

Legislative Council—No 81

As received from the House of Assembly and read a first time, 18 November 2015

South Australia

Planning, Development and Infrastructure Bill 2015

A BILL FOR

An Act to provide for matters that are relevant to the use, development and management of land and buildings, including by providing a planning system to regulate development within the State, rules with respect to the design, construction and use of buildings, and other initiatives to facilitate the development of infrastructure, facilities and environments that will benefit the community; to repeal the *Development Act 1993*; to make related amendments to the *Character Preservation (Barossa Valley) Act 2012*, the *Character Preservation (McLaren Vale) Act 2012*, the *Environment, Resources and Development Court Act 1993*, the *Liquor Licensing Act 1997*, the *Local Government Act 1999*, the *Public Sector Act 2009* and the *Urban Renewal Act 1995*; and for other purposes.

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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 *Planning, Development and Infrastructure Act 2015*.

5 2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
(2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—
- 10 ***accredited professional*** means a person who holds an accreditation under section 82;
adjacent land in relation to other land, means land that is no more than 60 metres from the other land;
adjoining owner means the owner of land that abuts (either horizontally or vertically) on the land of a building owner;
- 15 ***advertisement*** means an advertisement or sign that is visible from a street, road or public place or by passengers carried on any form of public transport;
advertiser in relation to an advertisement, means the person whose goods or services are advertised in the advertisement;
- 20 ***advertising hoarding*** means a structure for the display of an advertisement or advertisements;
- affected part*** of a building in relation to which building work is to be carried out means any of the following:
- 25 (a) the principal pedestrian entrance of the building;
 (b) any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the location of the building work;

allotment has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot, development lot and common property within the meaning of the *Community Titles Act 1996* and a unit and common property within the meaning of the *Strata Titles Act 1988*;

5 **amendment** includes an addition, excision or substitution;

amenity of a locality or building means any quality, condition or factor that makes, or contributes to making, the locality or building harmonious, pleasant or enjoyable;

authorised officer means a person appointed to exercise the powers of an authorised officer under this Act;

10 **building** means a building or structure or a portion of a building or structure (including any fixtures or fittings which are subject to the provisions of the Building Code), whether temporary or permanent, moveable or immovable, and includes a boat or pontoon permanently moored or fixed to land, or a caravan permanently fixed to land;

15 **building certifier**—see section 86;

Building Code means an edition of the *Building Code of Australia* published by the Australian Building Codes Board in the National Construction Code series;

building consent means a consent granted under section 96(1)(b);

20 **building owner** means the owner of land on or in relation to which building work is or is to be performed;

Building Rules means—

- (a) the Building Code, as it applies under this Act; and
- (b) any regulations under this Act that regulate the performance, standard or form of building work; and
- 25 (c) without limiting paragraph (b), any regulations that relate to designated safety features; and
- (d) the Ministerial building standards published by the Minister under this Act;

building work means work or activity in the nature of—

- 30 (a) the construction, demolition or removal of a building (including any incidental excavation or filling of land); or
- (b) any other prescribed work or activity,

but does not include any work or activity that is excluded by regulation from the ambit of this definition;

business day means any day except—

- 35 (a) Saturday, Sunday or a public holiday; or
- (b) any other day which falls between 25 December in any year and 1 January in the following year;

character preservation area means the area which constitutes a district within the meaning of a character preservation law;

character preservation law means an Act that specifies that it is a character preservation law for the purposes of this Act;

Chief Executive means the Chief Executive of the Department and includes a person for the time being acting in that position;

5 ***Commission*** means the State Planning Commission established under Part 3 Division 1;

Commissioner for Consumer Affairs means the person holding the office of Commissioner for Consumer Affairs and includes a person for the time being acting in that office;

10 ***Community Engagement Charter***—see section 44;

construct in relation to a building, includes—

- (a) to build, rebuild, erect or re-erect the building;
- (b) to repair the building;
- (c) to make alterations to the building;
- 15 (d) to enlarge or extend the building;
- (e) to underpin the building;
- (f) to place or relocate the building on land;

council means a council constituted under the *Local Government Act 1999*;

Court means the Environment, Resources and Development Court;

20 ***Crown*** means the Crown in right of the State or in any of its other capacities;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

designated safety features means—

- (a) in relation to a swimming pool—swimming pool safety features; and
- 25 (b) in relation to a building—safety features relating to the use or occupation of a building;

design standard—see Part 5 Division 2 Subdivision 4;

development means—

- (a) a change in the use of land; or
- 30 (b) building work; or
- (c) the division of an allotment; or
- (d) the construction or alteration (except by the Crown, a council or other public authority (but so as not to derogate from the operation of paragraph (e))) of a road, street or thoroughfare on land (including excavation or other preliminary or associated work); or
- 35 (e) in relation to a State heritage place—the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place; or

(f) in relation to a local heritage place—any work (including painting) that could materially affect the heritage value of the place (including, in the case of a tree, any tree-damaging activity) specified by the Planning and Design Code for the purposes of this paragraph (whether in relation to local heritage places generally or in relation to the particular local heritage place); or

(g) the external painting of a building within an area specified by the Planning and Design Code for the purposes of this paragraph; or

(h) in relation to a regulated tree—any tree-damaging activity; or

(i) the creation of fortifications; or

(j) prescribed mining operations on land; or

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

(l) an act or activity in relation to land declared by or under the regulations to constitute development,

(including development on or under water) but does not include an act or activity that is declared by or under the regulations not to constitute development for the purposes of this Act;

development authorisation means any assessment, decision, permission, consent, approval, authorisation or certificate required—

(a) by or under this Act; or

(b) by or under any other Act prescribed by the regulations for the purposes of this definition;

division of an allotment means—

(a) the division, subdivision or resubdivision of the allotment (including by community plan under the *Community Titles Act 1996* and by strata plan under the *Strata Titles Act 1988*); or

(b) the alteration of the boundaries of an allotment; or

(c) the conferral or exercise of a present right to occupy part only of an allotment under a lease or licence, or an agreement for a lease or licence, the term of which exceeds 6 years or such longer term as may be prescribed, or in respect of which a right or option of renewal or extension exists so that the lease, licence or agreement may operate by virtue of renewal or extension for a total period exceeding 6 years or such longer period as may be prescribed, but does not include a lease, licence or agreement of a class excluded from the ambit of this paragraph by the regulations; or

(d) the grant or acceptance of a lease or licence, or the making of an agreement for a lease or licence, of a class prescribed by the regulations,

and **to divide** has a corresponding meaning;

document means a paper or record of any kind, including a disk, tape or other article from which information is capable of being reproduced (with or without the aid of another article or device);

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

EIS—see subsection (4);

Environment Protection Authority means the Environment Protection Authority established under the *Environment Protection Act 1993*;

ERD Committee means the Environment, Resources and Development Committee of the Parliament;

ESCOSA means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

essential infrastructure means—

- (a) infrastructure, equipment, structures, works and other facilities used in or in connection with—
 - (i) the generation of electricity or other forms of energy; or
 - (ii) the distribution or supply of electricity, gas or other forms of energy; and
- (b) water infrastructure or sewerage infrastructure within the meaning of the *Water Industry Act 2012*; and
- (c) transport networks or facilities (including roads, railways, busways, tramways, ports, wharfs, jetties, airports and freight-handling facilities); and
- (d) causeways, bridges or culverts; and
- (e) embankments, walls, channels, drains, drainage holes or other forms of works or earthworks; and
- (f) testing or monitoring equipment; and
- (g) coast protection works or facilities associated with sand replenishment; and
- (h) communications networks; and
- (i) health, education or community facilities; and
- (j) police, justice or emergency services facilities; and
- (k) other infrastructure, equipment, buildings, structures, works or facilities brought within the ambit of this definition—
 - (i) by the Planning and Design Code; or
 - (ii) by the regulations;

fire authority means the South Australian Metropolitan Fire Service or the South Australian Country Fire Service;

fortification has the same meaning as in Part 16 of the *Summary Offences Act 1953*;

Greater Adelaide means Greater Adelaide constituted under section 5;

joint planning board means a joint planning board constituted under a planning agreement;

land means, according to context—

- (a) land as a physical entity, including land covered with water and including any building on, or fixture to, the land; or
- (b) any legal estate or interest in, or right in respect of, land;

5 **LGA** means the Local Government Association of South Australia;

liability includes a contingent liability;

local government rate means a rate imposed under the *Local Government Act 1999*;

local heritage place means a place that is designated as a place of local heritage by the Planning and Design Code;

10 **locality** includes a road, street or thoroughfare;

Mining Act means—

- (a) the *Mining Act 1971*; or
- (b) the *Offshore Minerals Act 2000*; or
- (c) the *Opal Mining Act 1995*; or
- 15 (d) the *Petroleum and Geothermal Energy Act 2000*; or
- (e) the *Petroleum (Submerged Lands) Act 1982*;

mining production tenement means a lease or licence granted under a Mining Act that is brought within the ambit of this definition by the regulations;

owner of land means—

- 20 (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee; or
- 25 (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;

party wall means a wall built to separate 2 or more buildings or a wall forming part of a building and built on the dividing line between adjoining premises for their common use and includes a common wall for the purposes of the Building Code;

30 **Planning and Design Code**—see Part 5 Division 2 Subdivision 3;

Planning and Development Fund means the Planning and Development Fund continued in existence under this Act;

planning agreement means an agreement under Part 3 Division 3;

planning consent means a consent granted under section 96(1)(a);

35 **planning region** means a planning region constituted under section 5;

Planning Rules means—

- (a) the Planning and Design Code; and
- (b) the design standards that apply under Part 5 Division 2 Subdivision 4; and

- (c) any other instrument prescribed by the regulations for the purposes of this definition;

practice direction issued by the Commission under, or in accordance with, section 42;

practice guideline means a practice guideline issued by the Commission under, or in accordance with, section 43;

precinct authority means a precinct authority under Part 2B of the *Urban Renewal Act 1995*;

prescribed mining operations means operations carried on in the course of—

- (a) the recovery of naturally occurring substances (except water) from the earth (whether in solid, liquid or gaseous form);
- (b) the recovery of minerals by the evaporation of water,

but does not include operations carried on in pursuance of any of the Mining Acts;

public notice means notice that complies with regulations made for the purposes of this definition;

public place includes a street, road, square, reserve, lane, footway, court, alley and thoroughfare which the public are allowed to use (whether formed on private property or not), any public watercourse, and any foreshore;

public realm means—

- (a) parks and other public places; and
- (b) streetscapes;

railway includes—

- (a) a tramway; and
- (b) track structures;

regional plan—see Part 5 Division 2 Subdivision 2;

Registrar-General includes the Registrar-General of Deeds;

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, under the Planning and Design Code (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);

relevant authority—see section 77;

repealed Act means the *Development Act 1993*;

right includes a right of action;

SA planning database—see Part 4 Division 2;

SA planning portal—see Part 4 Division 2;

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, under the Planning and Design Code (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;

South Australian Heritage Council means the South Australian Heritage Council constituted under the *Heritage Places Act 1993*;

special legislative scheme—see section 11;

spouse—a person is a spouse of another if they are legally married;

the State includes any part of the sea—

- (a) that is within the limits of the State; or
- (b) that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

State heritage place means—

- (a) a place entered, either on a provisional or permanent basis, in the State Heritage Register; or
- (b) a place within an area established as a State Heritage Area under the *Heritage Places Act 1993*;

statutory instrument means—

- (a) a state planning policy; or
- (b) a regional plan; or
- (c) the Planning and Design Code; or
- (d) a design standard; or
- (e) a practice direction, guideline, standard or specification published by the Commission under this Act; or
- (f) any other instrument prescribed by the regulations for the purposes of this definition;

structure includes a fence or wall;

swimming pool means an excavation or structure that is capable of being filled with water and is used primarily for swimming, wading, paddling or the like and includes a bathing or wading pool or spa pool (but not a spa bath);

swimming pool safety features means a fence, barrier or other structure or equipment prescribed by the regulations for the purposes of this definition;

tree-damaging activity means—

- (a) the killing or destruction of a tree; or

- (b) the removal of a tree; or
- (c) the severing of branches, limbs, stems or trunk of a tree; or
- (d) the ringbarking, topping or lopping of a tree; or
- (e) any other substantial damage to a tree,

5 and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree or that is excluded by regulation from the ambit of this definition;

10 *to undertake development* means to commence or proceed with development or to cause, suffer or permit development to be commenced or to proceed.

- (2) For the purposes of this Act, any plant that is commonly known as a *palm* will be taken to be a tree.
- (3) 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 the same or a similar species, size, age and structure.
- (4) A reference in this Act to an EIS is a reference to an environmental impact statement, being a document that includes a detailed description and analysis of a wide range of issues relevant to a development or project and incorporates significant information to assist in an assessment of environmental, social or economic effects associated with the development or project and the means by which those effects can be managed.
- (5) If at the foot of a section or subsection the words "Additional penalty" appear, those words signify that a person who undertakes development in contravention of, and thus commits an offence against, that section or subsection is liable, in addition to any other penalty prescribed for the offence, to a penalty of an amount not exceeding the cost of the development insofar as it has been undertaken in contravention of that section or subsection.
- (6) If at the foot of a section or subsection the words "Default penalty" appear, those words signify that, where a person is convicted of an offence against the section or subsection and the offence continues after the date of the conviction, the person is guilty of a further offence against the section or subsection and liable, in addition to any other penalty prescribed for the offence, to a penalty not exceeding the amount of the default penalty for every day the offence continues after the date of the conviction.
- (7) For the purposes of this Act, a person is an associate of another person if—
 - (a) the other person is a relative of the person or of the person's spouse or domestic partner; or
 - (b) the other person—
 - (i) is a body corporate; and
 - (ii) the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares of the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate; or

- (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or
- (d) the person is an associate of the other person within the meaning of the regulations.

4—Change of use of land

- (1) For the purpose of determining whether a change in the use of land has occurred, the commencement or revival of a particular use of the land will, subject to this section, be regarded as a change in the use of the land if—
- (a) the use supersedes a previous use of the land; or
- (b) the commencement of the use or the revival of the use follows on from a period of non-use; or
- (c) the use is additional to a previously established use of the land which continues despite the commencement of the new use; or
- (d) there is an increase in the intensity of the use of the land which is prescribed by the Planning and Design Code as constituting a material increase in use for the purposes of this paragraph.
- (2) The revival of a use of land after a period of discontinuance will be regarded as the continuation of an existing use unless (subject to subsection (3))—
- (a) the period intervening between the discontinuance and revival of the use exceeds 12 months; or
- (b) during the whole or a part of the period intervening between its discontinuance and revival, the use was superseded by some other use.
- (3) The revival of a use of land after a period of discontinuance will also be regarded as the continuance of an existing use—
- (a) if the revival of the use is allowed under a principle specified by the Planning and Design Code for the purposes of this subsection; or
- (b) in circumstances prescribed by the regulations.
- (4) The resumption of an activity carried out on land (or, if there is more than 1 activity that has been carried out, the most significant activity) after a period of cessation of the activity will also be regarded as a change in the use of land if—
- (a) the activity, on its resumption, would be inconsistent with a zoning policy that applies in relation to the area where the land is located; and
- (b) the period intervening between the cessation and the resumption exceeds—
- (i) 12 months; or
- (ii) such longer period allowed by the Planning and Design Code in the relevant case.
- (5) Subsection (4) does not apply in circumstances prescribed by the regulations.
- (6) A change of use within a use class specified in the Planning and Design Code will not be regarded as a change in the use of land under this Act.

- (7) A change of use specified in the Planning and Design Code as a minor change of use will not be regarded as a change in the use of land under this Act.
- (8) Without limiting a preceding subsection, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

5 **5—Planning regions and Greater Adelaide**

- (1) The Governor may, by proclamation made on the recommendation of the Minister—
 - (a) divide the State into planning regions for the purposes of this Act; and
 - (b) define 1 of the planning regions as constituting Greater Adelaide for the purposes of this Act.
- 10 (2) The Governor may, by subsequent proclamation made on the recommendation of the Minister—
 - (a) vary the boundaries of—
 - (i) any planning region; or
 - (ii) Greater Adelaide; or
 - 15 (b) abolish a planning region (on the basis that a new division is to occur), other than Greater Adelaide.
- (3) The Minister must, in formulating a recommendation for the purposes of subsection (1) or (2)—
 - (a) seek to reflect communities of interest at a regional level; and
 - 20 (b) take into account—
 - (i) the boundaries of the areas of councils and other relevant administrative boundaries that apply within the State; and
 - (ii) relevant economic, social and cultural factors; and
 - 25 (iii) relevant environmental factors (including water catchment areas and biogeographical regions); and
 - (c) give attention to the need to achieve effective planning consistent with the objects of this Act, and the delivery of infrastructure, government services and other relevant services, at the regional level.
- (4) The Minister must, before a proclamation is made under this section—
 - 30 (a) seek the advice of the Commission; and
 - (b) give any council that will be directly affected notice of the proposed proclamation and give consideration to any submission made by such a council within a period (being at least 28 days) specified in the notice, and the Minister may consult in relation to a proposed proclamation with any other
35 person or body as the Minister thinks fit.
- (5) The Minister must ensure that a proclamation under this section is published on the SA planning portal.

- (6) If the Governor makes a proclamation under subsection (2)(a)(ii)—
- (a) the Minister must cause a copy of the proclamation to be laid before both Houses of Parliament; and
 - (b) the proclamation cannot take effect unless approved by a resolution passed by both Houses of Parliament.
- (7) Notice of motion for a resolution under subsection (6) must be given at least 6 sitting days before the motion is passed.
- (8) A proclamation under this section may define an area (either for the purposes of constituting a planning region or Greater Adelaide) by a plan deposited in the General Registry Office by the Minister (as it exists at a specified date), or in some other way as the Governor thinks fit.

6—Subregions

- (1) The Minister may, by notice published in the Gazette and on the SA planning portal, establish a subregion within a planning region.
- (2) The Minister may, by subsequent notice published in the Gazette and on the SA planning portal—
- (a) vary the boundaries of a subregion; or
 - (b) abolish a subregion.
- (3) The Minister must, before a notice is published under this section, seek the advice of the Commission.
- (4) A notice under this section may define an area by a plan deposited in the General Registry Office by the Minister (as it exists at a specified date), or in some other way as the Minister thinks fit.

7—Environment and food production areas—Greater Adelaide

- (1) The Minister may, by notice published in the Gazette and on the SA planning portal, establish 1 or more *environment and food production areas* within Greater Adelaide (but not within any part of Greater Adelaide that is within a character preservation area).
- (2) The Minister must, in acting under subsection (1), seek to ensure—
- (a) that areas of rural, landscape or environmental significance within Greater Adelaide are protected from urban encroachment by the establishment of 1 or more environment and food production areas; and
 - (b) that an area or areas outside environment and food production areas support the principle of urban renewal and consolidation of existing urban areas; and
 - (c) that adequate provision is made outside environment and food production areas to accommodate housing and employment growth over the longer term (being at least a 15 year period) in a manner that avoids undue upward pressure on the cost of housing, transport and other services; and
 - (d) that appropriate programs and initiatives are under consideration in order to achieve the affordable renewal or revitalisation of existing urban areas,
- and the Minister may take into account such other matters as the Minister thinks fit.

- (3) The following provisions will apply in relation to a proposed development in an environment and food production area that involves a division of land that would create 1 or more additional allotments:
- (a) a relevant authority, other than the Commission or the Minister, must not grant development authorisation to the development unless the Commission concurs in the granting of the authorisation;
 - (b) if the Commission is the relevant authority, the Commission must not grant development authorisation to the development unless the council for the area where the proposed development is situated concurs in the granting of the authorisation;
 - (c) no appeal lies against a refusal by a relevant authority to grant development authorisation to the development or a refusal by the Commission or a council to concur in the granting of such an authorisation;
 - (d) if the proposed development will create additional allotments to be used for residential development, the relevant authority must refuse to grant development authorisation in relation to the proposed development;
 - (e) a development authorisation granted in relation to the proposed development will be taken to be subject to the condition that the additional allotments created will not be used for residential development.
- (4) For the avoidance of doubt, the establishment of 1 or more environment and food production areas does not affect the operation of this Act, a Mining Act or any other Act, except as provided in subsection (3).
- (5) The Minister may, by subsequent notice published in the Gazette and on the SA planning portal, vary or abolish an environment and food production area.
- (6) The Minister may only act under subsection (5) if—
- (a) the Minister has, before publishing the notice under that subsection, obtained the advice of the Commission under subsection (7); or
 - (b) the Minister is acting on the advice of the Commission after a review under subsection (8).
- (7) The Commission must, in connection with providing advice under subsection (6)(a)—
- (a) conduct an inquiry into the matter; and
 - (b) furnish a report on the outcome of the inquiry to the Minister.
- (8) The Commission must, in connection with the operation of subsection (6)(b)—
- (a) conduct a review of the environment and food production areas established under this section on a 5 yearly basis; and
 - (b) as part of a review, conduct an inquiry; and
 - (c) furnish a report on the outcome of the review to the Minister.
- (9) The purpose of a review under subsection (8) is to assess whether adequate provision exists outside environment and food production areas to accommodate housing and employment growth over the longer term (being at least a 15 year period) in a manner that avoids undue upward pressure on the cost of housing, transport and other services.

(10) The Commission may recommend a change by the Minister under subsection (6)(b) if (and only if)—

(a) the Commission is satisfied—

- (i) that provision is not being made to accommodate the growth referred to in subsection (9); and
- (ii) that that provision cannot reasonably be achieved through the processes of urban renewal and the consolidation of existing urban areas; or

(b) the Commission is satisfied that the change is minor or trivial in nature and will address a recognised anomaly.

(11) If the Minister publishes a notice under subsection (5)—

(a) the Minister must cause—

- (i) a copy of the notice; and
- (ii) a copy of the report of the Commission under subsection (7) or subsection (8) (as the case requires),

to be laid before both Houses of Parliament; and

(b) the notice cannot take effect unless approved by a resolution passed by both Houses of Parliament.

(12) Notice of motion for a resolution under subsection (11) must be given at least 6 sitting days before the motion is passed.

(13) A notice under this section may define an area by a plan deposited in the General Registry Office by the Minister (as it exists at a specified date), or in some other way as the Minister thinks fit.

(14) In this section—

residential development means development primarily for residential purposes but does not include—

- (a) the use of land for the purposes of a hotel or motel or to provide any other form of temporary residential accommodation for valuable consideration; or
- (b) a dwelling for residential purposes on land used primarily for primary production purposes.

8—Application of Act—general provision

(1) Subject to this section, this Act applies throughout the State.

(2) The regulations may provide—

- (a) that a specified provision of this Act does not apply, or applies with prescribed variations, to a part of the State specified by the regulations;
- (b) that a specified provision of this Act does not apply, or applies with prescribed variations, in respect of a particular class of place or development, or in any circumstance or situation (or circumstance or situation of a prescribed class), specified by the regulations,

and, subject to any condition to which the regulation is expressed to be subject, the operation of this Act is modified accordingly.

9—Application of Act—Crown

5 This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

10—Interaction with other Acts

Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

11—Recognition of special legislative schemes

10 For the purposes of this Act, a *special legislative scheme* is—

- (a) a character preservation law; or
- (b) any of the following Acts:
 - (i) the *River Murray Act 2003*;
 - 15 (ii) the *Adelaide Dolphin Sanctuary Act 2005*;
 - (iii) the *Marine Parks Act 2007*;
 - (iv) the *Arkaroola Protection Act 2012*; or
- (c) another Act, or a part of another Act, that is—
 - (i) declared by that other Act to be a special legislative scheme for the purposes of this Act; or
 - 20 (ii) declared by the regulations to be a special legislative scheme for the purposes of this Act.

Part 2—Objects, planning principles and general responsibilities

25 Division 1—Objects and planning principles

12—Objects of Act

- (1) The primary object of this Act is to support and enhance the State's prosperity by creating an effective, efficient and enabling planning system, linked with other laws, that—
 - 30 (a) promotes and facilitates development, and the integrated delivery and management of infrastructure and public spaces and facilities, consistent with planning principles and policies; and
 - (b) provides a scheme for community participation in relation to the initiation and development of planning policies and strategies.

- (2) In association with the object referred to subsection (1), the scheme established by this Act is intended to—
- (a) be based on policies, processes and practices that are designed to be simple and easily understood and that provide consistency in interpretation and application; and
 - (b) enable people who use or interact with the planning system to access planning information, and to undertake processes and transactions, by digital means; and
 - (c) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and
 - (d) promote high standards for the built environment through an emphasis on design quality in policies, processes and practices; and
 - (e) promote safe and efficient construction through cost-effective technical requirements that form part of a national scheme of construction rules and product accreditation; and
 - (f) provide financial mechanisms, incentives and value-capture schemes that support development and that can be used to capitalise on investment opportunities; and
 - (g) promote cooperation, collaboration and policy integration between and among State government agencies and local government bodies.

13—Promotion of objects

A person or body involved in the administration of this Act must have regard to, and seek to further, the objects established by this section.

14—Principles of good planning

In seeking to further the objects of this Act, regard should be given to the following principles that relate to the planning system established by this Act (insofar as may be reasonably practicable and relevant in the circumstances):

(a) *long-term focus principles* as follows:

- (i) policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations;
- (ii) policy frameworks should be responsive to emerging challenges, changing trends and cumulative impacts identified by monitoring, benchmarking and evaluation programs;

(b) *urban renewal principles* as follows:

- (i) preference should be given to accommodating expected future growth of cities and towns through the logical consolidation and redevelopment of existing urban areas;
- (ii) the encroachment of urban areas on areas of rural, landscape or environmental significance is to be avoided other than in exceptional circumstances;

(iii) urban renewal should seek to make the best use (as appropriate) of underlying or latent potential associated with land, buildings and infrastructure;

(c) *high-quality design principles* as follows:

5 (i) development should be designed to reflect local setting and context, to have a distinctive identity that responds to the existing character of its locality, and to strike a balance between built form, infrastructure and public realm;

10 (ii) built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with relevant public realm;

(iii) public realm should be designed to be used, accessible, and appropriately landscaped and vegetated;

15 (iv) cities and towns should be planned and designed to be well-connected in ways that facilitate the safe, secure and effective movement of people within and through them;

(d) *activation and liveability principles* as follows:

(i) planning and design should promote mixed use neighbourhoods and buildings that support diverse economic and social activities;

20 (ii) urban areas should include a range of high quality housing options with an emphasis on living affordability;

(iii) neighbourhoods and regions should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;

25 (e) *sustainability principles* as follows:

(i) cities and towns should be planned, designed and developed to be sustainable;

(ii) particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change;

30 (iii) policies and practices should promote sustainable resource use, reuse and renewal and minimise the impact of human activities on natural systems that support life and biodiversity;

(f) *investment facilitation principles* as follows:

35 (i) planning and design should be undertaken with a view to strengthening the economic prosperity of the State and facilitating proposals that foster employment growth;

(ii) the achievement of good planning outcomes should be facilitated by coordinated approaches that promote public and private investment towards common goals;

40 (g) *integrated delivery principles* as follows:

- 5
- (i) policies, including those arising outside the planning system, should be coordinated to ensure the efficient and effective achievement of planning outcomes;
 - (ii) planning, design and development should promote integrated transport connections and ensure equitable access to services and amenities;
 - (iii) any upgrade of, or improvement to, infrastructure or public spaces or facilities should be coordinated with related development.

Division 2—General duties and coordination of activities

15—General duties

- 10
- (1) It is expected that a person or body that—
- (a) seeks to obtain an authorisation under this Act; or
 - (b) performs, exercises or discharges a function, power or duty under this Act; or
 - (c) takes the benefit of this Act or is otherwise involved in a process provided by this Act,
- 15
- will—
- (d) act in a cooperative and constructive way; and
 - (e) be honest and open in interacting with other entities under this Act; and
 - (f) be prepared to find reasonable solutions to issues that affect other interested parties or third parties.
- 20
- (2) Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must—
- (a) exercise professional care and diligence; and
 - (b) act honestly and in an impartial manner; and
 - (c) be responsible and accountable in its conduct; and
 - (d) comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.
- 25
- (3) The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.
- 30
- (4) The principles and benchmarks under this section—
- (a) do not give rise to substantive rights or liabilities; but
 - (b) may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.

16—Responsibility to coordinate activities

- 5
- (1) It is expected that any State or local government body or agency will, in the performance, exercise or discharge of a function, power or duty (including in a case arising under another Act), insofar as may be appropriate and relevant in the circumstances, seek to develop and implement policies that are consistent with the schemes established by this Act and will cooperate with any person or body involved in the administration of this Act.
 - (2) The Commission may, as it thinks fit, furnish to the Minister a report on any failure by a body or agency to comply with the requirements of subsection (1).

Part 3—Administration

Division 1—State Planning Commission

Subdivision 1—Establishment and constitution of Commission

17—Establishment of Commission

- 15
- (1) The *State Planning Commission* is established.
 - (2) The Commission is a body corporate.
 - (3) The Commission is an instrumentality of the Crown.
 - (4) The Commission is subject to the general control and direction of the Minister.
 - (5) However, the Minister may not give a direction where—
 - (a) the Commission is making or required to make a recommendation; or
 - 20 (b) the Commission is providing or required to provide advice to the Minister; or
 - (c) the Commission is required to give effect to an order of a court; or
 - (d) the Commission has a discretion in relation to the granting of a development authorisation.
 - (6) The Commission must, in the performance of its functions, take into account—
 - 25 (a) a particular government policy; or
 - (b) a particular principle or matter,specified by the Minister (subject to any relevant principle of law).

18—Constitution of Commission

- 30
- (1) Subject to this section, the Commission consists of—
 - (a) at least 4 and not more than 6 persons appointed by the Minister; and
 - (b) the Chief Executive (*ex officio*).
 - (2) A person appointed to the Commission must have such qualifications, knowledge, expertise or experience as are, in the Minister's opinion, relevant to the functions of the Commission.

(3) Without limiting subsection (2), the Minister must give consideration to appointing persons so as to provide a range of qualifications, knowledge, expertise and experience in the following areas:

- (a) economics, commerce or finance;
- (b) planning, urban design or architecture;
- (c) development or building construction;
- (d) the provision of or management of infrastructure or transport systems;
- (e) social or environmental policy or science;
- (f) local government, public administration or law.

(4) The Minister will appoint 1 member of the Commission to chair the meetings of the Commission.

(5) The Minister may appoint a suitable person to be a deputy of an appointed member of the Commission and to act as a member of the Commission during any period of absence of the appointed member.

19—Special provision relating to constitution of Commission

(1) The Commission may appoint 1 or 2 persons to act as additional members of the Commission for the purposes of dealing with any matter arising under this Act.

(2) The following provisions apply in connection with subsection (1):

- (a) a person appointed under that subsection must be selected from a list of persons established by the Minister for the purposes of that subsection;
- (b) the Minister should, in establishing the list under paragraph (a), seek to obtain a wide range of expertise relevant to the classes of matters that might (in the opinion of the Minister after consultation with the Commission) be suited to being assessed by the Commission as constituted after an appointment or appointments have been made under that subsection;
- (c) a person will be appointed to, and remain on, the list under paragraph (a) on terms and conditions determined by the Minister and, at the expiration of a term of appointment, is eligible for reappointment;
- (d) the Commission must make an appointment or appointments under that subsection in a prescribed case;
- (e) a person appointed under that subsection is not to be considered to be an appointed member of the Commission under the other sections of this Subdivision.

20—Conditions of membership

(1) An appointed member of the Commission is appointed on conditions determined by the Minister and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) The Minister may remove an appointed member of the Commission from office—

- (a) for breach of, or non-compliance with, a condition of appointment; or

- (b) for misconduct; or
- (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of an appointed member of the Commission becomes vacant if the member—

- 5 (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence or is sentenced to imprisonment for an offence; or
- 10 (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (f) is removed from office under subsection (2).

21—Allowances and expenses

15 An appointed member of the Commission is entitled to fees, allowances and expenses determined by the Minister.

Subdivision 2—Functions and powers

22—Functions

- (1) The Commission has the following functions:
 - 20 (a) to act as the State's principal planning advisory and development assessment body;
 - (b) to support the Minister in the administration of this Act and, in so doing, to provide advice, and make recommendations, to the Minister on the administration of this Act and with respect to the effect of any other legislation that is relevant to the operation of this Act;
 - 25 (c) at the request of the Minister, to provide a report on any specified matter;
 - (d) to work with—
 - (i) the other entities involved in the administration of this Act; and
 - (ii) other entities that perform functions or exercise powers under any other Act that is relevant to the operation of this Act or to furthering the objects of this Act; and
 - 30 (iii) other entities (both within the public and private sectors) that have a significant role with respect to planning, development or infrastructure provision within the State;
 - (e) to conduct inquiries with respect to any matter—
 - 35 (i) referred to the Commission by the Minister under this paragraph; or
 - (ii) determined by the Commission under this paragraph with the approval of the Minister; and
 - (f) to assist the Minister by working with the Chief Executive—

-
- 5
- (i) in connection with the implementation of planning policies developed under this Act; and
 - (ii) in considering and providing advice with respect to funding programs that are relevant to planning or development within the State; and
 - (iii) in working with government agencies and councils, including by providing information, guidance material and training in connection with the operation of this Act; and
 - (iv) in undertaking or publishing research, or analysing or monitoring trends, with respect to planning and development within the State;
- 10
- (g) such other functions assigned to the Commission by the Minister or by or under this or any other Act.
- (2) Without limiting subsection (1), the Commission has a role that includes providing advice with respect to any of the following matters:
- 15
- (a) initiatives that are consistent with or promote principles that relate to the planning system established by this Act;
 - (b) the regulatory controls, standards or rules that apply, or should apply, with respect to development;
 - (c) the making, amendment or repeal of instruments under this Act;
 - (d) the performance of entities acting under this Act;
 - (e) other matters or issues that are relevant to the operation of this Act.
- 20
- (3) The Commission may, in relation to providing advice under this Act, act on its own initiative or on request.
- (4) If an inquiry is conducted by the Commission under subsection (1)(e)—
- 25
- (a) the Commission may, for the purposes of the inquiry—
 - (i) call for or receive submissions or representations; and
 - (ii) request any person to provide information or materials to the Commission; and
 - (iii) otherwise collect information or materials or inform itself as the Commission thinks fit; and
 - (b) the Commission may, if it thinks fit, receive or retain any information or materials provided to it on a confidential basis; and
 - (c) the Commission must, at the conclusion of the inquiry, furnish a report to the Minister about—
 - (i) the matters addressed by the inquiry; and
 - (ii) the outcomes of the inquiry; and
 - (iii) any other relevant matter (including any advice or recommendations of the Commission).
- 30
- 35

- (5) An agency or instrumentality of the Crown must, at the request of the Commission and insofar as is appropriate—
- (a) take steps to cooperate with the Commission in connection with the performance of its functions; and
 - (b) provide information that will assist the Commission in the performance of its functions.
- (6) Without limiting subsection (5), an agency or instrumentality of the Crown must, at the direction of the Minister—
- (a) participate in any committee established by the Commission in connection with the operation of the planning system under this Act or development within the State; and
 - (b) comply with any requirement specified by the Minister in order to resolve any issue associated with the formulation or implementation of a planning policy under this Act.
- (7) The Minister may only act under subsection (6) after taking into account the advice of the Commission in relation to the matter.
- (8) A direction under subsection (6) is not binding on an agency or instrumentality of the Crown to the extent (if any) to which—
- (a) it would impede or affect the performance of a quasi-judicial or statutorily independent function of the entity; or
 - (b) it is inconsistent with a direction or determination of another Minister under another Act.

23—Powers

The Commission has all the powers of a natural person together with the powers conferred on the Commission by or under this or any other Act and may do anything necessary or convenient to be done in the performance of its functions.

24—Minister to be kept informed

The Commission must—

- (a) keep the Minister reasonably informed about its activities; and
- (b) if a matter arises that in the Commission's opinion may prevent, or adversely affect, the performance of any function or the achievement of any objective or target outlined in its performance statement, promptly inform the Minister of the matter.

25—Minister to have access to information

- (1) The Minister is entitled—
- (a) to require the Commission to collect or retain specified information; and
 - (b) to have information in the possession of the Commission; and
 - (c) if the information is in or on a document, to have, and make and retain copies of, that document.

- (2) The Minister may, in connection with the operation of subsection (1)—
- (a) request the Commission to furnish information to the Minister; and
 - (b) request the Commission to give the Minister access to information; and
 - (c) for the purposes of paragraph (b), make use of the staff of the Commission to obtain the information and furnish it to the Minister.
- (3) However, the Minister is not entitled to obtain under this section information that the Commission considers should be treated for any reason as confidential so long as the Commission does not adversely affect the proper performance of ministerial functions or duties.

Subdivision 3—Related matters

26—Validity of acts

An act or proceeding of the Commission is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

27—Proceedings

- (1) A quorum at a meeting of the Commission consists of a number ascertained by dividing the total number of members by half, ignoring any fraction resulting from the division, and adding 1 (and no business may be transacted at a meeting of the Commission unless a quorum is present).
- (2) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Commission.
- (3) Each member present at a meeting of the Commission 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.
- (4) A conference between members constituting a quorum by telephone or audio-visual means is a valid meeting of the Commission if—
 - (a) a notice of the conference is given to all members in the manner determined by the Commission for that purpose; and
 - (b) the system of communication allows a participating member to communicate with any other participating member during the conference.
- (5) A resolution of the Commission—
 - (a) of which prior notice was given to members in accordance with procedures determined by the Commission; and
 - (b) in which at least the majority of members of the Commission expressed their concurrence in writing or by electronic communication,
 will be taken to be a decision of the Commission made at a meeting of the Commission.

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

(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 Commission; and

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

Maximum penalty: \$30 000.

(7) Without limiting the effect of subsection (6), a member of the Commission 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.

(8) The Commission must have accurate minutes kept of its proceedings.

(9) Subject to this Act, the Commission may determine its own procedures.

28—Disclosure of financial interests

A member of the Commission must disclose his or her financial interests in accordance with Schedule 1.

29—Committees

(1) The Commission—

(a) must establish 1 or more committees in connection with its functions and powers as a relevant authority under this Act (to be known as *Commission assessment panels*); and

(b) must establish such other committees as may be required—

(i) by the regulations; or

(ii) by the Minister; and

(c) may, with the approval of the Minister, establish other committees, to advise the Commission on any aspect of its functions, or to assist the Commission or to act on behalf of the Commission in the performance of its functions or the exercise of its powers.

(2) A committee may, but need not, consist of or include members of the Commission.

(3) The procedures to be observed in relation to the conduct of business of a committee will be—

(a) as determined by the Commission; or

(b) insofar as the procedure is not determined by the Commission—as determined by the relevant committee.

30—Delegations

(1) The Commission may delegate any of its functions or powers.

- (2) A delegation—
- (a) may be made—
 - (i) to a particular person or body;
 - (ii) to the person for the time being occupying a particular office or position; and
 - (b) must, if required by the Minister, be made to a committee of the Commission designated by the Minister; and
 - (c) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (d) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (e) is revocable at will and does not derogate from the power of the Commission to act in any matter.
- (3) In addition, the Commission must delegate its functions and powers as a relevant authority with respect to determining whether or not to grant planning consent under this Act to—
- (a) a Commission assessment panel established under section 29(1)(a); or
 - (b) an assessment panel appointed or constituted under section 77; or
 - (c) a person for the time being occupying a particular office or position.
- (4) The Commission may, in connection with the operation of subsection (3)—
- (a) make a series of delegations according to classes of development; and
 - (b) vary any delegation from time to time.
- (5) A function or power delegated under subsection (3) may be further delegated (and any such further delegation may be made subject to conditions or limitations, is revocable at will, and does not derogate from the power of the delegator under this subsection to act in any matter).

31—Staff and facilities

- (1) There will be such staff to assist the Commission as the Minister may approve.
- (2) The staff of the Commission will be public service employees.
- (3) In addition, the Commission may—
 - (a) by arrangement with the appropriate authority, make use of the services, facilities or staff of any government department, agency or instrumentality; or
 - (b) with the approval of the Minister—
 - (i) make use of the services, facilities or staff of any other entity; and
 - (ii) engage any person to perform specific work on terms and conditions determined by the Commission.

32—Annual report

- (1) The Commission must, on or before 30 September in every year, forward to the Minister a report on the Commission's operations for the preceding financial year.
- (2) The report must contain any information required by the regulations.
- 5 (3) The Minister must, within 6 sitting days after receiving a report under this section, cause copies of the report to be laid before both Houses of Parliament.

