

House of Assembly—No 147A

As reported with amendments, report agreed to and passed remaining stages,
28 November 2005

South Australia

Development (Miscellaneous) Amendment Bill 2005

A BILL FOR

An Act to amend the *Development Act 1993*; and to make related amendments to the
Natural Resources Management Act 2004 and the *River Murray Act 2003*.

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Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

- 1 Amendment provisions

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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 (Miscellaneous) Amendment Act 2005*.

2—Commencement

- 5 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***10 3A—Amendment of section 3—Objects**

Section 3—after paragraph (d) insert:

- (da) to facilitate the identification and protection of places of State and local heritage significance; and

4—Amendment of section 4—Interpretation

- 15 (1) Section 4(1), definition of *Building Code*—delete the definition and substitute:

Building Code means an edition of the *Building Code of Australia* published by the Australian Building Codes Board, as in force from time to time and as modified (from time to time) by the variations, additions or exclusions for South Australia contained in the code, but subject to the operation of subsection (7);

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(2) Section 4(1), definition of *building work*, (a)—after "of a building" insert:

(including any incidental excavation or filling of land)

(3) Section 4(1), definition of *building work*, (b)—delete paragraph (b)

(4) Section 4(1), definition of *development*—after paragraph (g) insert:

5 (ga) prescribed earthworks (to the extent that any such work or activity is not within the ambit of a preceding paragraph); or

(5) Section 4(1)—after the definition of *land* insert:

LGA means the Local Government Association of South Australia;

5—Amendment of section 17—Staff

10 Section 17(2)—delete subsection (2) and substitute:

(2) A secretary or other member of staff referred to in subsection (1) will be Public Service employees.

6—Insertion of Part 2 Division 5

Part 2—after Division 4 insert:

15 Division 5—Codes of conduct

21A—Codes of conduct

(1) The Minister may adopt—

- 20 (a) a code of conduct to be observed by members of the Development Assessment Commission; and
- (b) a code of conduct to be observed by members of regional development assessment panels; and
- (c) a code of conduct to be observed by members of development assessment panels established by councils; and
- 25 (d) a code of conduct to be observed by officers of relevant authorities or other agencies who are acting under delegations under this Act.

(2) The Minister may vary a code of conduct, or adopt a new code of conduct in substitution for an existing code of conduct, in operation under subsection (1).

30 (3) Before the Minister adopts or varies a code of conduct under this section, the Minister must take reasonable steps to consult with—

- (a) the Environment, Resources and Development Committee of the Parliament; and
- (b) the LGA.

35 (4) If the Minister adopts or varies a code of conduct under this section, the Minister must—

- (a) publish a notice of the adoption or variation in the Gazette; and

- (b) ensure that a copy of the code of conduct (as adopted or varied) is kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations.

5 **7—Amendment of section 24—Council or Minister may amend a Development Plan**

- (1) Section 24(1)—after paragraph (fb) insert:

- 10 (fc) where a regional NRM board has requested a council to proceed with an amendment on the basis of a regional NRM plan approved under the *Natural Resources Management Act 2004* by the Minister responsible for the administration of that Act and the council has not acted under section 25 of this Act in relation to the matter within a period determined by the Minister responsible for the administration of this Act to be reasonable in the circumstances—by the Minister;

- 15 (2) Section 24—after subsection (2) insert:

- 20 (2a) The Minister must not act under subsection (1)(fc) unless the Minister has, by notice in writing to the relevant council, given the council an opportunity to make submissions (within a period specified in the notice) in relation to the matter, and considered any submission received within the specified period from the council.

