

Legislative Council—No 1A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 8 June 2006

South Australia

Development (Panels) Amendment Bill 2006

A BILL FOR

An Act to amend the *Development Act 1993* and to make related amendments to the *Criminal Law Consolidation Act 1935* and the *Ombudsman Act 1972*.

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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 (Panels) Amendment Act 2006*.

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*

5 4—Amendment of section 10—Development Assessment Commission

- (1) Section 10(3)(d)—delete ", industry, building safety or landscape design" and substitute:

or industry

- (2) Section 10(3)—after paragraph (f) insert:

10 (g) a person with practical knowledge of, and experience in, urban design, building safety or landscape design.

- (3) Section 10(9)—after paragraph (e) insert:

(f) failure to comply with the requirements of section 11A or a breach of, or failure to comply with, a code of conduct under section 21A.

15 5—Insertion of section 11A

After section 11 insert:

11A—Disclosure of financial interests

20 A member of the Development Assessment Commission (including a person appointed to a list under this Act to act as an additional member of the Development Assessment Commission in particular circumstances) must disclose his or her financial interests in accordance with Schedule 2.

6—Amendment of section 13—Procedures

Section 13(5)—delete subsection (5) and substitute:

- 25 (5) A member of a statutory body who has a direct or indirect personal or pecuniary interest in a matter before the statutory body (other than an indirect interest that exists in common with a substantial class of persons)—

- 30 (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the statutory body; and
- (b) must not take part in any hearings conducted by the statutory body, or in any deliberations or decision of the statutory body, on the matter and must be absent from the meeting
- 35 when any deliberations are taking place or decision is being made.

Maximum penalty: Division 4 fine.

- (5a) Without limiting the effect of subsection (5), a member of a statutory body will be taken to have an interest in a matter for the purposes of that subsection if an associate of the member has an interest in the matter.

5 **7—Amendment of section 20—Delegations**

Section 20(2)(d)—after "subject to" insert:
any other provision of this Act or

8—Amendment of section 21A—Codes of conduct

Section 21A(1)(c)—after "by members of" insert:
10 council

9—Amendment of section 34—Determination of relevant authority

- (1) Section 34—after subsection (6) insert:

(6a) A member of a regional development assessment panel who is not a member of a council must disclose his or her financial interests in accordance with Schedule 2.

- (2) Section 34(7)(b)—delete paragraph (b) and substitute:

(b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

- (3) Section 34(7)—at the foot of subsection (7) insert:

Maximum penalty: Division 4 fine.

- (4) Section 34—after subsection (8) insert:

(8a) Without limiting any provision made under subsection (4), the councils for the areas in relation to which a regional development assessment panel is constituted may remove a member from the panel for a failure to comply with the requirements of subsection (6a) or (7) or a breach of, or failure to comply with, a code of conduct under section 21A.

- (5) Section 34(12)(a)—delete paragraph (a) and substitute:

(a) during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:

(i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(ii) information the disclosure of which—

(A) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and

- (B) would, on balance, be contrary to the public interest;
- (iii) information the disclosure of which would reveal a trade secret;
- 5 (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
- (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
- 10 (B) would, on balance, be contrary to the public interest;
- (v) matters affecting the safety or security of any person or property;
- 15 (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- 20 (vii) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- (viii) legal advice;
- 25 (ix) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;
- (x) information the disclosure of which—
- (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of a council, or a person engaged by a council); and
- 30 (B) would, on balance, be contrary to the public interest; or
- 35 (6) Section 34—after subsection (18) insert:
- (18a) In addition to its functions as a relevant authority under this Act, a regional development assessment panel may, as it thinks fit, provide advice and reports to any council for the areas in relation to which the panel is constituted on trends, issues and other matters relating to
- 40 planning or development that have become apparent or arisen through its assessment of applications under this Act.
- (18b) Each regional development assessment panel must have a public officer (who must not be a member of the panel) appointed by the panel.