Division 2—Chief Executive

33—Functions

- 10 (1) The Chief Executive's functions in connection with the administration of this Act include the following:
 - (a) to work with the Commission in the performance of its functions; and
 - (b) to be responsible to the Commission for managing the Commission's business efficiently and effectively;
 - 15 (c) to be responsible for supervising any staff appointed to assist the Commission.
- (2) The Chief Executive has such other functions assigned to the Chief Executive by the Commission or by or under this or any other Act.

34—Delegation

- 20 (1) The Chief Executive may delegate any of the Chief Executive's functions or powers under this Act.
- (2) A delegation—
 - (a) may be made—
 - 25 (i) to a particular person or body; or
 - (ii) to the person for the time being occupying a particular office or position; and
 - (b) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (c) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - 30 (d) is revocable at will and does not derogate from the power of the Chief Executive to act in any matter.

Division 3—Joint planning arrangements

Subdivision 1—Planning agreements

35—Planning agreements

- 5 (1) Subject to this section, the Minister may, after seeking or receiving the advice of the Commission, enter into an agreement (a *planning agreement*), relating to a specified area of the State, with any of the following entities:
- (a) any council that has its area, or part of its area, within the specified area of the State;
 - (b) any other Minister who has requested to be a party to the agreement;
 - 10 (c) if the Minister thinks fit, any other entity (whether or not an agency or instrumentality of the Crown) that has requested or agreed to be a party to the agreement.
- (2) A planning agreement must include provisions that outline the purposes of the agreement and the outcomes that the agreement is intended to achieve and may provide for—
- 15 (a) the setting of objectives, priorities and targets for the area covered by the agreement; and
 - (b) the constitution of a joint planning board including, in relation to such a board—
 - 20 (i) the membership of the board, being between 3 and 7 members (inclusive); and
 - (ii) subject to subsection (3), the criteria for membership; and
 - (iii) the procedures to be followed with respect to the appointment of members; and
 - 25 (iv) the terms of office of members; and
 - (v) conditions of appointment of members, or the method by which those conditions will be determined, and the grounds on which, and the procedures by which, a member may be removed from office; and
 - 30 (vi) the appointment of deputy members; and
 - (vii) the procedures of the board; and
 - (c) the delegation of functions and powers to the joint planning board (including, if appropriate, functions or powers under another Act); and
 - 35 (d) the staffing and other support issues associated with the operations of the joint planning board; and
 - (e) financial and resource issues associated with the operations of the joint planning board, including—
 - (i) the formulation and implementation of budgets; and

(ii) the proportions in which the parties to the agreement will be responsible for costs and other liabilities associated with the activities of the board; and

(f) such other matters as the parties to the agreement think fit.

5 (3) The criteria for membership of a joint planning board must be consistent with any requirement of the Minister that is intended to ensure that the members of the joint planning board collectively have qualifications, knowledge, expertise and experience necessary to enable the board to carry out its functions effectively.

(4) A planning agreement—

10 (a) expires at the end of 10 years from the date of the agreement and may, when it expires, be replaced by a new agreement (in the same or different terms); and

(b) may be varied by agreement between the parties to the agreement or may be terminated—

15 (i) by agreement between the parties to the agreement; or

(ii) by the Minister—

20 (A) on the ground that the Minister considers that there has been a serious contravention or failure on the part of the joint planning board to comply with a provision of this or any other Act, or a serious failure on the part of the joint planning board to discharge a responsibility under this or any other Act; or

25 (B) on the ground that the Minister considers that a serious irregularity has occurred in the conduct of the affairs of the joint planning board or that the joint planning board is not functioning effectively or acting appropriately; or

(C) on any ground prescribed by the regulations.

(5) However, the Minister should only agree to the termination of an agreement under subsection (4)(b)(i) if the Minister is satisfied that it is in the public interest to do so.

30 (6) The regulations may—

(a) make provision for the form of planning agreements; and

35 (b) make provision in relation to the termination of planning agreements (including for the transfer to other entities of matters being dealt with by a joint planning board (or an assessment panel appointed by a joint planning board) at the time of a termination); and

(c) make such other such provision as the Governor thinks fit in relation to planning agreements.

(7) The Chief Executive must—

(a) maintain a register of planning agreements in force under this Division; and

40 (b) publish the register on the SA planning portal.

- (8) The Minister must, within 6 sitting days after a planning agreement is entered into or varied under this section, cause copies of the agreement or variation (as the case may be) to be laid before both Houses of Parliament.

Subdivision 2—Joint planning boards

5 36—Joint planning boards

- (1) The Minister must, in connection with the commencement of a planning agreement, by notice published in the Gazette, establish a joint planning board in accordance with the terms of the agreement.
- (2) A joint planning board—
- 10 (a) is a body corporate; and
- (b) has the name assigned to it under the relevant planning agreement; and
- (c) is constituted in accordance with the terms of the relevant planning agreement; and
- (d) has the functions and powers assigned to it under this or any other Act or
- 15 conferred under the terms of the relevant planning agreement; and
- (e) must prepare and furnish annual reports in accordance with requirements prescribed by the regulations.
- (3) The Minister may, by further notice published in the Gazette, abolish a joint planning board if the relevant planning agreement is terminated.

20 37—Disclosure of financial interests

A member of a joint planning board who is not a member of a council must disclose his or her financial interests in accordance with Schedule 1.

38—Committees

- (1) A joint planning board may establish such committees as the board thinks fit to advise
- 25 the board on any aspect of its functions, or to assist the board in the performance of its functions or the exercise of its powers.
- (2) A joint planning board must establish a committee designated by the relevant planning agreement if the planning agreement so requires.
- (3) A committee may, but need not, consist of or include members of the joint planning
- 30 board.
- (4) The procedures to be observed in relation to the conduct of business of a committee will be—
- (a) as determined by the joint planning board; or
- (b) insofar as the procedure is not determined by the joint planning board—as
- 35 determined by the relevant committee.

39—Subsidiaries

- (1) A joint planning board may establish a subsidiary—
- (a) to carry out a specified activity or activities; or

(b) to perform a function or to exercise a power of the board under this Act; or

(c) to hold or administer any land, facility or assets.

(2) The establishment of a subsidiary under this section is subject to obtaining the approval of the Minister to the conferral of corporate status under this Act.

5 (3) The establishment of a subsidiary does not derogate from the power of the joint planning board to act in any matter.

(4) Schedule 2 contains other provisions that are relevant to a subsidiary established under this section.

40—Delegations

10 (1) A joint planning board may delegate any of its functions or powers.

(2) A delegation—

(a) may be made—

(i) to a particular person or body; or

(ii) to the person for the time being occupying a particular office or
15 position; and

(b) must in prescribed circumstances be made to a committee of the board established in accordance with the requirements of the regulations; and

(c) may be made subject to conditions or limitations specified in the instrument of delegation; and

20 (d) if the instrument of delegation so provides, may be further delegated by the delegate; and

(e) is revocable at will and does not derogate from the power of the board to act in any matter.

Subdivision 3—Appointment of administrator

25 41—Appointment of administrator

(1) The Minister may appoint an administrator of a joint planning board if—

(a) the Minister considers that the board is not operating effectively or appropriately and that steps should be taken under this section until the matter can be resolved; or

30 (b) the Minister has determined that the relevant planning agreement should be terminated and considers that steps should be taken to appoint an administrator under this section until the operations of the board can be wound up; or

35 (c) the Minister considers that taking action under this section is appropriate on any other reasonable ground.

(2) Before appointing an administrator under this section, the Minister must consult with the other parties to the relevant planning agreement.

(3) An administrator has, while the appointment remains in force, full and exclusive power to perform the functions and exercise the powers of the joint planning board.

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- (4) The remuneration of the administrator will be fixed by the Minister and is payable from the joint planning board's funds.
- (5) The members of the joint planning board are suspended from office while an administrator holds office under this section.
- 5 (6) The Minister may revoke an appointment under this section when the Minister considers it appropriate to do so.

Division 4—Practice directions and practice guidelines

42—Practice directions

- (1) The Commission may issue practice directions for the purposes of this Act.
- 10 (2) Without limiting any other provision that contemplates the issuing of a practice direction, a practice direction may specify procedural requirements or steps in connection with any matter arising under this Act.
- (3) Without limiting subsections (1) and (2), the Commission must, by practice direction to be applied under this Act, establish a scheme with a view to ensuring that planning assessment or controls undertaken or established under this Act (including through the imposition of conditions under this Act) do not conflict with or duplicate matters that may be dealt with or addressed under a licensing or other regulatory regime under another Act.
- 15 (4) A practice direction—
- 20 (a) must be—
- (i) notified in the Gazette; and
- (ii) published on the SA planning portal; and
- (b) may be varied or revoked by the Commission from time to time by a further instrument—
- 25 (i) notified in the Gazette; and
- (ii) published on the SA planning portal.
- (5) A practice direction does not give rise to—
- (a) any liability of, or other claim against, the Commission; or
- 30 (b) any right, expectation, duty or obligation that would not otherwise be available to a person.

43—Practice guidelines

- (1) The Commission may, with the approval of the Minister, make practice guidelines with respect to the interpretation, use or application of—
- (a) the Planning Rules; or
- 35 (b) the Building Rules.
- (2) Without limiting subsection (1), a practice guideline may—
- (a) make a declaration as to the effect of a provision of the Planning Rules or a provision of the Building Rules in a particular set of circumstances; and

- (b) specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations.
- (3) If a relevant authority acts in accordance with a practice guideline, the relevant authority will be taken, in the absence of proof to the contrary, to be acting consistently with relevant provision of the Planning Rules or the Building Rules (as the case may be).
- (4) A practice guideline—
- (a) must be—
- (i) notified in the Gazette; and
- (ii) published on the SA planning portal; and
- (b) may be varied or revoked by the Commission from time to time by further instrument—
- (i) notified in the Gazette; and
- (ii) published on the SA planning portal.
- (5) A practice guideline does not give rise to—
- (a) any liability for, or claim against, the Commission; or
- (b) any right expectation, duty or obligation that would not otherwise be available to a person.

Part 4—Community engagement and information sharing

Division 1—Community engagement

44—Community Engagement Charter

- (1) There must be a charter to be called the *Community Engagement Charter*.
- (2) The Minister is responsible for establishing and maintaining the charter.
- (3) The following principles must be taken into account in relation to the preparation (or amendment) of the charter:
- (a) members of the community should have reasonable, meaningful and ongoing opportunities to participate in relevant planning processes;
- (b) community engagement should be weighted towards engagement at an early stage and scaled back when dealing with settled or advanced policy;
- (c) information about planning issues should be in plain language, readily accessible and in a form that facilitates community participation;
- (d) participation methods should seek to foster and encourage constructive dialogue, discussion and debate in relation to the development of relevant policies and strategies;
- (e) participation methods should be appropriate having regard to the significance and likely impact of relevant policies and strategies;

- (f) insofar as is reasonable, communities should be provided with reasons for decisions associated with the development of planning policy (including how community views have been taken into account).
- (4) The charter—
- 5 (a) will relate to—
- (i) public participation with respect to the preparation or amendment of any statutory instrument where compliance with the charter is contemplated by this Act; and
- 10 (ii) without limiting subparagraph (i), any other circumstance where compliance with the charter is contemplated by this Act; and
- (b) may relate to any other circumstances determined by the Minister.
- (5) The charter may—
- (a) establish categories of statutory processes to which various parts of the charter will apply; and
- 15 (b) in relation to each category established under paragraph (a)—
- (i) specify mandatory requirements; and
- (ii) set out principles and performance outcomes that are to apply to the extent that mandatory requirements are not imposed; and
- (c) in relation to performance outcomes under paragraph (b)(ii)—
- 20 (i) provide guidance on specific measures or techniques by which the outcomes may be achieved; and
- (ii) set out measures to help evaluate whether, and to what degree, the outcomes have been achieved.
- (6) The charter must comply with any requirements prescribed by the regulations.
- 25 (7) Despite a preceding subsection, the charter must not relate to the assessment of applications for development authorisations under this Act in addition to the other provisions of this Act that apply in relation to such assessments.
- (8) An entity to which the charter applies must—
- (a) comply with any mandatory requirement that applies in a relevant case; and
- 30 (b) to the extent that paragraph (a) does not apply, have regard to, and seek to achieve, any principles or performance outcomes that apply in a relevant case.
- (9) The Commission, or an entity acting with the approval of the Commission, may adopt an alternative way to achieving compliance with a requirement of the charter (including a mandatory requirement or a requirement prescribed by the regulations) if the Commission is satisfied that the alternative way is at least effective in achieving public consultation as the requirement under the charter.
- 35 (10) Despite a preceding subsection, the charter does not give rise to substantive rights or liabilities (and a failure to comply with the charter does not give rise to a right of action or invalidate any decision or process under this Act).

- (11) If, in the opinion of the Commission, an entity fails to comply with the charter—
- (a) the Commission may direct the entity to comply with the charter; and
 - (b) if the direction is not complied with within a period prescribed by the regulations—the Commission may take any action required by its direction and recover the reasonable costs and expenses of so doing as a debt from the entity that failed to comply with the direction.

45—Preparation and amendment of charter

- (1) A proposal to prepare or amend the charter may be initiated by—
- (a) the Minister; or
 - (b) the Commission acting on behalf of the Minister (at the direction or with the approval of the Minister).
- (2) The Commission must, after a proposal is initiated under subsection (1)—
- (a) prepare a draft of the proposal; and
 - (b) consult with—
 - (i) any entity specified by the Minister; and
 - (ii) any other entity prescribed by or under the regulations; and
 - (c) ensure that a copy of the proposal is published on the SA planning portal with an invitation for interested persons to make representations (in writing or via the SA planning portal) on the proposal within a period specified by the Commission.
- (3) The Commission must, after complying with subsection (2), prepare a report on the matters raised during consultation (including information about any change to the original proposal that the Commission considers should be made) and furnish a copy of the report to the Minister.
- (4) The Minister may then—
- (a) adopt the charter, or the amendment to the charter (as the case may be), as recommended in the report under subsection (3); or
 - (b) make alterations to what is recommended in the report and then proceed to adopt the charter or the amendment, as altered (as the case may be); or
 - (c) determine that the matter should not proceed.
- (5) The charter, or an amendment to the charter, adopted under subsection (4)—
- (a) does not have effect until it is published on the SA planning portal; and
 - (b) may take effect from the date of publication under paragraph (a), or from a later date specified by the Minister.
- (6) Despite a preceding subsection, the Minister may, by instrument published on the SA planning portal, amend the charter—
- (a) in order to make a change of form (without altering the effect of an underlying policy reflected in the charter); or
 - (b) in order to take action which, in the opinion of the Minister, is correcting an error.

- (7) In addition, the Commission must ensure that the various parts of the charter are reviewed at least once in every 5 years according to a scheme approved by the Minister.
- 5 (8) The outcome of a review undertaken to comply with subsection (7) must be embodied in a written report furnished to the Minister.
- (9) The Minister must, within 6 sitting days after receiving a report under subsection (8), cause copies of the report to be laid before both Houses of Parliament.

46—Parliamentary scrutiny

- 10 (1) The Minister must, within 28 days after adopting the charter or an amendment to the charter, refer the charter or the amendment (as the case may be) to the ERD Committee.
- (2) An instrument referred to the ERD Committee under this section must be accompanied by a report prepared by the Minister that sets out—
- 15 (a) in the case of an amendment—the reasons for the amendment; and
- (b) information about the consultation that was undertaken in the preparation of the charter or the amendment (as the case may be); and
- (c) any other material considered relevant by the Minister; and
- (d) any other information or material prescribed by the regulations.
- (3) The ERD Committee must, after receiving an instrument under subsection (1)—
- 20 (a) in the case of the charter—resolve to suggest amendments to the charter; and
- (b) in the case of an amendment to the charter—
- (i) resolve that it does not object to the amendment; or
- (ii) resolve to suggest amendments to the amendment; or
- (iii) resolve to object to the amendment.
- 25 (4) Subject to subsection (6), if, at the expiration of 28 days from the day on which the charter or an amendment was referred to the ERD Committee, the ERD Committee has not made a resolution under subsection (3), it will be conclusively presumed that the ERD Committee does not object to the charter or the amendment (as the case may be) and does not propose to suggest any amendments.
- 30 (5) Subject to subsection (6), if the period of 28 days referred to in subsection (4) would, but for this subsection, expire in a particular case between 15 December in 1 year and 15 January in the next year (both days inclusive), the period applying for the purposes of subsection (4) will be extended on the basis that any days falling on or between those 2 dates will not be taken into account for the purposes of calculating the period that applies under subsection (4).
- 35 (6) If the period applying under subsection (4), including by virtue of subsection (5), would, but for this subsection, expire in a particular case sometime between the day on which the House of Assembly is dissolved for the purposes of a general election and the day on which the ERD Committee is reconstituted at the beginning of the first session of the new Parliament after that election (both days inclusive), the period will be extended by force of this subsection so as to expire 28 days from the day on which the ERD Committee is so reconstituted.
- 40

- (7) If an amendment is suggested under subsection (3)—
- (a) the Minister may proceed to make such an amendment; or
 - (b) the Minister may report back to the ERD Committee that the Minister is unwilling to make the amendment suggested by the ERD Committee and, in such a case, the ERD Committee may—
 - (i) in the case that applies under subsection (3)(a)—resolve that it does not object to the charter as originally made, or resolve to object to the charter; and
 - (ii) in the case that applies under subsection (3)(b)—resolve that it does not object to the amendment as originally made, or resolve to object to the amendment.
- (8) If the ERD Committee resolves to object to the charter or an amendment, copies of the charter or the amendment (as the case may be) must be laid before both Houses of Parliament.
- (9) If either House of Parliament passes a resolution disallowing the charter or an amendment laid before it under subsection (8), then the charter or the amendment (as the case may be) will cease to have effect (and, in the case of an amendment, the charter will, from that time, apply as if it had not been amended by that amendment).
- (10) A resolution is not effective for the purposes of subsection (9) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the relevant instrument was laid before the House.
- (11) The preceding subsections do not apply in a particular case if—
- (a) the Minister has consulted with the ERD Committee before the charter, or an amendment to the charter, has been finalised; and
 - (b) the ERD Committee has resolved, on account of that consultation, that the charter or the amendment (as the case may be) need not be referred to the ERD Committee if or when it has been approved by the Minister.

Division 2—Online planning services and information

47—SA planning website

- (1) The Chief Executive is to establish and maintain a website for the purposes of this Act (the *SA planning portal*).
- (2) The SA planning portal—
- (a) is intended to facilitate the online delivery of services and information in connection with the operation of this Act; and
 - (b) must include the documents and instruments that are required under this Act to be published on the SA planning portal; and
 - (c) must include any other information, documents or materials specified by the Commission; and
 - (d) must include any other information, documents or materials that are required to be published on the SA planning portal by the regulations; and

(e) may include such other information, documents or materials as the Chief Executive thinks fit.

(3) The SA planning portal is to maintain (insofar as is reasonably practicable) historical as well as current versions of documents, instruments or materials required to be published on the SA planning portal.

(4) The SA planning portal must also include a facility that allows members of the community to make submissions and provide feedback in relation to matters that are subject to notification or consultation under this Act (subject to complying with or observing any rules, requirements, restrictions or exclusions determined by the Chief Executive for the purposes of this subsection).

48—Planning database

(1) The Chief Executive is to establish and maintain an electronic database (the *SA planning database*) that produces, by gaining access to—

(a) the state planning policies; and

(b) the Planning Rules; and

(c) any relevant land management agreements; and

(d) other instruments and documents as the Chief Executive thinks fit,

textual and spatial information that identifies the planning policies, rules and information that apply to specific places within the State under this Act.

(2) The SA planning database must be accessible on the SA planning portal.

49—Online atlas and search facilities

(1) The Chief Executive must establish and maintain, as part of the SA planning portal and in connection with the SA planning database, an online atlas and search facility that allows a person to search across the website and the database.

(2) Without limiting subsection (1) or any other provision of this Act, the online atlas must include—

(a) a council-based zoning map or set of maps; and

(b) any other mapping product required by the Commission.

50—Standards and specifications

(1) The Commission may prepare and publish standards and specifications that are to apply to or in relation to—

(a) the SA planning portal; and

(b) the SA planning database; and

(c) the online atlas and search facility.

(2) A standard or specification under subsection (1) may include—

(a) technical requirements for any document, instrument or material that is to be included on the SA planning portal or in connection with the SA planning database; and

(b) requirements as to electronic files, including as to their formats; and

- (c) requirements as to the provision and certification of any document, instrument or material, or as to any matter; and
 - (d) requirements as to the accessibility of the SA planning portal or the SA planning database; and
 - 5 (e) requirements as to the recording, management, preservation, storage, archiving and (if appropriate) disposal of any document, instrument or material; and
 - (f) other matters determined by the Commission.
- (3) Subject to complying with any standard or specification under subsection (2), the SA planning portal and SA planning database may be maintained (and the SA planning database compiled) as determined by the Chief Executive.
- 10 (4) In addition to subsection (3), the Chief Executive may—
- (a) grant authorisations to a person, or persons of a specified class, to deposit or amend a document, instrument or other materials on the SA planning portal, subject to such conditions or limitations as the Chief Executive thinks fit; and
 - 15 (b) specify requirements, protocols and guidelines that will apply in relation to the administration of the SA planning portal.
- (5) A person must not breach, or fail to comply with, a condition under subsection (4)(a).
Maximum penalty: \$20 000.
- 20 (6) The *State Records Act 1997* does not apply to or in relation to a record (within the meaning of that Act) that is received, created or held under this Division.

51—Certification and verification of information

- (1) A version of a statutory instrument published on the SA planning portal and certified in accordance with any requirements prescribed by the regulations by the Chief Executive (including a consolidation of a statutory instrument as at a particular day) will be presumed, in the absence of proof to the contrary, to be a complete and accurate record of the statutory instrument (or the statutory instrument as amended or consolidated) and in force on the relevant day specified on the SA planning portal (and so may be relied on for the purposes of this Act).
- 25
- (2) Any information produced on the SA planning database as to the application of planning policies, rules and information to a specified place within the State will be presumed, in the absence of proof to the contrary, to be accurate and correct (and so may be relied on for the purposes of this Act).
- 30

52—Online delivery of planning services

- 35 The regulations may make provision for or with respect to the online delivery of planning services and information in relation to such things as—
- (a) the lodging of applications, documents and information under this Act; and
 - (b) the assessment of categories of development; and
 - (c) the issuing or registration of development authorisations; and
 - 40 (d) the provision or publication of information.

53—Protected information

- 5 (1) Despite a preceding section of this Division, the Minister may, after taking into account the advice of the Commission, by notice published in the Gazette, issue a direction with respect to prohibiting, restricting or limiting access to any document, instrument or material on the SA planning portal on the ground of—
- (a) confidentiality or privacy; or
 - (b) safety or security (including the security, or future security, of a building); or
 - (c) any other matter prescribed by the regulations.
- 10 (2) A direction under subsection (1) may provide access subject to conditions specified by the direction.
- (3) A person must not breach, or fail to comply with, a direction under subsection (1) or a condition under subsection (2).
Maximum penalty: \$20 000.
- 15 (4) The Minister may, by subsequent notice published in the Gazette, vary or revoke a notice under this section.

54—Freedom of information

The *Freedom of Information Act 1991* does not apply to or in relation to a document (within the meaning of that Act) that is received, created or held under this Division.

55—Fees and charges

- 20 (1) The Chief Executive may, with the approval of the Minister, impose fees and charges with respect to gaining access to, or obtaining, information or material held under this Division.
- (2) The Chief Executive may, with the approval of the Minister, require a council to make a contribution, on a periodic or other basis, towards the costs of establishing or
25 maintaining—
- (a) the SA planning portal; and
 - (b) the SA planning database; and
 - (c) any online atlas and search facility under this Division.
- (3) Any fee, charge or contribution under subsection (1) or (2) may be—
- 30 (a) set on a differential basis; and
- (b) varied from time to time by the Chief Executive with the approval of the Minister.
- (4) If a council fails to comply with a requirement under subsection (2), the contribution payable by the council will be recoverable by the Chief Executive as a debt.
- 35 (5) Nothing in this section limits or derogates from the power to set or impose a fee or charge by regulation under this Act (and vice versa).

Part 5—Statutory instruments

Division 1—Principles

56—Principles

- 5 (1) The following principles must be taken into account with respect to the instruments created under this Part:
- (a) duplication between instruments, and between the various layers of policies and rules within instruments, is to be avoided;
- 10 (b) rules should be based on clear performance outcomes, may include deemed to satisfy requirements (including requirements that can be met in a variety of ways), and should seek to apply excellence in design practices and techniques;
- (c) rules and standards should be proportionate, suited to relevant conditions, and insofar as is reasonably practicable and appropriate, seek to minimise regulatory burdens;
- 15 (d) any other principles prescribed by the regulations.
- (2) Without limiting subsection (1), any rule, standard or other material that is dealt with or that is more suited to consideration under Division 3 should not be included in an instrument under Division 2.
- 20 (3) If an inconsistency exists between the Planning Rules and the Building Rules, the Building Rules prevail and the Planning Rules do not apply to the extent of the inconsistency.
- (4) Subsection (3) does not apply—
- (a) in relation to a State heritage place or a local heritage place; or
- 25 (b) in relation to a matter excluded from the operation of that subsection by the regulations; or
- (c) in any case, so as to negate the need to obtain planning consent for a change in the use of land under the terms of the relevant provisions of the Planning Rules (insofar as may be required under the other provisions of this Act).

Division 2—Planning instruments

30 Subdivision 1—State planning policies

57—Preparation of state planning policies

- (1) The Minister may prepare state planning policies.
- 35 (2) The state planning policies will collectively set out the State's overarching goals or requirements for the planning system (to be given effect through the other instruments under this Division).

- (3) A state planning policy may—
- (a) include any matter that is relevant to planning or development within the State by setting out or including policies, objectives or principles that are to be applied under the provisions of this Act or the terms of the state planning policy; and
 - (b) include any other matter considered appropriate by the Minister; and
 - (c) without limiting paragraphs (a) and (b), make provision for or with respect to any other matter contemplated by this or any other Act as being the subject of a state planning policy (to such extent, or in such manner, as the Minister thinks fit).
- (4) A state planning policy is not to be taken into account for the purposes of any assessment or decision with respect to an application for a development authorisation under this Act.

58—Design quality policy

The Minister must ensure that there is a specific state planning policy (to be called the *design quality policy*) that specifies design policies and principles that are to be applied in the other instruments under this Division.

59—Integrated planning policy

The Minister must ensure that there is a specific state planning policy (to be called the *integrated planning policy*) that specifies policies and principles that are to be applied with respect to integrated land use, transport and infrastructure planning.

60—Special legislative schemes

- (1) The Minister must, after consultation with the Commission, by notice published in the Gazette, establish a state planning policy with respect to each special legislative scheme that—
- (a) in the case of a character preservation law—addresses (and seeks to preserve) the character values of each relevant character preservation area; and
 - (b) in any other case—complies with requirements (if any) of the Act in question; and
 - (c) addresses any other matter determined by the Minister to be relevant to the operation or objects of the Act in question insofar as it interacts with, or is relevant to, the operation and objects of this Act.
- (2) The Minister may, after consultation with the Commission, by subsequent notice published in the Gazette, amend a state planning policy under subsection (1).
- (3) The Minister must also, in acting under this section in relation to a particular Act, consult with the Minister who is responsible for the administration of that other Act.
- (4) A state planning policy, or an amendment to a state planning policy, under this section—
- (a) does not have effect until it is published on the SA planning portal; and
 - (b) takes effect without the need to take any other steps under this Division and without the need to be approved under any other provision of this Act; and

- (c) does not need to be referred to the ERD Committee under this Part (and so is not subject to disallowance).

Subdivision 2—Regional plans

61—Regional plans

- 5 (1) Subject to subsection (2), the Minister must prepare a regional plan for each planning region.
- (2) If a joint planning board has been constituted in relation to an area of the State, the regional plan for that area must be prepared by the joint planning board and the Minister will prepare the regional plan for any balance of a planning region that
10 remains outside the area in relation to which the joint planning board has been constituted.
- (3) A regional plan must be consistent with any state planning policy (insofar as may be relevant to the relevant region or area) and include—
- 15 (a) a long-term vision (over a 15 to 30 year period) for the relevant region or area, including provisions about the integration of land use, transport infrastructure and the public realm; and
- (b) maps and plans that relate to spatial patterns that are relevant to the long-term vision; and
- 20 (c) such contextual information about the relevant region or area, including forward projections and statistical data and analysis, as may be determined by the Minister or required by a practice direction; and
- (d) recommendations about the application and operation of the Planning and Design Code in the relevant region or area; and
- 25 (e) a framework for the public realm or infrastructure located within the relevant region or area; and
- (f) any other information or material required—
- (i) by another provision of this Act; or
- (ii) by the regulations; or
- 30 (iii) in the case of a regional plan prepared by a joint planning board—by the Minister.
- (4) A regional plan may—
- (a) be divided into various parts that relate to subregions; and
- (b) include structure plans, master plans, concept plans or other similar documents.
- 35 (5) A regional plan prepared by a joint planning board must comply with any practice direction issued for the purposes of this Subdivision by the Commission with the approval of the Minister.
- (6) A regional plan is not to be taken into account for the purposes of any assessment or decision with respect to an application for a development authorisation under this Act
40 (except to the extent provided by this Act).

Subdivision 3—Planning and Design Code

62—Establishment of code

- (1) There must be a *Planning and Design Code*.
- (2) The Minister will be responsible for preparing and maintaining the Planning and Design Code.

63—Key provisions about content of code

- (1) The Planning and Design Code must set out a comprehensive set of policies, rules and classifications which may be selected and applied in the various parts of the State through the operation of the Planning and Design Code and the SA planning database for the purposes of development assessment and related matters within the State.
- (2) In particular, the Planning and Design Code will—
 - (a) incorporate a scheme that includes the use of zones, subzones and overlays; and
 - (b) specify policies and rules that will—
 - (i) govern the use and development of an area within a particular class of zone; and
 - (ii) in relation to a subzone, set out additional policies or rules relating to the character of a particular part of a zone; and
 - (iii) address specified or defined issues that may apply in any zone or subzone (or a part of any zone or subzone), or across zones or subzones, depending on the circumstances (*overlays*); and
 - (c) include definitions of land use and establish land use classes; and
 - (d) make provision for or with respect to any other matter contemplated by this Act as being included in the Planning and Design Code (to such extent, or in such manner, as the Minister thinks fit); and
 - (e) include any other matter—
 - (i) prescribed by the regulations; or
 - (ii) considered appropriate by the Minister.
- (3) In connection with subsections (1) and (2)—
 - (a) policies and rules for development in a zone, subzone or overlay should be clear and straightforward; and
 - (b) if relevant, it should be clear which provisions in a zone are being modified by a subzone or overlay and how those provisions are being modified; and
 - (c) the only spatial layers to be used are zones, subzones and overlays; and
 - (d) the provisions of the Planning and Design Code may provide guidance for the development of the public realm; and
 - (e) any policy or rule under the Planning and Design Code may apply in relation to development generally or any class of development; and

- (f) the Planning and Design Code must comply with any principle prescribed by the regulations or a state planning policy.
- (4) The Planning and Design Code may include provisions that provide for the adaptation or modification of the rules that apply in relation to a specified zone or subzone or as an overlay, including by permitting—
- (a) the variation of a technical or numeric requirement within specified parameters; and
- (b) the variation of a requirement applying in a subzone, within specified parameters, in order to recognise unique character attributes; and
- (c) the adoption of options for development that are additional to those provided in a zone or subzone or as an overlay.
- (5) The Planning and Design Code may be accompanied by advisory material in the form of planning or design manuals or guidelines.

64—Local heritage

- (1) The Planning and Design Code may designate a place as a place of local heritage value if—
- (a) it displays historical, economic or social themes that are of importance to the local area; or
- (b) it represents customs or ways of life that are characteristic of the local area; or
- (c) it has played an important part in the lives of local residents; or
- (d) it displays aesthetic merit, design characteristics or construction techniques of significance to the local area; or
- (e) it is associated with a notable local personality or event; or
- (f) it is a notable landmark in the area; or
- (g) in the case of a tree (without limiting a preceding paragraph)—it is of special historical or social significance or importance within the local area.
- (2) For the purposes of subsection (1)—
- (a) a place will be taken to be any place within the meaning of the *Heritage Places Act 1993*; and
- (b) a designation of a place as a place of local heritage value must nominate or identify the component or other item, feature or attribute that is assessed as forming part of, or contributing to, the heritage significance of the place; and
- (c) the Minister may, after seeking the advice of the South Australian Heritage Council, develop or adopt guidelines that are to be used in the interpretation or application of the criteria set out in that subsection.
- (3) The Community Engagement Charter must include provisions that require consultation with the owner of any land constituting a place—
- (a) that is being proposed for inclusion in the Planning and Design Code as a place of local heritage value; or

- (b) that, under an amendment to the Planning and Design Code, is being proposed as being subject to any heritage character or preservation policy that is similar in intent or effect to a local heritage listing.

65—Significant trees

- 5 (1) The Planning and Design Code 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
- 10 (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 taking into account any criteria prescribed by the regulations; or
- (iv) it satisfies any criteria prescribed by the regulations; or
- 15 (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
- (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).
- (2) However, a declaration under subsection (1) must not be inconsistent with any criteria prescribed by the regulations for the purposes of this subsection.
- 30 (3) For the purposes of subsection (1), the Planning and Design Code must identify the location of a tree or stand of trees in accordance with any requirements imposed by the regulations.

Subdivision 4—Design standards

66—Design standards

- 35 (1) The Minister may prepare design standards that relate to the public realm or infrastructure for the purposes of this Act.
- (2) A design standard may supplement the Planning and Design Code by—
- (a) specifying design principles; and
- (b) specifying design standards for the public realm or infrastructure; and
- (c) providing design guidance with respect to any relevant matter.

- (3) A design standard may—
- (a) be linked to any spatial layer in the Planning and Design Code; and
 - (b) apply to any location specified in the Planning and Design Code, an infrastructure delivery scheme under Part 13 Division 1, or a scheme established under Part 15 Division 2.
- (4) A design standard may be accompanied by advisory material in the form of design manuals or guidelines.

Subdivision 5—Related and common provisions

67—Interpretation

In this Subdivision—

designated instrument means—

- (a) a state planning policy; or
- (b) a regional plan; or
- (c) the Planning and Design Code; or
- (d) a design standard.

68—Incorporation of material and application of instrument

A designated instrument may—

- (a) be linked to other instruments and standards under this Act; and
- (b) refer to or incorporate wholly or partially and with or without modification, a policy or other document prepared or published by a prescribed body, either as in force at a specified time or as in force from time to time; and
- (c) be of general or limited application; and
- (d) make different provision according to an area, or circumstances or entities, to which it is expressed to apply; and
- (e) other than in the case of a regional plan, provide that any matter or thing is to be determined, dispensed with or regulated according to the discretion of the Minister, the Commission, the Chief Executive or any other specified body or person.

69—Status

- (1) A state planning policy or a regional plan is an expression of policy formed after consultation within government and within the community and does not affect rights and liabilities (whether of a substantive, procedural or other nature).
- (2) No action may be brought on the basis that an entity has acted in a way that is inconsistent with a state planning policy or a regional plan.
- (3) The Planning and Design Code or a design standard is a public document of which a court or tribunal will take judicial notice, without formal proof of its contents.
- (4) No action may be brought on the basis that another instrument is inconsistent with a designated instrument

70—Preparation and amendment

- (1) A proposal to prepare a designated instrument may be initiated by—
- (a) the Minister; or
 - (b) the Commission acting on behalf of the Minister (at the direction of or with the approval of the Minister); or
 - (c) in relation to a regional plan—a joint planning board.
- (2) A proposal to amend a designated instrument may be initiated by—
- (a) the Minister; or
 - (b) the Commission acting on behalf of the Minister (at the direction of the Minister or with the approval of the Minister); or
 - (c) with the approval of the Minister—
 - (i) another Minister; or
 - (ii) the Chief Executive; or
 - (iii) another agency or instrumentality of the Crown; or
 - (iv) a joint planning board; or
 - (v) a council; or
 - (vi) a provider of essential infrastructure; or
 - (vii) a scheme coordinator appointed under Part 13 Division 1; or
 - (viii) in relation to the Planning and Design Code or a design standard—a person who has an interest in land and who is seeking to alter the way in which the Planning and Design Code or a design standard affects that land.
- (3) Without limiting any other provision, an agency or instrumentality of the Crown may make an application under subsection (2)(c)(iii) in connection with being prescribed under section 116.
- (4) An approval under subsection (2)(c) may be given by the Minister on the basis—
- (a) that the person or entity given the approval will conduct the processes specified in the succeeding subsections of this section himself, herself or itself; or
 - (b) in the case of an approval under subsection (2)(c)(vi) or (viii), that the Chief Executive will conduct the processes specified in the succeeding subsections of this section on behalf of the relevant person or entity.
- (5) An approval of the Minister under subsection (2)(c) may be given on conditions—
- (a) prescribed by the regulations; or
 - (b) specified by the Minister.
- (6) A person or entity authorised or approved under a preceding subsection (a *designated entity*), after all of the requirements of those subsections have been satisfied—
- (a) may prepare a draft of the relevant proposal; and

- (b) must comply with the Community Engagement Charter for the purposes of consultation in relation to the proposal; and
- (c) must consult with any person or body specified by the Minister and may consult with any other person or body as the designated entity thinks fit; and
- 5 (d) must carry out such investigations and obtain such information specified by the Minister; and
- (e) must comply with any requirement prescribed by the regulations.
- (7) The designated entity must, after complying with subsection (6), prepare a report in accordance with any practice direction that applies for the purposes of this section (including information about any change to the original proposal that the designated entity considers should be made) and (except where the designated entity is the Minister) furnish a copy of the report to the Minister.
- 10 (8) A designated entity may enter into an agreement with a person for the recovery of costs incurred by the designated entity in relation to an amendment of the Planning and Design Code or a design standard under this section.
- 15 (9) After receiving a report under subsection (7)—
- (a) if the Minister thinks that the matter is significant—the Minister may consult with the Commission; or
- (b) in the case of an amendment where an agreement under subsection (8) for the recovery of costs in relation to the amendment has been entered into—the Minister must consult with the Commission,
- 20 and the Minister may then—
- (c) adopt the designated instrument, or the amendment of a designated instrument (as the case may be), as outlined in the report under subsection (7); or
- 25 (d) make alternations to what is outlined in the report and then proceed to adopt the designated instrument or the amendment, as altered (as the case may be); or
- (e) in the case of an amendment—divide the amendment into separate parts and then proceed to adopt 1 or more of those parts; or
- 30 (f) determine that the matter should not proceed.
- (10) Subject to this Act, the designated instrument, or the amendment of a designated instrument, adopted under subsection (9)—
- (a) in a case where the designated instrument is a state planning policy—does not have effect unless or until it has been approved by the Governor by notice published in the Gazette; and
- 35 (b) does not have effect until it is published on the SA planning portal; and
- (c) may take effect from the date of publication under paragraph (b), or from a later date specified by the Minister.
- (11) Subject to any practice direction issued by the Commission with the approval of the Minister, a process under a preceding subsection may be undertaken as a joint process that relates to 2 or more instruments.
- 40

71—Parliamentary scrutiny

- (1) A reference in this section to a designated instrument includes a reference to an amendment to a designated instrument.
- 5 (2) The Minister must, within 28 days after a designated instrument takes effect, refer the designated instrument to the ERD Committee.
- (3) A designated instrument referred under this section must be accompanied by a report prepared by the Commission that sets out—
 - (a) the reason for the designated instrument; and
 - 10 (b) information about the consultation that was undertaken in the preparation of the designated instrument; and
 - (c) any other material considered relevant by the Commission; and
 - (d) any other information or material prescribed by the regulations.
- (4) The ERD Committee must, after receipt of a designated instrument under subsection (2)—
 - 15 (a) resolve that it does not object to the designated instrument; or
 - (b) resolve to suggest amendments to the designated instrument; or
 - (c) resolve to object to the designated instrument.
- 20 (5) Subject to subsection (7), if, at the expiration of 28 days from the day on which a designated instrument was referred to the ERD Committee, the ERD Committee has not made a resolution under subsection (4), it will be conclusively presumed that the ERD Committee does not object to the designated instrument and does not itself propose to suggest any amendments to the designated instrument.
- 25 (6) Subject to subsection (7), if the period of 28 days referred to in subsection (5) would, but for this subsection, expire in a particular case between 15 December in one year and 15 January in the next year (both days inclusive), the period applying for the purposes of subsection (5) will be extended on the basis that any days falling on or between those 2 dates will not be taken into account for the purposes of calculating the period that applies under subsection (5).
- 30 (7) If the period applying under subsection (5), including by virtue of subsection (6), would, but for this subsection, expire in a particular case sometime between the day on which the House of Assembly is dissolved for the purposes of a general election and the day on which the ERD Committee is reconstituted at the beginning of the first session of the new Parliament after that election (both days inclusive), the period will be extended by force of this subsection so as to expire 28 days from the day on which
 - 35 the ERD Committee is so reconstituted.
- (8) If an amendment is suggested under subsection (4)—
 - (a) the Minister may, by notice published in the Gazette, proceed to make such an amendment; or

- 5 (b) the Minister may report back to the ERD Committee that the Minister is unwilling to make the amendment suggested by the ERD Committee (and, in such a case, the ERD Committee may resolve that it does not object to the designated instrument as originally made, or may resolve to object to the designated instrument).
- (9) The Minister must consult with the Commission before making an amendment under subsection (8)(a).
- (10) If the ERD Committee resolves to object to a designated instrument, copies of the designated instrument must be laid before both Houses of Parliament.
- 10 (11) If either House of Parliament passes a resolution disallowing a designated instrument laid before it under subsection (10), then the designated instrument will cease to have effect (and if the designated instrument is in fact an amendment by virtue of the operation of subsection (1), the relevant designated instrument will, from that time, apply as if it had not been amended by that amendment).
- 15 (12) A resolution is not effective for the purposes of subsection (11) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the state planning policy was laid before the House.
- (13) If a resolution is passed under subsection (11), notice of that resolution must
20 immediately be published in the Gazette.
- (14) The preceding subsections do not apply in a particular case if—
- (a) the Minister has consulted with the ERD Committee before a designated instrument, or an amendment to a designated instrument, has been finalised; and
- 25 (b) the ERD Committee has resolved, on account of that consultation, that the designated instrument or the amendment (as the case may be) need not be referred to the ERD Committee if or when it has been approved by the Governor.