7A—Amendment of section 25—Amendments by a council

- (1) Section 25(12)—delete subsection (12)
- (2) Section 25(15)(b)—delete paragraph (b)

7B—Insertion of section 25A

25 After section 25 insert:

25A—Heritage matters—council amendments

- (1) Section 25 operates subject to the requirements of this section.
- (2) If a council is considering an amendment to a Development Plan that may involve the designation of a place as a place of local heritage value then—
- 30 (a) the council must—
- 35 (i) before it finalises its Plan Amendment Report under section 25(3) and (4), engage a person who is recognised by the South Australian Heritage Council as being appropriately qualified for the purpose to undertake a heritage survey; and

- 5 (ii) subject to subsection (3), adopt the advice of that person as to whether or not a particular place should be listed as a place of local heritage value in the Development Plan and proceed to prepare any relevant draft amendment as expeditiously as possible (subject to the operation of section 25 and this section),

10 (although any advice as to the policies that should apply under the Development Plan in relation to such a place will be provided by the person who is providing advice to the council under section 25(3)); and

- 15 (b) subject to any exemption under subsection (10), the council must, before it releases a Plan Amendment Report that proposes the designation of a place as a place of local heritage value for public consultation under section 25, apply to the Minister for a declaration under section 28 so that the amendment may come into operation on an interim basis under that section (and, if the Plan Amendment Report has been divided into parts under section 25(9), then only the part that relates to local heritage will be subject to this requirement).

20 (3) If—

- 25 (a) the person who has undertaken a heritage survey under subsection (2)(a) has advised the council that a particular place should be listed as a place of local heritage value; but

(b) the council believes that that place should not be so listed, the council may, with the agreement of the Minister, release the Plan Amendment Report for public consultation without that place being listed as a place of local heritage value.

- 30 (4) If a particular place is not listed in a proposed amendment to a Development Plan by virtue of the operation of subsection (3), the council must include a note on the matter (in accordance with any prescribed requirement) in the relevant Plan Amendment Report that is released for public consultation.

- 35 (5) Subject to the operation of subsection (3), a council must release for public consultation as expeditiously as possible any proposed amendment to a Development Plan that designates a place as a place of local heritage value.

- 40 (6) If a proposed amendment to a Development Plan under section 25 (after taking into account any step that has been taken under subsection (3) of this section) designates a place—

- (a) as a place of local heritage value; or

- (b) as a place within a local heritage zone or policy area, or within any other prescribed kind of zone or policy area, that should be subject to additional heritage-related policies because of its contribution (or potential contribution) to the character of the zone or area,

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the council must, at the time when the relevant Plan Amendment Report is released for public consultation, give each owner of land constituting the place so designated a written notice—

- (c) informing the owner of the proposed amendment; and
(d) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under section 25.

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- (7) If the effect of a proposed amendment to a Development Plan under section 25 is that a place would cease to be designated as a place of local heritage value, the council must also give each owner of the relevant land a written notice that complies with the requirements of subsection (6).

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- (8) If an owner of land notified under subsection (6) or (7) objects to the relevant amendment within the period provided for public consultation, the Minister may, after receiving the relevant report of the council under section 25(13)(a), refer the matter to the Advisory Committee for advice and report.

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- (9) If the Minister takes action under subsection (8), the owner of the land must be given a reasonable opportunity to make submissions to the Advisory Committee (in such manner as the Advisory Committee thinks fit) in relation to the matter before the Advisory Committee reports back to the Minister.

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- (10) The Minister may exempt a council from the requirement to comply with subsection (2)(b).

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- (11) To avoid doubt, if a council fails to comply with subsection (2)(b) (and the Minister has not granted an exemption), the Minister may proceed to make a declaration under section 28 in any event.

7C—Amendment of section 26—Amendments by the Minister

- (1) Section 26(6)—delete subsection (6)
(2) Section 26(7)(b)—delete paragraph (b)

35

7D—Insertion of section 26A

After section 26 insert:

26A—Heritage matters—Ministerial amendments

- (1) Section 26 operates subject to the requirements of this section.