(18c) A regional development assessment panel must, on appointing a public officer, ensure that notice of the appointment (including the public officer's name and contact details) is published in the Gazette.

(18d) The functions of a public officer include ensuring the proper investigation of complaints about the conduct of a member of the relevant regional development assessment panel (but nothing in this section prevents a person making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972* or the public officer referring a complaint to another person or authority for investigation or determination).

(7) Section 34—after subsection (22) insert:

(23) A council must delegate its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent under this Act to—

- (a) its council development assessment panel; or
- (b) a person for the time being occupying a particular office or position (but not including a person who is a member of the council); or
- (c) a regional development assessment panel (if such a delegation is consistent with the extent to which the panel may act under the provisions of the regulations constituting the panel and in addition to the operation of subsection (1)(ab)).

(24) A council may, in connection with the operation of subsection (23)—

- (a) make a series of delegations according to classes of development; and
 - (b) vary any delegation from time to time,
- but a council cannot at any time—
- (c) act in its own right in a matter that is subject to delegation under that subsection; or
 - (d) give a direction with respect to the exercise or performance of a power or function under the delegation.

(25) A delegation under subsection (23), or the variation of a delegation under subsection (24), will not—

- (a) affect any application lodged under this Act before the making of the delegation; or
- (b) affect any right or power created, established or exercisable before the making of the delegation; or
- (c) affect any action, legal proceedings or remedy that may be taken, pursued or enforced on account of any application lodged under this Act before the making of the delegation.

5 (26) A power or function delegated under subsection (23) may be further delegated (and any such further delegation may be made subject to specified conditions and limitations, is revocable at will and will not derogate from the power of the panel or person making the delegation to act in any matter).

(27) A council must—

10 (a) establish a policy relating to the basis upon which it will make the various delegations required by subsection (23); and

(b) ensure that a copy of that policy is available—

(i) for inspection at the principal office of the council during ordinary office hours; and

(ii) for inspection on the Internet.

15 **10—Amendment of section 56A—Councils to establish council development assessment panels**

(1) Section 56A(1), (2), (3) and (4)—delete subsections (1), (2), (3) and (4) and substitute:

(1) A council must establish a panel (a **council development assessment panel**) for the purposes of this Part.

(2) The functions of a council development assessment panel are—

20 (a) to act as a delegate of the council in accordance with the requirements of this Act; and

25 (b) as it thinks fit, to provide advice and reports to the council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act; and

(c) to perform other functions (other than functions involving the formulation of policy) assigned to the panel by the council.

30 (3) The following provisions will apply in relation to the constitution and membership of a council development assessment panel:

(a) a panel must consist of 7 members or, with the approval of the Minister—

(i) in the case of a council with an area that lies wholly outside Metropolitan Adelaide—5 or 9 members; or

35 (ii) in the case of a council with an area that lies wholly or partially within Metropolitan Adelaide—9 members;

(b) the presiding member will be appointed by the council taking into account the following requirements:

40 (i) the presiding member must not be a member or officer of the council;

(ii) the presiding member must be a fit and proper person to be a member of a development assessment panel;

5 (iii) subject to any provision made by the regulations, the presiding member must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of this Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel;

10 (c) the remaining members of the panel will be appointed by the council taking into account the following requirements:

(i) up to half of the remaining members may comprise:

(A) council members; or

15 (B) officers of the council (although any such officer may only be a member of the panel if the council has taken steps to ensure that the officer is not directly involved in the assessment of applications under this Act (other than as a member of the panel), or in the preparation of any council report to the panel on the assessment of particular applications),

(in any combination);

25 (ii) with respect to the members of the panel who are not within the ambit of subparagraph (i):

(A) each must be a fit and proper person to be a member of a council development assessment panel; and

30 (B) subject to any provision made by the regulations, each must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of this Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel; and