72—Complying changes—Planning and Design Code

- 30 (1) The Minister may initiate or agree to an amendment to the Planning and Design Code under this section if—
- (a) the amendment comprises a change to—
- (i) the boundary of a zone or subzone; or
- (ii) the application of an overlay; and
- 35 (b) the amendment is consistent with a recommendation in the relevant regional plan that, through the use of—
- (i) specific maps or other spatial information; and
- (ii) specific information about the changes that are being proposed,
clearly and expressly identifies (in the opinion of the Minister) the changes
40 that are considered to be appropriate.
- (2) The Minister has an absolute discretion about whether or not to agree to an amendment under subsection (1).

- (3) An amendment under this section is effected by an instrument deposited on the SA planning portal for publication on the SA planning database (in accordance with requirements established by the Chief Executive).
- (4) An amendment under this section—
- (a) takes effect from a date specified in the instrument under subsection (3); and
 - (b) takes effect without the need to take any other steps under this Division and without the need to be approved under any other provision of this Act; and
 - (c) does not need to be referred to the ERD Committee under this Part (and is not subject to disallowance).

73—Minor or operational amendments

- (1) The Minister may, by notice published in the Gazette, amend a designated instrument—
- (a) in order to make a change of form (without altering the effect of an underlying policy reflected in the designated instrument); or
 - (b) in order to take action which, in the opinion of the Minister, is—
 - (i) addressing or removing irrelevant material or a duplication or inconsistency (without altering the effect of an underlying policy reflected in the designated instrument); or
 - (ii) correcting an error; or
 - (c) in order to provide consistency between the designated instrument and any provision made by the regulations (including to provide information in a designated instrument that relates to the content or effect of any regulation); or
 - (d) in accordance with any plan, policy, standard, report, document or code which—
 - (i) is prepared, adopted or applied under another Act; and
 - (ii) falls within a class prescribed by the regulations for the purposes of this provision.
- (2) The Minister may, by notice published in the Gazette, amend a designated instrument—
- (a) in order to give effect to the adoption of, or an amendment to, a precinct plan under the *Urban Renewal Act 1995*; or
 - (b) in order to make such provision as the Minister thinks fit relating to planning or development within a precinct or the revocation of a precinct under the *Urban Renewal Act 1995*; or
 - (c) in order to provide consistency between the designated instrument and subsection (3) of section 7 after a notice under subsection (5) of that section has taken effect in accordance with that section; or

(d) in order to provide consistency between the designated instrument and any development approval that has been granted by the Minister under Part 7 Division 2 Subdivision 4 where the development to which the approval relates has been substantially commenced or completed.

5 (3) Without limiting subsection (1) or (2) the Minister may, by notice published in the Gazette, amend the Planning and Design Code—

(a) in order to include a State heritage place in the Planning and Design Code; or

10 (b) in order to designate a place (or part of a place) that is (or has been) a State heritage place as a place of local heritage value (on the basis of a recommendation of the South Australian Heritage Council under the *Heritage Places Act 1993*); or

(c) in order to designate a place (or part of a place) that is a place of local heritage value as a State heritage place (on the basis of action taken by the South Australian Heritage Council under the *Heritage Places Act 1993*); or

15 (d) in order to remove a place that is no longer a State heritage place from the Planning and Design Code; or

(e) in order to remove from the Planning and Design Code—

(i) a State heritage place or a local heritage place (as listed in the Planning and Design Code); or

20 (ii) any other place listed in the Planning and Design Code (if relevant to local heritage),

where the building or other item that gave rise to the relevant listing has been demolished, destroyed or removed.

(4) An amendment under this section—

25 (a) takes effect from a date specified in the notice; and

(b) takes effect without the need to take any other steps under this Division and without the need to be approved under any other provision of this Act; and

(c) does not need to be referred to the ERD Committee under this Part (and is not subject to disallowance).

30 **Subdivision 6—Other matters**

74—Early commencement

35 (1) If the Minister is of the opinion that it is necessary in the interests of the orderly and proper development of an area of the State that an amendment to a regional plan, the Planning and Design Code or a design standard should come into operation without delay, the Minister may, at the same time as, or at any time after, the amendment is released for public consultation under the Community Engagement Charter under this Part, and without the need for any other consultation or process, by notice published in the Gazette, declare that the amendment will come into operation on an interim basis on a day specified in the notice.

40 (2) If a notice has been published under subsection (1), the amendment comes into operation on the day specified in the notice.

- (3) The Minister must, as soon as practicable after the publication of a notice under subsection (1), prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.
- (4) An amendment that has come into operation under this section ceases to operate—
- 5 (a) if the Minister, by notice published in the Gazette, terminates the operation of the amendment; or
- (b) if either House of Parliament passes a resolution disallowing the amendment after copies of the amendment have been laid before both Houses of Parliament under section 71; or
- 10 (c) if the amendment has not been adopted by the Minister under this Part within 12 months from the day on which it came into operation; or
- (d) if the amendment is superseded by another amendment that comes into operation under this Part.
- (5) If an amendment ceases to operate by virtue of subsection (4)(b) or (c), notice of that
- 15 cessation must forthwith be published in the Gazette.
- (6) If an amendment ceases to operate by virtue of subsection (4)(a), (b) or (c), the regional plan, Planning and Design Code or design standard will, from the date of cessation, apply as if it had not been amended by that amendment.

Division 3—Building related instruments

20 75—Building Code

- (1) The Building Code, as in force from time to time, applies for the purposes of this Act but subject to—
- (a) any modifications effected by variations, additions or exclusions for South Australia contained in the Code; and
- 25 (b) any modifications effected by a Ministerial building standard under this Division.
- (2) In connection with subsection (1), any modification to the Building Code as described in subsection (1)(a) will not take effect for the purposes of this Act—
- (a) before a day on which notice of the alteration is published by the Minister by
- 30 notice published in the Gazette; and
- (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.

76—Ministerial building standards

- (1) The Minister may, by notice published in the Gazette, publish standards (*Ministerial building standards*), that—
- 35 (a) relate to any aspect of—
- (i) building work (including the regulation, control, restriction or prohibition of building work); or
- (ii) the design, construction, quality, safety, health, amenity,
- 40 sustainability or maintenance of buildings; or

- (b) modify the Building Code as it applies under this Act.
- (2) Without limiting subsection (1), a Ministerial building standard may specify deemed-to-satisfy building practices or techniques that will be taken to constitute compliance with the Building Code.
- 5 (3) The Minister may, by subsequent notice published in the Gazette, vary or revoke a Ministerial building standard under subsection (1).

Part 6—Relevant authorities

Division 1—Entities constituting relevant authorities

77—Entities constituting relevant authorities

10 Subject to this Act, the following will be relevant authorities:

- (a) the Minister;
- (b) the Commission;
- (c) an assessment panel appointed by a joint planning board;
- (d) an assessment panel appointed by a council, but not—
 - 15 (i) in respect of an area in relation to which—
 - (A) a planning agreement that envisages the appointment of an assessment panel by the joint planning board under this section applies; or
 - (B) a regional assessment panel has been constituted; or
 - 20 (ii) if a local assessment panel has been constituted by the Minister in substitution for an assessment panel appointed by the council;
- (e) any of the following assessment panels constituted by the Minister:
 - (i) a combined assessment panel;
 - (ii) a regional assessment panel;
 - 25 (iii) a local assessment panel;
- (f) an assessment manager;
- (g) an accredited professional;
- (h) a council.

Division 2—Assessment panels

78—Panels established by joint planning boards or councils

- (1) The following provisions will apply in relation to an assessment panel appointed by a joint planning board or a council (a *designated authority*) under Division 1:
 - 35 (a) a designated authority may appoint more than 1 assessment panel but, if it does so, the designated authority must clearly specify which class of development each assessment panel is to assess;

-
- (b) a designated authority must determine—
- (i) the membership of the assessment panel, being no more than 5 members and, if the designated authority thinks fit, on the basis that the assessment panel will be constituted by a different number of members depending on the particular class of development that is being assessed by the assessment panel; and
 - (ii) the procedures to be followed with respect to the appointment of members; and
 - (iii) the terms of office of members; and
 - (iv) conditions of appointment of members, or the method by which those conditions will be determined, (including as to their remuneration) and the grounds on which, and the procedures by which, a member may be removed from office; and
 - (v) the appointment of deputy members; and
 - (vi) who will act as the presiding member of the panel and the process for appointing an acting presiding member;
- (c) a person appointed as a member of an assessment panel must be an accredited professional;
- (d) a person who is a member of the Parliament of the State or a member of a council is not eligible to be appointed as a member of an assessment panel;
- (e) a person appointed as a member of an assessment panel must disclose his or her financial interests in accordance with Schedule 1;
- (f) the procedures of an assessment panel must comply with any requirements prescribed by the regulations;
- (g) a member of an assessment panel must not act in relation to a development if he or she has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development;
- (h) the designated authority that appoints an assessment panel will be responsible for—
- (i) arranging the staffing and support required for the purposes of the operations of the panel; and
 - (ii) the costs and other liabilities associated with the activities of the panel.
- (2) Without limiting the effect of subsection (1)(g), a person will be taken to have a pecuniary interest in a matter for the purposes of the subsection if an associate of the person has an interest in the matter.
- (3) A person who contravenes subsection (1)(g) is guilty of an offence.
Maximum penalty: \$20 000.

79—Panels established by Minister

(1) The following provisions will apply in relation to an assessment panel constituted by the Minister under Division 1:

5 (a) the assessment panel will be constituted by the Minister by notice published in the Gazette;

10 (b) in relation to a combined assessment panel—the Minister may constitute a combined assessment panel if the panel is to act as a relevant authority under this Act and, at the same time, be involved in the assessment of matters relevant to obtaining a licence, permission, consent, approval, authorisation, certificate or other authority under another Act;

(c) in relation to a regional assessment panel—

15 (i) the Minister may, in accordance with subparagraph (ii), constitute the panel in relation to an area or areas of the State comprising parts or all of the areas of 2 or more councils and, if the Minister so determines, a part or parts of the State that are not within the area of a council; and

(ii) the Minister may constitute a regional assessment panel if—

20 (A) 2 or more councils request the Minister to constitute a regional assessment panel in relation to their combined areas; or

25 (B) the Minister has, after seeking the views of the relevant councils, determined that it is appropriate in the interests of orderly and effective development assessment that a regional assessment panel be constituted in relation to the areas of 2 or more councils (or parts of such areas);

30 (d) in relation to a local assessment panel—the Minister may only constitute a local assessment panel if the Minister has determined, after undertaking such investigations as the Minister thinks fit and consulting with the relevant council, that an assessment panel appointed by a council has consistently failed to comply with a requirement under this Act and that, in the circumstances, the assessment panel appointed by the council should be removed and an assessment panel appointed by the Minister substituted;

(e) the Minister may, in constituting an assessment panel, make provision with respect to—

35 (i) the membership of the assessment panel, including—

(A) the number of members; and

(B) the procedures to be followed with respect to the appointment of members; and

(C) the terms of office of members; and

40 (D) conditions of appointment of members (including their remuneration) and the grounds on which, and the procedures by which, a member may be removed from office; and

(E) the appointment of deputy members; and

- (F) the appointment of the presiding member of the assessment panel and the process for appointing an acting presiding member; and
- (ii) the procedures of the assessment panel;
- 5 (f) a person who is a member of the Parliament of the State or a member of a council is not eligible to be appointed as a member of an assessment panel;
- (g) a member of an assessment panel must disclose his or her financial interests in accordance with Schedule 1;
- 10 (h) a member of an assessment panel must not act in relation to a development if he or she has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development;
- (i) the costs associated with the activities of a local assessment panel will be the responsibility of the relevant council and may be recovered from the council by the Minister as a debt;
- 15 (j) the costs associated with the activities of a regional assessment panel will be shared between the councils for the areas in relation to which the regional assessment panel is constituted in accordance with a scheme set out in the notice under paragraph (a);
- 20 (k) the Minister may, by subsequent notice published in the Gazette, vary or revoke a notice under paragraph (a).
- (2) Without limiting the effect of subsection (1)(h), a person will be taken to have a pecuniary interest in a matter for the purposes of the subsection if an associate of the person has an interest in the matter.
- (3) A person who contravenes subsection (1)(h) is guilty of an offence.
- 25 Maximum penalty: \$20 000.

80—Appointment of additional members

- (1) An assessment panel appointed or constituted under this Act may appoint 1 or 2 members to act as additional members of the assessment panel for the purposes of dealing with a matter that it must assess as a relevant authority under this Act.
- 30 (2) A person is not eligible to be appointed under subsection (1) unless the person holds a qualification, or has expertise or experience, recognised by a practice direction made for the purposes of this section.
- (3) A person appointed under subsection (1)—
- 35 (a) will be, subject to paragraph (b), taken to be a member of the assessment panel in all respects; but
- (b) will not be able to vote on any matter arising for determination by the assessment panel.

Division 3—Assessment managers

81—Assessment managers

The following provisions will apply in relation to an assessment manager under Division 1:

- 5 (a) each assessment panel must have an assessment manager (but a person may be appointed to be assessment manager for more than 1 assessment panel);
- (b) a person appointed as an assessment manager must be—
- (i) an accredited professional; or
- (ii) a person of a prescribed class;
- 10 (c) a person appointed as an assessment manager may (but need not) be an officer or employee of a council or a public sector employee;
- (d) an assessment manager will be appointed by—
- (i) if the assessment panel was appointed by a joint planning board—the joint planning board; and
- 15 (ii) if the assessment panel was appointed by a council—the chief executive of the council; and
- (iii) if the assessment panel is constituted by the Minister—the Chief Executive,
- and (subject to paragraph (e)(i)) an assessment manager will be responsible to the person who has made the appointment for his or her performance;
- 20 (e) the functions of an assessment manager include:
- (i) acting as a relevant authority as provided under this Act (and, in so acting, is not subject to direction by an assessment panel or any other person);
- 25 (ii) being responsible for managing the staff and operations of the assessment panel in relation to which the assessment manager has been appointed; and
- (iii) providing advice to the assessment panel (as appropriate); and
- 30 (f) the designated authority that appoints an assessment panel will be responsible for the costs and other liabilities associated with the activities of the assessment manager.

Division 4—Accredited professionals

82—Accreditation scheme

- 35 (1) The Governor may, by regulations made on the recommendation of the Minister acting in association with the Commissioner for Consumer Affairs, establish an accreditation scheme with respect to persons who are to act (or who are seeking to act) as accredited professionals for the purposes of this Act.

(2) The accreditation scheme—

- (a) may make different provision according to the function or role that an accredited professional is to perform under this Act, including in relation to particular aspects of development assessment or control; and
- (b) may provide for a term or a period of accreditation, and for the suspension or cancellation of accreditation on specified grounds; and
- (c) may specify terms or conditions of accreditation; and
- (d) may provide for any aspect of the scheme to be administered or managed by the Commissioner for Consumer Affairs, or by another person or body prescribed by the regulations or specified by the Minister (and different persons or bodies may administer or manage the scheme insofar as it will apply to different classes or categories of accredited professional); and
- (e) may provide that a person holding an accreditation, registration or other form of authorisation or status under a scheme recognised by the regulations will be taken to hold an accreditation under this section; and
- (f) may be amended or substituted by the Governor from time to time by further regulations made on the recommendation of the Minister acting in association with the Commissioner for Consumer Affairs.

(3) If the regulations amend or substitute an accreditation scheme under subsection (2)(f), the regulations may make additional provision of a saving or transitional nature.

83—Notification of acting

An accredited professional must, on making a decision of a prescribed kind in relation to a proposed development or a particular aspect of a proposed development—

- (a) notify a prescribed body in accordance with the regulations of the decision; and
- (b) provide such information or documentation as may be prescribed by the regulations or as the prescribed body may require.

Maximum penalty: \$10 000.

84—Removal from acting

(1) An accredited professional who has not completed the functions of a relevant authority in relation to a particular development may not be removed from his or her engagement as a relevant authority unless the Minister consents to that removal.

Maximum penalty: \$10 000.

(2) If an accredited professional resigns from an engagement as a relevant authority or dies or becomes incapable for any other reason of carrying out the functions of a relevant authority in respect of a particular development, the matter may be referred to another relevant authority.

85—Duties

(1) An accredited professional must act in accordance with the public interest.

Maximum penalty: \$50 000.

- (2) An accredited professional must not—
- (a) perform any act or make any omission that results in a failure to comply with this Act; or
 - (b) seek, accept or agree to accept a benefit from another person (whether for himself or herself or for a third person) as a reward or inducement to act against a provision of this Act; or
 - (c) act in a manner contrary to any other duty prescribed by the regulations.

Maximum penalty: \$50 000.

- (3) An accredited professional who contravenes or fails to comply with a provision of a code of conduct that applies to the accredited professional under Schedule 3 is guilty of an offence.

Maximum penalty: \$50 000.

- (4) A person who improperly gives, offers or agrees to give a benefit to an accredited professional or to a third person as a reward or inducement for an act done or to be done, or an omission made or to be made, by the accredited professional in the performance of a function under this Act is guilty of an offence.

Maximum penalty: \$50 000.

- (5) An accredited professional must ensure that any development authorisation given by the accredited professional is consistent with any other development authorisation that has already been given in respect of the same proposal.

Maximum penalty: \$25 000.

- (6) In this section—

benefit does not include a benefit that consists of remuneration or any condition of appointment or employment properly attaching or incidental to the work of an accredited professional under this Act.

86—Use of term "building certifier"

An accredited professional who is qualified under the accreditation scheme to assess development in respect of the Building Rules (and to perform other functions relating to buildings and building work under this Act) may be known as a *building certifier* (and this designation will, as appropriate, be used for the purposes of this Act).

Division 5—Determination of relevant authority

87—Relevant authority—panels

- (1) Subject to any other provision of this Act, an assessment panel will be a relevant authority in relation to a proposed development as follows:

- (a) where the proposed development is to be undertaken within the area of a council then, subject to the succeeding paragraphs, an assessment panel appointed by the council is the relevant authority;
- (b) despite paragraph (a), where the proposed development is within the area of a council in respect of which a local assessment panel has been appointed then, subject to the succeeding paragraphs, the local assessment panel is the relevant authority;

- (c) despite a preceding paragraph, where the proposed development is within an area of the State in relation to which a regional assessment panel has been constituted then, subject to the succeeding paragraphs, the regional assessment panel is the relevant authority;
- 5 (d) despite a preceding paragraph, where the proposed development is within an area of the State in relation to which a planning agreement applies and an assessment panel has been appointed by the joint planning board then, subject to paragraph (e), that assessment panel is the relevant authority;
- 10 (e) despite a preceding paragraph, where the proposed development is a matter designated by the Minister, by notice published in the Gazette, as being a matter that will be assessed by a combined assessment panel then the combined assessment panel is the relevant authority.
- (2) This section does not apply in a case where—
- (a) an assessment manager; or
- 15 (b) an accredited professional,
- may act as a relevant authority under a scheme prescribed by the regulations for the purposes of this section.
- (3) This section does not apply in a case where section 88 or section 89 applies.

88—Relevant authority—Commission

- 20 (1) Subject to any other provision of this Act (other than section 87), the Commission will be a relevant authority in relation to a proposed development as follows:
- (a) where the proposed developed falls within a class of development—
- (i) designated by the Planning and Design Code for the purposes of this paragraph; or
- 25 (ii) prescribed by the regulations for the purposes of this paragraph;
- (b) where the proposed development is classified as restricted development by the Planning and Design Code;
- (c) where the proposed development is to be undertaken in a part of the State that is not (wholly or in part) within the area of a council, other than in a case
- 30 where a regional assessment panel has been constituted in relation to that part of the State;
- (d) where the Commission, and an assessment panel appointed by a council or by the Minister in substitution for such an assessment panel, would, apart from this provision, both be constituted as relevant authorities in relation to the
- 35 proposed development;
- (e) where the Commission and an assessment panel appointed by a joint planning board would, apart from this provision, both be constituted as relevant authorities in relation to the proposed development;
- 40 (f) where the Commission and a regional assessment panel would, apart from this provision, both be constituted as relevant authorities in relation to the proposed development;

(g) where the Minister, acting at the request of a council or a joint planning board, declares, by notice served on the proponent, that the Minister desires the Commission to act as the relevant authority in relation to the proposed development;

5 (h) where the Minister, by notice served on the proponent, calls the proposed development in for assessment under this paragraph on a ground set out in subsection (2).

(2) Any of the following grounds apply for the purposes of subsection (1)(h):

10 (a) the Minister considers that the proposed development is of significance to the State because, in the opinion of the Minister—

(i) the development is of major social, economic or environmental importance; or

(ii) the development involves benefits, impacts or risks that are of significance to the State; or

15 (iii) the cumulative effect of the development, when considered in conjunction with any other development, project or activity already being undertaken or carried on, or proposed to be undertaken or carried on, at or within the vicinity of the relevant site, gives rise to issues that are of significance to the State; or

20 (iv) the development is directly related to—

(A) a development that has already been called in by the Minister under this section; or

(B) a development that is considered by the Minister as being of significance to the State;

25 (b) the Minister considers that the proposed development—

(i) would have a significant impact on a matter arising under another Act; or

(ii) will require assessment or approval under another Act as well as this Act;

30 (c) the Minister considers that the proposed development would have a significant impact beyond the boundaries of a particular planning region or a particular council;

35 (d) the Minister considers that the proposed development may have a significant impact on an aspect of a precinct under Part 2B of the *Urban Renewal Act 1995*;

(e) an assessment panel appointed by a council or a joint planning board, or a regional assessment panel, has (in the opinion of the Minister) failed to deal with an application for development authorisation within a reasonable period;

40 (f) the proposed development involves land situated in more than 1 planning region or the area of more than 1 council;

(g) the Minister considers that it is otherwise necessary or appropriate for the proper assessment of the proposed development that the proposed development be assessed by the Commission.

(3) If the Minister acts under subsection (1)(h)—

- (a) a relevant authority already acting in relation to the proposed development under another paragraph of subsection (1) must, at the request of the Commission, provide the Commission with a report relating to any application for development authorisation that has been under consideration by the relevant authority; and
- (b) the Commission in acting as the relevant authority in relation to the particular proposed development may, as it thinks fit, do either or both of the following:
 - (i) adopt any assessment, finding or determination that was made by a relevant authority that has been acting in relation to the proposed development;
 - (ii) continue to assess the proposed development from the stage reached immediately before the Minister acted under that subsection.

(4) This section does not apply in a case where section 89 applies.

89—Relevant authority—Minister

Where a proposed development is classified as impact assessed development (other than restricted development) then the Minister is the relevant authority.

90—Relevant authority—assessment managers

An assessment manager may act as a relevant authority—

- (a) in cases contemplated by this Act; and
- (b) in cases prescribed or authorised by the regulations.

91—Relevant authority—accredited professionals

An accredited professional may act as a relevant authority—

- (a) in cases contemplated by this Act; and
- (b) in cases prescribed or authorised by the regulations.

92—Relevant authority—councils

A council will act as a relevant authority as provided by section 93.

93—Related provisions

(1) If—

- (a) a proposed development involves the performance of building work; and
- (b) a relevant authority determines to act under this subsection,

the relevant authority may—

- (c) refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or
- (d) require that the assessment of the development in respect of the Building Rules be undertaken by a building certifier.

(2) If subsection (1) applies—

(a) in the case of subsection (1)(c)—the council for the area in which the development is to be undertaken will be the relevant authority for the purposes of—

- (i) assessing the development against and, if appropriate, granting a consent in respect of, the relevant provisions of the Building Rules; and
- (ii) if appropriate, granting development approval; and

(b) in the case of subsection (1)(d)—

- (i) the building certifier will be the relevant authority for the purposes of assessing the development against and, if appropriate, granting a consent in respect of, the relevant provisions of the Building Rules; and
- (ii) the council for the area in which the development is to be undertaken will be the relevant authority for the purposes of, if appropriate, granting development approval.

(3) In addition, where a proposed development is to be undertaken within the area of a council then, subject to the regulations, the council will be the relevant authority for the purposes of, if appropriate, granting the final development approval after all elements of the development have been assessed by 1 or more relevant authorities under this section.

Division 6—Delegations

94—Delegations

(1) A relevant authority may delegate any functions or powers of the relevant authority under this Act.

(2) A delegation—

(a) may be made—

- (i) to a particular person or body; or
- (ii) to the person for the time being occupying a particular office or position; and

(b) may be made subject to conditions or limitations specified in the instrument of delegation; and

(c) if the instrument of delegation so provides, may be further delegated by the delegate; and

(d) is revocable at will and does not derogate from the power of the relevant authority to act in any matter.

Part 7—Development assessment—general scheme

Division 1—Approvals

95—Development must be approved under this Act

5 Subject to this Act, no development may be undertaken unless the development is an approved development.

96—Matters against which development must be assessed

- 10 (1) Subject to this Act, a development is an approved development if, and only if, a relevant authority has assessed the development against, and granted a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):
- 15 (a) the requirement that the development is assessed as being appropriate after taking into account—
 - (i) the relevant provisions of the Planning Rules; and
 - (ii) to the extent provided by Part 7 Division 2—the impacts of the development,

(*planning consent*);
 - (b) the relevant provisions of the Building Rules (*building consent*);
 - 20 (c) in relation to a proposed division of land (otherwise than under the *Community Titles Act 1996* or the *Strata Titles Act 1988*)—the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):
 - 25 (i) requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
 - (ii) any relevant requirements set out in a design standard has been satisfied;
 - (iii) the requirements of a water industry entity under the *Water Industry Act 2012* identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
 - 30 (iv) where land is to be vested in a council or other authority—the council or authority consents to the vesting;
 - (v) requirements set out in regulations made for the purposes of this provision are satisfied;
 - 35 (d) in relation to a division of land under the *Community Titles Act 1996* or the *Strata Titles Act 1988*—the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):
 - (i) requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
 - (ii) any relevant requirements set out in a design standard has been satisfied;

- 5
- (iii) any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
- (iv) where land is to be vested in a council or other authority—the council or authority consents to the vesting;
- (v) a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose;
- 10
- (vi) 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;
- (vii) the requirements of a water industry entity under the *Water Industry Act 2012* identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
- 15
- (viii) any building situated on the land complies with the Building Rules;
- (ix) requirements set out in the regulations made for the purposes of this provision are satisfied;
- (e) any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
- 20
- (f) if relevant—requirements applying under Part 15 Division 2 are satisfied;
- (g) such other matters as may be prescribed.
- (2) An application may be made for all or any of the consents required for the approval of a proposed development, or for any 1 or more of those consents.
- 25
- (3) A relevant authority may, in relation to granting a planning consent, on its own initiative or on application, reserve its decision on a specified matter or reserve its decision to grant a planning consent—
- (a) until further assessment of the relevant development under this Act; or
- 30
- (b) until further assessment or consideration of the proposed development under another Act; or
- (c) until a licence, permission, consent, approval, authorisation, certificate or other authority is granted, or not granted (by the decision of another authority), under another Act.
- 35
- (4) A relevant authority must allow any matter specified by the Planning and Design Code for the purposes of this subsection to be reserved on the application of the applicant.
- (5) Any matter that is not fundamental to the nature of the relevant development may, subject to the Planning and Design Code, be reserved under subsection (3) or (4).
- 40
- (6) To avoid doubt, in relation to a proposed development that requires more than 1 consent under this Act, the consents need not be granted in any particular order.

- (7) To avoid doubt, if a development involves 2 or more elements that will together require planning consent, each element may be assessed separately (including by different relevant authorities) and granted a planning consent with respect to that particular element.
- 5 (8) A development will be taken to be an approved development when all relevant consents have been granted and a relevant authority has, in accordance with this Act, indicated that the development is approved.
- 10 (9) The provisions of the Building Rules that are relevant to the operation of subparagraph (viii) of paragraph (d) of subsection (1) are the provisions of the Building Rules as in force at the time the application was made for consent in respect of the matters referred to in that paragraph.
- (10) An encroachment under subsection (1)(d)(iii) or (e) must not interfere with a property right without the consent of the person who, at the time that the consent is granted, is the holder of that right.
- 15 (11) In addition—
- (a) subsection (10) does not apply in relation to an encroachment over public land; but
 - (b) in the case of public land, the entity that has the care, control and management of the public land may impose a reasonable charge on account
- 20 of the encroachment when the relevant development is undertaken.
- (12) In this section—
- public land* means land that is under the care, control and management of—
- (a) an agency or instrumentality of the Crown; or
 - (b) a council or other local government agency.

25 **Division 2—Planning consent**

Subdivision 1—Categories of development

97—Categories of development

Development will be divided into 3 categories for the purposes of assessment in relation to planning consent as follows:

- 30 (a) *accepted development*;
- (b) *code assessed development*;
- (c) *impact assessed development*.

Subdivision 2—Accepted development

98—Accepted development

- 35 (1) Development falls within the category of accepted development if it is classified by the Planning and Design Code or the regulations as *accepted development*.
- (2) Accepted development does not require planning consent.

Subdivision 3—Code assessed development

99—Categorisation

Development falls within the category of code assessed development if—

- (a) it is classified by the Planning and Design Code as *deemed-to-satisfy development*; or
- (b) it—
 - (i) does not fall within the category of accepted development; and
 - (ii) does not fall within the category of impact assessed development.

100—Deemed-to-satisfy assessment

- (1) If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.
- (2) If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).
- (3) A planning consent under this section must be granted without undertaking a process for public notification or submissions in relation to the proposed development.
- (4) A planning consent under this section will apply subject to conditions imposed under this Act and subject to such conditions or exceptions as may be prescribed by the regulations or the Planning and Design Code, and subject to any other provision made by this Act or applying under the regulations.
- (5) A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.
- (6) Nothing in this section requires the assessment of an element of a development that may be classified as accepted development.

101—Performance assessed development

- (1) In a case where proposed development is to be assessed as code assessed development and the development cannot be assessed, or fully assessed, as deemed-to-satisfy development, the development will be assessed on its merits against the Planning and Design Code.
- (2) In connection with subsection (1)—
 - (a) to the extent that 1 or more elements of the proposed development may be classified as *deemed-to-satisfy* under the Planning and Design Code (if any)—that part of the development will be taken to have been granted planning consent; and
 - (b) to the extent that paragraph (a) does not apply (including on the basis that that paragraph does not apply at all)—the development will be assessed on its merits against the Planning and Design Code.

- (3) If a proposed development is to be assessed under this section—
- (a) subject to a decision of a relevant authority made in accordance with a practice direction, notice of the application for planning consent must be given, in accordance with the regulations, to—
 - (i) an owner or occupier of each piece of adjacent land; and
 - (ii) members of the public by notice placed on the relevant land; and
 - (b) a person may, in accordance with the regulations and within a period prescribed by the regulations, make representations to the relevant authority in relation to the granting or refusal of planning consent; and
 - (c) if a representation is made under paragraph (b) (being a representation received in accordance with the regulations and within a period prescribed by the regulations), the relevant authority must forward to the applicant a copy of the representation and allow the applicant to respond, in accordance with the regulations and within a period prescribed by the regulations, to those representations.
- (4) The subject matter of—
- (a) any notice required under subsection (3)(a); and
 - (b) any representation under subsection (3)(b),
- must be limited to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits (and a relevant authority should limit the matters that it will take into account in the same way).
- (5) In addition, a representation that is not made in accordance with any requirement prescribed by the regulations for the purposes of this section is not required to be taken into account under this section.
- (6) The Planning and Design Code may exclude specified classes of development from the operation of subsections (3) and (4).
- (7) A planning consent under this section will apply subject to conditions imposed under this Act and subject to such conditions or exceptions as may be prescribed by the regulations or the Planning and Design Code, and subject to any other provision made by this Act or applying under the regulations.
- (8) To avoid doubt, the fact that 1 or more elements of a proposed development may be classified as *deemed-to-satisfy* does not prevent a relevant authority deciding not to grant planning consent on account of the assessment of the balance of the development under this section.
- (9) A practice direction may specify the form of any notice to be given under this section.
- (10) Nothing in this section requires the assessment of an element of a development that may be classified as accepted development

Subdivision 4—Impact assessed development

102—Categorisation

- (1) Development falls within the category of impact assessed development if—
- (a) it is classified by the Planning and Design Code as *restricted development*; or
 - 5 (b) it is classified by the regulations as *impact assessed development*; or
 - (c) it is declared by the Minister as being *impact assessed development*.
- (2) A declaration under subsection (1)(c)—
- (a) is made by notice published—
 - (i) in the Gazette; and
 - 10 (ii) on the SA planning portal; and
 - (b) to avoid doubt, may be made in relation to—
 - (i) a development specified in the notice; or
 - (ii) a kind of development specified in the notice (either in the State generally, or in a specified part of the State); or
 - 15 (iii) development generally within a specified part of the State.
- (3) A declaration under subsection (1)(c) does not extend to development lawfully commenced by substantial work on the site of the development before publication of the notice published in the Gazette under subsection (2)(a)(i).
- (4) The Minister may vary or revoke a declaration under subsection (1)(c) by further notice published—
- 20 (a) in the Gazette; and
 - (b) on the SA planning portal.
- (5) A reference to development in connection with the operation of subsection (1)(c) extends to a project and, if a declaration is made under that subsection in relation to a project, a reference to "development" in the following sections of this Division specified by the regulations will be taken to include a reference to a project (subject to any modifications prescribed by the regulations).
- (6) The prescribed fee is payable in accordance with the regulations when a development or project comes within the ambit of a declaration under subsection (1)(c).

103—Practice direction to provide guidance

- (1) In connection with the operation of this Subdivision, the Commission must publish a practice direction with respect to—
- (a) in relation to restricted development—
 - 35 (i) the circumstances under which the Commission will be prepared to assess restricted development; and
 - (ii) if an assessment is to be undertaken—how the Commission will proceed with the assessment (including requirements as to the information that must be provided by an applicant for a development authorisation and the other steps that an applicant must take); and

- (b) in relation to impact assessed development (not being restricted development)—
- (i) requirements as to the preparation of an EIS, including the level of detail that an EIS must address with respect to various classes of development; and
 - (ii) any other requirements for assessing the level of impact of a development that is to be assessed as impact assessed development; and
 - (iii) the information that must be provided by the proponent at the various stages assessed under this Act; and
- (c) any other matter prescribed by the regulations.
- (2) The Commission must, in acting under subsection (1)—
- (a) take into account principles and requirements prescribed by the regulations; and
 - (b) in relation to subsection (1)(b), classify the issues identified by the Commission as being relevant to the proper assessment of development according to categories of importance so as to indicate the levels of attention that should be given to those issues in the preparation of an EIS.

104—Restricted development

- (1) The Commission will determine, in relation to proposed development classified as restricted development, whether or not the development will be assessed and, if so, whether or not planning consent will be granted, and in doing so will act as the relevant authority under this Act.
- (2) Subject to this section, if proposed development is to be assessed as restricted development—
- (a) notice of the application for planning consent must be given, in accordance with the regulations, to—
 - (i) an owner or occupier of each piece of adjacent land; and
 - (ii) any other owner or occupier of land which, according to the determination of the Commission, would be directly affected to a significant degree by development if it were to proceed; and
 - (iii) any other person of a prescribed class; and
 - (iv) the public generally, including by notice placed on the relevant land; and
 - (b) a person who is interested in doing so may, in accordance with the regulations and within a period prescribed by the regulations, make representations to the Commission in relation to the granting or refusal of planning consent; and
 - (c) if a representation is made under paragraph (b) (being a representation received in accordance with the regulations and within a period prescribed by the regulations)—

(i) the Commission must forward to the applicant a copy of the representation and allow an applicant to respond, in accordance with the regulations and within a period prescribed by the regulations, to those representations; and

5 (ii) the Commission must allow the person who made the representation and who, as part of that representation, indicated an interest in appearing before the Commission, a reasonable opportunity to appear personally or by representative before it to be heard in support of the representation and, if the person so appears, the
10 Commission must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative before it in order to respond to any relevant matter.

(3) The Commission may dispense with any requirement under subsection (2)(a) if the
15 Commission considers that the giving of a notice envisaged by that subsection is unnecessary in the circumstances of the particular case.

(4) Except as otherwise provided by the regulations, the subject matter of—

(a) any notice required under subsection (2)(a); and

(b) any representation under subsection (2)(b); and

20 (c) any submissions made by a person who has made a representation under subsection (2)(c),

must be limited to what should be the decision of the Commission as to planning consent in relation to the development.

(5) A representation that is not made in accordance with any requirement prescribed by the regulations for the purposes of this section is not required to be taken into account
25 under this section.

(6) If a person makes a representation under subsection (2)(b) in relation to any development under this section, the Commission must—

(a) give the person notice of—

(i) its decision on the application for development; and

30 (ii) the date of the decision; and

(iii) the person's appeal rights under this Act; and

(b) give to the Court notice of—

(i) its decision on the application for development; and

(ii) the date of the decision; and

35 (iii) the names and addresses of the person or persons who made representations to the Commission under that subsection.

(7) An appeal against a decision on a development classified as restricted development by a person who is entitled to be given notice of the decision under subsection (6) must be commenced within 15 business days after the date of the decision.

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- (8) If an appeal is lodged against a decision on a development classified as restricted development by a person who is entitled to be given notice of the decision under subsection (6), the applicant for the relevant development authorisation must be notified by the Court of the appeal and will be a party to the appeal.
- 5 (9) A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under this section does not operate—
- 10 (a) until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
- (b) if an appeal is commenced—
- (i) until the appeal is dismissed, struck out or withdrawn; or
- (ii) until the questions raised by the appeal have been finally determined (other than any question as to costs).
- 15 (10) The Commission must, if it makes an assessment under this section in relation to any restricted development, take into account the relevant provisions of the Planning and Design Code (but is not bound by those provisions).
- (11) A planning consent under this section will apply subject to conditions imposed under this Act and subject to such conditions or exceptions as may be prescribed by the regulations or the Planning and Design Code, and subject to any other provision made
- 20 by this Act or applying under the regulations.
- (12) To avoid doubt, the fact that 1 or more elements of a proposed development may be classified as *deemed-to-satisfy* does not prevent the Commission deciding not to grant planning consent on account of the assessment of the development under this section.
- 25 (13) The Commission may determine the form of any notice to be given under this section.
- (14) The Commission, acting through its delegate under section 30(3), may refuse an application that relates to proposed development classified as restricted development without proceeding to make an assessment of the application.
- (15) A decision to refuse an application under subsection (14) without proceeding to make an assessment is, on application under this subsection by the applicant, subject to
- 30 review by the Commission itself.
- (16) An application under subsection (15) must be made in a manner and form determined by the Commission and must be made within 1 month after the applicant receives notice of the decision under subsection (14) unless the Commission, in its discretion,
- 35 allows an extension of time.
- (17) On an application under subsection (15)—
- (a) the Commission may adopt such procedures as the Commission thinks fit; and
- (b) the Commission is not bound by the rules of evidence and may inform itself
- 40 as it thinks fit.
- (18) The Commission may, on a review under subsection (15)—
- (a) affirm the decision of its delegate; or

- (b) refer the matter back with a direction that the application for planning consent be assessed (and that direction will have effect according to its terms).

