

South Australia

**Development (Regulated Trees) Amendment
Bill 2009**

A BILL FOR

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 (Regulated Trees) Amendment Act 2009*.

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 4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *development*, (fa)—delete paragraph (fa) and substitute:
(fa) in relation to a regulated tree—any tree-damaging activity; or

(2) Section 4(1)—after the definition of *the Registrar-General* insert:

regulated tree means—

- (a) a tree within a class of trees declared to be regulated by the regulations (whether or not the tree also constitutes a significant tree under the regulations); or
- (b) a tree declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Development Plan (whether or not the tree also falls within a class of trees declared to be regulated trees by the regulations);

(3) Section 4(1), definition of *significant tree*—delete the definition and substitute:

significant tree means—

- (a) a tree declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Development Plan (whether or not the tree also falls within a class of trees declared to be regulated trees by the regulations); or
- (b) a tree within a class of trees declared to be regulated trees by the regulations that, by virtue of the application of prescribed criteria, is to be taken to be a significant tree for the purposes of this Act;

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

- (9) For the purposes of this Act, any plant that is commonly known as a *palm* will be taken to be a tree.

5—Amendment of section 23—Development Plans

Section 23(4a)—delete subsection (4a) and substitute:

(4a) A Development Plan may—

(a) declare a tree to be a significant tree if—

- (i) it makes a significant contribution to the character or visual amenity of the local area; or
- (ii) it is indigenous to the local area, it is a rare or endangered species taking into account any criteria prescribed by the regulations, or it forms part of a remnant area of native vegetation; or
- (iii) it is an important habitat for native fauna; or
- (iv) it satisfies any criteria prescribed by the regulations; or

(b) declare a group of trees to be significant trees if—

- (i) as a group they make a significant contribution to the character or visual amenity of the local area; or

(ii) they are indigenous to the local area, they are members of a rare or endangered species taking into account any criteria prescribed by the regulations, or they form, or form part of, a remnant area of native vegetation; or

(iii) as a group they form an important habitat for native fauna; or

(iv) as a group they satisfy any criteria prescribed by the regulations,

(and the declaration may be made on the basis that certain trees located at the same place are excluded from the relevant group).

(4b) However, a declaration under subsection (4a) must not be inconsistent with any criteria prescribed by the regulations for the purposes of this subsection.

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

(1) Section 39(1a)—delete "significant tree" and substitute:

regulated tree

(2) Section 39—after subsection (3) insert:

(3a) A relevant authority should, in dealing with an application that relates to a regulated tree that is not a significant tree, unless the relevant authority considers that special circumstances apply, seek to assess the application without requesting the provision of an expert or technical report relating to the tree.

7—Insertion of section 50B

After section 50A insert:

50B—Urban trees fund

(1) A council may, with the approval of the Minister, establish a fund (an *urban trees fund*) for an area designated by the council (a *designated area*).

(2) The establishment of the fund will be effected by notice in the Gazette.

(3) A designated area must be defined by reference to an area established by the relevant Development Plan.

(4) A fund will consist of—

(a) all amounts paid to the credit of the fund under subsection (5); and

(b) any income paid into the fund under subsection (7).

(5) If—

- (a) a person is proposing to undertake development within a designated area that involves the killing, destruction or removal of a prescribed tree; and
- 5 (b) application for development plan consent is made under this Part; and
- 10 (c) the relevant authority determines, after taking into account the provisions of the relevant Development Plan, that, if the development plan consent is to be granted, 1 or more trees (of a kind determined by the relevant authority) should be planted to replace the prescribed tree; and
- 15 (d) the relevant authority and the applicant agree that the applicant will make a contribution to the relevant urban trees fund in lieu of planting the tree or trees envisaged by paragraph (c), on the basis that it is not reasonably practicable or beneficial for the tree or trees to be planted on the site of the development,

then the applicant must make a contribution to the urban trees fund of an amount calculated in accordance with a determination of the relevant council (and the development may, once approved, proceed despite the determination under paragraph (c)).

(6) A determination of a council for the purposes of calculating amounts to be paid into an urban trees fund—

- 25 (a) has effect when published in the Gazette; and
- (b) may be varied by the council from time to time by further notice in the Gazette.

(7) Any money in an urban trees fund that is not for the time being required for the purpose of the fund may be invested by the council and any resultant income must be paid into the fund.

30 (8) Money standing to the credit of an urban trees fund may be applied by the council to plant or maintain trees in the designated area which will, when established, constitute significant trees under this Act.

(9) In this section—

prescribed tree means—

- 35 (a) a significant tree; or
- (b) another class of regulated tree prescribed by the regulations for the purposes of this section.

8—Amendment of section 54A—Urgent work in relation to trees

Section 54A(1)—delete "significant tree" and substitute:

40 regulated tree

9—Amendment of section 54B—Interaction of controls on trees with other legislation

(1) Section 54B(1)—delete "significant tree" and substitute:

regulated tree

(2) Section 54B(2)—delete "significant tree" and substitute:

regulated tree

(3) Section 54B(2)(b)—after "section" insert:

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10—Insertion of section 106A

After section 106 insert:

106A—Make good orders

(1) If in any proceedings under this Act a court finds that a person has breached this Act by undertaking a tree-damaging activity, the court may, by order, direct a specified person to do 1 or more of the following:

(a) to establish a tree or trees of a kind specified by the court in a place or places specified by the court;

(b) to remove any buildings, works or vegetation that have been erected, undertaken or planted at or near the place where the regulated tree was situated since the breach occurred;

(c) to nurture, protect and maintain any tree or trees until they are fully established or for such period as may be specified by the court, or to make a payment or payments towards the maintenance of any tree or trees.

(2) A court acting under subsection (1) may make any ancillary order as the court thinks fit.

(3) A court must, before making an order under subsection (1) directed at a person who is not an owner or occupier of the relevant land, ensure that reasonable steps have been taken to give notice of the relevant proceedings to an owner or occupier of the land.

(4) If a person to whom an order under subsection (1) applies is not an owner or occupier of the relevant land, or ceases to be an owner or occupier of the relevant land, the court may authorise the person (or a person authorised by him or her)—

(a) to enter the land with such materials and equipment as are reasonably necessary to comply with the order; and

(b) to enter and cross any land specified in the order with the materials and equipment referred to in paragraph (a) for the purpose of gaining access to the relevant land.

(5) A court that has made an order under this section may, on application, vary or revoke the order.

- (6) A person who fails to comply with an order under subsection (1) or (2) is, in addition to any liability for contempt, guilty of an offence.

Penalty: Division 4 fine.

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- (7) An owner or occupier of land, or any other person, who hinders or obstructs a person in carrying out the requirements of an order under subsection (1) or (2) or entering or crossing land under subsection (4) is guilty of an offence.

Penalty: Division 5 fine.

10 **Schedule 1—Transitional provisions**

1—Interpretation

In this Schedule—

principal Act means the *Development Act 1993*.

2—Development plans

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A tree that is a significant tree by virtue of a declaration in a Development Plan under section 23(4a) of the principal Act, as in force immediately before the commencement of this clause, will continue to be a significant tree under the principal Act after that commencement until the relevant declaration is amended or revoked so that it no longer has effect in relation to that tree.

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3—Applications

An application for a development authorisation under the principal Act with respect to a significant tree made before the commencement of this clause will continue as if it were an application with respect to a regulated tree under that Act.

4—Other provisions

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- (1) The Governor may, by regulation, make additional 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.

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- (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.

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- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.