35 (C) the qualifications and experience of these members, when considered in conjunction with the qualifications and experience of the presiding member, must provide a reasonable balance across the fields that are relevant to the activities of the panel;

40 (d) the council should ensure—

(i) that at least 1 member of the panel is a woman and at least 1 member is a man; and

- (ii) that, as far as practicable, the panel consists of equal numbers of men and women;
- (e) the term of office of a member will be for a period, not exceeding 2 years, determined by the council (and, at the expiration of a term of appointment, a member is eligible for reappointment);
- (f) the other conditions of appointment of the members of the panel will be determined by the council;
- (g) the council may remove a member of the panel from office for—
- (i) breach of, or failure to comply with, the conditions of appointment; or
 - (ii) misconduct; or
 - (iii) neglect of duty; or
 - (iv) incapacity to carry out satisfactorily the duties of his or her office; or
 - (v) failure to carry out satisfactorily the duties of his or her office; or
 - (vi) failure to comply with a requirement under subsection (6) or (7) or a breach of, or failure to comply with, a code of conduct under section 21A;
- (h) the office of a member of the panel will become vacant if the member—
- (i) dies; or
 - (ii) completes a term of office and is not reappointed; or
 - (iii) resigns by written notice to the council; or
 - (iv) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (v) is convicted of an indictable offence punishable by imprisonment; or
 - (vi) is removed from office by the council under paragraph (g).
- (4) A reference to an officer of a council under subsection (3) will be taken to include a reference to a person who is a consultant engaged by the council.
- (4a) A member of a council development assessment panel whose term of office expires may nevertheless continue to act as a member, for a period of up to 6 months, until he or she is reappointed or a successor is appointed (as the case may be).
- (4b) The members of a council development assessment panel will appoint the deputy presiding member of the panel.

(2) Section 56A(5)—after "a member of a" insert:

council

(3) Section 56A(6)—delete subsection (6) and substitute:

(6) A member of a council development assessment panel who is not a member of the council must disclose his or her financial interests in accordance with Schedule 2.

(4) Section 56A(7)—delete "development assessment panel" wherever occurring and substitute in each case:

council development assessment panel

(5) Section 56A(7)(b)—delete paragraph (b) and substitute:

(b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

(6) Section 56A(7)—at the foot of subsection (7) insert:

Maximum penalty: Division 4 fine.

(7) Section 56A(8)—after "a member of a" insert:

council

(8) Section 56A(9)—delete subsection (9) and substitute:

(9) The provisions of Chapter 13 Part 1 of the *Local Government Act 1999* extend to council development assessment panels and to members of council development assessment panels as if—

(a) a reference to a member of a council were a reference to a member of a council development assessment panel; and

(b) a reference to section 74 of that Act were a reference to subsections (7) and (8) of this section; and

(c) a reference to any office under the *Local Government Act 1999* were a reference to the office of a member of a council development assessment panel under this Act; and

(d) a reference to a council were a reference to a council development assessment panel; and

(e) a reference to a public official included a reference to a public officer of a council development assessment panel appointed under subsection (22) of this section.

(9) Section 56A(10)—after "A member of a" insert:

council

(10) Section 56A(11)—after "a meeting of a" insert:

council

(11) Section 56A(12)—after "A" insert:

council

(12) Section 56A(12)(a)—delete paragraph (a) and substitute:

(a) during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:

5 (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(ii) information the disclosure of which—

10 (A) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and

(B) would, on balance, be contrary to the public interest;

15 (iii) information the disclosure of which would reveal a trade secret;

20 (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

(A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and

(B) would, on balance, be contrary to the public interest;

25 (v) matters affecting the safety or security of any person or property;

30 (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;

(vii) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court of tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

35 (viii) legal advice;

(ix) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;

(x) information the disclosure of which—

40 (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and

(B) would, on balance, be contrary to the public interest; or

(13) Section 56A(12)(b)—delete "unless otherwise determined by the council—"