(19) No appeal to the Court lies against—

- (a) a decision of a delegate under subsection (14); or

- (b) a decision of the Commission under subsection (18).

105—Impact assessment by Minister—procedural matters

(1) This section applies in relation to impact assessed development (not being restricted development).

(2) In a case where this section applies—

- (a) any application under Division 4 that relates to a development within the ambit of the relevant regulation or declaration automatically lapses and any relevant documentation that has been lodged with a relevant authority under that Division must be transmitted to the Minister in accordance with the regulations; and

- (b) Division 4 and Division 5 will not apply in relation to a development within the ambit of the relevant regulation or declaration; and

- (c) subject to section 102(3), any development authorisation previously given under this Part in relation to a development within the ambit of the relevant regulation or declaration ceases to have effect (unless otherwise provided by the regulations); and

- (d) a proponent must lodge with the Minister an application that complies with the following requirements:

- (i) the application must be in a form determined by the Minister;

- (ii) the application must include, or be accompanied by, any documents, assessments or information required by a practice direction published by the Commission in connection with this Subdivision;

- (iii) the application must be accompanied by such plans, drawings, specifications or other documents as may be required by the Minister; and

- (e) an EIS must be prepared in relation to the proposed development.

(3) The Minister may subsequently require the proponent to provide such additional documents, assessments or information (including calculations and technical requirements) as the Minister thinks fit.

(4) The Minister will determine whether or not planning consent will be granted under this Act in relation to proposed development in a case where this section applies and, in doing so, will act as the relevant authority under this Act.

(5) Nothing in this section limits the operation of section 109(2)(a).

106—Level of detail

The Commission will determine the level of detail required in relation to an EIS after taking into account—

- (a) a practice direction published by the Commission in connection with this Subdivision; and
- (b) any views expressed by a person or body prescribed by the regulations for the purposes of this paragraph; and
- (c) any views expressed by the proponent after consultation in accordance with the regulations.

107—EIS process

- (1) This section applies if an EIS must be prepared in relation to a proposed development.
- (2) The Minister will, after consultation with the proponent—
 - (a) require the proponent to prepare the EIS; or
 - (b) determine that the Minister will arrange for the preparation of the EIS.
- (3) The EIS must be prepared in accordance with a practice direction published by the Commission in connection with this Subdivision.
- (4) The EIS must, subject to any practice direction, include a statement of—
 - (a) the expected environmental, social and economic effects of the development;
 - (b) the extent to which the expected effects of the development are consistent with the provisions of—
 - (i) any relevant state planning policy; and
 - (ii) the relevant regional plan; and
 - (iii) the Planning and Design Code; and
 - (iv) any matters prescribed by the regulations;
 - (c) if the development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the extent to which the expected effects of the development are consistent with—
 - (i) the objects of the *Environment Protection Act 1993*; and
 - (ii) the general environmental duty under that Act; and
 - (iii) relevant environment protection policies under that Act;
 - (d) if the development is to be undertaken within an area of the State that is specifically subject to a special legislative scheme—the extent to which the expected effects of the development are consistent with the state planning policy that specifically relates to that special legislative scheme;
 - (e) the proponent's commitments to meet conditions (if any) that should be observed in order to avoid, mitigate or satisfactorily manage and control any potentially adverse effects of the development on the environment or any matter that may be directly relevant to a special legislative scheme;

(f) other particulars in relation to the development required—

- (i) by the regulations; or
- (ii) by the Minister.

(5) After the EIS has been prepared, the Minister—

(a) —

(i) must, if the EIS relates to a development that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the EIS to the Environment Protection Authority; and

(ii) must, in a case where subsection (4)(d) applies in relation to a special legislative scheme—refer the EIS to the Minister who is responsible for the administration of the Act in question; and

(iii) must refer the EIS to the relevant council (or councils), and to any prescribed authority or body; and

(iv) may refer the EIS to such other authorities or bodies as the Minister thinks fit,

for comment and report within the time prescribed by the regulations; and

(b) must ensure—

(i) that copies of the EIS are available for public inspection and purchase (during normal office hours) for at least a period specified or determined under the practice direction published by the Commission in connection with this Subdivision at a place or places determined by the Minister and, by public notice, give notice of the availability of copies of the EIS and invite interested persons to make written submissions to the Minister on the EIS within the time determined under the practice direction referred to above; and

(ii) that a copy of the EIS is published on the SA planning portal.

(6) The Minister may undertake, or require the proponent to undertake, any other consultation in relation to the EIS as the Minister thinks fit.

(7) The Minister must give to the proponent copies of all submissions made within a specified time limit.

(8) The proponent must then prepare a written response to—

(a) matters raised by a Minister, and any authority or body specified by the Minister, for consideration by the proponent; and

(b) all submissions referred to the proponent under subsection (7),

and provide a copy of that response to the Minister.

(9) The Commission must then prepare a report (an *Assessment Report*) that sets out or includes—

(a) the Minister's assessment of the development; and

(b) the Minister's comments (if any) on—

- (i) the EIS; and
 - (ii) any submissions made under subsection (5); and
 - (iii) the proponent's response under subsection (8); and
 - (c) comments provided by the Environment Protection Authority, another Minister, a council or other authority or body for inclusion in the report; and
 - (d) other comments or matter as the Minister or the Commission thinks fit.
- (10) The Commission must—
- (a) notify a person who made a written submission under subsection (5) of the availability of the Assessment Report; and
 - (b) by public notice, give notice of the place or places at which copies of the Assessment Report are available for inspection and purchase.
- (11) Copies of the EIS, the proponent's response under subsection (8), and the Assessment Report must be kept available for inspection and purchase at a place determined by the Commission for a period determined by the Commission.
- (12) If a proposed development to which an EIS relates will, if the development proceeds, be situated wholly or partly within the area of a council, the Commission must give a copy of the EIS, the proponent's response under subsection (8) and the Assessment Report to the council.

108—Amendment of EIS

- (1) An EIS, and the relevant Assessment Report, may be amended at any time in order to—
- (a) correct an error; or
 - (b) take account of more accurate or complete data or technological or other developments not contemplated when the document was prepared; or
 - (c) take account of an alteration to the original proposal; or
 - (d) update the document on account of the length of time that has passed since the document was prepared (or last updated); or
 - (e) make such other provision as may be necessary or appropriate given the content or purpose of an EIS or Assessment Report.
- (2) However—
- (a) the Minister cannot amend an EIS prepared by a proponent but the proponent must, at the direction of the Minister, undertake a review of an EIS prepared by the proponent (and then make any appropriate amendments); and
 - (b) if a proposed amendment would in the opinion of the Minister significantly affect the substance of the EIS, the amendment must not be made before interested persons have been invited, in accordance with the practice direction published by the Commission in connection with this Subdivision, to make written submissions on the amendment and the Minister has considered the submissions (if any) received in response to that invitation.

(3) If an EIS or Assessment Report is amended under this section, the Commission must give notice of the place or places at which copies of the relevant document or documents (with the amendments) are available for inspection and purchase.

(4) An amendment under this section may include the addition, variation, substitution or deletion of material.

109—Decision by Minister

(1) This section applies to a proposed development that is classified as impact assessed development (other than restricted development).

(2) The Minister may, in relation to a development to which this section applies—

(a) indicate (at any time) that he or she will not grant a development authorisation for the development; or

(b) on due application—

(i) grant a development authorisation required under this Act, subject to conditions (if any) determined by the Minister; or

(ii) refuse approval to the development.

(3) However, the Minister must not grant a development authorisation under this section unless—

(a) an EIS, and an Assessment Report, have been prepared in relation to the development in accordance with the requirements of this Subdivision (as appropriate); or

(b) the Minister is satisfied that an appropriate EIS, and an Assessment Report, that encompass the development have previously been prepared.

(4) If more than 5 years have elapsed since an EIS that relates to a development to which this section applies was completed and placed on public exhibition, the document cannot be used for the purposes of subsection (3) unless or until it has been reviewed in order to see whether it should be amended (and, if amendment is found to be necessary, unless or until it is amended).

(5) The Minister must, before the Minister approves a development to which this section applies, have regard to—

(a) any relevant state planning policy; and

(b) the relevant regional plan; and

(c) the provisions of the Planning Rules and the regulations (so far as they are relevant); and

(d) the Building Rules (so far as they are relevant); and

(e) if the development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*—

(i) the objects of the *Environment Protection Act 1993*; and

(ii) the general environmental duty under the *Environment Protection Act 1993*; and

- (iii) any relevant environment protection policies under the *Environment Protection Act 1993*; and
- (f) if the development is to be within an area of the State that is specifically subject to a special legislative scheme—the views of the Minister who is responsible for the administration of the Act in question; and
- (g) any relevant EIS, and the relevant Assessment Report,
- and may, in making a decision, take into account other matters considered relevant by the Minister.
- (6) The Minister may grant a provisional development authorisation under this section, reserving a decision on a specified matter—
- (a) until further assessment of the relevant development under this Act; or
- (b) until further assessment or consideration of the proposed development under another Act; or
- (c) until a consent, approval, licence, permit or other authorisation is granted, or not granted (by the decision of another authority), under another Act.
- (7) The Minister may—
- (a) when determining what conditions should be attached to a development authorisation under this section, attach conditions that must be complied with in the future;
- (b) —
- (i) in relation to matters specified by the Minister when granting a development authorisation under this section; or
- (ii) on application of a person who has the benefit of a development authorisation under this section; or
- (iii) in relation to a matter that is relevant to the variation of a development authorisation under this section,
- vary or revoke conditions to which the development authorisation is subject or attach new conditions to the development authorisation.
- (8) The Minister may, on the application of a person who has the benefit of the development authorisation under this section, vary a development authorisation that has been given under this section.
- (9) If—
- (a) the Minister gives a development authorisation under this section; but
- (b) the development to which the development authorisation relates is not commenced by substantial work on the site of the development within the time specified by the regulations or, if a time is specified by the Minister as part of the development authorisation, within that time,
- the Minister may, by notice in writing to any owner or occupier of the relevant land, cancel the development authorisation.
- (10) No appeal lies against a decision under this section.

(11) A person—

- (a) who undertakes development to which this section applies without the consent of the Minister; or
- (b) who undertakes development contrary to a development authorisation under this section; or
- (c) who contravenes, or fails to comply with, a condition on which a development authorisation was granted,

is guilty of an offence.

Maximum penalty: \$250 000.

Additional penalty.

Default penalty: \$1 000.

(12) A person who has the benefit of a development must ensure that the development is used, maintained and operated in accordance with—

- (a) any development authorisation under this section; and
- (b) documents submitted for the purposes of this Division that are relevant to such development authorisation.

Maximum penalty: \$120 000.

Default penalty: \$500.

110—Costs

The Minister may recover, as a debt due from the proponent, reasonable costs incurred in relation to—

- (a) the preparation and publication of material relating to an EIS and an Assessment Report; and
- (b) the making of decision under section 109.

111—Testing and monitoring

(1) This section applies to a development that has been subject to assessment as impact assessed development.

(2) The Minister may—

(a) by notice in writing to a person—

- (i) who is undertaking a development to which this section applies; or
- (ii) who has the benefit of a development to which this section applies,

require the person to do either or both of the following:

- (iii) to carry out specified tests and monitoring relevant to the development and to make specified reports to the Minister on the results of the tests and monitoring;
- (iv) to comply with the requirements of an audit program specified by the Minister to the satisfaction of the Minister;

(b) after given notice in writing to a person—

- (i) who is undertaking a development to which this section applies; or
 - (ii) who has the benefit of a development to which this section applies,
- cause to be carried out specified tests and monitoring relevant to the development.

- 5 (3) A person to whom a notice is directed under subsection (2) must—
- (a) in the case of a notice under subsection (2)(a)—comply with the terms of the notice; or
 - (b) in the case of a notice under subsection (2)(b)—provide reasonable assistance to facilitate the testing or monitoring specified in the notice.

10 Maximum penalty: \$15 000.

- (4) The Minister may recover, as a debt due from a person who receives a notice under subsection (2)(b), reasonable costs incurred in carrying out tests and monitoring specified by that notice.

Division 3—Building consent

15 112—Building consent

- (1) If the regulations provide that a form of building work complies with the Building Rules, any such building work must be granted a building consent (subject to such conditions or exceptions as may be prescribed by the regulations).
- (2) Subject to subsection (6), a development that is at variance with the Building Rules

20 must not be granted a building consent unless—

 - (a) the variance is with the performance requirements of the Building Code and the Commission concurs in the granting of the consent; or
 - (b) the variance is with a part of the Building Rules other than the Building Code and the relevant authority determines that it is appropriate to grant the consent

25 despite the variance on the basis that it is satisfied—

 - (i) that—
 - (A) the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed

30 building work fails to conform with the Building Rules only in minor respects; and
 - (B) the variance is justifiable having regard to the objects of the Planning and Design Code or the performance requirements of the Building Code and would achieve the objects of this Act as effectively, or more effectively, than if the variance

35 were not to be allowed; or
 - (ii) in a case where the consent is being sought after the development has occurred—that the variance is justifiable in the circumstances of the particular case.
- (3) No appeal lies against—

40 (a) a refusal of concurrence by the Commission under subsection (2)(a); or

- (b) a refusal of building consent by a relevant authority if the Commission has refused its concurrence under subsection (2)(a); or
- (c) a condition attached to a consent or approval that is expressed to apply by virtue of a variance with the performance requirements of the Building Code.
- 5 (4) A relevant authority may, at the request or with the agreement of the applicant, refer proposed building work to the Commission for an opinion on whether or not it complies with the performance requirements of the Building Code.
- (5) In addition, regulations made for purposes of this subsection may provide that building work of a prescribed class must not be granted a building consent unless the
- 10 Commission concurs in the granting of the consent.
- (6) If an inconsistency exists between the Building Rules and the Planning Rules in relation to a State heritage place or a local heritage place—
- (a) the Planning Rules prevail and the Building Rules do not apply to the extent of the inconsistency; but
- 15 (b) the relevant authority must, in determining an application for building rules consent, ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved in respect of the development that are as good as can reasonably be achieved in the circumstances.
- 20 (7) A relevant authority must seek and consider the advice of the Commission before imposing or agreeing to a requirement under subsection (6) that would be at variance with the performance requirements of the Building Code.
- (8) Subject to this Act, a relevant authority must accept that proposed building work complies with the Building Rules to the extent that—
- 25 (a) such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; or
- (b) such compliance is certified by a building certifier.
- (9) No act or omission by a relevant authority in good faith in connection with the
- 30 operation of subsections (6) or (8)(a) (other than where a certificate under subsection (8)(a) is given by a building certifier) subjects the relevant authority to any liability.
- (10) The relevant authority may refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a
- 35 particular classification would cease to conform with the requirements of the Building Rules for a building of that classification.
- (11) If a relevant authority decides to grant building consent in relation to a development that is at variance with the Building Rules, the relevant authority must, subject to the regulations, in giving notice of its decision on the application for that consent, specify
- 40 (in the notice or in an accompanying document)—
- (a) the variance; and
- (b) the grounds on which the decision is being made.

Division 4—Procedural matters and assessment facilitation

113—Application and provision of information

- (1) An application to a relevant authority for the purposes of this Part must—
- (a) be in a form determined by the Minister for the purposes of this Act; and
 - 5 (b) include any information reasonably required by the relevant authority; and
 - (c) be lodged in the manner and accompanied by such plans, drawings, specifications or other documents as may be prescribed; and
 - (d) be accompanied by the appropriate fee.
- (2) No fee is payable under this section in relation to an application made by the owner or occupier of land (the *relevant land*) in order to remove or cut back a part of a regulated tree that is located on adjoining land but is encroaching on to the relevant land.
- (3) A relevant authority may request an applicant—
- 15 (a) to provide such additional documents, assessments or information (including calculations and technical details) as the relevant authority may reasonably require to assess the application;
 - (b) to remedy any defect or deficiency in any application or accompanying document or information required by or under this Act;
 - (c) to consult with an authority or body prescribed by the regulations;
 - 20 (d) to comply with any other requirement prescribed by the regulations.
- (4) If—
- (a) a development is of a kind that is classified by the Planning and Design Code as deemed-to-satisfy development; and
 - 25 (b) the development falls within a class of development prescribed by the regulations for the purposes of this subsection; and
 - (c) the applicant has complied with the requirements of subsection (1)(a), (c) and (d),
- then the relevant authority must, in making an assessment as to planning consent, assess the application without requesting the applicant to provide additional documents or information.
- 30
- (5) If—
- (a) a development falls within a class of development prescribed by the regulations for the purposes of this subsection; and
 - (b) the applicant has complied with the requirements of subsection (1)(a), (c) and
 - 35 (d),
- then—
- (c) the relevant authority may, in making an assessment as to planning consent, only request the applicant to provide additional documents or information in relation to the application on 1 occasion; and

- (d) the relevant authority must make that request within a period prescribed by the regulations.
- (6) If a request is made under subsection (3)—
- 5 (a) any period between the date of the request and the date of compliance is not to be included in the time within which the relevant authority is required to decide the application; and
- (b) if the request is not complied with within the time specified by the regulations, the relevant authority—
- 10 (i) may, subject to subparagraph (ii), refuse the application; and
- (ii) must refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is deemed-to-satisfy development).
- (7) 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.
- 15 (8) 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.
- 20 (9) A relevant authority may—
- (a) permit an applicant—
- (i) to vary an application;
- (ii) to vary any plans, drawings, specifications or other documents that
- 25 accompanied an application,
- (provided that the essential nature of the proposed development is not changed);
- (b) permit an applicant to lodge an application without the provision of any information or document required by the regulations;
- 30 (c) to the extent that the fee is payable to that relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);
- (d) if there is an inconsistency between any documents lodged with the relevant authority for the purposes of this Part (whether by an applicant or any other person), or between any such document and a development authorisation that
- 35 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.
- 40 (10) A relevant authority may grant a permission under subsection (9) unconditionally or subject to such conditions as the relevant authority thinks fit.

(11) Without limiting subsection (6), if—

- (a) an applicant requests time to address any issue related to the application (including so as to prepare and submit any variation); or
- (b) an applicant requires time to respond to any matter raised by a person or body in connection with the application under this Act,

then, subject to the regulations, the time required by the applicant is not to be included in the time within which the relevant authority is required to decide the application.

(12) An application, or a consent, may provide for, or envisage the undertaking of development in stages, with separate consents or approvals for the various stages.

(13) To avoid doubt, a person may apply for the approval of a proposed development even if the person is not the owner or occupier of the land constituting the site of the proposed development.

(14) An applicant may withdraw an application (but, unless the relevant authority otherwise determines, the applicant is not entitled to a refund of the application fee in such a case).

114—Outline consent

(1) Subject to this section, a relevant authority may, on application, grant a consent in the nature of an *outline consent*.

(2) An outline consent may be granted in circumstances specified by a practice direction.

(3) If an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction), a relevant authority—

- (a) must grant any consent contemplated by the outline consent; and
- (b) must not impose a requirement that is inconsistent with the outline consent.

(4) An outline consent remains operative for a period specified by a practice direction.

115—Design review

(1) This section applies in relation to development of a class specified by the Planning and Design Code.

(2) A person who is considering the undertaking of development to which this section applies may apply to a design panel for advice.

(3) An application under this section must—

- (a) be in a form determined by the Commission; and
- (b) include any information specified by the Commission; and
- (c) be accompanied by the prescribed fee.

(4) If an application is made, a design panel will be established under a scheme determined by the Minister for the purposes of this section.

(5) The design panel may provide advice about 1 or more of the following:

- (a) the form or content of the proposed development; and
- (b) how the proposed development might be changed or improved; and

- (c) other matters that may assist with the assessment of the development; and
 - (d) such other matters as the design panel thinks fit.
- (6) A design panel may, in acting under this section, adopt such procedures as it thinks fit.
- (7) A relevant authority must, in acting under this Act, take into account any advice provided by a design panel (insofar as may be relevant to the assessment of proposed development by the relevant authority).
- (8) No action may be brought against a member of a design panel on the basis of any advice or other action given or taken by a design panel under this section.

116—Referrals to other authorities or agencies

- (1) The regulations may provide, subject to this section, that where an application for consent to, or approval of, a proposed development of a prescribed class is to be assessed by a relevant authority—
- (a) the relevant authority must refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, if so prescribed, the Commission); and
 - (b) the relevant authority must not make its decision until it has received a response from that prescribed body in relation to the matter or matters for which the referral was made (but if a response is not received from the body within a period prescribed by the regulations, it will be presumed, unless the body notifies the relevant authority within that period that the body requires an extension of time because of subsection (4) (being an extension equal to that period of time that the applicant takes to comply with a request under subsection (3)), that the body does not desire to make a response, or concurs (as the case requires)).
- (2) The Governor must not prescribe a body (other than the Commission) under subsection (1)(a) unless—
- (a) the Governor is satisfied that provisions about the policy or policies that the body will seek to apply in connection with the operation of this section have been included in the Planning and Design Code (recognising that a policy may not apply in all cases, or that a policy may need to be varied, adjusted or reconsidered in particular cases); or
 - (b) the Minister has indicated that the Minister is satisfied that a policy envisaged by paragraph (a) is not necessary or is not appropriate.
- (3) A prescribed body may, before it gives a response under this section, request the applicant—
- (a) to provide such additional documents or information (including calculations and technical details) as the prescribed body may reasonably require to assess the application; and
 - (b) to comply with any other requirements or procedures of a prescribed kind.
- (4) If a request is made under subsection (3)—
- (a) the prescribed body may specify a time within which the request must be complied with; and

- (b) the prescribed body may, if it thinks fit, grant an extension of the time specified under paragraph (a).
- (5) The regulations may, in relation to the operation of subsection (1)—
- 5 (a) provide that the relevant authority cannot consent to or approve the development without the concurrence of the prescribed body (which concurrence may be given by the prescribed body on such conditions as it thinks fit);
- (b) empower the prescribed body to direct the relevant authority—
- 10 (i) to refuse the application; or
- (ii) if the relevant authority decides to consent to or approve the development—subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body, to impose such conditions as the prescribed body thinks fit,
- (and the relevant authority must comply with any such direction).
- 15 (6) If a relevant authority acting by direction of a prescribed body refuses an application or imposes conditions in respect of a development authorisation—
- (a) the relevant authority must notify the applicant that the application was refused, or the conditions imposed, by direction under this section; and
- (b) if the regulations so provide, no appeal lies against that refusal or those
- 20 conditions.
- (7) If a relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under this Act, the prescribed body is a respondent to the appeal and the relevant authority may, on application, be joined as a party to the proceedings.
- 25 (8) If a relevant authority is directed by a prescribed body to impose a condition in respect of a development authorisation and the condition is the subject of an appeal under this Act, both the prescribed body and the relevant authority are respondents to the appeal.
- (9) A prescribed body acting under this section is only to deal with the matter or matters for which a referral was made to the extent that is relevant to the purpose of the
- 30 referral and so as only to consider matters that are within its relevant field of expertise or operation.
- (10) An applicant may request a relevant authority to defer a referral under this section to a particular stage in the process of assessment and, in such a case, the relevant authority must comply with the request.
- 35 (11) However, a request under subsection (10) may not be made if it is inconsistent with any provision made by the regulations for the purposes of this subsection.

117—Preliminary advice and agreement

- 40 (1) A person may seek the opinion of a prescribed body under section 116 in relation to proposed development before lodging an application for planning consent with respect to the development.

(2) If—

- (a) a proposed development is referred to a prescribed body under subsection (1); and
- (b) the prescribed body agrees to consider the matter under this section after taking into account any matter prescribed by the regulations; and
- (c) the prescribed body agrees, in the manner prescribed by the regulations, that the development meets the requirements (if any) of the prescribed body (including on the basis of the imposition of conditions),

then, subject to subsection (4)—

- (d) if an application for planning consent with respect to the development is lodged with the relevant authority within the prescribed period after the prescribed body has indicated its agreement under paragraph (c); and
- (e) if the relevant authority is satisfied that the application accords with the agreement indicated by the prescribed body (taking into account the terms or elements of that agreement and any relevant plans and other documentation),

the application will not be referred to the prescribed body under section 116.

(3) A prescribed body under section 116 may, in connection with the operation of subsections (1) and (2)—

- (a) require the payment of a fee prescribed by the regulations (if the prescribed body agrees to consider the matter under subsection (2)(b)); and
- (b) in relation to the proposed development—exercise any power (including the power to impose conditions) that it would be able to exercise if the development were to be referred to it under section 116.

(4) Any agreement under this section will cease to have effect (and an application will need to be referred to a prescribed body under section 116 despite the operation of subsection (2)) if the relevant authority determines that the agreement is no longer appropriate due to the operation of section 126.

(5) If—

- (a) a prescribed body had indicated its agreement under this section; and
- (b) an application is not referred to the prescribed body under section 116 by virtue of the operation of subsection (2) of this section,

the process established by this section will be taken to be a referral under section 116 for the purposes of any other Act.

118—Proposed development involving creation of fortifications

(1) If a relevant authority has reason to believe that a proposed development may involve the creation of fortifications, the relevant authority must refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the *Commissioner*).

- (2) Subject to subsection (3), the Commissioner must, as soon as possible after receipt of a referral under subsection (1)—
- (a) assess the application to determine whether or not the proposed development involves the creation of fortifications; and
 - (b) advise the relevant authority in writing of the Commissioner's determination.
- (3) The Commissioner may, before making a determination under this section, request the applicant to provide such additional documents or information (including calculations and technical details) as the Commissioner may reasonably require to assess the application.
- (4) If a request is made under subsection (3)—
- (a) the Commissioner may specify a time within which the request must be complied with; and
 - (b) the Commissioner may, if he or she thinks fit, grant an extension of the time specified under paragraph (a).
- (5) If the Commissioner determines that the proposed development involves the creation of fortification, the relevant authority must—
- (a) if the proposed development consists only of the creation of fortifications—refuse the application; or
 - (b) in any other case—impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications.
- (6) If a relevant authority acting on the basis of a determination of the Commissioner under subsection (2) refuses an application or imposes conditions in respect of a development authorisation, the relevant authority must notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under this section.
- (7) If a refusal or condition referred to in subsection (5) is the subject of an appeal under this Act—
- (a) the Commissioner will be the respondent to the appeal; and
 - (b) the relevant authority may, if the Court permits, be joined as a party to the appeal.

119—Time within which decision must be made

- (1) A relevant authority should deal with an application as expeditiously as possible and within the time prescribed by the regulations.
- (2) If a relevant authority does not decide an application within the time prescribed under subsection (1) in respect of the provision of planning consent, the applicant may, before the application is decided, give the relevant authority a notice in the prescribed manner and form (a *deemed consent notice*) that states that planning consent should be granted.
- (3) On the day that the relevant authority receives the deemed consent notice, the relevant authority is, subject to this section, taken to have granted the planning consent (a *deemed planning consent*).

(4) The relevant authority may, within 10 business days after receiving the deemed consent notice—

- (a) grant the planning consent itself; or
- (b) grant the planning consent subject to conditions.

5 (5) The deemed planning consent is taken to include—

- (a) any conditions that a relevant authority imposes under subsection (4)(b); or
- (b) if the relevant authority does not grant a planning consent under subsection (4)—any standard condition specified by a practice direction issued by the Commission for the purposes of this subsection.

10 (6) If—

- (a) a deemed planning consent is taken to have been granted under subsection (3); and
- (b) a relevant authority considers that the relevant application for planning consent should have been refused,

15 the relevant authority may apply to the Court for an order quashing the consent.

(7) An application under subsection (6) must be made within 1 month after the deemed planning consent is taken to have been granted unless the Court, in its discretion, allows an extension of time (and then the Court will determine the matter under section 193).

20 (8) If a relevant authority does not decide an application within the time prescribed under subsection (1) in respect of the provision of a development authorisation other than planning consent, the applicant may, after giving the relevant authority 14 days notice in accordance with the regulations, apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court.

25 (9) If the Court makes an order under subsection (8), 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
- (b) that the delay is attributable to a decision of the relevant authority not to deal with the application within the relevant time because—
 - 30 (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
 - 35 (ii) the relevant authority was not provided with appropriate documentation or information relevant to making a decision under this Act; or
 - (iii) the relevant authority believed, on other reasonable grounds, that it was not appropriate to decide the matter in the particular circumstances; or

40 (c) that an order for costs should not be made for some other reason.

(10) This section does not apply to or in relation to impact assessed development where the Minister is the relevant authority.

120—Determination of application

- 5
- (1) A relevant authority must, on making a decision on an application under this Part, give notice of the decision in accordance with the regulations (and, in the case of a refusal, the notice must include the reasons for the refusal and any appeal rights that exist under this Act).
- (2) A development authorisation under this Part remains operative for a period prescribed by the regulations.
- 10 (3) A relevant authority may, on its own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under subsection (2).
- (4) A court may, on the application of a person who is a party to proceedings before the court which relate to any matter arising under this Act, extend a period prescribed under subsection (2).

Division 5—Conditions

121—Conditions

- 15
- (1) A decision under this Part is subject to such conditions (if any)—
- (a) as a relevant authority thinks fit to impose in relation to the development; or
- (b) as may be specified by any practice direction or otherwise imposed under another provision of this Act.
- 20 (2) Any such condition—
- (a) in the case of a condition under subsection (1)(a)—must be consistent with any practice direction published by the Commission for the purposes of this section (and, for the purposes of this paragraph, a practice direction may prohibit certain conditions or classes of condition); and
- 25 (b) is binding on, and enforceable against—
- (i) the person by whom the development is undertaken; and
- (ii) any person who acquires the benefit of the decision or the development; and
- (iii) the owners and occupiers of the land on which the development is
- 30 undertaken; and
- (c) may continue to apply in relation to the development unless or until it is varied or revoked by the relevant authority in accordance with an application under this Part.
- 35 (3) Subject to a preceding subsection, a relevant authority may, for example, approve a development subject to a condition—
- (a) that regulates or restricts the use of any land or building subject to development; or
- (b) that provides for the management, preservation or conservation of any land or building subject to development; or
- 40 (c) that regulates maintenance of any land or building subject to development; or

- (d) if the applicant is seeking approval for a temporary development—that provides that, at a future time specified in the condition—
- (i) the previous use of the land will revive, or a use of the land will cease; and
 - (ii) any person who has the benefit of the development will restore the land to the state in which it existed immediately before the development.
- (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).
- (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).
- (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) an urban trees fund has not been established for the area where the relevant tree is situated; or
 - (ii) the relevant authority is the Commission or an assessment panel appointment by the Minister or a joint planning board,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.

Division 6—Variation of authorisation

122—Variation of authorisation

- 5 (1) Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).
- (2) An application to which subsection (1) applies—
- 10 (a) may only be made if the relevant authorisation is still operative; and
 - (b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation; and
 - 15 (c) in a case where the development to which the development authorisation previously given was classified by the Planning and Design Code as restricted development—must also be dealt with as restricted development if any representations were made under section 104(2)(b), unless the Commission (as the relevant authority) determines that no such representation related to any aspect of the development that is now under consideration on account of
20 the application for variation and that, in the circumstances, the level of notification and consultation envisaged by section 104 is not required; and
 - (d) unless otherwise approved by the relevant authority, cannot seek to extend the period for which the relevant authorisation remains operative.

Part 8—Development assessment—essential infrastructure

25 Division 1—Development assessment—standard designs

123—Development assessment—standard designs

- (1) In this section—

infrastructure reserve means—

- 30 (a) land identified in the Planning and Design Code as having a land use that is specified as being suitable for infrastructure; or
- (b) land that is subject to a statutory easement;

statutory easement means an easement under an Act that is brought within the ambit of this definition by the regulations.

- 35 (2) For the purposes of this section, the Minister may, on the recommendation of the Commission, adopt a design standard relating to any infrastructure or class of infrastructure (a *standard infrastructure design*).

- (3) The following provisions may apply in relation to proposed development to be undertaken for the purposes of essential infrastructure—
- (a) if the proposed development is to be undertaken within an infrastructure reserve—an assessment against the Planning Rules, and planning consent, are not required; and
- (b) if the proposed development is consistent with a standard infrastructure design and to be undertaken within an infrastructure reserve where that design is recognised as being permitted within that reserve—an accredited professional may (if qualified under this Act) act as a relevant authority for the purposes of granting any relevant development authorisation.

Division 2—Essential infrastructure—alternative assessment process

124—Essential infrastructure—alternative assessment process

- (1) This section applies to essential infrastructure of a prescribed class.
- (2) A person who proposes to undertake development with respect to the provision of essential infrastructure to which this section applies (a *proponent*) may apply to the Commission for an approval under this section.
- (3) The application must contain the prescribed particulars.
- (4) The Commission may request the proponent to provide additional documents or information (including calculations and technical details) in relation to the application.
- (5) If an application relates to development within the area of a council, the Commission must give notice containing prescribed particulars of the development to the council in accordance with the regulations.
- (6) A council may report to the Commission on any matters contained in a notice under subsection (5).
- (7) Where a notice is given to a council under subsection (6), and a report from the council is not received by the Commission within 4 weeks of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.
- (8) The Commission must assess an application lodged with it under this section.
- (9) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Commission must refer the application, together with a copy of any relevant information provided by the proponent, to a body prescribed by the regulations for comment and report within the time prescribed by the regulations.
- (10) A prescribed body may, before it provides a report under subsection (9), request the proponent—
- (a) to provide additional documents or information (including calculations and technical details) in relation to the application; and
- (b) to comply with any other requirements or procedures of a prescribed kind.

- (11) If an application is referred to a prescribed body under subsection (9) and a report from the prescribed body is not received by the Commission within a period determined under the regulations, it will be conclusively presumed that the prescribed body does not intend to report on the matter.
- 5 (12) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are complete, exceed \$10 000 000, other than an application for a variation to an approved development that, in the opinion of the Commission, is of a minor nature, the Commission must—
- 10 (a) by public advertisement, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and
- (b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before
- 15 the Commission to be heard in support of his or her submission; and
- (c) give due consideration in its assessment of the application to any submissions made by interested persons as referred to in paragraph (a) or (b).
- (13) The Commission will then prepare a report to the Minister on the matter.
- 20 (14) If a council has, in relation to any matters referred to the council under subsection (5), expressed opposition to the proposed development in its report under subsection (6), a copy of the report must be attached to the Commission's report (unless the council has, since providing its report, withdrawn its opposition).
- (15) If a prescribed body has provided a report under subsection (9), a copy of the report must also be attached to the Commission's report.
- 25 (16) The Commission must, unless the Minister grants an extension of time, furnish its report within the time prescribed by the regulations.
- (17) If a request is made under subsection (4), any period between the date of request and the date of compliance is not to be included in the calculation of the period under subsection (16).
- 30 (18) The Minister may, after receipt of the report of the Commission under this section (and after taking such action (if any) as the Minister thinks fit)—
- (a) approve the development; or
- (b) refuse to approve the development.
- (19) An approval may be given—
- 35 (a) for the whole or part of a proposed development;
- (b) subject to such conditions as the Minister thinks fit.
- (20) An approval under this section will be taken to be given subject to the condition that, before any building work is undertaken, the building work be certified by a building certifier, or by some person determined by the Minister for the purposes of this
- 40 provision, as complying with the provisions of the Building Rules to the extent that is appropriate in the circumstances.

(21) A person acting under subsection (20) must—

(a) seek and consider the advice of the Commission before giving a certificate in respect of building work that would be at variance with the performance requirements of the Building Code; and

(b) take into account the criteria, and comply with any requirement, prescribed by the regulations before giving a certificate in respect of building work that would otherwise involve a variance with the Building Rules,

and if the person gives a certificate that involves building work that is at variance with the Building Rules then the person must, subject to the regulations, specify the variance in the certificate.

(22) A person engaged to perform building work for a development approved under this section must—

(a) ensure that the building work is performed in accordance with technical details, particulars, plans, drawings and specifications certified for the purposes of subsection (20); and

(b) comply with the Building Rules (subject to any certificate under subsection (20) that provides for a variance with the Building Rules), and any other requirements imposed under this section.

Maximum penalty: \$120 000.

Default penalty: \$500.

(23) A person must not contravene, or fail to comply with, a condition of an approval under this section.

Maximum penalty: \$120 000.

Additional penalty.

Default penalty: \$500.

(24) If the Minister approves a development under this section, no other procedure or requirement relating to the assessment of the development under this Act applies and no other development authorisation (including a certificate or approval under Part 11) is required under this Act, although the Minister may, if necessary for the purposes of any other Act, issue any other development authorisation under this Act (which will then be taken, for the purposes of that other Act, to have been issued by a relevant authority under this Act).

(25) Despite a preceding subsection, if the Minister directs that an EIS be prepared with respect to a development otherwise within the ambit of this section then—

(a) this section ceases to apply to the development; and

(b) the proponent must not undertake the development without the approval of the Minister under section 109 (as if the development were classified as impact assessed development); and

(c) unless section 109(2)(a) applies, the development becomes subject to the processes and procedures under this Act with respect to the preparation and consideration of an EIS.

(26) No appeal lies against a decision of the Minister under this section.

(27) This section does not limit—

- (a) the ability of a person to apply for the assessment and approval of essential infrastructure under Part 7; or
- (b) the ability of a person to proceed under Division 1 of the Part.

5 **Part 9—Development assessment—Crown development**

125—Development assessment—Crown development

(1) In this section—

the Crown means the Crown in right of the State;

State agency means—

- 10 (a) the Crown or a Minister of the Crown;
- (b) an agency or instrumentality of the Crown (including a Department or administrative unit of the State);
- (c) any other prescribed person or prescribed body acting under the express authority of the Crown,

15 but does not include a person or body excluded from the ambit of this definition by regulation.

(2) Subject to this section, if—

- 20 (a) a State agency proposes to undertake development (other than in partnership or joint venture with a person or body that is not a State agency); or
- (b) a State agency proposes to undertake development for the purposes of the provision of essential infrastructure (whether or not in partnership or joint venture with a person or body that is not a State agency); or
- 25 (c) a person proposes to undertake development initiated or supported by a State agency for the purposes of the provision of essential infrastructure and specifically endorsed by the State agency for the purposes of this section,

the State agency must lodge an application for approval containing prescribed particulars with the Commission.

(3) Subject to subsection (4), this section does not apply to or in relation to proposed development if—

- 30 (a) the development is accepted development or deemed-to-satisfy development under Part 7 Division 2; and
- (b) the relevant State agency determines to proceed with the assessment and approval of the development under Part 7 or Part 8 Division 1 (and any other related provisions of this Act).

35 (4) No application for approval is required (either under this section or any other provision of this Act), and no notice to a council is required under subsection (6), if the development is of a kind excluded from the provisions of this section by regulation.

40 (5) The Commission may request the State agency to provide additional documents or information (including calculations and technical details) in relation to the application.

- (6) If an application relates to development within the area of a council, the Commission must give notice containing prescribed particulars of the development to the council in accordance with the regulations.
- 5 (7) A council may report to the Commission on any matters contained in a notice under subsection (6).
- (8) Where a notice is given to a council under subsection (6), and a report from the council is not received by the Commission within 4 weeks of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.
- (9) The Commission must assess an application lodged with it under this section.
- 10 (10) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Commission must refer the application, together with a copy of any relevant information provided by the State agency, to a body prescribed by the regulations for comment and report within the time prescribed by the regulations.
- 15 (11) A prescribed body may, before it provides a report under subsection (10), request the State agency—
- (a) to provide additional documents or information (including calculations and technical details) in relation to the application; and
 - (b) to comply with any other requirements or procedures of a prescribed kind.
- 20 (12) If an application is referred to a prescribed body under subsection (10) and a report from the prescribed body is not received by the Commission within a period determined under the regulations, it will be conclusively presumed that the prescribed body does not intend to report on the matter.
- 25 (13) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are completed, exceed \$10 000 000, other than an application for a variation to an approved development that, in the opinion of the Commission, is of a minor nature, the Commission must—
- (a) by public notice, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and
 - 30 (b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before the Commission to be heard in support of his or her submission; and
 - (c) give due consideration in its assessment of the application to any submissions
- 35 made by interested persons as referred to in paragraph (a) or (b).
- (14) The Commission will then prepare a report to the Minister on the matter.
- (15) If a council has, in relation to any matters referred to the council under subsection (6), expressed opposition to the proposed development in its report under subsection (7), a copy of the report must be attached to the Commission's report (unless the council has,
- 40 since providing its report, withdrawn its opposition).
- (16) If a prescribed body has provided a report under subsection (10), a copy of the report must also be attached to the Commission's report.