- 5
- (2) If the Minister is considering an amendment to a Development Plan that may involve the designation of a place of local heritage value then the Minister must—
- (a) before he or she finalises the relevant Plan Amendment Report under section 26(1), arrange for a person who is recognised by the South Australian Heritage Council as being appropriately qualified for the purpose to undertake a heritage survey; and
- 10
- (b) adopt the advice of that person as to whether or not a particular place should be listed as a place of local heritage value in the Development Plan (subject to the operation of section 26 and this section), unless the Minister considers that there are cogent reasons for not adopting that advice (and subject to the qualification that any advice as to the policies that should apply under the relevant Development Plan in relation to any listed place will be provided by the person who is providing advice to the Minister under section 26(1)).
- 15
- (3) If a particular place is not listed in a proposed amendment to a Development Plan despite the advice provided under subsection (2)(a), the Minister must include a note on the matter (in accordance with any prescribed requirement) in the relevant Plan Amendment Report that is released for public consultation.
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- (4) If a proposed amendment to a Development Plan under section 26 designates a place—
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- (a) as a place of local heritage value; or
- (b) as a place within a local heritage zone or policy area, or within any other prescribed kind of zone or policy area, that should be subject to additional heritage-related policies because of its contribution (or potential contribution) to the character of the zone or area,
- 30
- the Minister must, at the time when the relevant Plan Amendment Report is released for public consultation, give each owner of land constituting the place so designated a written notice—
- 35
- (c) informing the owner of the proposed amendment; and
- (d) inviting the owner to make submissions on the amendment within the period provided for public consultation under section 26.
- 40
- (5) If the effect of a proposed amendment to a Development Plan under section 26 is that a place would cease to be designated as a place of local heritage value, the Minister must also give each owner of the relevant land a written notice that complies with subsection (4).
- (6) The Minister may then seek the advice of the Advisory Committee on any submission made under subsection (4) or (5).

7E—Amendment of section 28—Interim development control

- (1) Section 28(1)—delete "the Governor" wherever occurring and substitute, in each case:
the Minister
- (2) Section 28(4)(a)—delete "the Governor" and substitute:
the Minister

8—Amendment of section 33—Matters against which a development must be assessed

- (1) Section 33(1)(c)—delete "by strata plan"
- (2) Section 33(1)(d)—delete "by strata plan"
- (3) Section 33(1)(d)(v)—delete "by strata plan" and substitute:
in the proposed manner
- (4) Section 33(1)(d)—after subparagraph (v) insert:
(va) the division of land under the *Community Titles Act 1996* or the
Strata Titles Act 1988 is appropriate having regard to the nature and
extent of the common property that would be established by the
relevant scheme;

9—Amendment of section 35—Special provisions relating to assessment against a development plan

- (1) Section 35(4)(a)—delete "this section" and substitute:
this Act at any stage in the process (including in the circumstances envisaged
by section 39(4) and including without hearing (or further hearing) from the
applicant)
- (2) Section 35—after subsection (4) insert:
(5) A proposed development that does not fall into a category of
development mentioned in a preceding subsection will be *merit*
development (and any such development must be assessed on its
merit taking into account the provisions of the relevant Development
Plan).

10—Amendment of section 39—Application and provision of information

Section 39(4)—after paragraph (d) insert:

- (e) if there is an inconsistency between any documents lodged with the
relevant authority for the purposes of this Division (whether by an
applicant or any other person), or between any such document and a
development authorisation that has already been given that is
relevant in the circumstances, return or forward any document to the
applicant or to any other person and determine not to finalise the
matter until any specified matter is resolved, rectified or addressed.

11—Amendment of section 41—Time within which decision must be made

Section 41(2) and (3)—delete subsections (2) and (3) and substitute:

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- (2) If a relevant authority does not decide an application within the time prescribed under subsection (1), the applicant may—
- (a) after giving 14 days notice in writing to the relevant authority—apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court; or
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- (b) in the case of a proposed development that falls within the ambit of section 35(5)—give the relevant authority a notice in accordance with the regulations requiring the relevant authority to make its determination within 14 days after service of the notice.
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- (3) If the Court makes an order under subsection (2)(a), the Court should also order the relevant authority to pay the applicant's costs of the proceedings unless the Court is satisfied—
- (a) that the delay is not attributable to an act or omission of the relevant authority; or
- 20
- (b) that the delay is attributable to a decision of the relevant authority not to deal with the application within the relevant time because—
- (i) it appeared to the relevant authority that there had been a failure to comply with a requirement prescribed by or under this Act; or
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- (ii) the relevant authority was not provided with appropriate documentation or information relevant to making a decision under this Act; or
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- (iii) the relevant authority believed, on other reasonable grounds, that it was not appropriate to decide the matter in the particular circumstances; or
- (c) that an order for costs should not be made for some other reason.
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- (4) If a notice is given under subsection (2)(b) and the relevant authority does not make a determination on the relevant application within 14 days after service of the notice, it will be taken that the relevant authority has refused to grant the application (and the relevant authority will be taken to have given notice of its decision at that time (and will not need to give any notice under section 40)).

