3		
s 22		
s 22(1)	amended by 39/2005 s 28(1)	17.11.2005
s 22(3)	substituted by 39/2005 s 28(2)	17.11.2005
s 22(4)	<i>deleted by 39/2005 s 28(2)</i>	17.11.2005
s 22(5)	amended by 39/2005 s 28(3), (4)	17.11.2005
Pt 4 Div 4	heading substituted by 39/2005 s 29	17.11.2005
s 23		
s 23(1)	substituted by 39/2005 s 30(1)	17.11.2005
s 23(2)	amended by 39/2005 s 30(2)	17.11.2005
s 23(3)	amended by 39/2005 s 30(3)	17.11.2005
s 23(4)	amended by 39/2005 s 30(4), (5)	17.11.2005

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s 24	substituted by 39/2005 s 31	17.11.2005
Pt 5		
Pt 5 Div 1		
heading	substituted by 39/2005 s 32	17.11.2005
s 25	amended by 39/2005 s 33(1)—(4)	17.11.2005
s 26	amended by 39/2005 s 34(1)—(4)	17.11.2005
ss 27 and 28	substituted by 39/2005 s 35	17.11.2005
s 29		
s 29(1)	s 29 redesignated as s 29(1) by 35/2003 Sch cl 9(b)	24.11.2003
	amended by 39/2005 s 36(1), (2)	17.11.2005
s 29(2)	inserted by 35/2003 Sch cl 9(b)	24.11.2003
	amended by 39/2005 s 36(3)	17.11.2005
s 29(3)	inserted by 35/2003 Sch cl 9(b)	24.11.2003
	amended by 39/2005 s 36(4)	17.11.2005
s 29(4)—(8)	inserted by 39/2005 s 36(5)	17.11.2005
s 29A	inserted by 39/2005 s 37	17.11.2005
Pt 5 Div 2		
s 30		
s 30(1)	amended by 39/2005 s 38(1), (2)	17.11.2005
s 30(2)	amended by 39/2005 s 38(3)	17.11.2005
s 30(3)	amended by 39/2005 s 38(4)	17.11.2005
s 30(4)	amended by 39/2005 s 38(5)	17.11.2005
s 30(6)	inserted by 39/2005 s 38(6)	17.11.2005
s 31	<i>deleted by 39/2005 s 39</i>	<i>17.11.2005</i>
Pt 6		
s 32		
s 32(1)	amended by 39/2005 s 40(1), (2)	17.11.2005
s 32(2)	substituted by 39/2005 s 40(3)	17.11.2005
s 32(3)	amended by 38/2005 s 3	14.7.2005
	amended by 39/2005 s 40(4), (5)	17.11.2005
s 32(4)	substituted by 39/2005 s 40(6)	17.11.2005
s 32(5)	inserted by 39/2005 s 40(6)	17.11.2005
s 33		
s 33(1)	amended by 39/2005 s 41(1)	17.11.2005
s 33(3)	amended by 39/2005 s 41(2)	17.11.2005
s 34		
s 34(1)	<i>deleted by 39/2005 s 42(1)</i>	<i>17.11.2005</i>
s 34(2)	amended by 39/2005 s 42(2)	17.11.2005
s 34(3)	inserted by 39/2005 s 42(3)	17.11.2005
Pt 7		
s 36 before substitution by 39/2005		

s 36(2)	<i>amended by 11/2000 Sch 2</i>	4.5.2002
s 36	substituted by 39/2005 s 43	17.11.2005
s 37	<i>deleted by 39/2005 s 44</i>	17.11.2005
s 38		
s 38(1)	amended by 39/2005 s 45(1), (2)	17.11.2005
s 38(2)	amended by 39/2005 s 45(3)	17.11.2005
s 38(3)	amended by 39/2005 s 45(4)	17.11.2005
s 38A	inserted by 39/2005 s 46	17.11.2005
s 38A(6)	amended by 17/2006 s 141	4.9.2006
<b>s 38A(11)</b>	<b>amended by 43/2006 s 125(1)</b>	<b>1.6.2007</b>
<b>s 38A(12)</b>	<b>substituted by 43/2006 s 125(2)</b>	<b>1.6.2007</b>
s 39		
s 39(1)	amended by 39/2005 s 47(1), (2)	17.11.2005
s 39(1a)	inserted by 39/2005 s 47(3)	17.11.2005
s 39A	inserted by 39/2005 s 48	17.11.2005
s 40	amended by 39/2005 s 49	17.11.2005
s 41	amended by 39/2005 s 50	17.11.2005
s 41A	inserted by 81/1999 s 3	15.6.2000
s 41B	inserted by 39/2005 s 51	17.11.2005
s 42		
s 42(5)	inserted by 39/2005 s 52	17.11.2005
s 43	amended by 39/2005 s 53	17.11.2005
s 44		
s 44(1)	amended by 39/2005 s 54(1)	17.11.2005
s 44(2a)	inserted by 81/1999 s 4	15.6.2000
s 44(3)	amended by 39/2005 s 54(2)	17.11.2005
s 45	substituted by 39/2005 s 55	17.11.2005
Sch 1		
<i>cl 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
<i>Sch 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
Sch 2	inserted by 38/2005 s 4	14.7.2005

## **Transitional etc provisions associated with Act or amendments**

### ***Heritage (Heritage Directions) Amendment Act 2005, Sch 1***

#### **11—Transitional provisions**

- (1) A decision or determination of the State Heritage Authority in force immediately before the commencement of this clause may continue to have force or effect after that commencement as if it were a decision or determination of the South Australian Heritage Council (and may then be varied or revoked by the Council).

- (2) A reference in any other Act to the State Heritage Authority will be taken to be a reference to the South Australian Heritage Council.
- (3) To avoid doubt, a person holding office as a member of the State Heritage Authority immediately before the commencement of this clause will, on that commencement, cease to hold that office.
- (4) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (5) A provision of a regulation made under subclause (4) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (6) To the extent to which a provision takes effect under subclause (5) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (7) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this clause, apply to any amendment or repeal effected by this Schedule.

## **Historical versions**

Reprint No 1—15.6.2000

Reprint No 2—4.5.2002

Reprint No 3—24.11.2003

14.7.2005

17.11.2005

4.9.2006