- (17) The Commission must, unless the Minister grants an extension of time, furnish its report within the time prescribed by the regulations.
- (18) If a request is made under subsection (5), any period between the date of request and the date of compliance is not to be included in the calculation of the period under subsection (17).
- (19) The Minister may, after receipt of the report of the Commission under this section (and after taking such action (if any) as the Minister thinks fit)—
- (a) approve the development; or
 - (b) refuse to approve the development.
- (20) An approval may be given—
- (a) for the whole or part of a proposed development;
 - (b) subject to such conditions as the Minister thinks fit.
- (21) An approval under this section will be taken to be given subject to the condition that, before any building work is undertaken, the building work be certified by a building certifier, or by some person determined by the Minister for the purposes of this provision, as complying with the provisions of the Building Rules to the extent that is appropriate in the circumstances.
- (22) A person acting under subsection (21) must—
- (a) seek and consider the advice of the Commission before giving a certificate in respect of building work that would be at variance with the performance requirements of the Building Code; and
 - (b) take into account the criteria, and comply with any requirement, prescribed by the regulations before giving a certificate in respect of building work that would otherwise involve a variance with the Building Rules,
- and if the person gives a certificate that involves building work that is at variance with the Building Rules then the person must, subject to the regulations, specify the variance in the certificate.
- (23) A person engaged to perform building work for a development approved under this section must—
- (a) ensure that the building work is performed in accordance with technical details, particulars, plans, drawings and specifications certified for the purposes of subsection (21); and
 - (b) comply with the Building Rules (subject to any certificate under subsection (21) that provides for a variance with the Building Rules), and any other requirements imposed under this section.

Maximum penalty: \$30 000.

Default penalty: \$500.

5 (24) If the Minister approves a development under this section, no other procedure or requirement relating to the assessment of the development under this Act applies and no other development authorisation (including a certificate or approval under Part 11) is required under this Act, although the Minister may, if necessary for the purposes of any other Act, issue any other development authorisation under this Act (which will then be taken, for the purposes of that other Act, to have been issued by a relevant authority under this Act).

(25) Despite a preceding subsection, if the Minister directs that an EIS be prepared with respect to a development otherwise within the ambit of this section, then—

10 (a) this section ceases to apply to the development; and

(b) the State agency must not undertake the development without the approval of the Minister under section 109 (as if the development were classified as impact assessed development); and

15 (c) unless section 109(2)(a) applies, the development becomes subject to the procedures under this Act with respect to the preparation and consideration of an EIS.

(26) No appeal lies against a decision of the Minister under this section.

Part 10—Development assessment and approval—related provisions

Division 1—General principles

126—Law governing proceedings under this Act

25 (1) If an application is made for a development authorisation under this Act, the law to be applied in deciding the application and the law to be applied in resolving any issues arising from the decision in any proceedings (whether brought under this Act or not) is the law in force as at the time the application was made.

30 (2) The provisions of the Planning and Design Code that are relevant to the consideration of an application for a planning consent and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the Planning and Design Code as in force at the time the application was made.

(3) The provisions of the Building Rules that are relevant to the consideration of an application for a building consent and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the Building Rules as in force at the time the application was made.

35 (4) If a place that is the subject of an application for development authorisation under this Act becomes a State heritage place within the meaning of this Act, the place will be taken to have been a State heritage place for the purposes of this section at the time the application was made.

- 5 (5) If a place that is the subject of an application for development authorisation under this Act becomes subject to an order under the *Heritage Places Act 1993* that requires a person to stop any work or activity, or prohibits any work or activity, the order will be taken to have been in force for the purposes of this section at the time the application was made.

127—Saving provisions

- 10 (1) A development for which development authorisation has been granted may be undertaken and completed in accordance with that authorisation notwithstanding an amendment to the Planning and Design Code or the Building Rules that takes effect after the date on which the application for the development authorisation was made (insofar as the application relates to an assessment in respect of the Planning and Design Code or Building Rules).
- 15 (2) An activity that becomes a development by virtue of an amendment to this Act, but was lawfully commenced within 3 years before the amendment took effect, may be continued and completed, without any development authorisation, within 3 years after the date on which the amendment took effect.
- (3) A relevant authority may, in order to avoid or reduce hardship, extend the limitation period referred to in subsection (2).
- 20 (4) A reference in this section to an amendment to this Act extends to the making of a regulation declaring an activity to constitute development and the variation of such a regulation.
- (5) In this section—
activity means an act or activity.

Division 2—Buildings

128—Requirement to up-grade

- 25 (1) If—
- 30 (a) an application for a building consent relates to—
- (i) building work in the nature of an alteration to a building constructed before the date prescribed by regulation for the purposes of this subsection; or
- (ii) a change of classification of a building; and
- (b) the building is, in the opinion of the relevant authority, unsafe, structurally unsound or in an unhealthy condition,
- 35 the relevant authority may require, before granting the building consent, that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure that the building is safe and conforms to proper structural and health standards.
- 40 (2) The relevant authority must, when imposing a requirement under subsection (1), specify (in reasonable detail) the matters under subsection (1)(b) that must, in the opinion of the relevant authority, be addressed.

(3) If—

- (a) application is made for building consent for building work in the nature of an alteration of a class prescribed by the regulations; and
- (b) the relevant authority is of the opinion that the affected part of the building does not comply with the performance requirements of the Building Code in relation to access to buildings, and facilities and services within buildings, for people with disabilities,

the relevant authority may require, before granting the building consent, that building work or other measures be carried out to the extent necessary to ensure that the affected part of the building will comply with those performance requirements of the Building Code.

(4) The Minister may, by instrument in writing, grant an exemption from the operation of subsection (3).

129—Urgent building work

(1) If building work must be performed as a matter of urgency—

- (a) to protect any person or building; or
- (b) in any other circumstance of a prescribed kind,

a person may, despite any other provision of this Act (but subject to subsection (2)), perform the building work.

(2) If building work is undertaken under subsection (1)—

- (a) the person who undertakes the work must immediately notify the relevant authority in accordance with the regulations; and
- (b) if the work affects a State heritage place or a local heritage place, the work must, so far as is reasonably practicable, be undertaken to conserve its heritage value; and
- (c) the owner of the land on which the work is carried out must, as soon as practicable after the commencement of the work and in any event within the prescribed period, apply for the appropriate development authorisation under this Act; and
- (d) if that development authorisation is refused, the person who undertakes the work must, subject to any direction issued by a relevant authority, within a period specified by a relevant authority, ensure that any land or building affected by the work is reinstated, so far as is practicable, to the state or condition that existed immediately before the commencement of the work.

Maximum penalty: \$60 000.

Division 3—Trees

130—Urgent work in relation to trees

(1) If a tree-damaging activity must be undertaken in relation to a regulated tree as a matter of urgency—

- (a) to protect any person or building; or

(b) in any other circumstance of a prescribed kind,
a person may, despite any other provision of this Act (but subject to subsection (2)),
undertake the activity.

(2) If an activity is undertaken under subsection (1)—

- 5 (a) the person who undertakes the activity must notify the relevant authority in
accordance with the regulations; and
- (b) the activity must, so far as is reasonably practicable, be undertaken to cause
the minimum amount of damage to the tree; and
- 10 (c) except in circumstances prescribed by the regulations, the owner of the land
on which the tree is situated must, as soon as practicable after the occurrence
of the activity and in any event within the prescribed period, apply for the
appropriate development authorisation under this Act.

Maximum penalty: \$60 000.

131—Interaction of controls on trees with other legislation

- 15 (1) The requirement to obtain approval under this Act for a tree-damaging activity in
relation to a regulated tree applies despite the fact that the activity may be permitted
under the *Native Vegetation Act 1991*.
- (2) The requirement to obtain approval under this Act for a tree-damaging activity in
relation to a regulated tree does not apply if the activity is being carried out—
- 20 (a) under Part 5 of the *Electricity Act 1996*; or
- (b) under, or in connection with the operation of, an order under section 254 or
299 of the *Local Government Act 1999*; or
- (c) under another Act, or specified provisions of another Act, prescribed by the
regulations for the purposes of this subsection.

Division 4—Land division certificate

132—Land division certificate

- 30 (1) Subject to any exclusion prescribed by the regulations, the following certificate is
required in relation to a development that involves the division of land under this Act,
namely a certificate from the Commission that it is satisfied that the prescribed
conditions as to development have been satisfied, or that the applicant has, by virtue
of an entitlement under the regulations, entered into a binding agreement, supported
by adequate security and, if the regulations so require, in a form prescribed by the
regulations, for the satisfaction of any such condition.
- 35 (2) Before the Commission issues a certificate it may require the applicant, the council for
the area in which the land is situated (if any), or any other person or body, to furnish it
with appropriate information as to compliance with a particular condition, or to
comply with any requirement prescribed by the regulations.
- (3) A certificate will be issued in the prescribed manner and form.
- 40 (4) The Commission must, as soon as practicable after issuing a certificate under
subsection (1) that relates to land within the area of a council, furnish the council with
such information as the regulations may require.

- (5) The Commission may give a certificate under subsection (1) in relation to a particular stage of a development constituted by the division of land.
- (6) A certificate issued under this section will, unless extended by the Commission within the period prescribed by the regulations, lapse at the end of that prescribed period.

5 **Division 5—Access to land**

133—Activities that affect stability of land or premises

- (1) This section applies if a development approval envisages that a person who undertakes the development will require access to other land or premises in order to address an affect on the stability of that land or those premises that will be caused (or is likely to be caused) on account of the undertaking of the development (the *affected site*).
 - (2) In a case where this section applies—
 - (a) the relevant authority must ensure that a notice in the prescribed form is provided to the owner of the affected site in accordance with the regulations (being a notice that informs the owner that a person undertaking the development may require access to the affected site within a period prescribed by the regulations); and
 - (b) subject to paragraph (c), a person undertaking the development is then entitled to gain access to the affected site at any reasonable time in order to protect the affected site and to carry out such other work in relation to the affected site as the owner of the affected site may require under paragraph (d); and
 - (c) before a person undertaking the development seeks access under paragraph (b), the person must give notice of the proposed work in accordance with the regulations; and
 - (d) subject to paragraph (e), the owner of the affected land may require the person who gains access under paragraph (b) to undertake other work that the owner is authorised under the regulations to require; and
 - (e) a person who is subject to a requirement to undertake work under paragraph (d) may apply to the Court for a determination of what proportion (if any) of the expense incurred by the person in the performance of the work should be borne by the owner of the affected site and the person may then recover an amount determined by the Court from the owner of the affected site as a debt in a court of competent jurisdiction.
 - (3) Another person authorised by the person undertaking the development in accordance with the regulations may gain access on behalf of that person for the purposes of subsection (2)(b).
 - (4) A person undertaking development who fails to comply with the requirement to give notice under subsection (2)(c) or a requirement under subsection (2)(d) is guilty of an offence.
- Maximum penalty: \$10 000.

134—Access to neighbouring land—general provision

- (1) This section applies if a person reasonably requires access to a part of a building (including a building under construction) or an allotment (a *relevant place*) from an adjoining allotment in order to carry out—
- 5 (a) an inspection for the purposes of proposed development with respect to the relevant place (including in order to make an application under this Act with respect to the proposed development); or
- (b) any building work with respect to the relevant place; or
- (c) any other prescribed activity.
- 10 (2) In a case where this section applies, the person seeking access to the adjoining allotment may serve notice requesting that he or she be given access on the owner of the adjoining allotment.
- (3) The notice must be in the prescribed form and must—
- (a) state the reason for which access is sought; and
- 15 (b) propose a time at which, or a period for which, access is sought; and
- (c) provide information about—
- (i) who would be entering the adjoining allotment if access were to be provided; and
- (ii) what they would bring with them; and
- 20 (iii) what activity or work would be carried out; and
- (d) set out any other information required by the regulations.
- (4) If a person who is served with a notice under subsection (2)—
- (a) does not respond to the notice within the prescribed period; or
- (b) responds to the notice by—
- 25 (i) refusing access; or
- (ii) proposing alternative arrangements for access that are considered to be unreasonable,
- the person seeking access may apply to the council for the area in which the adjoining allotment is situated for an authorisation to gain access under this section.
- 30 (5) On an application under subsection (4), a council may, if it considers it reasonable to do so, issue an authorisation permitting access on a specified basis, and on specified conditions (if any), set out in the authorisation.
- (6) A council may adopt such procedures and processes as it thinks fit in connection with an application under subsection (4).
- 35 (7) A council must, in acting under subsections (5) and (6), comply with any practice direction issued for the purposes of this section by the Commission.
- (8) A person to whom an authorisation is granted under subsection (4) must take steps to serve a copy of the authorisation on the owner of the adjoining allotment in accordance with the regulations.

(9) A person must not, without reasonable excuse, fail to comply with an authorisation issued by a council under this section.

Maximum penalty: \$5 000.

5 (10) A person must not, without reasonable excuse, hinder or obstruct a person exercising a power conferred by an authorisation issued by a council under this section.

Maximum penalty: \$5 000.

(11) A person must, in exercising a power to enter land under this section, insofar as is reasonably practicable, minimise disturbance to the land.

10 (12) A person who exercises a power to enter land under this section is liable to pay reasonable compensation on account of any loss or damage caused by the exercise of the power.

(13) This section does not limit the ability of a person to gain access to land under an agreement with the owner or occupier of the land.

(14) This section does not limit the operation of section 133.

15 **Division 6—Uncompleted development**

135—Action if development not completed

(1) If—

(a) an approval is granted under this Act; but

(b) —

20 (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

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

a designated authority may apply to the Court for an order under this section.

(2) The Court must give the following persons a reasonable opportunity to be heard at the hearing of an application under this section:

30 (a) the applicant;

(b) any owner or occupier of the relevant land;

(c) any other person who satisfies the Court that he or she has a material interest in the proceedings.

(3) The Court may, on the hearing of the application—

35 (a) require the removal or demolition of any building;

(b) require the reinstatement, so far as is practicable, of any land or building to the state or condition that land or building was in immediately before the commencement of the development;

- (c) extend, on such conditions (if any) as the Court thinks fit, the period within which the development may be completed;
- (d) require the performance of any work;
- 5 (e) require the making of any application for an appropriate development authorisation under this Act;
- (f) make any further or other order the Court thinks fit.
- (4) A person who contravenes, or fails to comply with, an order under this section is guilty of an offence.
Maximum penalty: \$60 000.
10 Default penalty: \$200.
- (5) If the Court makes an order under subsection (3)(a), (b) or (d) and a person fails to comply with the order within the period specified by the Court, the designated authority may cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt from the person.
- 15 (6) If an amount is recoverable from a person by a designated authority under subsection (5)—
- (a) the designated authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the
20 prescribed rate on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the designated authority on any land owned by the person.
- (7) In this section—
- 25 *designated authority* means—
- (a) a council; or
- (b) a joint planning board; or
- (c) the Commission; or
- (d) the Minister.

30 **136—Completion of work**

- (1) If—
- (a) an approval is granted under this Act; but
- (b) the development to which the approval relates has been substantially but not
35 fully completed within the period prescribed by the regulations for the lapse of the approval,
- a designated authority may, by notice in writing, require the owner of the relevant land to complete the development within a period specified in the notice.
- (2) If an owner fails to carry out work as required by a notice under subsection (1), the designated authority may cause the necessary work to be carried out.

(3) The reasonable costs and expenses incurred by the designated authority (or any person acting on behalf of the designated authority) under this section may be recovered by the designated authority as a debt due from the owner.

(4) If an amount is recoverable from a person by a designated authority under this section—

(a) the designated authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate on the amount unpaid; and

(b) the amount together with any interest charged so payable is until paid a charge in favour of the designated authority on any land owned by the person.

(5) A person who has been served with a notice under this section may appeal to the Court against the notice.

(6) An appeal against a notice under this section must be commenced within 14 days after the order is given to the appellant unless the Court allows a longer time for the commencement of the appeal.

(7) In this section—

designated authority means—

(a) a council; or

(b) a joint planning board; or

(c) the Commission; or

(d) the Minister.

Division 7—Cancellation of development authorisation

137—Cancellation of development authorisation

(1) A relevant authority may, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.

(2) A cancellation under this section is subject to such conditions (if any) as the relevant authority thinks fit to impose.

Division 8—Inspection policies

138—Inspection policies

(1) The Commission must issue a practice direction that will require councils to carry out inspections of development undertaken in their respective areas.

(2) The practice direction may make different provision in relation to different councils (or groups of councils).

(3) The Commission must, when preparing (or varying) the practice direction, take into account the following matters (and may take into account other matters):

(a) the financial and other resources of councils;

- (b) the impact that a failure to inspect a certain number of developments over a period of time may have on local communities;
- (c) the various sizes of the areas of councils and differences in population;
- (d) the amount of development undertaken in the various areas of the State;
- 5 (e) the type of development that predominates in the various areas of the State;
- (f) in relation to building work, building conditions in the various areas of the State;
- (g) the public interest in ensuring that development is undertaken in accordance with the requirements of this Act.
- 10 (4) A council must comply with the requirements of the practice direction as they relate to the council.

Part 11—Building activity and use—special provisions

Division 1—Preliminary

139—Interpretation

- 15 In this Part—
- council* means, in relation to any development or building that is not within the area of a council, a person or body, or a person or body of a class, prescribed by the regulations for the purposes of this definition.

Division 2—Notifications

20 140—Notification during building

- (1) If building work is being carried out within the area of a council, then—
- (a) a licensed building work contractor who is carrying out the work or who is in charge of carrying out the work; or
- (b) if there is no such licensed building work contractor, the building owner,
- 25 must, in accordance with a scheme prescribed by the regulations, notify the council within the prescribed period of the commencement or completion of a prescribed stage of work (a *mandatory notification stage*).
- (2) The notification must, if the regulations so require, be accompanied or supported by a statement (a *statement of compliance*) from a person who holds prescribed
- 30 qualifications that the building work has been carried out in accordance with the requirements of this Act.
- Maximum penalty: \$10 000.
- (3) Subject to subsection (4), a person who is carrying out building work must, if directed
- 35 to do so by the council, stop building work when a mandatory notification stage has been reached pending an inspection by an authorised officer who holds prescribed qualifications.
- Maximum penalty: \$10 000.

- (4) An authorised officer must carry out an inspection under subsection (3) within 24 hours after a direction is given under that subsection and, if such an inspection is not carried out within that time, the person may proceed with the building work.

Division 3—Party walls and similar matters

141—Construction of party walls

- (1) If the owner of any land proposes to build a party wall, or to convert an existing structure into a party wall, on any part of the line of junction between the land and adjoining land, the following provisions apply:
- (a) the owner (being the building owner) must serve notice on the adjoining owner, describing the proposed wall; and
 - (b) if the adjoining owner consents to the building of the party wall, the wall must be built in the position agreed between the two owners; and
 - (c) the cost of building the party wall is to be borne by the 2 owners in due proportion, taking into account the use that is likely to be made of the wall by each owner; and
 - (d) a party wall cannot be built by the building owner without the consent of the adjoining owner; and
 - (e) the owners must create easements of support in respect of the party wall over their respective land and cause the easements to be registered under the *Real Property Act 1886* or lodged under the *Registration of Deeds Act 1935* (as the case may require) and the building owner is, in the absence of contrary agreement, liable for the expenses of, and incidental to, the registration.
- (2) Where a party wall was lawfully built before 1 January 1974 and conforms with the law of this State as in force at the time of its erection, either owner may require the adjoining owner to create, and cause to be registered under the *Real Property Act 1886* or lodged under the *Registration of Deeds Act 1935* (as the case may require), an easement of support over his or her land in respect of the party wall, and the adjoining owner must comply with that requirement.

142—Rights of building owner

- (1) Subject to obtaining any appropriate approval under this Act (and otherwise complying with this Act), a building owner has the following rights in addition to, and without prejudice to, any rights under any other Act or at common law:
- (a) a right to make good, underpin or repair any party wall that is defective or out of repair; and
 - (b) a right to pull down and rebuild any party wall that is so defective or out of repair that it is necessary or expedient to pull it down; and
 - (c) a right to raise and underpin a party wall; and
 - (d) a right to pull down a party wall that is of insufficient strength for a proposed building (but the building owner must then rebuild a party wall of sufficient strength); and
 - (e) a right to cut into a party wall; and

- (f) a right to perform any other work in relation to the party wall prescribed by the regulations.
- (2) A building owner has a right, by virtue of this subsection—
- 5 (a) to instal flashings between 2 buildings, including a building on an adjoining allotment; and
- (b) without limiting paragraph (a), to instal a flashing so that it overlaps a boundary.
- (3) The building owner is liable to make good any damage to adjacent premises, and the contents of adjacent premises, caused by the exercise of a right under this section.
- 10 (4) The building owner cannot, except with the consent in writing of the adjoining owner, exercise any right under this section unless, before doing so, he or she has served personally or by post on the adjoining owner a notice in writing stating the nature and particulars of the proposed work and when it is to commence in accordance with any requirements prescribed by the regulations.
- 15 (5) If a building owner proposes to exercise a right conferred under this section, the adjoining owner may, by notice in writing served personally or by post on the building owner, require the building owner to carry out such other work on, or in relation to, any party wall as may be reasonably necessary for the convenience of the adjoining owner, and the building owner must comply with that requirement except where to do
- 20 so would cause loss or damage to the building owner, or would cause undue inconvenience or delay.
- (6) The adjoining owner is liable for all expenses incurred by the building owner under subsection (5).
- (7) The building owner must, in the exercise of any right under this section, take
- 25 reasonable steps to protect any adjoining land or premises.
- (8) A building owner must not exercise any right under this section in such manner, or at such time, as will cause unnecessary inconvenience to the adjoining owner or occupier, and must perform any building work with due diligence.

143—Power of entry

- 30 (1) A building owner, or an authorised agent or employee, may, at any reasonable time, enter and remain on the land or premises of the adjoining owner for the purpose of performing any work in accordance with this Division, and may perform any act that the nature of the work requires.
- 35 (2) The building owner must serve, on the adjoining owner in accordance with the regulations, before entering on the land or premises of the adjoining owner or, in the case of an emergency, as early as possible, notice of intention to enter the land or premises of the adjoining owner, stating the time at which the building owner proposes to enter the land or premises in accordance with any requirements prescribed by the regulations.
- 40 (3) The building owner, or an authorised agent or employee, accompanied by a member of the police force, may break into the premises of the adjoining owner.

144—Appropriation of expense

- (1) The expense of building a party wall, or carrying out any work in relation to a party wall, is to be borne in due proportion by the adjoining owners, having regard to the use that each owner is to make of the party wall.
- 5 (2) The building owner must, within 28 days after the completion of any work in respect of which a contribution is payable by the adjoining owner, serve on the adjoining owner in accordance with the regulations an account showing the cost of the building work and the proportion of that cost that the building owner claims to be payable by the adjoining owner.
- 10 (3) If after the expiration of 28 days from the service of the account the account remains unpaid, the building owner may, by action in any court of competent jurisdiction, seek a determination of the amount payable to him or her by the adjoining owner, and recover that amount as a debt.

Division 4—Classification and occupation of buildings

145—Classification of buildings

- (1) Subject to this section, a building must have a classification determined in accordance with the regulations.
- (2) A council may assign to a building erected in its area a classification that conforms with the regulations.
- 20 (3) If a council assigns a classification under this section, the council must give notice in writing to the owner of the building to which the classification has been assigned, of the classification assigned to the building.
- (4) Except with the consent of the owner, a classification cannot be assigned to a building erected before 1 January 1974 if, as a result of the classification being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.
- 25 (5) The owner of a building must not permit the building to be occupied unless the building is constructed, maintained and operated in accordance with the classification appropriate to its use.
- 30 Maximum penalty: \$10 000.
Default penalty: \$100.

146—Certificates of occupancy

- (1) A person must not—
 - 35 (a) occupy a building on which building work is carried out after the commencement of this section unless an appropriate certificate of occupancy has been issued for the building, or the building is of a type excluded by the regulations from the requirements as to certificates of occupancy; or
 - (b) occupy a building in contravention of a certificate of occupancy.Maximum penalty: \$10 000.
- 40 (2) A certificate of occupancy will be issued by a council.

- (3) An application for a certificate of occupancy must—
- (a) include any information required by the council; and
 - (b) be accompanied by such certificates, reports or other documentation as the regulations may require; and
 - 5 (c) be accompanied by the appropriate fee.
- (4) The regulations may provide that a report or consent from a prescribed agency or authority must be obtained in accordance with the regulations before the application can be granted (but if a report or consent is not received from the agency or authority within a period prescribed by the regulations, it will be presumed, unless the agency or authority indicates otherwise, that the agency or authority does not desire to make a report or consents (as the case requires)).
- 10 (5) The council must consider any report supplied under subsection (4) before deciding the application.
- (6) The council must issue the certificate if it is satisfied (in accordance with procedures set out in the regulations and on the basis of information provided or obtained under this section) that the relevant building is suitable for occupation and complies with such requirements as may be prescribed by the regulations for the purposes of this provision.
- 15 (7) A certificate of occupancy does not constitute a certificate of compliance with the Building Rules.
- 20 (8) The regulations may specify the time within which an application should be decided under this section.
- (9) An application will be taken to have been refused if not decided within the time specified by the regulations.
- 25 (10) A council which refuses an application must notify the applicant in writing of—
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal under this Act.
- (11) Any appeal under this section must be commenced within 28 days after a notice is given to the appellant under subsection (10) unless the Court allows an extension of time.
- 30 (12) A certificate of occupancy may apply to the whole or part of a building.
- (13) A council may, in accordance with the regulations, revoke a certificate of occupancy in prescribed circumstances.

35 **147—Temporary occupation**

- (1) A person may, with the approval of a council, occupy a building on a temporary basis without a certificate of occupancy.
- (2) An approval under subsection (1) may be given on such conditions (if any) as the council thinks fit to impose.

- (3) A council which refuses an application must notify the applicant in writing of—
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) the applicant's right of appeal under this Act.

- 5 (4) Any appeal under this section must be commenced within 28 days after a notice is given to the applicant under subsection (3) unless the Court allows an extension of time.

148—Building certifiers

- 10 (1) A building certifier may exercise the powers of a council under this Division in relation to—
- (a) a building owned or occupied by the Crown, or an agency or instrumentality of the Crown; or
 - (b) a building in relation to which the building certifier has issued a building consent.
- 15 (2) For the purposes of the operation of subsection (1)—
- (a) a reference in this Division to a council will be taken to include a reference to a building certifier acting under subsection (1); and
 - (b) a decision of a building certifier under this Division has the same effect and is subject to appeal in the same way as a decision of the council that would otherwise be exercising the relevant function under this Division; and
 - 20 (c) a building certifier is subject to the same duties and requirements as the council that would otherwise be exercising the relevant function under this Division.

Division 5—Emergency orders

25 149—Emergency orders

- (1) An authorised officer may make an emergency order under this section if the authorised officer is of the opinion that the order is necessary—
- (a) because of a threat to safety arising out of the condition or use of a building or an excavation; or
 - 30 (b) because of a threat to any State heritage place or local heritage place.
- (2) However, the power conferred by subsection (1)(a) may only be exercised by an authorised officer who holds prescribed qualifications.
- (3) An emergency order may require the owner of any building or land to do any 1 or more of the following things:
- 35 (a) evacuate the building or land;
 - (b) not to conduct or not to allow the conduct of a specified activity or immediately terminate a specified activity;
 - (c) carry out building work or other work.

- (4) An emergency order may also prohibit the occupation of a building or land or the use of a building or land for a specified activity, or an activity of a specified class.
- (5) If an owner fails to carry out work as required by an emergency order, the council may cause the necessary work to be carried out.
- 5 (6) The reasonable costs and expenses incurred by the council (or any person acting on behalf of the council) under this section may be recovered by the council as a debt due from the owner.
- (7) If an amount is recoverable from a person by the council under this section—
- 10 (a) the council may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate on the amount unpaid; and
- 15 (b) the amount together with any interest charge so payable is, until paid, a charge in favour of the council on any land owned by the person.
- (8) On completion of any work required to be carried out by an emergency order, the owner must notify the authorised officer in writing.
Maximum penalty: \$2 000.
- 20 (9) An order under this section must be given in writing unless the authorised officer considers that urgent action is required, in which case it may be given orally.
- (10) If the direction is given orally under subsection (9), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 p.m. on the next business day.
- 25 (11) An appeal against an order under this section must be commenced within 14 days after the order is given to the appellant unless the Court allows a longer time for the commencement of the appeal.
- (12) Subject to an order of the Court to the contrary, the operation of an order under this section is not suspended pending the determination of an appeal.
- 30 (13) A person who contravenes or fails to comply with an order under this section is guilty of an offence.
Maximum penalty: \$20 000.
Default penalty: \$200.
- 35 (14) It is a defence to a prosecution under subsection (13) if the defendant satisfies the Court that he or she was unaware of the fact that an activity in respect of which the offence arose was the subject of an order under this section.
- (15) In this section—
building includes a building in the course of construction;
excavation includes a well or hole.

Division 6—Swimming pool and building safety

150—Designated safety requirements

(1) In this section—

designated owner means—

(a) in relation to a swimming pool—

- (i) if the swimming pool is a fixture to, or forms part of, land—the owner of the land;
- (ii) in any other case—the owner of the structure that constitutes the swimming pool; and

(b) in relation to a building—the owner of the building;

prescribed event means an event or circumstance prescribed by the regulations as constituting a prescribed event for the purposes of this section.

(2) Without limiting any provision of the Building Code or a Ministerial building standard, the regulations may specify requirements that are to apply in relation to designated safety features for swimming pools or buildings.

(3) In particular, the regulations may—

- (a) require a designated owner of a swimming pool or building to ensure that designated safety features are installed and maintained in accordance with prescribed requirements; and
- (b) require the owner of an existing swimming pool or building—
 - (i) to ensure that designated safety features are installed, replaced or upgraded before, or on the occurrence of, a prescribed event; or
 - (ii) to install, replace or upgrade designated safety features within a prescribed period.

(4) A person who contravenes, or fails to comply with, a requirement under this section (including a requirement prescribed by the regulations) is guilty of an offence.

Maximum penalty: \$15 000.

(5) The Commission may issue a practice direction that requires councils to carry out inspections of swimming pools and buildings to ascertain compliance with this section.

(6) A practice direction may make different provision in relation to different councils (or groups of councils).

(7) A council must comply with the requirements of a practice direction as it relates to the council.

(8) Nothing in this section limits a power under another section to take action in relation to the safety of any place or building.

151—Fire safety

- (1) An authorised officer who holds prescribed qualifications or a member of an appropriate authority may, at any reasonable time, enter and inspect any building for the purpose of determining whether the fire safety of a building is adequate.
- 5 (2) An authorised officer who holds prescribed qualifications must conduct an inspection of a building under subsection (1) at the request of an appropriate authority or a fire authority.
- (3) If an appropriate authority is satisfied that the fire safety of a building is not adequate, the appropriate authority may cause a notice to be served on the owner of the building.
- 10 (4) A notice under subsection (3) may—
- (a) require the owner to report to the appropriate authority on the work or other measures necessary to ensure that the fire safety of the building is adequate; or
 - (b) in the case of an emergency—
- 15 (i) require the owner to carry out a program of work, or to take any other measure, to overcome any fire hazard; or
- (ii) require the evacuation of the building; or
- (iii) prohibit the occupation or use of the building or a part of the building until the appropriate authority is satisfied that the fire hazard no longer exists; or
- 20 (iv) require the owner to take such other action prescribed by the regulations.
- (5) A report under subsection (4)(a) must be provided to the appropriate authority within 2 months, or within such longer period as the appropriate authority may allow.
- 25 Maximum penalty: \$2 500.
- (6) The owner may, during the period referred to in subsection (5), make representations to the appropriate authority about the fire safety of the building and the work or other measures to be carried out or taken.
- (7) An appropriate authority may, after receiving a report under subsection (4) (or, in the event of a failure to provide a report in accordance with this section), by notice given to the owner of the building—
- 30 (a) require the owner to seek an appropriate development authorisation under this Act and, if granted, to carry out a program of work or to take other measures to ensure that the fire safety of the building is adequate; or
- 35 (b) prohibit the occupation or use of the building or a part of the building until the appropriate authority is satisfied that any fire hazard no longer exists; or
- (c) require the owner to take such other action prescribed by the regulations.
- (8) On completion of any work required to be carried out by a notice under this section, the owner must notify the appropriate authority in writing.
- 40 Maximum penalty: \$2 500.

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Part 11—Building activity and use—special provisions

Division 6—Swimming pool and building safety

(9) An appropriate authority may, at the request of the owner, vary a notice under this section or may, on its own initiative, revoke a notice if satisfied that it is appropriate to do so.

5 (10) An appeal against a notice under this section must be commenced within 14 days after the notice is given unless the Court allows longer time for the commencement of the appeal.

(11) Subject to any order of the Court to the contrary, the operation of a notice under this section is not suspended pending the determination of an appeal.

10 (12) A person who contravenes or fails to comply with a notice under subsection (4)(b) or (7) is guilty of an offence.

Maximum penalty: \$20 000.

Default penalty: \$200.

(13) This section does not authorise any action inconsistent with the *Heritage Places Act 1993* or a provision of the Planning and Design Code that relates to heritage.

15 (14) Any action taken under this section should seek to achieve (in the following order of priority)—

(a) firstly, a reasonable standard of fire safety for the occupiers of the relevant building;

(b) secondly, the minimal spread of fire and smoke;

20 (c) thirdly, an acceptable fire fighting environment.

(15) No matter or thing done or omitted to be done by an appropriate authority in good faith in connection with the operation of this section subjects the authority to any liability.

25 (16) For the purposes of this section, an **appropriate authority** is a body established by a council, or by 2 or more councils, under subsection (17) and designated by the council or councils as an appropriate authority under this section.

(17) The following provisions apply with respect to the establishment of an appropriate authority:

(a) the appropriate authority will be constituted of—

30 (i) a person who holds prescribed qualifications in building surveying appointed by the council or councils; and

(ii) an authorised officer under Part 3 Division 5 or section 86 of the *Fire and Emergency Services Act 2005* who, depending on the location of the council area or areas, has been approved by the Chief Officer of the relevant fire authority to participate as a member of the appropriate authority; and

35 (iii) a person with expertise in the area of fire safety appointed by the council or councils; and

40 (iv) if so determined by the council or councils—a person selected by the council or councils;

(b) the council or councils may specify a term of office of a member of the appropriate authority (other than a member under paragraph (a)(ii));

- (c) the office of a member of the appropriate authority (other than a member under paragraph (a)(ii)) 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 addressed to the council or councils; or
 - (iv) is removed from office by the council or councils for any reasonable cause;
- (d) deputy members may be appointed;
- (e) subject to a determination of the council or councils—the appropriate authority may determine its own procedures (including as to quorum).

(18) A member of an appropriate authority who has a personal interest or a direct or indirect pecuniary interest in any matter before the appropriate authority (other than an indirect interest that exists in common with a substantial class of persons) must not take part in any deliberations or decision of the authority in relation to that matter.

Division 7—Liability

152—Negation of joint and several liability in certain cases

- (1) If—
- (a) building work is defective; and
 - (b) the defect or defects arise from the wrongful acts or defaults of 2 or more persons; and
 - (c) those persons would, apart from this section, be jointly and severally liable for damage or loss resulting from the defective work; and
 - (d) an action is brought against any 1 or more of those persons to recover damages for that damage or loss,

the court may only give judgment against a defendant, or each defendant, for such amount as may be just and equitable having regard to the extent to which the act or default of that defendant contributed to the damage or loss.

- (2) An act or default for which a person is vicariously liable will be taken to be an act or default of that person for the purposes of this section.

153—Limitation on time when action may be taken

- (1) Despite the *Limitation of Actions Act 1936*, or any other Act or law, no action for damages for economic loss or rectification costs resulting from defective building work (including an action for damages for breach of statutory duty) can be commenced more than 10 years after completion of the building work.
- (2) This section does not affect an action to recover damages for death or personal injury resulting from defective building work.
- (3) The period prescribed by subsection (1) cannot be extended.

Part 12—Mining—special provisions

154—Mining tenements to be referred in certain cases to Minister

(1) In this section—

appropriate Authority or *Authority* means the Minister of the Crown for the time being administering the Mining Acts;

designated mining matter means—

- (a) an application for a mining production tenement; or
- (b) a proposed statement of environmental objectives under the *Petroleum and Geothermal Energy Act 2000*.

(2) The appropriate Authority may refer a designated mining matter to the Minister for advice and, if the designated mining matter is such that it is required by the regulations to be so referred to the Minister, the appropriate Authority must refer the designated mining matter to the Minister for advice.

(3) Copies of any submissions received under the Mining Acts as a result of public consultation on the designated mining matter must be forwarded to the Minister for the purposes of subsection (2).

(4) If, in the opinion of the Minister or of the appropriate Authority, operations to be conducted in pursuance of a mining production tenement are of major social, economic or environmental importance—

(a) the Minister or the Authority may determine that the operations are to be subject to the processes and procedures prescribed by Part 7 Division 2 Subdivision 4 with respect to the preparation of an EIS; and

(b) in the case of such a determination, that Subdivision will then apply in relation to the preparation of an EIS, and a related Assessment Report—

(i) subject to the qualification that any reference under that Subdivision to the Commission is to have effect as if it were a reference to the Minister or the Authority, depending on who has made the determination, but the EIS will cover matters determined by the Minister after consultation with the Authority; and

(ii) subject to any other modifications as may be prescribed by the regulations.

(5) The Minister, after obtaining and considering a report of a prescribed kind on a designated mining matter referred for advice under this section and after considering the terms of any relevant EIS, must advise the appropriate Authority on the steps that should be taken (including, in relation to an application for a mining production tenement, whether the application should or should not be granted or, as relevant, what conditions or requirements should be included in a mining production tenement or a statement of environmental objectives) in order to recognise and address actual or potential adverse effects on the environment.

(6) If the appropriate Authority does not agree with advice tendered under subsection (5), it must refer the matter to the Governor and the Governor will determine whether the Authority should adhere to the advice (after considering the terms of any relevant EIS).

5 (7) The appropriate Authority may, with the concurrence of the Minister, determine that it is appropriate that proposed development associated with mining operations within the ambit of subsection (4)(a) also be assessed under this section and, if the Authority makes such a determination, the Authority may, by notice published in the Gazette, combine the assessment of the proposed development with the assessment of the
10 relevant mining operations and, in such a case—

- (a) the proposed development associated with the mining operations must also be considered under the relevant EIS; and
- (b) the Minister may deal with the development under section 109 as if the development had been declared to be impact assessed development.

15 **155—Related matters**

(1) This Part does not limit the ability of the Minister to make a declaration under section 102(1)(c) in respect of a proposal that involves—

- (a) proposed mining operations on a mining tenement; and
- (b) proposed development associated with the mining operations.

20 (2) For the avoidance of doubt, a determination under this Part with respect to the preparation of an EIS does not bring the relevant mining operations within the ambit of Part 7 Division 2 Subdivision 4 (but may bring an associated development within the ambit of that Subdivision by virtue of the operation of section 154(7)).

25 (3) Except as provided in this Part, this Act does not prevent, or otherwise affect, operations carried on in pursuance of any of the Mining Acts.

(4) This Act does not prevent, or otherwise affect, the operation of a private mine.

(5) The operation of subsections (3) and (4) is subject to any provision made by the regulations as to the application of the Building Rules to any building work carried out in connection with operations carried on in pursuance of any of the Mining Acts.

30 **Part 13—Infrastructure frameworks**

Division 1—Infrastructure delivery schemes

Subdivision 1—Establishment of scheme

156—Initiation of scheme

35 (1) The Minister may initiate a scheme under this Division in relation to the provision of essential infrastructure (and the undertaking of any related development).