12—Amendment of section 45—Offences relating specifically to building work

(1) Section 45—after subsection (2) insert:

(2a) If—

(a) any item or materials incorporated into any building through the performance of any building work do not comply with the Building Rules (as modified under this Act and subject to any variation allowed under section 36); and

(b) the failure to comply is attributable (wholly or in part) to an act or omission of a person who designed, manufactured, supplied or installed the item or materials, being an act or omission occurring where it was reasonably foreseeable that the item or materials would be required to comply with the Building Rules and where it was reasonable, in the circumstances, to rely on the advice, skills or expertise of that person,

then that person will be guilty of an offence.

Penalty: Division 4 fine.

(2b) The fact that a person may have (or has) committed an offence against subsection (2a) does not affect the requirements imposed on a person by subsections (1) and (2).

(2) Section 45—after subsection (3) insert:

(4) In this section—

item includes any component, fitting, connection, mounting or accessory.

13—Substitution of heading to Part 4 Division 3

Heading to Part 4 Division 3—delete the heading to Division 3 and substitute:

Division 3—Crown development and public infrastructure

14—Amendment of section 49—Crown development and public infrastructure

(1) Section 49(2)(d) and (e)—delete paragraphs (d) and (e) and substitute:

lodge an application for approval containing prescribed particulars with the Development Assessment Commission.

(2) Section 49—after subsection (4) insert:

(4a) If an application relates to development within the area of a council, the Development Assessment Commission must give notice containing prescribed particulars of the development to the council in accordance with the regulations.

(3) Section 49(5)—delete "under subsection (2)" and substitute:

under subsection (4a)

(4) Section 49(6)—delete "subsection (2)" and substitute:

subsection (4a)

- (5) Section 49(9)—delete "subsection (2)" and substitute:
subsection (4a)

15—Substitution of heading to Part 4 Division 3A

Heading to Part 4 Division 3A—delete the heading to Division 3A and substitute:

5 **Division 3A—Electricity infrastructure development**

16—Amendment of section 49A—Electricity infrastructure development

- (1) Section 49A(1)—delete paragraphs (a) and (b) and substitute:

lodge an application for approval containing prescribed particulars with the
Development Assessment Commission

- 10 (2) Section 49A—after subsection (4) insert:

(4a) If an application relates to development within the area of a council,
the Development Assessment Commission must give notice
containing prescribed particulars of the development to the council in
accordance with the regulations.

- 15 (3) Section 49A(6)—delete "subsection (1)" and substitute:

subsection (4a)

- (4) Section 49A(9)—delete "subsection (1)" and substitute:

subsection (4a)

17—Amendment of section 50—Open space contribution scheme

- 20 (1) Section 50(1)(d)—delete paragraph (d) and substitute:

(d) that the applicant make the contribution prescribed by the regulations
in accordance with the requirements of this section; or

- (2) Section 50(1)—before "and, in so acting" insert:

25 according to the determination and specification of the council or the
Development Assessment Commission

- (3) Section 50(2)(b)—delete "by strata plan"

- (4) Section 50(2)(c)—delete paragraph (c) and substitute:

30 (c) the Development Assessment Commission may require the applicant
to pay to the Development Assessment Commission the contribution
prescribed by the regulations in accordance with the requirements of
this section; or

(5) Section 50—after subsection (3) insert:

(3a) Where an application under this Part provides for the undertaking of development of a prescribed class in prescribed circumstances (being development that does not fall within the ambit of subsection (1) or (2)), the Development Assessment Commission may require—

(a) that an area not exceeding the prescribed percentage of the total area of the site of the development be kept as open space or in some other form that allows for active or passive recreation (as determined by the Development Assessment Commission), with some or all of this area to be vested in the Crown or, with the concurrence of the council, a council; or

(b) that the applicant pay the contribution prescribed by the regulations to the Development Assessment Commission; or

(c) that certain land be kept in the manner contemplated by paragraph (a) and that the applicant will make a contribution to the Development Assessment Commission under this section.