(14) Section 56A(13)—after "A" insert:

5 council

(15) Section 56A(14)—after "the minutes of the" insert:

council

(16) Section 56A(15)(a)—after "meetings of a" insert:

council

10 (17) Section 56A(15)(b)—after "meetings of a" insert:

council

(18) Section 56A(16)—after "However, a" insert:

council

(19) Section 56A(18)—after "An act of a" insert:

15 council

(20) Section 56A—after subsection (18) insert:

(18a) A quorum at a meeting of a council development assessment panel is a number ascertained by dividing the total number of members of the panel for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

20

(18b) Each member of a council development assessment panel present at a meeting of the panel is entitled to 1 vote on any matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.

25 (21) Section 56A(19)—delete subsection (19) and substitute:

(19) Subject to this Act, the procedures to be observed in relation to the conduct of the business of a council development assessment panel will be—

(a) as prescribed by regulation; or

30 (b) insofar as a procedure is not prescribed under paragraph (a)—as determined by the panel.

(22) Section 56A(20)(a)—after "constitution of a" insert:

council

(23) Section 56A(20)(b)—after "delegated to a" insert:

35 council

(24) Section 56A(21)—delete "The" and substitute:

Except as otherwise provided in this section, the

(25) Section 56A(21)—after "in relation to, a" insert:

council

(26) Section 56A—after subsection (21) insert:

- 5
- (22) Each council development assessment panel must have a public officer (who must not be a member of the panel) appointed by the council.
- (23) A council must, on appointing a public officer, ensure that notice of the appointment (including the public officer's name and contact details) is published in the Gazette.
- 10
- (24) The functions of a public officer include ensuring the proper investigation of complaints about the conduct of a member of the relevant panel (but nothing in this section prevents a person making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972* or the public officer referring a complaint to another person or authority for investigation or determination).
- 15
- (25) A council is responsible for any costs, expenses or liabilities arising in relation to the activities of its council development assessment panel.
- (26) Despite a preceding subsection, a council is not required to establish a council development assessment panel under this section if all of its powers and functions as a relevant authority (after taking into account any powers or functions that have been assigned to a regional development assessment panel or other body under this Act) have been delegated to other persons or bodies under this Act.
- 20
- (27) In addition, the Minister may, on application by a council with an area that lies wholly outside Metropolitan Adelaide, exempt the council from the requirement to establish a panel under this section if the Minister is satisfied that the number of applications for development plan consent made to the council as a relevant authority under this Act in any year (on average) does not justify the constitution of a panel under this section.
- 25
- (28) The Minister may, after consultation with the relevant council, revoke an exemption under subsection (27) if the Minister forms the view that circumstances within the area of the council have changed to such an extent that an exemption under that subsection is no longer appropriate.
- 30
- (29) If a council is granted an exemption under subsection (27), subsections (23) to (26) (inclusive) of section 34 do not apply in relation to the council while the exemption is in force.
- 35

11—Amendment of section 108—Regulations

Section 108—after subregulation (8) insert:

- 5 (9) A regulation cannot be made under item 9 of Schedule 1 unless the Minister has given the LGA notice of the proposal to make a regulation under that item and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.

12—Amendment of Schedule 1

Item 9—delete item 9 and substitute:

- 10 9 The qualifications or experience that must be held by a person who exercises or performs (or who is to exercise or perform) a prescribed power or function under this Act (including as a member of a panel or other body established under this Act and including by prescribing
15 a range of qualifications or experience that may be taken into account), and the training, examination, registration or accreditation of any person in prescribed circumstances.