(2) A scheme under this Division should relate to 1 or more of the following purposes:

- (a) to facilitate development or urban renewal of a significant nature by providing a scheme that supports and advances the provision of infrastructure;

- (b) to provide a mechanism for the equitable distribution and apportionment of the costs of essential infrastructure;
- (c) to assist in the augmentation of capital available to fund essential infrastructure;
- 5 (d) to provide an incentive for the provision of essential infrastructure (including through private sector investment) by providing certainty through the establishment of the scheme.
- (3) The Minister may act under this section—
- (a) on the Minister's own initiative; or
- 10 (b) at the request of another person or body interested in the provision or delivery of infrastructure.
- (4) The Minister will initiate a scheme by preparing a draft outline of the scheme that—
- (a) provides detailed information about—
- 15 (i) the nature and intended scope of the infrastructure; and
- (ii) any related development that is proposed to be undertaken as part of the scheme; and
- (b) identifies the location in relation to which it is proposed that the scheme will be established; and
- (c) provides information about the proposed timing or staging of the various elements of the scheme; and
- 20 (d) assesses the costs and benefits of the scheme; and
- (e) outlines a funding arrangement for the scheme; and
- (f) if a funding arrangement includes a proposal for the collection of contributions under Subdivision 3—specifies the area or areas (to be called a *contribution area*) in relation to which it is proposed that the contributions are to be imposed; and
- 25 (g) provides information about the person or body that will be carrying out the work envisaged by the scheme (to the extent that this is known); and
- (h) identifies any infrastructure or other assets that might be expected to be transferred to another entity when the scheme has been completed; and
- 30 (i) provides such other information as the Minister thinks fit.
- (5) In giving consideration to whether to include a proposal for the collection of contributions under Subdivision 3, the Minister must take into account—
- (a) the extent to which it is reasonable that other sources of funding be used instead; and
- 35 (b) the extent to which the relevant infrastructure will provide a direct benefit to—
- (i) the development potential, capacity, use, value and amenity of the land that would be expected to be included within a relevant contribution area; and
- 40

- (ii) without limiting subparagraph (i), people who might be required to make contributions; and
- (c) any schemes or arrangements (including with respect to the imposition of separate or other rates or charges) that are already in place, or are already planned (and known to the Minister), with respect to the provision of infrastructure or the undertaking of works in the area (or in an adjacent or related area).
- (6) In giving consideration to the establishment of a contribution area under subsection (4)(f), consideration must be given to—
- (a) the area or areas which will benefit from any infrastructure or works to be provided or undertaken under the proposed scheme; and
- (b) the extent to which it may be possible for contributions towards the costs of the scheme to be equitably proportioned between potential beneficiaries; and
- (c) the extent to which the contribution area may overlap with another contribution area under another scheme (or proposed scheme).
- (7) The Minister, in preparing the draft outline, must—
- (a) seek the advice of the Commission; and
- (b) take reasonable steps to consult with the council within whose area the scheme is proposed to be undertaken and, if relevant, any council whose area may include the whole or any part of a proposed contribution area; and
- (c) take reasonable steps to consult with the owners of any land that would be directly affected by any infrastructure or works to be provided or undertaken under the proposal scheme,
- any may consult with any other person or body as the Minister thinks fit.
- (8) The Minister will then publish the draft outline—
- (a) in the Gazette; and
- (b) on the SA planning portal.
- (9) The Minister will then (at a time determined by the Minister) refer the proposed scheme to the Chief Executive for the appointment of a scheme coordinator.

157—Scheme coordinator

- (1) The Chief Executive must, on a referral under section 156—
- (a) appoint a person to act as the scheme coordinator; or
- (b) constitute a committee to be appointed as the scheme coordinator; or
- (c) appoint a precinct authority to act as the scheme coordinator.
- (2) In a case where subsection (1)(a) applies, the Chief Executive may replace the person appointed under that subsection from time to time as the Chief Executive thinks fit.
- (3) In a case where subsection (1)(b) applies, the Chief Executive may—
- (a) constitute the committee as the Chief Executive thinks fit; and
- (b) appoint or remove persons to or from the committee from time to time as the Chief Executive thinks fit; and

(c) determine any matter relevant to the operation and procedures of the committee.

(4) An appointment by the Chief Executive under this section will be on conditions determined by the Chief Executive.

5 **158—Consideration of proposed scheme**

(1) A scheme coordinator has the following functions in relation to a proposed scheme:

(a) to prepare scoped and costed proposals for the scheme that accord with any relevant design standards;

(b) to develop a work program for the scheme;

10 (c) to undertake consultation in relation to the scheme in accordance with any requirement under the Community Engagement Charter;

(d) if it is proposed that a funding arrangement should be established under this Division—to develop the funding arrangement;

15 (e) such other functions assigned by the Minister after consultation with the Chief Executive.

(2) In addition to the other provisions of this Division, in developing a funding arrangement that includes a proposal for the collection of contributions under Subdivision 3, consideration must be given to the following principles:

20 (a) the contributions should be limited to recovering the reasonable capital costs of the scheme based only on infrastructure that is not excessive and that is not produced or delivered at a cost or price that is unreasonable in the circumstances;

(b) the contributions should not have an excessive impact on—

(i) housing or living affordability within a contribution area; or

25 (ii) the economic viability of a contribution area;

(c) funding under the scheme—

(i) may, as appropriate—

(A) seek to attribute costs over the lifetime of the relevant infrastructure (or over some other appropriate period); or

30 (B) be based on contributions that become payable on a specified event or events; and

(ii) should recognise the need to provide value for money in connection with funding arrangements including, as appropriate, through the contestable provision of infrastructure;

35 (d) augmentation charges should be shared between beneficiaries in proportion to the benefits that they receive;

(e) rebates for contributions should be available in appropriate circumstances.

- (3) In connection with subsection (2)(c)(i)(B), an event or events that trigger the requirement to make, or to begin to make, contributions should be related to when a benefit will begin to accrue, or is intended to accrue—
- (a) in relation to land; or
 - 5 (b) to the persons who will be subject to charges within a contribution area, being (for example)—
 - (c) the division of land; or
 - (d) a change to Planning and Design Code; or
 - 10 (e) an approval or the undertaking of development (including development involving the provision of infrastructure).
- (4) The scheme coordinator will, after taking the steps set out in subsection (1), prepare a report on the outcome of its activities and furnish a copy of the report to the Minister.

159—Adoption of scheme

- 15 (1) The Minister may, on the receipt of a report on a proposed scheme furnished by a scheme coordinator—
- (a) determine to proceed with the scheme with any variations, exclusions or inclusions as the Minister thinks fit; or
 - (b) determine not to proceed with the scheme.
- 20 (2) If the Minister decides to proceed under subsection (1)(a), the Minister must cause a final outline of the scheme to be—
- (a) notified in the Gazette; and
 - (b) published on the SA planning portal.
- (3) A funding arrangement that forms part of a scheme takes effect subject to obtaining an approval under Subdivision 2.
- 25 (4) The Minister may, if the Minister considers it necessary or appropriate to do so, vary an outline of the scheme at any time.
- (5) A variation under subsection (4) may include a proposal to vary a funding arrangement that has been approved under Subdivision 2.
- (6) A variation under subsection (4) will be made by the Minister by instrument—
- 30 (a) notified in the Gazette; and
 - (b) published on the SA planning portal.
- (7) The Minister may, in constituting a scheme, include or address any other matter as the Minister thinks fit.

160—Role of scheme coordinator in relation to delivery of scheme

35 The scheme coordinator has the following functions in relation to a scheme established under this Division:

- (a) to oversee the delivery of any infrastructure or works that form part of the scheme;

- 5
- (b) if a funding arrangement is approved under this Division—to administer the funding arrangement and to provide advice to the Minister about the levels and amounts of any contributions that are to be recovered under Subdivision 3;
- (c) to provide advice to the Minister about what should happen on the completion of the works associated with the scheme;
- (d) to provide advice on any other matter at the request of the Minister or as the scheme coordinator thinks fit;
- 10 (e) such other functions assigned by the Minister after consultation with the Chief Executive.

Subdivision 2—Funding arrangements

161—Funding arrangements

- (1) A funding arrangement established under this Division may—
- 15 (a) include 1 or more of the following:
- (i) the provision of funds from public or private sources (including by the Treasurer providing guarantees if the Treasurer thinks fit);
- (ii) exemptions from 1 or more taxes, levies or local government rates imposed under a law of the State;
- 20 (iii) the collection of contributions under Subdivision 3, including by designating the relevant contribution area or areas; and
- (b) include a scheme for rebates and other adjustments in relation to contributions that would be otherwise payable under Subdivision 3 (and any such scheme will have effect according to its terms); and
- 25 (c) provide for any charge or other amount to be imposed, collected, rebated or adjusted according to a determination of ESCOSA, or of some other specified person or body (including a determination that is made after the scheme has been approved under this section); and
- (d) include a scheme for other works to be undertaken on an "in kind" basis; and
- (e) provide for other matters determined by the Minister.
- 30 (2) In connection with subsection (1)—
- (a) a scheme that provides for the collection of contributions under Subdivision 3 must specify arrangements for the periodic review of the levels and amounts of those contributions and, as part of such a review, may provide for any matter to be considered or determined by ESCOSA, or by some other
- 35 specified person or body, on application by the Minister or a council; and
- (b) ESCOSA has (in addition to ESCOSA's functions and powers under the *Essential Services Commission Act 2002*)—
- (i) the ability to make a determination for the purposes of subsection (1)(c); and
- 40 (ii) the ability to act on an application under paragraph (a); and

- (iii) any other functions and powers conferred by regulations made under this Act; and
- (c) if ESCOSA is to act under this section, the *Essential Services Commission Act 2002* may apply subject to such modifications as may be prescribed by regulations made on the recommendation of the Minister after consultation with ESCOSA.
- (3) A funding arrangement has no force or effect unless or until it has been approved by the Governor by notice published in the Gazette.
- (4) The Governor may vary or revoke a funding arrangement approved under subsection (3) by further notice published in the Gazette.
- (5) If the Governor approves or varies a funding arrangement under this section, the Minister must—
- (a) prepare a report that sets out the funding arrangement and information about any contribution that is to be collected under Subdivision 3 or, if relevant, the extent of a variation; and
- (b) furnish a copy of the report to the ERD Committee; and
- (c) publish a copy of the report on the SA planning portal.
- (6) A funding arrangement that provides for or includes the collection of contributions under Subdivision 3 in relation to prescribed infrastructure cannot be approved under subsection (3) unless (in relation to the component that relates to the imposition of those contributions)—
- (a) the funding arrangement is consistent with a practice direction issued by the Commission with the approval of the Minister for the purposes of this subsection; or
- (b) the funding arrangement has been approved by persons who, at the time that the Minister is submitting the funding arrangement for approval of the Governor under subsection (3), own (in total) at least the prescribed percentage of land within the relevant contribution area or areas.
- (7) In connection with subsection (6)—
- (a) the Commission must, in preparing a practice direction (or a variation of a practice direction) under subsection (6)(a), take reasonable steps to consult with—
- (i) an entity or entities that, in the opinion of the Commission, represent the interests of persons who are directly involved in providing infrastructure or developing land that may be subject to a scheme of the relevant kind under this Division; and
- (ii) —
- (A) if the practice direction (or variation) is specifically relevant to a particular council or councils—that council or those councils; or
- (B) in any other case—the LGA,
- and may consult with any other person or body as the Commission thinks fit; and

- (b) the approval of any person under subsection (6)(b) will be obtained or ascertained in a manner determined by the Minister for the purposes of that subsection.
- 5 (8) If a report furnished to the ERD Committee under subsection (5) relates to the approval of a scheme for the collection of contributions under Subdivision 3 (in this section referred to as a *contributions scheme*), the ERD Committee must, after receiving the report—
- (a) resolve that it does not object to the contributions scheme; or
- (b) resolve to suggest amendments to the contributions scheme; or
- 10 (c) resolve to object to the contributions scheme.
- (9) Subject to subsection (11), if, at the expiration of 28 days from the day on which the report was referred to the ERD Committee under subsection (5), the ERD Committee has not made a resolution under subsection (8), it will be conclusively presumed that the ERD Committee does not object to the contributions scheme and does not propose to suggest any amendments.
- 15 (10) Subject to subsection (11), if the period of 28 days referred to in subsection (9) would, but for this subsection, expire in a particular case between 15 December in 1 year and 15 January in the next year (both days inclusive), the period applying for the purposes of subsection (9) will be extended on the basis that any days falling on or between those 2 dates will not be taken into account for the purposes of calculating the period that applies under subsection (9).
- 20 (11) If the period applying under subsection (9), including by virtue of subsection (10), would, but for this subsection, expire in a particular case sometime between the day on which the House of Assembly is dissolved for the purposes of a general election and the day on which the ERD Committee is reconstituted at the beginning of the first session of the new Parliament after that election (both days inclusive), the period will be extended by force of this subsection so as to expire 28 days from the day on which the ERD Committee is so reconstituted.
- 25 (12) If an amendment is suggested under subsection (8)—
- 30 (a) the Minister may proceed to make such an amendment; or
- (b) the Minister may report back to the ERD Committee that the Minister is unwilling to make the amendment suggested by the ERD Committee and, in such a case, the ERD Committee may—
- (i) resolve that it does not object to the contributions scheme; or
- 35 (ii) resolve to object to the contributions scheme.
- (13) If the ERD Committee resolves to object to the contributions scheme, copies of the report furnished to the ERD Committee under subsection (5) must be laid before both Houses of Parliament.
- 40 (14) If either House of Parliament passes a resolution disallowing the contributions scheme after a report has been laid before it under subsection (13), then the contributions scheme will cease to have effect.

(15) A resolution is not effective for the purposes of subsection (14) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the relevant report was laid before the House.

5 (16) If a resolution is passed under subsection (15), notice of that resolution must immediately be published in the Gazette.

(17) Subsections (8) to (16) (inclusive) do not apply in a particular case if—

(a) the Minister has consulted with the ERD Committee before the contributions scheme has been finalised; and

10 (b) the ERD Committee has resolved, on account of that consultation, that the scheme need not be subject to the processes set out in those subsections if or when it has been approved by the Governor as part of the relevant funding arrangement under subsection (3).

(18) In this section—

15 *prescribed infrastructure* means—

(a) infrastructure within the ambit of paragraph (i), (j) or (k) of the definition of *essential infrastructure* under section 3(1); or

(b) without limiting paragraph (a), infrastructure that relates to the provision of public transport; or

20 (c) other infrastructure brought within the ambit of this definition by the regulations;

prescribed percentage means 75% of the total area of land located within a contribution area or areas.

162—Government guarantees

25 A liability of the Crown arising by virtue of a guarantee under an approved funding arrangement is to be paid out of the Consolidated Account (which is appropriated to the necessary extent).

163—Exemptions from taxes and levies

30 An exemption from a tax, levy or local government rate under an approved funding arrangement will have effect by force of this section (and despite any other Act).

Subdivision 3—Scheme contributions

164—Application of Subdivision

(1) This Subdivision applies in order to raise contributions for the purposes of a scheme that is undertaken under this Division.

35 (2) The contributions will apply in relation to an area of the State designated as a contribution area by the relevant funding arrangement established under Subdivision 2.

(3) To avoid doubt, a contribution area under a scheme may overlap with a contribution area under another scheme.

- (4) In a case where subsection (3) applies, the relevant contributions will be collected separately and the succeeding provisions of this Subdivision will apply accordingly.

165—Contributions by constituent councils

5 (1) If this Subdivision applies in relation to a contribution area, the council or councils whose areas or parts of whose areas fall within the contribution area (the *constituent councils*) are responsible to make a contribution under this Subdivision based on an amount specified by the Minister in accordance with this Subdivision in respect of each financial year with respect to which this Subdivision applies.

10 (2) Subject to this section, liability for the amount to be contributed by constituent councils will be shared between them—

(a) if the charge under section 168 is based on the value of rateable land—

15 (i) unless subparagraph (ii) or (iii) applies, in the proportions that the capital value of the rateable land in the contribution area is distributed amongst the areas of the councils (and this subparagraph applies despite the fact that an individual council uses a different basis to impose the charge);

20 (ii) if all of the constituent councils base their general rates on the site value of land—in the proportions that the site value of the rateable land in the contribution area is distributed amongst the areas of the councils;

(iii) if all of the constituent councils base their general rates on the annual value of land—in the proportions that the annual value of the rateable land in the contribution area is distributed amongst the areas of the councils;

25 (b) if the charge is a fixed amount on all rateable land—in proportion to the number of rateable properties situated in the area of each council (being properties also situated in the contribution area);

30 (c) if the charge is a fixed amount that depends on the purpose for which rateable land is used—in proportion to the number of rateable properties used for each relevant purpose that are in the area of each council and also in the contribution area;

(d) if the charge is based on the area of rateable land—in the proportions that the area of the rateable land in the contribution area is distributed amongst the areas of the councils;

35 (e) if the charge is based on the purpose for which rateable land is used and the area of rateable land—in the proportions that the area of the rateable land in the contribution area that is used for each purpose is distributed amongst the areas of the councils;

40 (f) if the charge is based on the location of rateable land—in proportion to the number of rateable properties situated within the location or locations in the area of each council (being properties also situated in the contribution area).

- 5
- (3) The Minister may, in connection with the operation of subsection (2), determine that there should be differentiating factors applied with respect to the calculation of the respective shares of the constituent councils taking into account any matter prescribed by the regulations and make adjustments to the shares that the constituent councils would otherwise contribute on the basis of these factors.
- (4) The share of each council will be determined by the Minister after consultation with the council and the scheme coordinator.
- 10 (5) A council must, at the request of the Minister, supply the Minister with information in the possession of the council to enable the Minister to determine shares under subsections (2) and (3).
- (6) The Minister must cause notice of the determination of a council's share to be given to the council and to be published in the Gazette.
- 15 (7) 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 at least 21 days) specified by the Minister.
- (8) In this section—
rateable land means rateable land under the *Local Government Act 1999*.

166—Payment of contributions

- 20 (1) A council's share of the amount to be contributed by the constituent councils is payable by the council in approximately equal instalments on 30 September, 31 December, 31 March and 30 June in the year to which the contribution relates in accordance with a determination of the Minister and interest accrues on any amount unpaid at the rate and in the manner prescribed by regulation.
- 25 (2) An amount payable by a council under this section and any interest that accrues in respect of that amount is recoverable as a debt in accordance with a scheme prescribed by the regulations.

167—Funds may be expended in subsequent years

30 To avoid doubt, if an amount paid by a council under this Subdivision is not spent in the financial year in respect of which it was paid, it may be spent in a subsequent financial year.

168—Imposition of charge by councils

- 35 (1) In order to reimburse itself for the amounts contributed (or to be contributed) under this Subdivision, a council must impose a charge on rateable land in the contribution area.
- (2) A charge must be consistent with—
- (a) the funding arrangement established under Subdivision 2; and
 - (b) any determination or direction of the Minister.
- 40 (3) Except to the extent that the contrary intention appears, Chapter 10 of the *Local Government Act 1999* applies to and in relation to a charge as if it were a separate rate under that Chapter.

- (4) Without limiting the operation of any other provision of this Act, the following provisions apply with respect to the application of Chapter 10 of the *Local Government Act 1999* to and in relation to a charge:
- 5 (a) section 154(1), (2) and (3) of that Act will not apply in relation to the charge and the basis for the charge will be chosen from the following (as set out in the relevant funding arrangement):
- 10 (i) the value of rateable land; or
- (ii) a fixed charge of the same amount on all rateable land; or
- (iii) a fixed charge of an amount that depends on the purpose for which rateable land is used; or
- (iv) the area of rateable land; or
- (v) the purpose for which rateable land is used and the area of the land; or
- (vi) the location of rateable land;
- 15 (b) if the value of rateable land is the basis for the charge under paragraph (a), a council must use capital value, site value or annual value as the basis to impose the charge;
- (c) if a fixed charge is the basis for the charge under paragraph (a), then
- 20 section 152 of that Act will apply subject to any modifications prescribed by the regulations;
- (d) if relevant, the purposes for which land is used that may be the basis for the charge under paragraph (a) will be purposes prescribed by the regulations;
- (e) despite section 154(6) of that Act, a charge under this Subdivision may be
- 25 declared more than 1 month before the commencement of a financial year to which the charge relates;
- (f) section 151(5) of that Act will not apply in relation to the charge;
- (g) section 156 of that Act will apply (subject to the use of any differentiating factor under paragraph (a));
- (h) any other section, or part of any other section, of that Act prescribed by the
- 30 regulations will not apply in relation to the charge;
- (i) the regulations may modify the operation of Chapter 10 of that Act in any other respect.
- (5) To avoid doubt, nothing in subsection (4) prevents the operation of section 158 of the *Local Government Act 1999*.
- 35 (6) A charge is not invalid because it raises more or less than the amount that the council must contribute under this Subdivision.
- (7) 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 at least
- 40 21 days) specified by the Minister.

169—Costs of councils

- (1) A council is entitled to be paid an amount determined in accordance with the regulations on account of the costs of the council in complying with the requirements of this Subdivision.
- 5 (2) Regulations made for the purposes of subsection (1) may—
- (a) provide a method or methods by which a council's costs are to be determined, including by the use of estimates or prescribed amounts in prescribed circumstances; and
 - (b) limit any calculation of costs to amounts prescribed as fair costs.
- 10 (3) A payment under subsection (1) must be paid in accordance with the regulations.
- (4) 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 at least 21 days) specified by the Minister.

15 Subdivision 4—Statutory funds

170—Establishment of funds

- (1) The Chief Executive must establish a fund for the purposes of each scheme that provides for the imposition of a charge under Subdivision 3.
- (2) The fund will consist of—
- 20 (a) any money payable by a council and recovered under Subdivision 3; and
- (b) any income and accretions produced by the investment of money from the fund; and
- (c) any money advanced or made available by the Treasurer for the purposes of the fund; and
- 25 (d) any money appropriated from the Consolidated Account for payment into the fund; and
- (e) other money paid into the fund under this or any other Act.
- (3) The fund will be applied towards the purposes of the relevant scheme in accordance with any directions or approvals of the Treasurer made or given after consultation with
- 30 the Minister, including so as to provide for, or to make reimbursements for, payments that have already been made.
- (4) The Minister may, after seeking the advice of the Treasurer, invest money that is not immediately required for the purposes of the fund as the Minister thinks fit.

171—Audit of funds

- 35 A fund established under this Subdivision will be taken to form part of the accounts of the Department for the purposes of the *Public Finance and Audit Act 1987*.

Subdivision 5—Winding up

172—Winding up

- (1) The Minister may, on the recommendation of, or after consultation with, the scheme coordinator, wind up a scheme under this Division by notice—
- 5 (a) notified in the Gazette; and
- (b) published on the SA planning portal.
- (2) The Minister may, on the winding up of a scheme, by notice published in the Gazette, transfer the assets, rights and liabilities of a prescribed body—
- 10 (a) to the Minister; or
- (b) to the Crown; or
- (c) to another agency or instrumentality of the Crown; or
- (d) with the agreement with the person or body—to a person or body that is not an agent or instrumentality of the Crown.
- (3) If a fund has been established under Subdivision 4 for the purposes of the scheme that is wound up under this section, the Treasurer may, by notice published in the
- 15 Gazette—
- (a) wind up the fund; and
- (b) deal with the balance of the fund in accordance with the terms of the scheme, which may include the transfer of money—
- 20 (i) to the Planning and Development Fund; or
- (ii) to another fund or account determined by the Treasurer.
- (4) Money transferred under subsection (3) may be applied for a purpose determined or approved by the Treasurer (which may be a purpose that is unrelated to the purposes of the scheme that is being wound up).
- 25 (5) Despite a preceding subsection, any amount that is attributable to any money paid under Subdivision 3 must be applied for a purpose that benefits the community where the relevant contribution area or areas are located under a scheme approved by the Treasurer.
- (6) The Treasurer must consult with the Minister before the Treasurer acts under
- 30 subsection (3), (4) or (5).
- (7) In this section—
- prescribed body*** means—
- (a) a Minister; or
- (b) another agency or instrumentality of the Crown.

Division 2—Infrastructure powers

173—Interpretation

In this Division—

designated entity means—

- 5 (a) the Minister; or
- (b) another Minister; or
- (c) any other agency or instrumentality of the Crown declared to be a designated entity under this Division by proclamation; or
- (d) the Chief Executive; or
- 10 (e) a council; or
- (f) person or body acting in accordance with a scheme under Division 1; or
- (g) a person or body declared to be a designated entity under this Division by another Act;

15 *lake* includes an artificial body of water declared by regulation to be a lake under this Division;

road means any street, road, thoroughfare, terrace, court, lane, alley, cul-de-sac, or place commonly used by the public, or to which the public are permitted to have access, and includes a part of a road;

roadwork means—

- 20 (a) the construction of a road; or
- (b) the maintenance or repair of a road; or
- (c) the alteration of a road; or
- (d) the construction of drains and other structures for the drainage of water from a road; or
- 25 (e) the installation of fences, railings, barriers or gates; or
- (f) the installation, maintenance or alteration of traffic islands or parking bays; or
- (g) the improvement of a road, including (for example)—
 - (i) landscaping and beautification; or
 - (ii) installation of road lighting; or
- 30 (h) the installation of amenities or equipment on or adjacent to a road for the use, enjoyment or protection of the public; or
- (i) the installation of signs on or adjacent to a road for the use or benefit of the public; or
- (j) any work in connection with a road;

traffic control device means a sign, signal, marking, structure or other device or thing, to direct or warn traffic on, entering, or leaving, a road, and includes a traffic cone, barrier, structure or other device or thing to wholly or partially close a road or part of a road;

5 *water management works* means—

- (a) holding water in a watercourse, dam, reservoir or lake, or by other means; or
- (b) diverting water (including into an aquifer), disposing of water to another place, or dealing with water in another way; or
- 10 (c) deepening, widening or changing the course of any watercourse, deepening or widening a dam, reservoir or lake, or taking action to establish or remove any obstruction to the flow of water; or
- (d) undertaking an activity that may affect access to any water; or
- (e) undertaking any other work of a prescribed kind.

174—Infrastructure works

15 For the purposes of this Division, infrastructure works includes any of the following in relation to essential infrastructure (or proposed essential infrastructure):

- (a) installing, altering, adding to or demolishing or removing essential infrastructure;
- (b) operating, maintaining, testing, repairing or replacing essential infrastructure;
- 20 (c) excavating or remediating any land;
- (d) inspecting, examining or surveying any land and for that purpose—
 - (i) fixing posts, stakes or other markers; or
 - (ii) digging trenches or sink holes; or
 - (iii) removing samples for analysis;
- 25 (e) erecting, constructing, altering or demolishing or removing any structure, building, fence, barrier, bank or levee;
- (f) carrying out any roadworks;
- (g) carrying out activities constituting the installation, maintenance, alteration, operation or removal, or causing the installation, maintenance, alteration,
- 30 operation or removal, of a traffic control device on, above or near a road;
- (h) carrying out activities constituting the erection, construction, laying down, making, alteration or removal of buildings, structures, notices or signs, over, under, along, across, or adjacent to, a road or railway;
- (i) without limiting a preceding paragraph, installing or removing any notice or
- 35 sign;
- (j) carrying out any water management works;
- (k) damaging or removing vegetation;
- (l) carrying out other work reasonably necessary in connection with any activity referred to above (including with respect to any facilities, works or services
- 40 connected with essential infrastructure).

175—Authorised works

- (1) A designated entity may carry out any infrastructure works if authorised to so do by or under this or any other Act.
- 5 (2) An authorisation under subsection (1) includes an authorisation included in a scheme under Division 1.
- (3) Subsection (1)—
- (a) operates subject to the provisions of any Act under which the authorisation is given; and
- 10 (b) operates subject to any requirement to obtain a development authorisation under this Act; and
- (c) operates subject to any other Act that requires an assessment, decision, permission, consent, approval, authorisation, certificate or other authority required under another Act.
- 15 (4) A designated entity must make good any damage to a road arising from works carried out under this section.
- (5) Subject to subsection (6), a designated entity must, in relation to a proposal that involves disturbing the surface of a road, or that otherwise relates to a road—
- (a) inform the relevant road maintenance authority of the proposal at least 28 days before the proposed commencement of any work; and
- 20 (b) give the relevant road maintenance authority a reasonable opportunity to consult with the designated entity in relation to the matter; and
- (c) ensure that proper consideration is given to the views of the road maintenance authority.
- 25 (6) In a case of emergency, the designated entity need only comply with subsection (5) to such extent as is practicable in the circumstances.
- (7) The provisions of the *Road Traffic Act 1961* apply in relation to a traffic control device installed, maintained, altered or operated under this Division as if a designated entity were a road authority authorised under Part 2 of that Act to install, maintain, alter or operate the device.

30 176—Entry onto land

- (1) For the purpose of undertaking any work or activity in connection with the exercise of a power under this Division, a person authorised by a designated entity may—
- (a) enter and pass over any land; and
- (b) bring onto any land any vehicles, plant or equipment; and
- 35 (c) temporarily occupy land; and
- (d) do anything else reasonably required in connection with the exercise of the power.
- (2) A person must, in exercising a power under subsection (1), insofar as is reasonably practicable, minimise disturbance to any land.

- (3) In addition, in the case of any work or activity to be undertaken on land used for residential purposes, the person exercising a power under subsection (1)—
- (a) must take reasonable steps to ensure that a notice in the prescribed form is provided to the owner of the land in accordance with the regulations; and
 - (b) must make every reasonable effort to comply with any reasonable request of an owner or occupier of the land in connection with the exercise of the power.
- (4) The designated entity that has acted under subsection (1) is liable to pay reasonable compensation on account of any loss or damage caused by the exercise of a power under that subsection.
- (5) A person must not, without reasonable excuse, hinder or obstruct a person exercising a power under this section.
Maximum penalty: \$20 000.
- (6) This section does not limit or derogate from the powers of a designated entity or another person or body under another Act.

177—Acquisition of land

- (1) A designated entity may, with the consent of the Minister, acquire land for a purpose associated with infrastructure works under and in accordance with the *Land Acquisition Act 1969* (but such consent is not required in the case of a Minister acting as a designated entity as any such Minister is to be taken, by operation of this Division, to be authorised to acquire land under that Act).
- (2) Nothing in this section affects—
- (a) the ability of a designated entity to acquire land by agreement; or
 - (b) the operation of any other section of this Act.

Division 3—Related provisions

178—Incorporation of Chief Executive

- (1) The Chief Executive is, for the purposes of this Part, constituted as a body corporate.
- (2) The body corporate—
- (a) is an instrumentality of the Crown; and
 - (b) has perpetual succession and common seal; and
 - (c) is capable of suing and being sued; and
 - (d) holds its property on behalf of the Crown; and
 - (e) has the functions assigned to it by or under this or any other Act; and
 - (f) has all the powers of a natural person together with the powers conferred on the Chief Executive by or under this or any other Act and may do anything necessary or convenient to be done in the exercise of its functions.

179—Step in powers

(1) In this section—

major infrastructure project means—

- (a) a project that constitutes a scheme that has been established under Division 1;
or
- (b) any other project that is to be carried out (or is being carried out) by, or that involves, a State agency that is brought within the ambit of this section by the Governor by notice in the Gazette;

responsible Minister, in relation to a State agency, means the Minister primarily responsible for the activities of the State agency;

State agency means—

- (a) an agency or instrumentality of the Crown (including a Department or administrative unit of the State); or
- (b) another person or body acting under the express authority of the Crown.

(2) The Chief Executive may, with the approval of the Minister and any other responsible Minister for a State agency that has a direct interest in the matter—

- (a) take over responsibility for a major infrastructure project;
- (b) without limiting paragraph (a), take over or undertake any work required for, or in connection with, a major infrastructure project.

(3) The Minister may, in connection with an approval under subsection (2), by notice published in the Gazette, transfer any assets, rights or liabilities that have been established or accrued as part of a major infrastructure project to the Chief Executive.

Part 14—Land management agreements

180—Land management agreements

(1) A designated authority may enter into an agreement relating to the development, management, preservation or conservation of land with the owner of the land.

(2) Subject to subsection (3), a greenway authority may enter into an agreement relating to the management, preservation or conservation of land with the owner of the land if—

- (a) the land comprises a greenway, or part of a greenway, for which the authority is responsible; or
- (b) where the land does not comprise a greenway—it is a term of an access agreement under the *Recreational Greenways Act 2000* that the greenway authority will enter into the agreement.

(3) A greenway authority that is not the Minister under the *Recreational Greenways Act 2000* may only enter into an agreement under subsection (2) if the agreement has been approved by that Minister.

- 5
- (4) A designated authority must, in considering whether to enter into an agreement under this section which relates to the development of land and, if such an agreement is to be entered into, in considering the terms of the agreement, have regard to—
- (a) the provisions of the Planning and Design Code and to any relevant development authorisation under this Act; and
- (b) the principle that the entering into of an agreement under this section by the designated authority should not be used as a substitute to proceeding with an amendment to the Planning and Design Code under this Act.
- 10
- (5) Agreements entered into under this section must be registered in accordance with the regulations (but the fact that an agreement is not registered does not affect its validity or effect).
- (6) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- 15
- (7) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (5).
- (8) A designated authority or a greenway authority has power to carry out on private land any work for which provision is made by agreement under this section.
- 20
- (9) An agreement under this section may include an indemnity from a specified form of liability or right of action, a waiver or exclusion of a specified form of liability or right of action, an acknowledgment of liability, or a disclaimer, on the part of a party to the agreement.
- 25
- (10) A provision under subsection (9) may be expressed to extend to, or to be for the benefit of, a person or body who or which is not a party to the agreement and, in such a case, the person or body may enforce, or obtain the benefit of, the provision as if the person or body were a party to the agreement.
- 30
- (11) An owner of land must not enter into an agreement under this section unless all other persons with a legal interest in the land consent.
- (12) The Registrar-General must, on an application of a party to an agreement made for the purposes of this section, 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.
- 35
- (13) An agreement under this section has no force or effect under this Act until a note is made under subsection (12).
- (14) Where a note has been entered under subsection (12), the agreement is binding on the current owner of the land whether or not the owner was the person with whom the agreement was made and notwithstanding the provisions of the *Real Property Act 1886*.
- 40
- (15) The Registrar-General must, if satisfied on the application of a designated authority or greenway authority, or the owner of the land, that an agreement in relation to which a note has been made under this section has been rescinded or amended, enter a note of the rescission or amendment against the instrument of title, or against the land.
- (16) An agreement under this section may provide for remission of rates or taxes on the land but, except as so provided, such an agreement does not affect the obligations of an owner of land under any other Act.

(17) An agreement under this section entered into by a council or greenway authority must not provide for the remission of rates or taxes payable to the Crown unless the Minister consents to the remission, and such an agreement entered into by the Minister must not provide for the remission of rates or taxes payable to a council unless the council consents to the remission.

(18) The existence of an agreement under this section may be taken into account when assessing an application for a development authorisation under this Act.

(19) In this section—

designated authority means—

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

greenway authority means—

- (a) the Minister for the time being administering the *Recreational Greenways Act 2000*; or
- (b) an association incorporated under the *Associations Incorporation Act 1985* that has been approved by the Minister referred to in paragraph (a) as a greenway authority for the purposes of this definition;

owner of land includes—

- (a) a person who has the care, control or management of a reserve; or
- (b) a mortgagee in possession of the land.

181—Land management agreements—development applications

(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—

- (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).

(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).

(3) However, the parties proposing to enter into an agreement must have regard to—

- (a) the provisions of the Planning and Design Code; and
- (b) the principle that the entering into of an agreement under this section by the designated authority should not be used as a substitute to proceeding with an amendment to the Planning and Design Code 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.
- 5 (5) Agreements entered into under this section must be registered in accordance with the regulations (but the fact that an agreement is not registered does not affect its validity or effect).
- (6) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- 10 (7) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (5).
- (8) 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.
- 15 Maximum penalty: \$120 000.
Additional penalty.
Default penalty: \$500.
- (9) 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.
- 20 (10) 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).
- 25 (11) An owner of land must not enter into an agreement, or give a consent under subsection (10), unless all other persons with a legal interest in the land consent.
- (12) A consent must be given in a manner and form determined by the Registrar-General.
- (13) 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
30 under the provisions of the *Real Property Act 1886*, against the land.
- (14) Where a note has been entered under subsection (13), 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 (10), and notwithstanding the provisions of the *Real Property Act 1886*.
- 35 (15) 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.
- 40 (16) If an agreement under this section does not have effect under this section (see subsection (9)) within the period prescribed by the regulations, the designated 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).

(17) 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.

(18) Nothing in this section affects or limits the operation of section 180.

5 (19) In this section—

designated authority means—

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

Part 15—Funds and off-set schemes

Division 1—Planning and Development Fund

182—Continuance of Fund

15 (1) The Fund at the Treasury known as the *Planning and Development Fund* continues in existence.

(2) The following amounts must be paid into the Fund:

- (a) money made available by the Treasurer out of appropriations authorised by Parliament for the purposes of the Fund;
- 20 (b) all money derived by the Minister from the sale, leasing or other disposal of land by the Minister of land vested in the Minister;
- (c) all loans raised by the Minister for the purposes of this Act;
- (d) all other money that is required to be paid into the Fund by or under this or any other Act (including by regulation under this Act).

25 (3) The Minister may borrow money for the purposes of this Act on terms and conditions approved by the Treasurer.

183—Application and management of Fund

(1) The money standing to the credit of the Fund may be used by the Minister for all or any of the following purposes:

- 30 (a) the acquisition, management or development of land, or any purpose related to the acquisition, management or development of land, under this Act;
- (b) the payment of money (by way of compensation or in other ways) which the Minister becomes liable to pay under this Act;
- (c) the payment of rates, taxes or other charges due and payable by the Minister in respect of land vested in or held by the Minister;
- 35 (d) the transfer to any reserve for the repayment of money borrowed by the Minister for the purposes of this Act;

- (e) the payment of principal, interest or expenses in respect of money borrowed by the Minister for the purposes of this Act;
- (f) the management and development of property vested in the Minister;
- (g) any purposes authorised by or under this Act (including by regulation) as a purpose for which the Fund may be applied;
- (h) assistance to councils in the provision and development of public land for conservation and recreation;
- (i) assistance or grants to—
 - (i) a joint planning board;
 - (ii) another entity acting under this Act; or
 - (iii) an entity acting under the *Urban Renewal Act 1995*.

184—Accounts and audit

- (1) The Minister must cause proper accounts to be kept in relation to the Fund.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

Division 2—Off-set schemes

185—Off-setting contributions

- (1) In this section—

designated entity means—

 - (a) the Minister; or
 - (b) a joint planning board or a council acting with the approval of the Minister.
- (2) A designated entity may establish a scheme under this section that is designed to support or facilitate—
 - (a) development that may be in the public interest or otherwise considered by the designated entity as being appropriate in particular circumstances (including by the provision of facilities at a different site); or
 - (b) planning or development initiatives that will further the objects of this Act or support the principles that relate to the planning system established by this Act; or
 - (c) any other initiative or policy—
 - (i) designated by the Planning and Design Code for the purposes of this subparagraph; or
 - (ii) prescribed by the regulations for the purposes of this subparagraph.
- (3) A scheme established under this section may include—
 - (a) an ability or requirement for a person who is proposing to undertake development (or who has the benefit of an approval under this Act)—
 - (i) to make a contribution to a fund established as part of the scheme; or

- (ii) to undertake work or to achieve some other goal or outcome (on an "in kind" basis); or
- (iii) to proceed under a combination of subparagraph (i) and subparagraph (ii),
- 5 in order to provide for or address a particular matter identified by the scheme; and
- (b) an ability for a provision of the Planning and Design Code to apply with a specified variation under the terms of the scheme; and
- (c) an ability for any relevant authority to act under or in connection with
- 10 paragraph (a) or (b), including where the relevant authority is not the designated entity that has established the scheme,
- and the scheme will, in so doing, have effect in accordance with its terms.
- (4) If a fund is established as part of a scheme under this section—
- (a) the fund will consist of—
- 15 (i) any money received under the terms of the scheme; and
- (ii) any income or accretions produced by the investment of money from the fund; and
- (iii) any money advanced or made available by the Treasurer or any other person or body for the purposes of the fund; and
- 20 (b) the fund will be applied towards the purposes of the scheme in accordance with any directions or approvals of the Treasurer made or given after consultation with the Minister; and
- (c) money that is not immediately required for the purposes of the fund may be invested in accordance with provisions included in the scheme; and
- 25 (d) the fund must be audited in accordance with provisions included in the scheme.
- (5) An approval of the Minister that relates to a scheme to be established by a joint planning board or a council may be given on conditions specified by the Minister.
- (6) If a scheme is established under this section, the Minister must—
- 30 (a) prepare a report that sets out information about the scheme; and
- (b) furnish a copy of the report to the ERD Committee; and
- (c) publish a copy of the report on the SA planning portal.
- (7) A scheme under this section may be varied or wound up—
- (a) by the Minister; or
- 35 (b) by another designated entity acting with the approval of the Minister.
- (8) The Minister may, on the winding up of a scheme, make a determination about the use or application of any amount standing to the credit of the fund established as part of the scheme (and any such determination will have effect according to its terms).