(3b) The percentage prescribed under subsection (3a)(a) must not exceed 12.5 per cent.

(6) Section 50(4)(a)—delete "or (2)" and substitute:

, (2) or (3a)

(7) Section 50(5) and (6)—delete subsections (5) and (6) and substitute:

(5) Without limiting the operation of any other provision of this Act, the regulations prescribing rates of contribution for the purposes of this section may make different provisions according to designated parts of the State delineated by zone maps in Development Plans.

(8) Section 50(7)—delete "the rate of contribution prescribed by subsection (5)" and substitute:

the rate of contribution prescribed by the regulations for each new allotment or strata lot within the relevant part of the State that do not exceed 1 hectare in area

(9) Section 50(10)(b)—after "the Fund" insert:

or, in the case of money received under subsection (3a), dealt with in any other manner prescribed by the regulations

18—Amendment of section 55—Action if development not completed

(1) Section 55(1)(b)—delete paragraph (b) and substitute:

(b) —

(i) the development to which the approval relates has been commenced but not substantially completed within the period prescribed by the regulations for the lapse of the approval; or

- (ii) in the case of a development that is envisaged to be undertaken in stages—the development is not undertaken or completed in the manner or within the period contemplated by the approval,

5 (2) Section 55(3)—after paragraph (c) insert:

- (ca) require the performance of any work;
- (cb) require the making of any application for an appropriate development authorisation under this Act;

(3) Section 55(5)—delete "(a) or (b)" and substitute:

10 (a), (b) or (ca)

(4) Section 55(7), definition of *relevant authority*—delete the definition and substitute:

relevant authority means—

- (a) a council; or
- (b) a regional development assessment panel; or
- 15 (c) the Development Assessment Commission; or
- (d) the Minister.

19—Amendment of section 56—Completion of work

Section 56(7), definition of *relevant authority*—delete the definition and substitute:

relevant authority means—

- 20 (a) a council; or
- (b) a regional development assessment panel; or
- (c) the Development Assessment Commission; or
- (d) the Minister.

20—Insertion of section 56B

25 After section 56A insert:

56B—Building Rules assessment audits

(1) In this section—

building assessment auditor means—

- 30 (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.

35 (2) Any council or private certifier undertaking the assessment of proposed developments against the provisions of the Building Rules under this Part must have its, his or her activities in relation to such assessments audited by a building assessment auditor in accordance with the requirements of this section.

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- (3) The purposes of an audit under this section are—
 - (a) to check whether the processes and procedures associated with the assessment of proposed developments against the provisions of the Building Rules, and with the granting of any relevant building rules consents or the provision of certificates of compliance with the provisions of the Building Rules, 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 the extent that the auditor thinks that it is appropriate to do so—to allow an auditor to check technical aspects of assessments of proposed developments against the provisions of the Building Rules; and
 - (c) 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—
- 5 (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
- 10 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.
- 15 (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
- 20 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 Building Rules in a significant respect or to a significant degree in undertaking the assessment of proposed developments against the provisions of the Building Rules under this
- 25 Part 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);
- 30 (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 Building Rules in a significant respect or to a significant degree, give directions to the council or private certifier to rectify the matter, or to take
- 35 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.
- 40 (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
- 45 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—
- 5 (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,
- 10 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).
Maximum penalty: Division 4 fine.
- 15 (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.
- 20 (19) A person must not act as a building assessment auditor in relation to a particular council or private certifier if he or she is disqualified from so acting under the regulations.
- 25 (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*,
- 30 (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).
- 35 (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.

