

Legislative Council—No 112A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 23 September 2009

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*

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, or 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 stand of trees declared to be significant trees, by a Development Plan (whether or not the tree is also declared to be a regulated tree, or 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 stand of trees declared to be significant trees, by a Development Plan (whether or not the tree is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees, by the regulations); or

(b) a tree declared to be a regulated tree by the regulations, or 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(1), definition of *tree-damaging activity*—after "health and appearance of a tree" insert:

or that is excluded by regulation from the ambit of this definition

(5) 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.

(10) For the purposes of this Act, a stand of trees is a group of trees that form a relatively coherent group by virtue of being of the same or a similar species, size, age and structure.

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

5 (iii) it is an important habitat for native fauna taking into account any criteria prescribed by the regulations; or

(iv) it satisfies any criteria prescribed by the regulations; or

10 (b) declare a stand 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

15 (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

20 (iii) as a group they form an important habitat for native fauna taking into account any criteria prescribed by the regulations; or

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

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

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

30 (4c) For the purposes of subsection (4a), a Development Plan must identify the location of a tree or stand of trees in accordance with any requirements imposed by the regulations.

6—Amendment of section 25—Amendments by a council

Section 25—after subsection (12) insert:

35 (12a) If a proposed amendment declares a tree to be a significant tree or a stand of trees to be significant trees, the council must, at or before the time when the DPA is released for public consultation, give each owner of land where the tree or trees are located a written notice—

(a) informing the owner of the proposed amendment; and

40 (b) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under the regulations.

7—Amendment of section 26—Amendments by the Minister

Section 26—after subsection (7) insert:

- 5 (7a) If a proposed amendment declares a tree to be a significant tree or a stand of trees to be significant trees, the Minister must, at or before the time when the DPA is released for public consultation, give each owner of land where the tree or trees are located a written notice—
- (a) informing the owner of the proposed amendment; and
 - (b) inviting the owner to make submissions on the amendment to the Minister within the period provided for public consultation under the regulations.
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8—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:

- 15 (3aa) A relevant authority should, in dealing with an application that relates to a regulated tree, unless the relevant authority considers that special circumstances apply, seek to make any assessment as to whether the tree is a significant tree without requesting the applicant to provide an expert or technical report relating to the tree.
- 20 (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 applicant to provide an expert or technical report relating to the tree.

9—Amendment of section 42—Conditions

Section 42—after subsection (3) insert:

- 30 (4) Subject to subsections (6) and (8), if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, the relevant authority must apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the relevant authority) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).
- 35 (5) A tree planted under subsection (4) must satisfy any criteria prescribed by the regulations (which may include criteria that require that any such tree not be of a species prescribed by the regulations).
- 40 (6) The relevant authority may, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees under subsection (4) (and the requirements under subsection (4) will then be adjusted accordingly).

- (7) For the purposes of subsection (6), the *relevant fund* is—
- (a) unless paragraph (b) applies—an urban trees fund for the area where the relevant tree is situated;
 - (b) if—
 - (i) the relevant authority is a council and an urban trees fund has not been established for the area where the relevant tree is situated; or
 - (ii) the relevant authority is the Development Assessment Commission,
the Planning and Development Fund.
- (8) Subsections (4) and (6) do not apply if—
- (a) the relevant tree is of a class excluded from the operation of those subsections by the regulations; or
 - (b) the relevant authority determines that it is appropriate to grant an exemption under this subsection in a particular case after taking into account any criteria prescribed by the regulations and the Minister concurs in the granting of the exemption.

10—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 into the fund as a condition of a development authorisation under section 42; and
 - (b) any income paid into the fund under subsection (5); and
 - (c) any amounts paid to the credit of the fund under subsection (7).
- (5) 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.

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- (6) Money standing to the credit of an urban trees fund may be applied by the council—
- (a) to maintain or plant trees in the designated area which are or will (when fully grown) constitute significant trees under this Act; or
 - (b) to purchase land within the designated area in order to maintain or plant trees which are or will (when fully grown) constitute significant trees under this Act.
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- (7) The council must, if it subsequently sells land purchased under subsection (6)(b), pay the proceeds of sale into an urban trees fund maintained by the council under this section, subject to the following qualifications:
- (a) if an urban trees fund is no longer maintained by the council, the proceeds must be applied for a purpose or purposes consistent with subsection (6)(a) or (b);
 - (b) if money from an urban trees fund only constituted a proportion of the purchase price of the land (the *designated proportion*), the money that is subject to these requirements is the designated proportion of the proceeds of sale.
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- (8) Despite the operation of any other provision, if—
- (a) a person is required to make a payment in lieu of planting 1 or more trees; and
 - (b) the person is a designated person,
- then the amount of the payment that would otherwise apply must be discounted by 66.6%.
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- (9) In this section—
- designated person* means a person—
- (a) who is an owner and occupier of the land where the relevant tree is situated; and
 - (b) who—
- (i) is the holder of a current Pensioner Concession Card issued by the Commonwealth Government and is in receipt of a full Commonwealth pension in connection with that card; or
 - (ii) falls within a class of person prescribed by the regulations for the purposes of this definition.
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11—Amendment of section 54A—Urgent work in relation to trees

- (1) Section 54A(1)—delete "significant tree" and substitute:
regulated tree
- 40 (2) Section 54A(2)(c)—before "the owner of the land" insert:
except in circumstances prescribed by the regulations,

12—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:

254 or

13—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 at the time of the making of the order, 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) Subject to subsection (6), an order under this section will cease to apply with respect to land if or when the land is sold to a genuine arms-length purchaser for value.

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(6) Subsection (5) does not apply if the order is noted 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 under a scheme prescribed by the regulations for the purposes of this subsection.

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

(8) 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.

Maximum penalty: \$60 000.

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(9) 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.

Maximum penalty: \$15 000.

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14—Amendment of Schedule 1—Regulations

Schedule 1, item 9—delete "power or function under" and substitute:

power or function under or in relation to the operation of

Schedule 1—Transitional provisions

1—Interpretation

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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.

3—Applications

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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

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

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- (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.
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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.