186—Open space contribution scheme

(1) Where an application for a development authorisation provides for the division of land into more than 20 allotments, and 1 or more allotments is less than 1 hectare in area—

(a) the council in whose area the land is situated; or

(b) if the land is not situated within the area of a council—the Commission, may require—

(c) that up to 12.5% in area of the relevant area be vested in the council or the Crown (as the case requires) to be held as open space; or

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

(e) that land be vested in the council or the Crown under paragraph (c) and that the applicant make a contribution determined in accordance with subsection (8),

according to the determination and specification of the council or the Commission and, in so acting, the council or the Commission must have regard to any relevant provision of the Planning and Design Code that designates any land as open space and, in the case of a council, must not take any action that is at variance with the Planning and Design Code without the concurrence of the Commission.

(2) Where an application under this Part provides for—

(a) the division of land into 20 allotments or less, and 1 or more allotments is less than 1 hectare in area; or

(b) the division of land under the *Community Titles Act 1996* or the *Strata Titles Act 1988*,

then, unless the division is of a kind excluded from the operation of this section by the regulations—

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

(d) the Commission may enter into an agreement with the applicant under which—

(i) certain land described by the relevant plan will be vested (as a separate allotment) in the council in whose area the land is situated or, where the land is not situated within the area of a council, in the Crown, to be held as open space; and

(ii) the applicant will make a contribution under this section.

(3) Where land referred to in subsection (2) is in the area of a council, the council must be a party to an agreement referred to in subsection (2)(d).

(4) Where an application for a development authorisation 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 Commission may require—

- 5 (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 Commission), with some or all of this area to be vested in the Crown or, with the concurrence of the council, a council; or
- 10 (b) that the applicant pay the contribution prescribed by the regulations to the 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 Commission under this section.

(5) The percentage prescribed under subsection (4)(a) must not exceed 12.5%.

15 (6) The council and the Commission must ensure that there is consistency between—

- (a) a requirement imposed under subsection (1), (2) or (4), or an agreement entered into under subsection (2); and
- (b) the terms of any development authorisation given under this Act.

20 (7) 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 the Planning and Design Code.

(8) The contribution that may be required under subsection (1)(e) will be determined in accordance with the following formula:

$$P = PC \left[\frac{(12.5 - OS)}{12.5} \times NA \right]$$

25 where—

P = the contribution payable

PC = 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

30 ***OS*** = the area of land (expressed as a percentage of the relevant area) to be vested in the council or the Crown as open space

NA = the number of new allotments or strata lots delineated on the plan that do not exceed 1 hectare in area.

(9) For the purposes of this section, if a plan divides a number of existing allotments or strata lots into an equal or lesser number of allotments or strata lots, the allotments or strata lots into which the land is divided will not be regarded as being new allotments or strata lots, and if a plan divides a number of existing allotments or strata lots into a greater number of allotments or strata lots, the number by which the greater number of allotments or strata lots exceeds the existing number of allotments or strata lots will be taken to be the number of new allotments or strata lots created by the plan and, for the purpose of determining the area of the new allotments or strata lots, the smallest allotment or strata lot delineated on the plan will be regarded as the first of the new allotments or strata lots, the next to smallest will be regarded as the second, and so on.

(10) Payment by the applicant under subsection (1) must be made—

- (a) to the council in whose area the land is situated;
- (b) if the land is not situated within the area of a council—to the Commission.

(11) Money received under this section—

- (a) in the case of money received by a council—must be immediately paid into a fund established for the purposes of this section and applied by the council for the purpose of acquiring or developing land as open space;
- (b) in the case of money received by the Commission—must be paid into the Planning and Development Fund or, in the case of money received under subsection (4), dealt with in any other manner prescribed by the regulations.

(12) If a council or the Commission is satisfied that the division of land is being undertaken in stages, this section does not apply to an application for development authorisation to the extent that an earlier application in respect of the same development has addressed the requirements of this section in respect of the area of land as a whole.

(13) In this section, unless the contrary intention appears—

allotment has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot (not being a strata lot) and a development lot within the meaning of the *Community Titles Act 1996* but does not include—

- (a) a strata lot within the meaning of the *Community Titles Act 1996* or a unit within the meaning of the *Strata Titles Act 1988* or common property within the meaning of either of those Acts; or
- (b) a road, street, thoroughfare, reserve or other similar open space delineated on the relevant plan;

strata lot means a strata lot within the meaning of the *Community Titles Act 1996* and includes a unit created by a strata plan under the *Strata Titles Act 1988*;

relevant area means the area of land delineated on the relevant plan, excluding any allotment that exceeds 1 hectare in area other than a road, street, thoroughfare, reserve or similar open space delineated on the relevant plan.

187—Multi-unit buildings

(1) Where an application for a planning consent provides for the construction of a prescribed building, the Commission may require that the applicant make the contribution prescribed by the regulations in accordance with the requirements of this section.

- (2) The rates of contribution prescribed under subsection (1) must be consistent with the rates applying under section 186.
- (3) 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 the Planning and Design Code.
- (4) Payment by the applicant under subsection (1) must be made to the Commission.
- (5) Money received under this section must be paid into the Planning and Development Fund.
- (6) If a payment is made under this section and the prescribed building is subsequently divided into allotments so as to create a liability under section 186, the liability that would otherwise arise under that section will be adjusted (or will be extinguished) under a scheme set out in the regulations in order to provide a credit for the amount paid under this section.
- (7) In this section—
- apartment* means a self-contained apartment, unit or other residential place that is proposed to be contained in a prescribed building and that is suitable for use for residential purposes, including on a short-term basis after applying any principle prescribed by the regulations for the purposes of this definition, but does not include any premises of a class excluded by the regulations from the ambit of this definition;
- prescribed building* means a building—
- (a) that is designed to include 2 or more apartments (with or without other elements); and
 - (b) that, in the opinion of the Commission, could be divided into 2 or more allotments (or could be so divided after undertaking minor alterations).

188—Urban trees funds

- (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 published in the Gazette.
- (3) A designated area must be defined by reference to an area established by the Planning and Design Code.
- (4) A fund will consist of—
 - (a) all amounts paid into the fund as a condition of a development authorisation under this Act; 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 immediately required for the purpose of the fund may be invested by the council and any resultant income must be paid into the fund.

(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.

(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.

(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%.

(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.

Part 16—Disputes, reviews and appeals

Division 1—General rights of review and appeal

189—Interpretation

In this Division—

5 *prescribed matter*, in relation to an application for a development authorisation, means—

- (a) any assessment, request, decision, direction or act of a relevant authority under this Act that is relevant to any aspect of the determination of the application; or
- 10 (b) a decision to refuse to grant the authorisation; or
- (c) the imposition of conditions in relation to the authorisation; or
- (d) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in relation to the authorisation.

15 190—Rights of review and appeal

(1) The following applications or proceedings may be made or brought under this Division:

- (a) the owner of any land constituting a place that has been designated in the Planning and Design Code as a place of local heritage value may appeal to the Court against the decision to make the designation;
- 20 (b) a person who has applied for a development authorisation may, in respect of a prescribed matter—
 - (i) in a case where the application was made to an assessment manager appointed by an assessment panel acting as a relevant authority—
 - 25 (A) apply to the assessment panel for a review of a prescribed matter; or
 - (B) appeal to the Court against a prescribed matter; or
 - (ii) in any other case—appeal to the Court against a prescribed matter;
- 30 (c) a person who, after making an application under paragraph (b)(i)(A), is dissatisfied with the outcome of the review, may appeal to the Court against a decision of the assessment panel on the review;
- (d) a person who is entitled to be given a notice of a decision under section 104(6) in respect of development classified as restricted development by the Planning and Design Code may appeal to the Court against the decision;
- 35 (e) a person who has applied to a council for a certificate of occupancy or an approval to occupy a building on a temporary basis may appeal to the Court against a refusal by the council to grant the certificate or to give the approval;

- (f) a person who is a party to a dispute relating to—
- (i) the effect of the Building Rules in specific circumstances; or
 - (ii) the manner in which the provisions of the Building Rules are, or ought to be, carried into effect; or
 - 5 (iii) whether or not an application for building consent in relation to a development that is at variance with the Building Rules should be granted in a particular case; or
 - (iv) whether the requirements of the Building Rules in any matter relating to building work have been satisfied in a particular case, or what is
10 necessary for the satisfaction of those requirements; or
 - (v) the construction of a party wall or the proportion or amount of the expense to be borne by the respective owners of premises separated by a party wall; or
 - (vi) any other prescribed matter,

15 may apply to the Court for determination of the dispute;

- (g) a person who can demonstrate an interest in a matter that is relevant to the determination of an application for a development authorisation by a relevant authority under this Act by virtue of being an owner or occupier of land constituting the site of the proposed development, or an owner or occupier of
20 land constituting the site of the proposed development, or an owner or occupier of adjacent land, may apply to the Court for a review of the matter with respect to a decision under this Act as to the nature of the development under Part 7 Division 2 Subdivision 1, Subdivision 2 or Subdivision 3.

- (h) proceedings that a person is authorised to bring before the Court by the
25 regulations.

(2) If—

- (a) an application that involves a dispute relating to a matter referred to in subsection (1)(e) or (f) (and no other matter) is made to the Court; or
- 30 (b) an appeal is commenced before the Court in any case prescribed by the regulations for the purposes of this paragraph,

the matter must, in accordance with the Rules of the Court, be referred to a commissioner or commissioners of the Court acting as a building referee or building referees under section 194.

(3) A right of review under subsection (1)(g) does not limit or restrict the ability of an
35 applicant for the relevant development authorisation to institute an appeal under subsection (1)(b).

(4) Subsection (1) does not—

- (a) derogate from any other provision of this Act that confers a right to apply to the Court in specified or prescribed circumstances;
- 40 (b) derogate from any other provision of this Act that prevents or restricts a right to apply to the Court in specified or prescribed circumstances.

- (5) If an application relates to the decision, direction, act, consent, approval, order or determination of a person or body acting in pursuance of delegated powers, the respondent is the principal and not the delegate.

191—Application to assessment panel

- 5 (1) An application to an assessment panel for review of a prescribed matter under this Division in a case where an assessment manager acted as a relevant authority must be made in the prescribed manner and form and must be made within 1 month after the applicant receives notice of the decision constituting the prescribed matter unless the assessment panel, in its discretion, allows an extension of time.
- 10 (2) On an application under subsection (1)—
- (a) the assessment panel may adopt such procedure as the assessment panel thinks fit; and
- (b) the assessment panel is not bound by the rules of evidence and may inform itself as it thinks fit.
- 15 (3) Without limiting subsection (2)—
- (a) the assessment manager must, on a request made by the assessment panel, furnish to the assessment panel any application, documents, written submissions, reports, plans, specifications or other documents lodged with, or received by, the assessment manager in relation to the matter, and any other relevant material requested by the assessment panel; and
- 20 (b) the assessment manager must, on a request made by the assessment panel, furnish a report on any aspect of the subject-matter of the review; and
- (c) the assessment panel may examine anything submitted under paragraph (a) and consider any report provided under paragraph (b) and draw any
- 25 conclusions of fact it considers proper.
- (4) An assessment panel may, on a review under this Division—
- (a) affirm the decision being reviewed; or
- (b) vary the decision being reviewed; or
- (c) set aside the decision being reviewed and substitute its own decision,
- 30 and any decision of an assessment panel will then have effect according to its terms.

192—Applications to Court

- 35 (1) An application to the Court must be made in a manner and form determined by the Court, setting out the grounds of the application, and, unless otherwise specifically provided under another provision of this Act, must be made within 2 months after the applicant receives notice of the decision to which the application relates unless the Court, in its discretion, allows an extension of time.
- (2) Subject to subsection (3), an application under subsection (1) must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).
- 40

(3) Subsection (2) does not apply—

- (a) in a case where the matter is referred to a building referee or building referees under section 194; or
- (b) in any case, or case of a kind, prescribed by the regulations.

5 **193—Powers of Court in determining any matter**

(1) The Court may, on hearing any proceedings under this Act—

- (a) confirm, vary or reverse any decision, assessment, consent, approval, direction, act, order or determination to which the proceedings relate;
- (b) affirm, vary or quash any order, notice or other authority that has been issued;
- 10 (c) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
- (d) if it appears to the Court to be appropriate to the subject of the proceedings, order—
 - 15 (i) that a building (or any part of a building) be altered, reinstated or rectified in a manner specified by the Court;
 - (ii) that a party to the dispute remove or demolish a building (or any part of a building);
- (e) if appropriate in the circumstances of the proceedings—make any determination or declaration, or grant any other remedy or relief, as the Court thinks fit, including so as to grant a development authorisation;
- 20 (f) make any consequential or ancillary order or direction, or impose any condition, that the Court considers necessary or expedient.

25 (2) The following provisions apply in connection with the exercise of the Court's jurisdiction in any proceedings under this Act:

- (a) subject to paragraph (b), the Court should only seek to deal with and resolve those issues in dispute between the parties and should not, unless the Court considers it to be necessary or appropriate to do so, consider any aspect of the decision, assessment, consent, approval, direction, act, order or determination that is not being challenged;
- 30 (b) if—
 - (i) a person who has applied for a development authorisation is appealing against a refusal to grant the authorisation; or
 - 35 (ii) a third party is appealing against a decision to grant a development authorisation,

the Court may (if the Court thinks fit) proceed to consider the matter *de novo* (adopting such processes and procedures as it thinks fit and taking into account any material that was before the relevant authority when it refused to grant the authorisation and such other evidence or material as the Court thinks fit);

(c) the Court may, in dealing with an application from a person to be joined as a party to the proceedings (other than the Crown, a relevant authority applying under section 116, or a person who was entitled to be given notice of a decision in prescribed circumstances (if relevant)), determine not to grant the application—

- (i) on the ground that the Court is not satisfied that the person has a special interest in the subject-matter of the application; or
- (ii) on the ground that, whatever the interest of the person may be, the Court is not satisfied that the interests of justice require that the person be joined as a party; or
- (iii) on any other ground determined to be appropriate by the Court.

194—Special provision relating to building referees

- (1) The commissioner or commissioners to whom a matter is referred under section 190 will determine the matter as a building referee or as building referees, who will, subject to the Rules of the Court, for the purposes of this provision, have the powers of arbitrators under the *Commercial Arbitration Act 2011*.
- (2) In addition to the other powers that a commissioner may exercise as a member of the Court under this Act, the commissioner or commissioners may—
 - (a) refer any question of law to a Judge of the Court for determination;
 - (b) require a party to furnish—
 - (i) particulars of his or her case;
 - (ii) documentary or other material relevant to the determination of the matter;
 - (iii) such other information as the commissioner thinks fit;
 - (c) give summary judgment (with costs) against any party who obstructs or delays the proceedings or who fails to attend or participate in the proceedings;
 - (d) make a declaration as to the effect of the Building Rules in the particular case (which declaration will have effect according to its terms);
 - (e) order that building work be carried out in a specified manner (being a manner that accords with the Building Rules or, if the commissioner or commissioners think fit, is at variance with the Building Rules but effectively attains the objects of this Act);
 - (f) settle any dispute relating to a party wall.
- (3) No appeal lies from a decision of a commissioner under this section on a question of fact.

Division 2—Initiation of proceedings to gain a commercial competitive advantage

195—Preliminary

- (1) In this Division—
 - commercial competitive interest*—see subsection (2);

relevant proceedings means any proceedings before a court arising under or in connection with the operation of this Act including proceedings for judicial review, but not including criminal proceedings.

- 5 (2) For the purposes of this Division, if the business of a person, or the business of an associate of a person (other than the proponent of the development), might be adversely affected by a particular development on account of competition in the same market, then the person will be taken to have a commercial competitive interest in any relevant proceedings that are related to that development.
- 10 (3) For the purposes of this Division, the circumstances in which proceedings are related to a development include a situation where proceedings constitute a challenge to the Planning and Design Code, or to the amendment of the Planning and Design Code, that affects a development.
- 15 (4) The regulations may provide that this Division does not apply in a circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations.

196—Declaration of interest

- (1) If—
- (a) a person—
 - 20 (i) commences any relevant proceedings; or
 - (ii) becomes a party to any relevant proceedings; and
 - (b) the person has a commercial competitive interest in the proceedings,
- then the person must disclose the commercial competitive interest.
- (2) If—
- 25 (a) a person—
 - (i) commences any relevant proceedings; or
 - (ii) becomes a party to any relevant proceedings; and
 - (b) the person receives, in connection with those proceedings, direct or indirect financial assistance from a person who has a commercial competitive interest in the proceedings,
- 30 then both the person referred to in paragraph (a) and the person who provided the financial assistance referred to in paragraph (b) must disclose the commercial competitive interest.
- (3) A disclosure must be made to the Registrar of the relevant court and to the other parties to the relevant proceedings in accordance with any requirements prescribed by the regulations.
- 35 (4) A person who fails to make a disclosure in accordance with the requirements of this section is guilty of an offence.
- Maximum penalty: \$20 000.

197—Right of action in certain circumstances

(1) If—

(a) a person—

(i) who is a party to the relevant proceedings related to a development;
or

(ii) who provides direct or indirect financial assistance to a party to any relevant proceedings related to a development,

has a commercial competitive interest in the proceedings, or has an associate who has a commercial competitive interest in the proceedings; and

(b) the outcome of the proceedings (including after taking into account any appeal) is that the development, or a development in substantially the same form, may proceed,

then the proponent of the development is entitled to recover from the person (the *defendant*) and, if relevant, from any associate of the defendant, as a debt, an amount equal to the amount of any loss (including economic loss) that can be reasonably assessed as having been suffered by the proponent as a result of delays to the development on account of the proceedings if the court is satisfied that the defendant's sole or predominant purpose in pursuing the proceedings, or for providing financial assistance (as the case may be) was to delay or prevent the development in order to obtain commercial benefit for the defendant or an associate of the defendant.

(2) A court before which proceedings are brought under subsection (1) may, if it considers that it is appropriate to do so, reduce any amount that would otherwise be recoverable under that subsection to take into account—

(a) any delay in the relevant proceedings reasonably attributable to the actions of the proponent of the development or of some other party (other than the defendant, an associate of the defendant or a person who has received direct or indirect financial assistance from the defendant in connection with those proceedings); or

(b) any other matter that it considers relevant in the circumstances of the particular case.

(3) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of subsection (1), a person may be taken to have pursued proceedings, or to have provided financial assistance to a party to proceedings (as the case may be) for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

Part 17—Authorised officers

198—Appointment of authorised officers

(1) The Minister or a council—

(a) may appoint a person to be an authorised officer for the purposes of this Act; and

(b) must appoint a person who holds the qualifications prescribed by the regulations to be an authorised officer for the purposes of this Act if required to do so by the regulations.

(2) An appointment of an authorised officer may be subject to conditions.

5 (3) Each authorised officer must be issued an identity card—

(a) containing a photograph of the authorised officer; and

(b) stating any conditions of appointment limiting the authorised officer's appointment.

10 (4) An authorised officer must, on request, produce the identity card for inspection before exercising the powers of an authorised officer under this Act in relation to any person.

(5) The Minister or a council may, at any time, revoke an appointment which the Minister or the council has made, or vary or revoke a condition of such an appointment or impose a further such condition.

199—Powers of authorised officers to inspect and obtain information

15 (1) An authorised officer may—

(a) enter and inspect any land or building—

(i) where the authorised officer reasonably suspects that a provision of this Act is being, or has been breached; or

20 (ii) in the case of an authorised officer who holds prescribed qualifications—for the purpose of inspecting any building work; or

(iii) for the purposes of determining that the land or building is safe; or

(iv) for any other reasonable purpose connected with the administration or operation of this Act;

(b) subject to subsection (2), where reasonably necessary—

25 (i) break into or open any part of, or anything in or on, the land or building; or

(ii) pull down or lay open any building or building work;

30 (c) require any person to produce any documents (which may include a written record reproducing in an understandable form information stored by computer, microfilm or other process) as reasonably required in connection with the administration or enforcement of this Act;

(d) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information;

35 (e) carry out tests, make measurements or take photographs, films or video recordings as reasonably necessary in connection with the administration or enforcement of this Act;

40 (f) require a person whom the authorised officer reasonably suspects to have committed, or to be committing or about to commit, any breach of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

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- (g) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- 5 (h) give any directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration or enforcement of this Act.
- (2) An authorised officer may only exercise the power conferred by subsection (1)(b) on the authority of a warrant issued by a magistrate unless the authorised officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- 10 (3) A magistrate must not issue a warrant under subsection (2) unless satisfied, on information given on oath—
- (a) that there are reasonable grounds to suspect that a provision of this Act has been, is being, or is about to be, breached; or
- 15 (b) that the warrant is otherwise reasonably required in the circumstances.
- (4) In the exercise of powers under this Act an authorised officer may be assisted by such persons as may appear to the authorised officer to be necessary or desirable in the circumstances.
- (5) An occupier of a building must give to an authorised officer or a person assisting an authorised officer such assistance as is reasonably required for the effective exercise of the powers conferred by this section.
- 20 Maximum penalty: \$10 000.
- (6) Subject to subsection (7), a person who—
- (a) without reasonable excuse, hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act; or
- 25 (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) without reasonable excuse, fails to obey a requirement or direction of an authorised officer under this Act; or
- 30 (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer, is guilty of an offence.
- 35 Maximum penalty: \$10 000.
- (7) It is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or information as required under this section that to do so might tend to incriminate the person or make the person liable to a penalty.

(8) If compliance by a natural person with a requirement under this section might tend to incriminate the person or make the person liable to a penalty, then—

(a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or

(b) in any other case—the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

Part 18—Enforcement

Division 1—Civil enforcement

200—Interpretation

(1) In this Division—

designated authority means—

(a) the Commission; or

(b) a council; or

(c) the South Australian Heritage Council; or

(d) a person or body brought within the ambit of this definition by the regulations.

(2) In this Division, a reference to a breach of this Act is a reference to—

(a) a contravention, or threatened contravention, of this Act, other than, in relation to the Crown, or an agency, instrumentality, officer or employee of the Crown, the Building Rules; or

(b) a contravention, or threatened contravention, of an agreement under Part 14.

201—Enforcement notices

(1) If a designated authority has reason to believe on reasonable grounds that a person has breached this Act or the repealed Act, the designated authority may do such of the following as the designated authority considers necessary or appropriate in the circumstances:

(a) direct a person to refrain, either for a specified period or until further notice, from the act, or course of action, that constitutes the breach;

(b) direct a person to make good any breach in a manner, and within a period, specified by the relevant authority;

(c) take such urgent action as is required because of any situation resulting from the breach.

- (2) A direction under subsection (1) must be given by notice in writing unless the designated authority considers that the direction is urgently required, in which case it may be given orally by an authorised officer.
- 5 (3) If a direction is given orally under subsection (2), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 pm on the next business day.
- (4) A written notice under subsection (2) or (3) must set out any appeal rights that the person may have under this Act.
- 10 (5) If a person fails to comply with a direction under subsection (1)(b) within the time specified in the notice, the designated authority may cause the necessary action to be taken.
- (6) The reasonable costs and expenses incurred by a designated authority (or any person acting on behalf of the designated authority) under this section may be recovered by the designated authority, as a debt, due from the person whose failure gave rise to the action.
- 15 (7) If an amount is recoverable from a person by a designated authority under this section—
- (a) the designated authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- 20 (b) the amount together with any interest charged so payable is until paid a charge in favour of the designated authority on any land owned by the person.
- 25 (8) An appeal against a notice under this section must be commenced within 14 days after the direction is given to the appellant unless the Court allows a longer time for the commencement of the appeal.
- (9) Subject to any order of the Court to the contrary, the operation of a direction is not suspended pending the determination of an appeal.
- 30 (10) In an appeal against a notice issued by a designated authority under this section, the Court may make such orders as to costs as it thinks fit.
- (11) A person who contravenes or fails to comply with a direction under this section is guilty of an offence.
Maximum penalty: \$20 000.
35 Default penalty: \$500.
- (12) A direction cannot be given under this section if it appears that the breach occurred more than 12 months previously.

202—Applications to Court

- 40 (1) Any person may apply to the Court for an order to remedy or restrain a breach of this Act or the repealed Act (whether or not any right of that person has been or may be infringed by or as a consequence of that breach).

- (2) Proceedings under this section may be brought in a representative capacity (but, if so, the consent of all persons on whose behalf the proceedings are brought must be obtained).
- (3) If proceedings under this section are brought by a person other than a designated authority, the applicant must serve a copy of the application on the designated authority within 3 days after filing the application with the Court.
- (4) An application may be made without notice to any person and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (5) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (6) If—
- (a) after hearing—
- (i) the applicant and the respondent; and
- (ii) any other person who has, in the opinion of the Court, a proper interest in the subject-matter of the proceedings and desires to be heard in the proceedings,
- the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act or the repealed Act; or
- (b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,
- the Court may, by order, exercise any of the following powers:
- (c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the breach;
- (d) require the respondent to make good the breach in a manner, and within a period, specified by the Court, or to take such other action as may appear appropriate to the Court;
- (e) cancel or vary any development authorisation;
- (f) require the respondent to pay to any person who has suffered loss or damage as a result of the breach, or incurred costs or expenses as a result of the breach, compensation for the loss or damage or an amount for or towards those costs or expenses;
- (g) if the Court considers it appropriate to do so, require the respondent to pay an amount, determined by the Court, in the nature of exemplary damages—
- (i) if the applicant is a council and the Crown has not become a party to the proceedings—to the council;
- (ii) in any other case—into the General Revenue of the State.
- (7) In assessing damages under subsection (6)(g), the Court must have regard to—
- (a) any detriment to the public interest resulting from the breach; and

- (b) any financial or other benefit that the respondent sought to gain by committing the breach; and
- (c) any other matter it considers relevant.
- (8) The power conferred under subsection (6)(g) can only be exercised by a Judge of the Court.
- (9) A designated authority, and any person with a legal or equitable interest in land to which an application under this section relates, is entitled to appear, before a final order is made, and be heard in proceedings based on the application.
- (10) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (11) An interim order—
- (a) may be made on an application without notice to any person; and
- (b) may be made whether or not the proceedings have been referred to a conference under subsection (5); and
- (c) will be made subject to such conditions as the Court thinks fit; and
- (d) will not operate after the proceedings in which it is made are finally determined.
- (12) If the Court makes an order under subsection (6)(d) and the respondent fails to comply with the order within the period specified by the Court, a designated authority may cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.
- (13) If an amount is recoverable from a person by a designated authority under subsection (12)—
- (a) the designated authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charged so payable is until paid a charge in favour of the designated authority on any land owned by the person.
- (14) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a development authorisation that should have been but was not made, or to remedy any other default.
- (15) The Court may order an applicant in proceedings under this section—
- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (16).
- (16) If on an application under this section the Court is satisfied—
- (a) that the respondent has not breached this Act or the repealed Act; and

(b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and

(c) that in the circumstances it is appropriate to make an order under this provision,

5 the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage which the respondent has suffered.

10 (17) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

(18) The Court may make such orders in relation to costs of proceedings under this section as it thinks fit.

15 (19) Proceedings under this section may be commenced at any time within 3 years after the date of the alleged breach or, with the authorisation of the Attorney-General, at any later time.

(20) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

20 **Division 2—General offences and provisions relating to offences**

Subdivision 1—General offences

203—General offences

(1) A person must not undertake development contrary to this Act.

Maximum penalty: \$120 000.

25 Additional penalty.

Default penalty: \$500.

(2) A person must not undertake development contrary to a development authorisation under this Act.

Maximum penalty: \$120 000.

30 Additional penalty.

Default penalty: \$500.

(3) A person who has the benefit of a development must ensure that the development is used, maintained and operated in accordance with—

(a) any development authorisation under this Act; and

35 (b) any plans, drawings, specifications or other documents submitted to a relevant authority for the purposes of this Act that are relevant to any such approval.

Maximum penalty: \$60 000.

- (4) A person must not contravene, or fail to comply with, a condition imposed under this Act in relation to a development authorisation.

Maximum penalty: \$120 000.

Additional penalty.

5 Default penalty: \$500.

204—Offences relating specifically to building work

- (1) A person must not perform building work, or cause it to be performed, except in accordance with technical details, particulars, plans, drawings and specifications approved in accordance with this Act.

10 Maximum penalty: \$60 000.

Default penalty: \$200.

- (2) A person must, in performing any building work, comply with the Building Rules (unless modified under this Act), and any other requirements imposed by or under this Act in respect of that work.

15 Maximum penalty: \$60 000.

Default penalty: \$200.

- (3) If—

20 (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 that may be lawfully allowed); and

25 (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.

Maximum penalty: \$60 000.

- 30 (4) The fact that a person may have (or has) committed an offence against subsection (3) does not affect the requirements imposed on a person by subsections (1) and (2).

(5) In so far as any charge for an offence against a preceding subsection relates to a failure to comply with the Building Rules (including the Building Rules as modified under this Act), it is a defence to prove that the failure to comply was only of a minor nature and had no adverse effect on the structural soundness or safety of the building in respect of which the relevant building work was performed.

- 35 (6) In this section—

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

205—False or misleading information

A person must not, in furnishing information under this Act, make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Maximum penalty: \$20 000.

Subdivision 2—General provisions relating to offences

206—Criminal jurisdiction of Court

The offences constituted by this Act lie within the criminal jurisdiction of the Court (and, for that purpose, all offences under this Act are classified as summary offences).

207—Proceedings for offences

- (1) Proceedings for an offence against this Act may be commenced by (and only commenced by)—
 - (a) the Minister; or
 - (b) the Director of Public Prosecutions; or
 - (c) the Chief Executive; or
 - (d) the Commission; or
 - (e) the Commissioner for Consumer Affairs; or
 - (f) an authorised officer; or
 - (g) a council; or
 - (h) the South Australian Heritage Council; or
 - (i) a person acting with the authorisation in writing to the Attorney-General.
- (2) A prosecution for an offence against this Act may be commenced at any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged commission of the offence.
- (3) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

208—Offences by bodies corporate—responsibility of officers

- (1) If a body corporate is guilty of a prescribed offence, each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director or the chief executive officer (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

- 5 (2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each director and the chief executive officer of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- (a) the director or chief executive officer (as the case may be) knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- 10 (b) the director or chief executive officer (as the case may be) was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
- (c) the director or chief executive officer (as the case may be) failed to exercise due diligence to prevent the commission of the offence.
- 15 (3) Subsection (2) does not apply if the principal offence is an offence against a section prescribed by the regulations for the purposes of this subsection.
- (4) The regulations may make provision in relation to the criminal liability of a director or the chief executive of a body corporate that is guilty of an offence against the regulations.

209—Penalties for bodies corporate

20 The maximum penalty that may be imposed for an offence against this Act that is committed by a body corporate is 5 times the maximum penalty that the court could, but for this section, impose as a penalty for an offence.

210—Order to rectify breach

- 25 (1) If, in proceedings for an offence against this Act, the court finds that the defendant has contravened, or failed to comply with, this Act, the court may, in addition to any penalty that it may impose, do 1 or more of the following:
- (a) order the person to take specified action to make good the contravention or default in a manner, and within a period, specified by the court (including an order that the person make application for a development authorisation that should have been, but has not been made, under this Act);
- 30 (b) order the person to pay to a relevant authority costs or expenses incurred by the authority in taking action on account of any situation that resulted from that contravention or failure;
- (c) cancel any development authorisation;
- 35 (d) order the person to pay to any person who has suffered loss or damage as a result of the contravention or failure, or incurred costs or expenses as a result of the contravention or failure, compensation for the loss or damage or an amount for or towards those costs or expenses.
- 40 (2) A person must not, without reasonable excuse, fail to comply with an order under this section.

Maximum penalty: \$20 000.

211—Adverse publicity orders

(1) If a person is found guilty of an offence against this Act, the court may make an order (an *adverse publicity order*) in relation to the person (the *offender*) requiring the offender—

- 5 (a) to take either or both of the following actions within the period specified in the order:
- (i) to publicise, in the way specified by the order, the offence, its consequences, the penalty imposed and any other related matter;
- 10 (ii) to notify a specified person or specified class of person, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
- (b) to give to the Commission or a council (as specified by the court), within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

15 (2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

(3) If the offender fails to give evidence to the Commission or a council in accordance with subsection (1)(b), the Commission or council, or a person authorised in writing by the Commission or council, may take the action or actions specified in the order.

20 (4) However, if—

- (a) the offender gives evidence to the Commission or council in accordance with subsection (1)(b); and
- (b) despite the evidence, the Commission or council is not satisfied that the offender has taken the action or actions specified in the order in accordance
- 25 with the order,

the Commission or council may apply to the court for an order authorising the Commission or council, or a person authorised in writing by the Commission or council, to take the action or actions.

30 (5) If the Commission or a council, or a person authorised in writing by the Commission or a council, takes an action or actions in accordance with subsection (3) or an order under subsection (4), the Commission or council is entitled to recover from the offender an amount in relation to the reasonable expenses of taking the action or actions, as a debt, due to the Commission or council.

212—Proceedings commenced by councils

35 If—

- (a) proceedings for an offence against this Act brought within the ambit of this section by the regulations are commenced by a council; and
- (b) a fine is imposed by a court for the offence; and
- (c) the fine is paid to a clerk of the court,
- 40 the clerk must pay the amount of the fine to the council.

Division 3—Civil penalties

213—Civil penalties

- 5 (1) Subject to this section, if a designated entity is satisfied that a person has committed an offence by contravening a provision of this Act, the designated entity may, as an alternative to criminal proceedings, recover, by negotiation or by application to the Court, an amount as a civil penalty in respect of the contravention.
- 10 (2) A designated entity may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors.
- 15 (3) A designated entity may not make an application to the Court under this section to recover an amount from a person as a civil penalty in respect of a contravention—
- 20 (a) unless the designated entity has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the designated entity, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the designated entity's notice to make such an election; or
- 25 (b) if the person serves written notice on the designated entity, before the making of such an application, that the person elects to be prosecuted for the contravention.
- (4) The maximum amount that a designated entity may recover by negotiation as a civil penalty in respect of a contravention is—
- 30 (a) the amount specified by this Act as the criminal penalty in relation to that contravention; or
- (b) \$120 000,
- whichever is the lesser.
- (5) If, on an application by a designated entity, the Court is satisfied on the balance of probabilities that a person has contravened a provision of this Act, the Court may order the person to pay to the designated entity an amount as a civil penalty (but not exceeding the amount specified by this Act as the criminal penalty in relation to that contravention).
- 35 (6) In determining the amount to be paid by a person as a civil penalty, the Court must have regard to—
- (a) the nature and extent of the contravention; and
- (b) any detriment to the public interest resulting from the contravention; and
- (c) any financial saving or other benefit that the person stood to gain by committing the contravention; and
- 40 (d) whether the person has previously been found, in proceedings under this Act, to have engaged in any similar conduct; and

(e) any other matter it considers relevant.

(7) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the Court.

(8) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).

(9) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started, or have already been started, against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(10) Furthermore—

(a) proceedings referred to in subsection (9) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person; and

(b) if proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention of this Act are commenced by a designated entity, criminal proceedings against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention cannot be commenced without the authorisation of the Attorney-General.

(11) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—

(a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a contravention of this Act; and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the contravention.

(12) However, subsection (11) does not apply to criminal proceedings in respect of the making of a false or misleading statement.

(13) Proceedings for an order under this section may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.

(14) An apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(15) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

(16) The Commission must ensure that information about the commencement of proceedings under this section is published on the SA planning portal.

(17) In this section—

designated entity means—

- (a) the Commission; or
- (b) a council acting under an authorisation granted by the Commission; or
- (c) the Commissioner for Consumer Affairs acting after consultation with the Commission.

(18) An authorisation granted to a council under subsection (17)—

- (a) may be granted on conditions determined by the Commission; and
- (b) may, if the Commission so determines, be varied or revoked by the Commission.

Division 4—Other matters

214—Imputation of conduct or state of mind of officer, employee etc

(1) For the purposes of proceedings for an offence against this Act or proceedings for the payment of an amount as a civil penalty in respect of an alleged contravention of this Act—

- (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
- (b) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person.

(2) If—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence but for the operation of subsection (1),

the person is not liable to be punished by imprisonment for the offence.

(3) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

215—Statement of officer evidence against body corporate

In proceedings for an offence against this Act by a body corporate or proceedings against a body corporate for the payment of an amount as a civil penalty in respect of an alleged contravention of this Act, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

216—Make good orders

(1) If in any proceedings under this Act the court finds that a person has contravened this Act by undertaking a tree-damaging activity, the court may, in addition to any penalty that it may impose, 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) The court may make any ancillary order as the court thinks fit.

(3) The 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.

(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.

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

(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: \$20 000.

(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: \$5 000.

217—Recovery of economic benefit

- (1) If in any proceedings under this Act, a court finds that a person has contravened this Act, the court may, in addition to any penalty that it may impose, order the person to pay to the Commission or a council (as the court thinks fit) an amount not exceeding the court's estimation of the amount of economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
- (2) For the purposes of subsection (1), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
- (3) A court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (4) An amount paid to the Commission in accordance with an order under subsection (1) must be paid into the Planning and Development Fund.
- (5) An amount paid to a council in accordance with an order under subsection (1) must be applied by the council for the purpose of acquiring or developing land as open space (and may be held by the council in a fund established for the purposes of section 186).

218—Enforceable voluntary undertakings

- (1) A designated entity may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the contravention or alleged contravention to which the undertaking relates.
- (3) A person must not contravene an undertaking made by the person that is in effect.
Maximum penalty: \$20 000.
- (4) If a designated entity considers that a person has contravened an undertaking accepted by the designated entity, the designated entity may apply to the Court for enforcement of the undertaking.
- (5) If the Court is satisfied that the person has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make any of the following orders:
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to a designated entity—
 - (i) the costs of the proceedings; and
 - (ii) the reasonable costs of the designated entity in monitoring compliance with the undertaking in the future;
 - (d) any other order that the Court considers appropriate in the circumstances.

(6) A person must not fail to comply with an order under subsection (5).

Maximum penalty: \$30 000.

(7) A person who has made an undertaking may, at any time, with the written agreement of the relevant designated entity—

- 5 (a) vary the undertaking; or
 (b) withdraw the undertaking.

(8) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act.

10 (9) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.

(10) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an undertaking in respect of that contravention and has completely discharged the undertaking.

15 (11) A designated entity may accept an undertaking in respect of a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.

(12) If a designated entity accepts an undertaking before the proceedings are finalised, the designated entity must take all reasonable steps to have the proceedings discontinued as soon as possible.

20 (13) The Commission must publish, on the SA planning portal, notice of—

- (a) the giving of an undertaking under this section; or
 (b) of the variation or withdrawal of an undertaking under this section.

(14) In this section—

designated entity means—

- 25 (a) the Commission; or
 (b) a council acting under an authorisation granted by the Commission; or
 (c) the Commissioner for Consumer Affairs acting after consultation with the Commission.

(15) An authorisation granted to a council under subsection (14)—

- 30 (a) may be granted on conditions determined by the Commission; and
 (b) may, if the Commission so determines, be varied or revoked by the Commission.

Part 19—Regulation of advertisements

219—Advertisements

35 (1) If, in the opinion of the Commission or a council, an advertisement or advertising hoarding—

- (a) disfigures the natural beauty of a locality or otherwise detracts from the amenity of a locality; or

- (b) is contrary to the character desired for a locality under the Planning and Design Code,

5 the Commission or council may, by notice served in accordance with the regulations on the advertiser or the owner or occupier of the land on which the advertisement or advertising hoarding is situated, whether or not a development authorisation has been granted in respect of the advertisement or advertising hoarding, order that person to remove or obliterate the advertisement or to remove the advertising hoarding (or both) within a period specified in the notice (which must be a period of at least 28 days from the date of service of the notice).

- 10 (2) An order under subsection (1) may not be made in relation to—

- (a) an advertisement the display of which is authorised under the *Local Government Act 1999*, the *Local Government (Elections) Act 1999* or the *Electoral Act 1985*; or
- (b) an advertisement required to be displayed under the provisions of some other
- 15 Act; or
- (c) an advertisement for the sale or lease of land situated on the land concerned; or
- (d) an advertisement of a prescribed class.