13—Insertion of new Schedule

After Schedule 1 insert:

Schedule 2—Disclosure of financial interests

1—Interpretation

- 20 (1) In this Schedule—

assessment panel means—

- 25 (a) the Development Assessment Commission (including a person appointed to a list under this Act to act as an additional member of the Development Assessment Commission in particular circumstances); or
(b) a regional development assessment panel; or
(c) a council development assessment panel;

family, in relation to a prescribed member, means—

- 30 (a) a spouse of the member; or
(b) a child of the member who is under the age of 18 years and normally resides with the member;

family company of a prescribed member means a proprietary company—

- 35 (a) in which the member or a member of the member's family is a shareholder; and

- (b) in respect of which the member or a member of the member's family, or any such persons together, are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company;

5

family trust of a prescribed member means a trust (other than a testamentary trust)—

- (a) of which the member or a member of the member's family is a beneficiary; and
- (b) which is established or administered wholly or substantially in the interests of the member or a member of the member's family, or any such persons together;

10

person related to a prescribed member means—

- (a) a member of the prescribed member's family; or
- (b) a family company of the prescribed member; or
- (c) a trustee of a family trust of the prescribed member;

15

prescribed member means a member of an assessment panel who is required to disclose his or her financial interests pursuant to section 11A, 34 or 56A;

20

relevant official means—

- (a) in relation to a member of the Development Assessment Commission (or a person on a relevant list)—the Minister;
- (b) in relation to a member of a regional development assessment panel or a council development assessment panel—the public officer of the panel.

25

- (2) For the purposes of this Schedule, a person who is the object of a discretionary trust is to be taken to be a beneficiary of that trust.

2—Disclosure of interests

- (1) A prescribed member of an assessment panel must—

30

- (a) on appointment, submit to the relevant official a return in the prescribed form relating to his or her pecuniary interests in accordance with the regulations; and
- (b) on an annual basis in accordance with the requirements of the regulations, submit to the relevant official an annual return in the prescribed form relating to his or her pecuniary interests in accordance with the regulations.

35

- (2) Without limiting the effect of subclause (1), a prescribed member of an assessment panel will be taken to have a pecuniary interest for the purposes of this clause if a person related to the member has that interest.

40

- (3) A prescribed member who has submitted a return under this Schedule may at any time notify the relevant official of a change or variation in the information appearing on the register in respect of the member.

3—Register

- (1) A relevant official must maintain a register of interests and cause to be entered in the register all information furnished under this Schedule.
- (2) A register that relates to a regional development assessment panel or a development assessment panel will also include information furnished by members of councils under Chapter 5 Part 4 Division 2 of the *Local Government Act 1999* and made available for incorporation into the register under a scheme established by the regulations.
- (3) A person is entitled to inspect (without charge) the register at the place where it is kept during ordinary office hours.
- (4) A person is entitled, on payment of a fee (specified by the relevant official as a standard fee to cover the relevant official's administrative and copying costs), to a copy of the register.

4—Compliance with Schedule

- (1) A prescribed member of an assessment panel who fails to comply with a requirement under this Schedule is guilty of an offence.
Maximum penalty: \$10 000.
- (2) A prescribed member of an assessment panel who submits a return under this Schedule that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.
Maximum penalty: \$10 000.

5—Restrictions on publication

- (1) A person must not—
- (a) publish information derived from a register under this Schedule unless the information constitutes a fair and accurate summary of the information contained in the register and is published in the public interest; or
 - (b) comment on the facts set forth in a register under this Schedule unless the comment is fair and published in the public interest and without malice.
- (2) If information or comment is published by a person in contravention of subclause (1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.
Maximum penalty: \$10 000.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1—Amendment of section 5—Interpretation

5 Section 5(1), definition of *local government body*—delete the definition and substitute:

local government body means—

- (a) a council or other body constituted under the *Local Government Act 1999*; or
- (b) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*;

Part 2—Amendment of *Ombudsman Act 1972*

2—Amendment of section 3—Interpretation

15 Section 3(1), definition of *agency to which this Act applies*—after paragraph (c) insert:

- (ca) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*; or

Part 3—Transitional provisions

3—Transitional provisions

- (1) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) 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.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of regulations made under this Schedule, apply to any amendment effected by this Act.