21—Insertion of section 57A

After section 57 insert:

57A—Land management agreements—development applications

- 5 (1) Subject to this section, a designated authority may enter into an agreement under this section with a person who is applying for a development authorisation under this Act that will, in the event that the relevant development is approved, bind—
- 10 (a) the person; and
- (b) any other person who has the benefit of the development authorisation; and
- (c) the owner of the relevant land (if he or she is not within the ambit of paragraph (a) or (b) and if the other requirements of this section are satisfied).
- 15 (2) An agreement under this section may relate to any matter that the person applying for the development authorisation and the designated authority agree is relevant to the proposed development (including a matter that is not necessarily relevant to the assessment of the development under this Act).
- 20 (3) However, the parties proposing to enter into an agreement must have regard to—
- (a) the provisions of the appropriate Development Plan; and
- (b) the principle that the entering into of an agreement under this section by the designated authority should not be used
- 25 as a substitute to proceeding with an amendment to a Development Plan under this Act.
- (4) An agreement under this section cannot require a person who has the benefit of the relevant development authorisation to make a financial contribution for any purpose that is not directly related to an issue associated with the development to which the agreement relates.
- 30 (5) Agreements entered into under this section must be registered in accordance with the regulations.
- (6) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- 35 (7) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (5).
- (8) If an agreement is entered into under this section in connection with an application for a development authorisation with respect to a Category 2 or Category 3 development, a note of the existence of the
- 40 agreement must be included on the notice of the relevant authority's decision under this Act.

- (9) A development to which an agreement under this section relates cannot be commenced pursuant to the relevant development approval unless or until the agreement has effect under this section.
- Penalty: Division 3 fine.
- 5 Additional penalty.
Default penalty: \$500.
- (10) An agreement under this section does not have effect unless or until it is noted against the relevant instrument of title or land under this section.
- 10 (11) If an owner of the land is not a party to an agreement, an application to note the agreement against the relevant instrument of title or the land cannot be made without the consent of the owner (and the owner has a discretion as to whether or not to give his or her consent under this subsection).
- 15 (12) An owner of land must not enter into an agreement, or give a consent under subsection (11), unless all other persons with a legal interest in the land consent.
- (13) A consent must be given in a manner and form determined by the Registrar-General.
- 20 (14) If the Registrar-General is satisfied that the requirements of this section have been satisfied, the Registrar-General must, on an application of a party to an 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.
- 25 (15) Where a note has been entered under subsection (14), the agreement is binding on the current owner of the land whether or not the owner was an initial party to the agreement or the person who gave any consent for the purposes of subsection (11), and notwithstanding the provisions of the *Real Property Act 1886*.
- 30 (16) The Registrar-General must, if satisfied on the application of a party to the agreement, the Minister, or any owner of the relevant land, that an agreement under this section has been rescinded or amended, enter a note of the rescission or agreement against the instrument of title, or against the land.
- 35 (17) The fact that the Minister or a council is a party to an agreement under this section does not prevent the Development Assessment Commission or the council (or a delegate of the Development Assessment Commission or the council) from acting as a relevant authority under this Act in relation to the proposed development.
- 40 (18) If an agreement under this section does not have effect under this section (see subsection (10)) within the period prescribed by the regulations, the relevant authority may, by notice given in accordance with the regulations, lapse the relevant development approval (and the agreement will then be rescinded by force of this subsection).
- 45

(19) Despite a preceding subsection, an agreement under this section cannot make provision with respect to any matter excluded from the ambit of this section by the regulations.

(20) Nothing in this section affects or limits the operation of section 57.

(21) In this section—

designated authority means—

(a) the Minister; or

(b) another Minister designated by the Governor, by notice in the Gazette, as being a designated authority for the purposes of this section; or

(c) a council.

22—Amendment of section 71A—Building inspection policies

Section 71A—after subsection (4) insert:

(4a) A building inspection policy must comply with any regulation prescribing a minimum level of inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12).

(4b) A regulation under subsection (4a) may prescribe different levels for different classes of buildings.

(4c) A regulation cannot be made under subsection (4a) unless the Minister has given the LGA notice of the proposal to make a regulation under that subsection and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.

