

South Australia

Development (Private Certification) Amendment Act 2012

An Act to amend the *Development Act 1993*.

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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 *Development (Private Certification) Amendment Act 2012*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Development Act 1993*

4—Amendment of section 35—Special provisions relating to assessment against Development Plan

Section 35—after subsection (5) insert:

- (6) Subject to this Act, a relevant authority must accept that a proposed development complies with the provisions of the appropriate development plan to the extent that such compliance is certified by a private certifier.

Note—

- 1 See section 89 with respect to certificates given by private certifiers.

5—Insertion of section 56C

After section 56B insert:

56C—Development Plan assessment audits

- (1) In this section—

development assessment auditor means—

- (a) a person of a class prescribed by the regulations; or
- (b) a person employed or engaged by a body prescribed by the regulations who holds qualifications prescribed by the regulations;

relevant Development Plan assessment means the assessment of a proposed development of a prescribed kind against the provisions of the appropriate Development Plan under this Part.

- (2) Any council or private certifier undertaking relevant Development Plan assessments must have its, his or her activities in relation to such assessments audited by a development assessment auditor in accordance with the requirements of this section.
- (3) The purposes of an audit under this section are—
 - (a) to check whether the processes and procedures associated with relevant Development Plan assessments, and with the granting of any relevant Development Plan consents, have been undertaken in accordance with the requirements of this Act (including requirements prescribed by the regulations) and, in particular, whether the matters prescribed by the regulations have been satisfied; and
 - (b) to examine and, if appropriate, report on any other aspect of the work of the council or the private certifier prescribed by the regulations for the purposes of this section.

- (4) The first audit under this section must be completed as follows:
- (a) in relation to a council—within the prescribed period after the commencement of this section;
 - (b) in relation to a private certifier—
 - (i) if the private certifier is carrying on business as a private certifier on the commencement of this section—within the prescribed period after the commencement of this section;
 - (ii) if the private certifier commences business as a private certifier after the commencement of this section—within the prescribed period after the date on which the private certifier commences business.
- (5) Thereafter, a council or private certifier must ensure that an audit is completed at least once in every prescribed period.
- (6) A private certifier must, when renewing any registration as a private certifier under the regulations (including in a case where the private certifier is only required to pay an annual registration fee and lodge an annual return), provide, in a manner determined by the Minister, evidence of compliance with this section (insofar as may be relevant).
- (7) It will be grounds for the cancellation of the registration of a private certifier if—
- (a) the private certifier has not complied with subsection (6); or
 - (b) the registration authority considers that the private certifier has not adequately addressed any matter identified by an auditor during the course of an audit under this section.
- (8) An audit conducted under this section will relate to an antecedent period, not exceeding the prescribed period, determined to be appropriate by the auditor.
- (9) An audit under this section may be conducted by—
- (a) analysing processes and procedures that have been employed by the council or private certifier to ensure compliance with the requirements of this Act; and
 - (b) examining random or selective samples of documents or other records to check on processes and procedures or to ascertain any other relevant matter; and
 - (c) conducting interviews of persons who may be able to provide information relevant to the audit; and
 - (d) taking such other steps or making such other inquiries as the auditor thinks fit.

- (10) An auditor must, before finalising a report for the purposes of this section, give a copy of the report to the council or private certifier and allow a reasonable time for the council or private certifier to provide a response with a view to correcting any error of fact.
- (11) An auditor must report to the Minister any contravention or failure on the part of a council or private certifier (as the case may be) to comply with the requirements of this Act (including those prescribed by the regulations) or the appropriate Development Plan in a significant respect or to a significant degree in undertaking relevant Development Plan assessments identified by the auditor during the course of an audit.
- (12) If an auditor provides a report to the Minister under subsection (11), the Minister may, after taking such action as the Minister thinks fit—
- (a) make recommendations to the council or private certifier (as the case may be);
 - (b) if the Minister considers that the council or private certifier (as the case may be) has contravened or failed to comply with the requirements of this Act (including those prescribed by the regulations) or the appropriate Development Plan in a significant respect or to a significant degree, give directions to the council or private certifier to rectify the matter, or to take specified action with a view to preventing a recurrence of any act, failure or irregularity;
 - (c) in the case of a private certifier—disqualify the person from acting as a private certifier by notice in the Gazette.
- (13) The Minister may, in taking action under subsection (12), if the Minister thinks fit, appoint an investigator or investigators to carry out an investigation under section 45A as if a ground had been made out for the purposes of subsection (1) of that section (and may then act under subsection (12)(a), (b) or (c) on the basis of a report presented to the Minister at the conclusion of the investigation).
- (14) The Minister must, before taking action under subsection (12), give the council or private certifier a reasonable opportunity to make submissions in relation to the matter.
- (15) If—
- (a) the Minister makes a recommendation to a council or private certifier under subsection (12)(a); and
 - (b) the Minister subsequently considers that the council or private certifier has not, within a reasonable period, taken appropriate action in view of the recommendation,
- the Minister may, after consultation with the council or private certifier, give directions to the council or private certifier.
- (16) A council or private certifier must comply with a direction under subsection (12) or (15).
- Penalty: Division 4 fine.

- (17) No action in defamation lies in respect of the contents of a report under this section.
- (18) An auditor must, in acting under this section, take into account any guidelines issued by the Minister for the purposes of this section.
- (19) A person must not act as a development assessment auditor in relation to a particular council or private certifier if he or she is disqualified from so acting under the regulations.
- (20) A regulation cannot be made for the purposes of this section unless the Minister has given the LGA notice of the proposal to make a regulation under this section and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.
- (21) Nothing in this section limits or affects the operation of—
 - (a) section 45A; or
 - (b) Chapter 13 Part 3 of the *Local Government Act 1999*,
(but subject to any direction under this or any other provision, including under the *Local Government Act 1999*, a council is not prevented from acting under this Act on account of a failure to ensure that an audit is conducted in accordance with the requirements of this section).
- (22) Nothing in this section limits or affects any other provision made by or under this Act with respect to the registration or activities of private certifiers.

6—Amendment of section 89—Preliminary

Section 89(3)—delete subsection (3)

7—Amendment of section 93—Authority to be advised of certain matters

Section 93(1)(b)—delete "any aspect of building work" and substitute:

a proposed development or a particular aspect of a proposed development