23—Amendment of section 89—Preliminary

Section 89(6)—delete "under" and substitute:

for the purposes of

24—Amendment of section 92—Circumstances in which a private certifier may not act

Section 92(1)—after paragraph (c) insert:

(d) if he or she is excluded from acting pursuant to the regulations.

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

Section 93—after its present contents (now to be designated as subsection (1)) insert:

(2) A private certifier must, in the notification furnished under subsection (1)(b)(i), specify any variation that has been made to any plan or other documentation on account of a requirement under this or any other Act (and such a variation may then be taken into account for the purposes of providing any development authorisation under this Act).

26—Amendment of section 108—Regulations

(1) Section 108(2)—delete "the Schedule" and substitute:

Schedule 1

(2) Section 108(7)—delete subsection (7) and substitute:

(7) The regulations may provide for the effect of failing to comply with any time limit or requirement prescribed by the regulations, including by providing that any action taken after the expiration of any such time limit or in a manner inconsistent with any such requirement will not have effect under this Act.

27—Substitution of heading

Schedule—delete the heading to the Schedule and substitute:

Schedule 1—Regulations

28—Amendment of Schedule 1

After item 45 insert:

46. The fixing of an expiation fee in respect of any offence against this Act or the regulations (being a fee equal to 5 per cent of the maximum fine that a court could impose as a penalty for the particular offence or a fee of \$315, whichever is the greater).

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Natural Resources Management Act 2004*

2—Amendment of section 29—Functions of boards

Section 29(1)—after paragraph (e) insert:

(ea) to undertake an active role in ensuring—

- (i) that any Development Plan under the *Development Act 1993* that applies within its region promotes the objects of this Act; and
- (ii) insofar as is reasonably practicable, that those Development Plans and the board's regional NRM plan form a coherent set of policies,

and, in so doing, when a Development Plan Amendment under the *Development Act 1993* that is relevant to the activities of the board is under consideration under that Act, to work with—

- (iii) in the case of a Development Plan Amendment proposed by a council—the council; or
- (iv) in the case of a Development Plan Amendment proposed by a Minister—that Minister's department;

3—Amendment of section 75—Regional NRM plans

Section 75(3)(f)—delete paragraph (f) and substitute:

- (f) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to promote the objects of this Act or to improve the relationship between the policies in the Development Plan and the policies reflected in the board's plan; and
- (fa) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation) to promote the objects of this Act and, insofar as the plan may apply within a part of the Murray-Darling Basin, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act;

4—Amendment of section 76—Preparation of water allocation plans

Section 76(4)(h)(ii)—delete subparagraph (ii) and substitute:

- (ii) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to improve the relationship in the policies in the Development Plan and the policies reflected in the water allocation plan; and
- (iii) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation);

5—Amendment of section 78—Concept statement

Section 78(4)(a)—delete paragraph (a)

6—Amendment of section 79—Preparation of plans and consultation

- (1) Section 79(2), (3), (4) and (5)—delete subsections (2), (3), (4) and (5) and substitute:
 - (2) The board must, during the preparation of the draft plan, take into account any relevant submissions made to the board in relation to the matter.

- (2) Section 79(6)(a)(ii)—delete subparagraph (ii)

7—Amendment of section 80—Submission of plan to Minister

Section 80(17), (18), (19) and (20)—delete subsections (17), (18), (19) and (20)

Part 3—Amendment of *River Murray Act 2003*

8—Amendment of section 22—Development of related policies and consideration of activities

Section 22(3)—delete subsection (3)

5 Part 4—Transitional provision

9—Interpretation

In this Part—

principal Act means the *Development Act 1993*.

10—Heritage surveys

10 A heritage survey undertaken before the commencement of this clause by a person
who is recognised by the South Australian Heritage Council as being appropriately
qualified to undertake heritage surveys under the principal Act may be adopted by a
council or the Minister under section 25A or 26A of the principal Act (as enacted by
this Act) provided that the survey has been completed within the period of 5 years
15 immediately preceding that adoption.