- 20 (3) If a person on whom a notice is served under subsection (1) fails to comply with a notice within the time allowed in the notice—

- (a) the Commission or council may itself enter on the land and take the necessary steps for carrying out the requirements of the notice and may recover the costs of so doing, as a debt, from the person on whom the notice was served; and

- 25 (b) the person on whom the notice was served is guilty of an offence.

Maximum penalty: \$10 000.

Default penalty: \$100.

- (4) If a development authorisation has been given under this Act for the erection or display of an advertisement, no further licence or other authorisation in respect of the
- 30 erection or display of the advertisement is required under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999*.
- (5) A person against whom an order is made under this section may, within 1 month after service of the notice or such longer period as may be allowed by the Court, appeal to the Court against the order and, on an appeal, the Court may confirm, vary or quash
- 35 the order subject to the appeal and make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

Part 20—Miscellaneous

220—Constitution of Environment, Resources and Development Court

The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act:

- 5 (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of a Judge and 1 commissioner;
- 10 (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
- (i) in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
- (ii) in any other case—at least 1 commissioner,
- 15 is a commissioner who has been specifically designated by the Governor as a person who has expertise in fields that are relevant to the jurisdiction conferred on the Court by this Act.

221—Exemption from liability

No act or omission in good faith in relation to a particular development by—

- 20 (a) the Minister, the Commission, a relevant authority, a council or other authority under this Act; or
- (b) an authorised officer; or
- (c) a building certifier,

25 after the development has been approved under this Act subjects that person or body to any liability.

222—Insurance requirements

The regulations may require prescribed classes of persons to have professional indemnity or other insurance of a kind prescribed by the regulations.

223—Professional advice to be obtained in relation to certain matters

- 30 (1) A relevant authority, council, authorised officer or building certifier may, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.
- (2) A relevant authority, council, authorised officer or building certifier must seek and consider the advice of a person with prescribed qualifications, or a person approved by
- 35 the Minister for that purpose, in relation to a matter arising under this Act that is declared by regulation to be a matter on which such advice should be sought.
- (3) A person may be approved by the Minister for the purposes of subsection (2) subject to such conditions as the Minister thinks fit, and the Minister may vary or withdraw such an approval at any time.

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- (4) No act or omission by a person or body in good faith in reliance on a certificate given under subsection (1) or advice given under subsection (2) subjects the person or body to any liability.
- (5) A person must not undertake an engagement to provide a certificate or advice for the purposes of this section in relation to a particular development if the person—
- (a) has been involved for remuneration in any aspect of the planning or design of the development; or
 - (b) has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development.

Maximum penalty: \$20 000.

224—Confidential information

- (1) A person performing any function under this Act must not use confidential information gained by virtue of his or her official position for the purpose of securing a private benefit for himself or herself personally or for some other person.

Maximum penalty: \$15 000 or imprisonment for 2 years.

- (2) A person performing any function under this Act must not intentionally disclose confidential information gained by virtue of his or her official position unless—
- (a) the disclosure is necessary for the proper performance of that function; or
 - (b) the disclosure is made to another who is also performing a function under this Act; or
 - (c) the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or
 - (d) the disclosure is authorised or required under any other Act or law; or
 - (e) the disclosure is authorised or required by a court or tribunal constituted by law; or
 - (f) the disclosure is authorised by the regulations.

Maximum penalty: \$15 000 or imprisonment for 2 years.

225—Accreditation of building products etc

- (1) Any building product, building method, design, component, equipment or system accredited by an entity prescribed for the purposes of this section is accredited for the purposes of this Act.
- (2) The accreditation is subject to any conditions or variations imposed by the entity from time to time and remains in force until the accreditation is revoked by the entity.
- (3) A relevant authority must not refuse to approve a development on the ground that any building product, building method, design, component, equipment or system connected with any building work is unsatisfactory if the product, method, design, component, equipment or system is accredited by a prescribed entity and it complies with any such accreditation.

226—Copyright issues

(1) In this section—

designated entity means—

- (a) the Minister; or
- (b) the Commission; or
- (c) the Chief Executive.

(2) A designated entity, acting for the services of the State, is authorised to publish any document, instrument or material in which copyright may exist.

(3) Without limiting subsection (2), a designated entity may refuse to accept any document, instrument or material—

- (a) for any purpose under this Act; and
- (b) without limiting paragraph (a)—for lodging on the SA planning portal,

unless or until there is an agreement in place relating to any copyright that may exist in the document, instrument or material (including an agreement under which no remuneration will be payable for the use of copyright material).

(4) Despite a preceding subsection, a designated entity may determine not to accept any document, instrument or material in which copyright may exist if the designated entity considers that the issue of copyright has not been dealt with appropriately or adequately.

227—Charges on land

(1) If a charge on land is created under a provision of this Act, the person in whose favour the charge is created may deliver to the Registrar-General a notice, in a form determined by the Registrar-General, setting out the amount of the charge and the land over which the charge is claimed.

(2) On receipt of a notice under subsection (1), the Registrar-General must, in relation to any land referred to in the notice, enter a note of the charge 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.

(3) Where a note has been entered under subsection (2), the Registrar-General must not register an instrument affecting the land to which the entry relates unless—

- (a) the instrument—
 - (i) was executed before the entry was made; or
 - (ii) has been executed under or pursuant to an agreement entered into before the entry was made; or
 - (iii) relates to an instrument registered before the entry was made; or
- (b) the instrument is an instrument of a prescribed class; or
- (c) the instrument is expressed to be subject to the operation of the charge; or
- (d) the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance in existence before the entry was made.

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- (4) An instrument registered under subsection (3)(a) or (b) has effect, in relation to the entry, as if it had been registered before the entry was made.
- (5) If an instrument is registered under subsection (3)(d), the charge will be taken to be cancelled by the registration of the instrument and the Registrar-General must make the appropriate entries to give effect to the cancellation.
- (6) The person in whose favour a charge exists must, if the amount to which the charge relates is paid, by notice to the appropriate authority in a form determined by the Registrar-General, apply for the discharge of the charge.
- (7) The Registrar-General must then cancel the relevant entry.

228—Registering authorities to note transfer

- (1) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this section, register or record in an appropriate manner the transfer to the Minister or another body of an asset, right or liability by regulation, proclamation or notice under this Act.
- (2) An instrument relating to an asset, right or liability that has transferred to the Minister or a body by regulation, proclamation or notice under this Act must, if the instrument is executed by the Minister or the body and is otherwise in an appropriate form, be registered or recorded by the Registrar-General or another appropriate authority despite the fact that the Minister or the body has not been registered or recorded as the proprietor of the property under subsection (1).
- (3) The vesting of property by regulation, proclamation or notice under this Act, and an instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

229—Delegation by Minister

- (1) The Minister may delegate any of the Minister's functions or powers under this Act.
- (2) A delegation—
- (a) may be made—
 - (i) to a particular person or body; or
 - (ii) to the person for the time being occupying a particular office or position; and
 - (b) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (c) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (d) is revocable at will and does not derogate from the power of the Minister to act in any manner.

230—Approvals by Minister or Treasurer

A matter under this Act for which the approval of the Minister or the Treasurer is required will be regarded as having that approval—

- (a) whether the approval is given in respect of that particular matter or a class of matters to which it belongs; and

- (b) whether the approval is given by the Minister or Treasurer or by a person acting with the authority of the Minister or Treasurer.

231—Compulsory acquisition of land

5 (1) The Minister may acquire land under this section where the Minister considers that the acquisition of the land is reasonably necessary—

- (a) for the operation or implementation of the Planning and Design Code; or
(b) for the implementation of a development authorisation of a prescribed class; or
(c) in order to further the objects of this Act.

10 (2) The *Land Acquisition Act 1969* applies to the acquisition of land in pursuance of this section.

232—Regulations

(1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

15 (2) Without limiting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 5.

(3) A regulation made for the purposes of this Act may operate subject to prescribed conditions.

(4) The regulations may adopt, wholly or partially and with or without modification—

- 20 (a) an instrument relating to matters in respect of which regulations may be made under this Act or otherwise relating to any aspect of development; or
(b) an amendment to such an instrument.

(5) Any regulations adopting an instrument, or an amendment to an instrument, may contain such incidental, supplementary and transitional provisions as appear to the
25 Governor to be necessary.

(6) The regulations or an instrument adopted by the regulations may—

- 30 (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
(b) be of general or limited application; and
(c) make different provision according to the circumstances or entities to which they are expressed to apply; and
35 (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commission, a joint planning board, a council, the Chief Executive, the Commissioner for Consumer Affairs, an authorised person or any other specified body or person.

- (7) Without limiting a preceding subsection, the regulations may—
- (a) 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; and
 - (b) specify circumstances where a notice may be taken to have been given or served for the purposes of this Act.

Schedule 1—Disclosure of financial interests

1—Interpretation

- (1) In this Schedule—

designated entity means—

- (a) the Commission; or
- (b) a joint planning board; or
- (c) an assessment panel;

family, in relation to a prescribed member, means—

- (a) a spouse or domestic partner 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—

- (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;

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;

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;

prescribed member means a member of a designated entity who is required to disclose his or her financial interests under this Act;

relevant official means—

- (a) in relation to a member of the Commission, a joint planning board or a regional assessment panel—the Minister;
- (b) in relation to a member of an assessment panel—a person prescribed by the regulations.
- (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 a designated entity must—
- (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.
- (2) Without limiting the effect of subclause (1), a prescribed member of a designated entity will be taken to have a pecuniary interest for the purposes of this clause if a person related to the member has that interest.
- (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 person is entitled to inspect (without charge) the register at the place where it is kept during ordinary office hours.
- (3) 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 a designated entity who fails to comply with a requirement under this Schedule is guilty of an offence.
Maximum penalty: \$10 000.
- (2) A prescribed member of a designated entity 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 2—Subsidiaries of joint planning boards

1—Application for Ministerial approval

- (1) A joint planning board proposing to establish a subsidiary of the board under this Act must apply to the Minister under this Schedule.
- (2) An application by a joint planning board for the approval of the Minister to establish a subsidiary must—
- (a) be in a form approved by the Minister; and
 - (b) be accompanied by information required by the Minister; and
 - (c) be accompanied by a copy of the proposed charter for the subsidiary.
- (3) A subsidiary comes into existence if or when the Minister, by notice published in the Gazette, signifies his or her approval of the establishment of the subsidiary.
- (4) The joint planning board must, in conjunction with the publication of a notice under subclause (3), ensure that a copy of the charter of the subsidiary is published on the SA planning portal.

2—Corporate status

A subsidiary established under this Schedule—

- (a) is a body corporate; and
- (b) has the name assigned to it by its charter; and
- (c) has the powers, functions and duties specified in its charter; and
- (d) holds its property on behalf of the joint planning board.

3—Charter of subsidiary

- (1) A charter must be prepared for a subsidiary by the joint planning board.
- (2) The charter must address—
- (a) the purpose for which the subsidiary is established;
 - (b) the constitution of a board of management as the subsidiary's governing body;
 - (c) the powers, functions and duties of the subsidiary;

- (d) staffing issues, including whether the subsidiary may employ staff and, if so, the process by which conditions of employment will be determined;
 - (e) whether the subsidiary is intended to be partially or fully self-funding, and other relevant arrangements relating to costs and funding;
 - 5 (f) any special accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
 - (g) the acquisition or disposal of assets;
 - (h) the manner in which surplus revenue is to be dealt with by the subsidiary;
 - 10 (i) the nature and scope of any investment which may be undertaken by the subsidiary;
 - (j) the subsidiary's obligations to report on its operations, financial position and other relevant issues;
 - (k) other matters contemplated by this Schedule or prescribed by the regulations.
- (3) The joint planning board may include in the charter other matters that it considers to be appropriate.
- (4) The joint planning board must ensure that a copy of the charter is published on the SA planning portal.
- (5) The charter may be reviewed by the joint planning board at any time.
- (6) The joint planning board must, if it amends a charter—
- 20 (a) furnish a copy of the charter, as amended, to the Minister; and
 - (b) ensure that a copy of the charter, as amended, is published on the SA planning portal.

4—Appointment of board of management

- 25 (1) Subject to the charter of the subsidiary, the membership of a board of management of a subsidiary will be determined by the joint planning board and may consist of, or include, persons who are not members of the joint planning board.
- (2) A board member will be appointed by the joint planning board for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.
- 30 (3) The office of board member becomes vacant if the board member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the joint planning board; or
 - 35 (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is removed from office by the joint planning board by written notice.
- (4) A board member must be appointed to chair meetings of the board of management.
- (5) On the office of a board member becoming vacant, a person may be appointed in accordance with this clause to the vacant office.

- (6) The joint planning board may appoint a suitable person to be a deputy of a board member and to act as a member of the board during any period of absence of the board member.
- 5 (7) The joint planning board may give directions in relation to an actual or potential conflict of duty between offices held concurrently, or in relation to some other incompatibility between offices held concurrently and, if the person concerned complies with those directions, he or she is excused from any breach that would otherwise have occurred.

5—Validity of acts

- 10 An act or proceeding of a board of management is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

6—Proceedings of board of management

- (1) A quorum of a board of management will be determined by the charter of the subsidiary.
- 15 (2) The board member appointed to chair the board of management will preside at meetings of the board of management or, in the absence of that member, another board member chosen by those present will preside.
- (3) A decision carried by a majority of votes cast by board members at a meeting is a decision of the board of management.
- 20 (4) Each board member present at a meeting of the board of management is entitled to 1 vote on any matter arising for decision and, if the votes are equal, the board member presiding at the meeting is entitled to a second or casting vote.
- (5) A telephone or video conference between board members will, for the purposes of this clause, be taken to be a meeting of the board of management at which the participating board members are present if—
- 25 (a) notice of the conference is given to all board members in the manner determined by the board of management for that purpose; and
- (b) each participating board member is capable of communicating with every other participating board member during the conference.
- 30 (6) A proposed resolution of the board of management becomes a valid decision of the board of management despite the fact that it is not voted on at a meeting if—
- (a) notice of the proposed resolution is given to all board members in accordance with procedures determined by the board of management; and
- (b) a majority of the board members express their concurrence in the proposed
- 35 resolution in writing or by electronic communication.
- (7) A person authorised in writing by the joint planning board for the purposes of this clause may attend (but not participate in) a meeting of the board of management and may have access to papers provided to board members for the purpose of the meeting.

5 (8) If a board of management considers that a matter dealt with at a meeting attended by a representative of the joint planning board should be treated as confidential, the board of management may advise the joint planning board of that opinion, giving the reason for the opinion, and the joint planning board may, subject to subclause (9), act on that advice as the joint planning board thinks fit.

10 (9) If the joint planning board is satisfied on the basis of the board of management's advice under subclause (8) that the subsidiary owes a duty of confidence in respect of a matter, the joint planning board must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the joint planning board.

(10) The board of management must have accurate minutes kept of its proceedings.

(11) Subject to this clause, and to a direction of the joint planning board, the board of management may determine its own procedures.

7—Specific functions of board of management

15 (1) The board of management of a subsidiary is responsible for the administration of the affairs of the subsidiary.

(2) The board of management of a subsidiary must ensure as far as practicable—

20 (a) that the subsidiary observes all plans, targets, structures, systems and practices required or applied to the subsidiary by the joint planning board; and

(b) that all information furnished to the joint planning board is accurate; and

25 (c) that the joint planning board is advised, as soon as practicable, of any material development that affects the financial or operating capacity of the subsidiary or gives rise to the expectation that the subsidiary may not be able to meet its debts as and when they fall due.

(3) Anything done by the board of management in the administration of the affairs of the subsidiary is binding on the subsidiary.

8—Board members' duty of care etc

30 (1) A board member must at all times act with reasonable care and diligence in the performance and discharge of official functions and duties, and (without limiting the effect of the foregoing) for that purpose—

(a) must take reasonable steps to inform himself or herself about the subsidiary and relevant aspects of the operations and activities of the joint planning board; and

35 (b) must take reasonable steps through the processes of the board of management to obtain sufficient information and advice about matters to be decided by the board of management or pursuant to a delegation to enable him or her to make conscientious and informed decisions; and

40 (c) must exercise an active discretion with respect to all matters to be decided by the board of management or pursuant to a delegation.

- (2) A board member is not bound to give continuous attention to the affairs of the subsidiary but is required to exercise reasonable diligence in attendance at and preparation for meetings of the board of management.
- 5 (3) In determining the degree of care and diligence required to be exercised by a board member, regard must be had to the skills, knowledge or acumen possessed by the board member and the degree of risk involved in a particular circumstance.
- (4) A board member does not commit a breach of duty under this clause by acting in accordance with a direction from the joint planning board.

9—Business plans

- 10 (1) A subsidiary must, in consultation with the joint planning board, prepare and adopt a business plan consistent with its charter.
- (2) A subsidiary and the joint planning board must ensure that the first business plan of the subsidiary is prepared within 6 months after the subsidiary is established.
- 15 (3) A business plan of a subsidiary continues in force for the period specified in the plan or until the earlier adoption by the subsidiary of a new business plan.
- (4) A subsidiary must, in consultation with the joint planning board, review its business plan on an annual basis.
- (5) A subsidiary may, after consultation with the joint planning board, amend its business plan at any time.
- 20 (6) A business plan must set out or include—
- (a) the performance targets that the subsidiary is to pursue; and
 - (b) a statement of the financial and other resources, and internal processes, that will be required to achieve the subsidiary's performance targets; and
 - (c) the performance measures that are to be used to monitor and assess
- 25 performance against targets.

10—Budget

- (1) A subsidiary must have a budget for each financial year.
- (2) Each budget of a subsidiary—
- 30 (a) must deal with each principal activity of the subsidiary on a separate basis; and
- (b) must be consistent with its business plan; and
- (c) must comply with standards and principles prescribed by the regulations; and
- (d) must be provided to the joint planning board in accordance with the regulations.
- 35 (3) A subsidiary may, with the approval of the joint planning board, amend its budget for a financial year at any time before the year ends.
- (4) A subsidiary may incur, for a purpose of genuine emergency or hardship, spending that is not authorised by its budget.

- (5) A subsidiary may, in a financial year, after consultation with the joint planning board, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.

11—Subsidiary subject to direction by joint planning board

5 A subsidiary is subject to the direction and control of the joint planning board.

12—Provision of information

- (1) A subsidiary must, at the request of the joint planning board, furnish to the joint planning board information or records in the possession or control of the subsidiary as the joint planning board may require in such manner and form as the joint planning board may require.
- 10
- (2) If the board of management of the subsidiary considers that information or a record furnished under this clause contains matters that should be treated as confidential, the board of management may advise the joint planning board of that opinion giving the reason for the opinion and the joint planning board may, subject to subclause (3), act on that advice as the joint planning board thinks fit.
- 15
- (3) If the joint planning board is satisfied on the basis of the board of management's advice that the subsidiary owes duty of confidence in respect of a matter, the joint planning board must ensure the observance of that duty in respect of the matter, but this subclause does not prevent a disclosure as required in the proper performance of the functions or duties of the joint planning board.
- 20

13—Reporting

- (1) A subsidiary must, at the request of the joint planning board, report to the joint planning board on any matter, and on any basis, specified by the joint planning board.
- (2) A subsidiary must, on or before a day determined by the joint planning board, furnish to the joint planning board a report on the work and operations of the subsidiary for the preceding financial year.
- 25
- (3) A report under subclause (2) must—
- (a) incorporate the audited financial statements of the subsidiary for the relevant financial year; and
- 30 (b) contain any other information or report required by the council or prescribed by the regulations.

14—Internal audit

- (1) A subsidiary must establish and maintain effective auditing of its operations.
- (2) A subsidiary must establish an audit committee.
- 35 (3) Subject to the regulations, an audit committee will comprise persons determined or approved by the joint planning board.
- (4) The functions of an audit committee include—
- (a) reviewing annual financial statements to ensure that they provide a timely and fair view of the state of affairs of the subsidiary; and
- 40 (b) liaising with external auditors; and

- (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

15—Delegations

- 5 (1) A subsidiary may delegate a function or power conferred on or vested in the subsidiary—
 - (a) to a particular person or body; or
 - (b) to a person for the time being occupying a particular office or position.
- (2) A delegation—
 - 10 (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - 15 (c) is revocable at will and does not derogate from the power of the subsidiary to act in any matter.

16—Common seal

A subsidiary must have a common seal and if a document appears to bear the common seal of the subsidiary, it will be presumed in the absence of proof to the contrary that the common seal of the subsidiary was properly affixed to the document.

17—Liabilities

- (1) Liabilities incurred or assumed by a subsidiary are guaranteed by the joint planning board.
- (2) A borrowing of a subsidiary requires the approval of the joint planning board (which may be absolute or conditional).

18—Winding-up

- (1) A subsidiary may be wound up by the Minister acting at the request of the joint planning board.
- (2) A subsidiary is wound up by the Minister publishing a notice published in the Gazette.
- 30 (3) Any assets or liabilities of the subsidiary at the time of winding-up vest in or attach to the joint planning board on the winding-up.

Schedule 3—Codes of conduct and professional standards

1—Codes of conduct

- (1) The Minister may adopt—
 - 35 (a) a code of conduct to be observed by members of the Commission; and
 - (b) a code of conduct to be observed by members of a joint planning board; and
 - (c) a code of conduct to be observed by members of an assessment panel; and
 - (d) a code of conduct to be observed by accredited professionals; and

- (e) a code of conduct to be observed by scheme coordinators, or members of committees appointed as scheme coordinators, under Part 13 Division 1; and
- (f) a code of conduct to be observed by officers of relevant authorities or other agencies who are acting under delegations, or in the performance of statutory functions, 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 this Schedule.
- (3) Before the Minister adopts or varies a code of conduct under this Schedule, the Minister must take reasonable steps to consult with—

- (a) the ERD Committee; and
- (b) the LGA; and
- (c) in the case of the code to be observed by accredited professional—the Commissioner for Consumer Affairs.

2—Publication of code

If the Minister adopts or varies a code of conduct under this Schedule, the Minister must—

- (a) publish a notice of the adoption or variation in the Gazette; and
- (b) ensure that a copy of the code (as adopted or varied) is published on the SA planning portal.

3—Professional standards and investigations

- (1) The regulations may provide for matters relating to—

- (a) compliance with a code of conduct; and
- (b) without limiting paragraph (a)—the conduct of accredited professionals,

including, for example—

- (c) monitoring and auditing the activities undertaken by a person who performs a function under this Act; and
- (d) receiving or acting on complaints; and
- (e) the conduct of investigations, including—
 - (i) by providing for the appointment of an investigator or investigators; and
 - (ii) by requiring that a person provide information or materials, or answer questions; and
- (f) the provision of reports and recommendations; and
- (g) the taking of disciplinary or other action against a person who—
 - (i) has contravened, or failed to comply with, a code of practice; or
 - (ii) in the case of an accredited professional—has acted in an unprofessional or inappropriate manner, or failed to professionally discharge a responsibility under this Act.

- (2) In connection with subclause (1), the regulations may—
- (a) confer functions, powers and duties on the Commissioner for Consumer Affairs, or on any other prescribed person or body; and
 - (b) vest jurisdiction in the South Australian Civil and Administrative Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013*.
- (3) The scheme established by subclauses (1) and (2) may—
- (a) interact with the accreditation scheme established under Part 6 Division 4; and
 - (b) in vesting jurisdiction in the South Australia Civil and Administrative Tribunal, also vest jurisdiction in the tribunal for the purposes of the scheme referred to in paragraph (a).

4—Non-derogation

Nothing in this Schedule limits, or derogates from, the operation of Schedule 4.

Schedule 4—Performance targets and monitoring

1—Targets

- (1) The Minister may, on the recommendation of the Commission, set performance targets in relation to—
- (a) any goal, policy or objective under a state planning policy; or
 - (b) any objectives, priorities or targets included in a planning agreement.
- (2) A target must—
- (a) set a clear and measurable goal; and
 - (b) specify a performance measure to enable the monitoring of progress towards achieving the goal and the extent to which the goal is achieved.
- (3) The Minister may, from time to time, on the recommendation of the Commission—
- (a) vary a target; or
 - (b) withdraw a target.
- (4) The Commission—
- (a) must monitor the extent to which a target is being achieved; and
 - (b) may publish periodic updates; and
 - (c) unless the target is achieved within an earlier time-frame, adjusted or withdrawn, review each target at least once in every 5 years.

2—Monitoring and evaluation of performance and trends

- (1) The Commission may, with the approval of the Minister, establish a scheme for the monitoring and evaluation of performance in the exercise of statutory functions under this Act.
- (2) A scheme under subclause (1) may include—
- (a) the collection, retention, analysis and provision of information; and

- (b) the provision of returns, reports and information to the Commission; and
 - (c) requirements as to the undertaking of audits and self-assessments, or requirements to arrange, or submit to, audits by persons who hold specified qualifications; and
 - 5 (d) the evaluation of performance and the preparation of reports by the Commission; and
 - (e) other matters as the Commission thinks appropriate.
- (3) The Commission may, from time to time, with the approval of the Minister, vary or substitute a scheme under subclause (1).
- 10 (4) The Commission must include in its annual report information about its assessment of performance and trends under the scheme established under this clause.

3—Review of performance

- (1) Subject to subclause (2), if the Minister, after consultation with the Commission, considers that it is appropriate to exercise a power under this clause in relation to a person or body that has performed, or that is responsible to perform, a function under this Act (a *designated entity*), the Minister may appoint an investigator or investigators to carry out an investigation and to report on the matter.
- (2) The Minister must only act under this clause if the Minister has reason to believe that the designated entity has—
- 20 (a) contravened or failed to comply with a provision of this Act in a significant respect or to a significant degree; or
- (b) failed to efficiently or effectively discharge a responsibility under this Act in a significant respect or to a significant degree.
- (3) The Minister must, before making an appointment under subclause (1), give the designated entity an opportunity to explain its actions, and to make submissions (including, if relevant, an indication of undertakings that the designated entity is willing to give in order to take remedial action), to the Minister within a period (being at least 28 days) specified by the Minister.
- (4) If the Minister decides to proceed under subclause (1) in relation to a council, the Minister must consult with the President of the LGA with respect to the person or persons to be appointed to carry out the investigation.
- 30 (5) An investigator may, for the purposes of an investigation—
- (a) require a member or employee of the designated entity, or a public sector employee or council employee assigned or engaged to assist the designated entity, to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief;
- 35 (b) require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration;
- (c) require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation;
- 40

- (d) retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.
- 5 (6) Subject to subclause (9), a person who refuses or fails to comply with a requirement under subclause (5) is guilty of an offence.
Maximum penalty: \$20 000.
- (7) Subject to subclause (8), a person is not excused from answering a question or from producing books, papers or other records under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- 10 (8) However, if compliance by a natural person with a requirement to answer a question or to produce a book, paper or other record might tend to incriminate the person or make the person liable to a penalty, then—
- 15 (a) in the case of a person who is required to produce a book, paper or record, the book, paper or record (as distinct from the contents of the book, paper or record); or
- (b) in any other case, the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
- 20 (9) A person is not obliged to provide information under this clause that is privileged on the ground of legal professional privilege.
- (10) At the conclusion of an investigation, the investigator or investigators must present a written report to the Minister on the results of the investigation.
- (11) The report may, if the investigator or investigators think fit, include recommendations to the Minister on what action (if any) should be taken in the circumstances.
- 25 (12) The Minister must supply the designated entity with a copy of a report presented under subclause (10).
- (13) The Minister may, on the basis of a report presented under subclause (10)—
- 30 (a) make recommendations to the designated entity; or
- (b) if the Minister considers that the designated entity has—
- 35 (i) contravened or failed to comply with a provision of this Act in a significant respect or to a significant degree; or
- (ii) failed to efficiently or effectively discharge a responsibility under this Act in a significant respect or to a significant degree,
- give directions to the designated entity to rectify the matter, or to take specified action with a view to preventing a recurrence of any act, failure or irregularity.
- (14) The Minister must, before taking action under subclause (13), give the designated entity an opportunity to make submissions to the Minister on the report on which the action is based within a period (being at least 28 days) specified by the Minister.
- 40

(15) If—

(a) the Minister makes a recommendation to a designated entity under subclause (13)(a); and

(b) the Minister subsequently considers that the designated entity has not, within a reasonable period, taken appropriate action in view of the recommendation, the Minister may, after consultation with the designated entity, give directions to it.

(16) A designated entity must comply with a direction under subclause (13) or (15).

(17) No action in defamation lies in respect of the contents of a report under this clause.

4—Non-derogation

Nothing in this Schedule limits, or derogates from, the operation of Schedule 3.

Schedule 5—Regulations

1 The procedures to be followed in relation to an application for any form of development authorisation under this Act (whether by the applicant or any other person or body), and the ability of a relevant authority to lapse an application in prescribed circumstances.

2 The provision of any report, statement, document, plan, drawing, specification, or other form of information to any person or body that performs a function under or pursuant to this Act.

3 The giving of public notice and public consultation in relation to any prescribed class of matter.

4 The form, manner and mode of giving other forms of notice under this Act (including in respect of the service of a notice, document or instrument).

5 The provision of returns, documents and other forms of information to the Minister, the Chief Executive or any other prescribed person or body for the purposes of this Act.

6 The keeping of records, statistics and other information by any person or body that performs a function under or pursuant to this Act and the provision of reports based on that information to the Minister, the Chief Executive or any other prescribed person or body.

7 The giving of notice before any prescribed class of activity or procedure is commenced, and the notification of the occurrence of any prescribed class of event.

8 The form and content of any application, certificate, statement or other document required or issued under this Act.

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 or in relation to the operation of this Act (including as a member of a panel or other body established under this Act and including by prescribing 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.

10 The regulation, restriction or prohibition of the performance of any function of a prescribed class (including so as to provide that a particular step must be taken by a relevant authority or other body or person within a prescribed period).

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- 11 Insurance requirements for prescribed classes of persons in prescribed circumstances.
- 12 The registration and retention of any application, report, document, plan, specification or other material lodged or provided under this Act.
- 13 The definition of words and expressions in an instrument under this Act.
- 5 14 The classification of various forms of development for the purposes of this Act.
- 15 The regulation of the design, construction, quality, safety, amenity or upkeep of buildings, including, for example:
- (a) the siting of buildings;
 - (b) the fixing of building lines in relation to public roads or thoroughfares;

10 (c) the height of buildings;

 - (d) the minimum height or dimensions of any room or area within buildings;
 - (e) the fire safety of buildings, and the provision and maintenance of fire-fighting equipment and other precautions;
 - (f) the heating, cooling and air-conditioning of buildings;

15 (g) the moisture resistance of buildings;

 - (h) the prevention of flooding of buildings;
 - (i) the noise-resistant construction of buildings;
 - (j) the environmental efficiency of buildings;
 - (k) the maintenance of buildings;

20 (l) the health, safety or welfare of the occupants of any building.
- 16 Without limiting any other item, the requirement that—
- (a) a building; or
 - (b) building products, building methods, designs, components, equipment or systems (including systems used in connection with a building); or

25 (c) land used in conjunction with a building; or

 - (d) fixtures, fittings or other items associated with land comprising the site of any building,
- 30 comply with any requirement relating to the sustainability of a building, or of the occupation or use of a building, from an environmental perspective, including so as to provide efficiencies with respect to the use of water, electricity or other resources or forms of energy, to reduce greenhouse gas emissions or the use of resources or energy, or to provide a rating system to facilitate the assessment of proposed development or to regulate the use or development of any building in accordance with prescribed standards.
- 35 17 The regulation, control, restriction or prohibition of building work, including, for example:
- (a) the preparation of land for building work;
 - (b) the structural strength of building work, products and materials;
 - (c) the use of public space and other forms of open space for building work;

- (d) safety in relation to the performance of building work.
- 18 The classification of buildings and the application of the regulations to different classes of buildings.
- 19 The regulation, restriction or prohibition of the occupation of buildings.
- 5 20 The restriction or prohibition of building work in prescribed circumstances.
- 21 The regulation, restriction or prohibition of building work over a public place and the standards to which a building over a public place must conform.
- 22 Utility, safety and hygiene services located in, or related to, buildings.
- 23 The regulation of projections from buildings and dangers arising from projections from building work.
- 10 24 Access to and within buildings, and egress from buildings.
- 25 The manner of alteration and demolition of, and additions to, buildings.
- 26 The creation of registers of certificates of occupancy under this Act and other matters relating to such certificates.
- 15 27 The inspection or testing of buildings, building work, fixtures, fittings, plant, materials, products, components, equipment or systems.
- 28 The accreditation of building products, building methods, designs, components, equipment or systems (including the issue of certificates of accreditation in prescribed circumstances).
- 20 29 The form and content of plans and specifications under this Act.
- 30 The availability for public inspection of any information or document for the purposes of this Act and the provision of copies of any such information or document to the public (whether on payment of a prescribed fee, on payment of a reasonable fee fixed by an authority of a prescribed class, or without charge).
- 25 31 The prescription, and payment, of fees (including differential fees and including fees that relate to any service provided by the Commission, the Chief Executive or the Department), and the recovery of expenses and the distribution of fees between relevant authorities or other entities.
- 32 The ability of any prescribed class of person or body to remit, reduce, waive or refund a fee payable under this Act.
- 30 33 The application of any amount payable under this Act.
- 34 Exemptions under this Act.
- 35 The prescription of time limits for the purposes of this Act.
- 36 The inspection of any place or work relevant to the assessment of any proposal, application or work under this Act, or to which this Act applies.
- 35 37 The provision of a notice to a person or body in prescribed circumstances.
- 38 The service of any notice or document under this Act.
- 39 The transfer of development rights between sites.
- 40 The practices or procedures of assessment panels.
- 40 41 Practice directions to be observed by accredited professionals.
- 42 The practice or procedure of the Court when exercising the jurisdiction under this Act.

- 43 The fees and costs that are payable in respect of proceedings before the Court under
this Act.
- 44 The payment of money into any fund under this Act.
- 45 The imposition of penalties, not exceeding \$10 000, for breaches of the regulations.
- 5 46 The fixing of an expiation fee, not exceeding \$750, in respect of any offence against
this Act or the regulations and the designation of persons who are authorised to give
expiation notices.

Schedule 6—Repeal and certain amendments

Part 1—Preliminary

10 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—Repeal

2—Repeal

- 15 (1) The *Development Act 1993* is repealed.
- (2) The Governor may, by proclamation, suspend the repeal of a specified provision or specified provisions of the *Development Act 1993* until a subsequent day to be fixed by proclamation, or a day to be fixed by subsequent proclamation.
- 20 (3) For the purposes of subclause (2), a reference to a provision of the *Development Act 1993* extends to a part of a provision (including a definition within a provision).

Part 3—Amendment of *Character Preservation (Barossa Valley) Act 2012*

3—Amendment of section 3—Interpretation

- 25 (1) Section 3(1), definition of *development authorisation*—delete "*Development Act 1993*" and substitute:
Planning, Development and Infrastructure Act 2015
- (2) Section 3(1), definition of *Planning Strategy*—delete the definition
- (3) Section 3(1), definition of *relevant authority*—delete "*Development Act 1993*" wherever occurring and substitute, in each case:
30 *Planning, Development and Infrastructure Act 2015*
- (4) Section 3(2)—delete "of the Planning Strategy" and substitute:
of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

4—Amendment of section 4—Interaction with other Acts

- 35 Section 4(2)—delete "*Development Act 1993*" and substitute:
Planning, Development and Infrastructure Act 2015

5—Amendment of section 5—Administration of Act

Section 5—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2015

6—Amendment of section 7—Character values of district

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

- (b) the policies to be developed and applied by any state planning policy and the Planning and Design Code under the *Planning, Development and Infrastructure Act 2015* in relation to the district.

7—Amendment of section 8—Limitations on land division in district

10 (1) Section 8—delete "*Development Act 1993*" wherever occurring and substitute, in each case:

Planning, Development and Infrastructure Act 2015

(2) Section 8—delete "Development Assessment Commission" wherever occurring and substitute, in each case:

15 State Planning Commission

(3) Section 8(7)(c)—delete paragraph (c) and substitute:

- (c) the prescribed allotment provisions provide for a large minimum allotment size than the provisions that would otherwise apply in relation to the proposed development,

20 (4) Section 8(7)—delete "despite the provisions of the Development Plan" and substitute:
despite the provisions of the Planning and Design Code

(5) Section 8(7)—delete "despite section 53(2)" and substitute:

section 118(2)

(6) Section 8(9)—before the definition of "*prescribed day*" insert:

25 *prescribed allotment provisions* means the provisions of the Development Plan under the *Development Act 1993* relating to the rural area and relating to the minimum size allotments that were in force on the prescribed day (after the commencement of the operation of any amendments to that Development Plan) that were made on that day;

30 **8—Amendment of section 10—Review of Act**

Section 10(3)(a)—delete "and any relevant provisions of the Planning Strategy"

9—Amendment of section 11—Regulations

Section 11(2)(a)—delete "Development Assessment Commission" and substitute:

State Planning Commission

Part 4—Amendment of *Character Preservation (McLaren Vale) Act 2012*

10—Amendment of section 3—Interpretation

- 5 (1) Section 3(1), definition of *development authorisation*—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2015

- (2) Section 3(1), definition of *Planning Strategy*—delete the definition
(3) Section 3(1), definition of *relevant authority*—delete "*Development Act 1993*"
wherever occurring and substitute, in each case:

10 *Planning, Development and Infrastructure Act 2015*

- (4) Section 3(2)—delete "of the Planning Strategy" and substitute:

of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

11—Amendment of section 4—Interaction with other Acts

- 15 Section 4(2)—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2015

12—Amendment of section 5—Administration of Act

- Section 5—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2015

13—Amendment of section 7—Character values of district

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

- (b) the policies to be developed and applied by any state planning policy and the Planning and Design Code under the *Planning, Development and Infrastructure Act 2015* in relation to the district.

14—Amendment of section 8—Limitations on land division in district

- 25 (1) Section 8—delete "*Development Act 1993*" wherever occurring and substitute, in each case:

Planning, Development and Infrastructure Act 2015

- 30 (2) Section 8—delete "Development Assessment Commission" wherever occurring and substitute, in each case:

State Planning Commission

15—Amendment of section 10—Review of Act

- Section 10(3)(a)—delete "and any relevant provisions of the Planning Strategy"

16—Amendment of section 11—Regulations

Section 11(2)(a)—delete "Development Assessment Commission" and substitute:
State Planning Commission

Part 5—Amendment of *Environment, Resources and Development Court Act 1993*

17—Amendment of section 21—Principles governing hearings

Section 21—after subsection (4) insert:

- (5) Without limiting a preceding subsection, the Court—
 - (a) may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument; and
 - (b) may limit the time available for presenting the respective cases of parties before it at a hearing to an extent that it considers would not impede the fair and adequate presentation of the cases.

18—Insertion of section 35A

After section 35 insert:

35A—Electronic hearings and proceedings without hearings

- (1) If the Court thinks it appropriate, it may allow the parties and their representatives and any witnesses (or 1 or more of them) to participate in a hearing in any proceedings by means of telephone, video link, or any other system or method of communication.
- (2) If the Court thinks it appropriate, it may conduct all or part of any proceedings entirely on the basis of documents without the parties or their representatives or any witnesses attending or participating in a hearing.
- (3) If the Court acts under this section, the Court is to take steps to ensure that the public has access to, or is precluded from access to, matters disclosed in the proceedings to the same extent as if the proceedings had been heard before the Court with the attendance in person of all persons involved in the proceedings.

Part 6—Amendment of *Liquor Licensing Act 1997*

19—Insertion of section 11C

After section 11B insert:

11C—Steps to avoid conflict with planning system

- The Commissioner should—
- (a) in the development and implementation of a code of practice; or

(b) in the assessment of an application for a licence under this Act; or

(c) in the imposition of conditions under this Act,

take reasonable steps to avoid any inconsistency with, or the duplication of, matters that are dealt with or addressed under the *Planning, Development and Infrastructure Act 2015*.

20—Amendment of section 76—Other rights of intervention

Section 76—after subsection (2) insert:

(2a) A representation under subsection (2) is not to extend to a matter that is dealt with or addressed under the *Planning, Development and Infrastructure Act 2015*.

Part 7—Amendment of *Local Government Act 1999*

21—Amendment of section 221—Alteration of road

Section 221(3)(b)—delete paragraph (b) and substitute:

(b) the alteration is approved as part of a development authorisation under the *Planning, Development and Infrastructure Act 2015*; or

22—Amendment of section 222—Permits for business purposes

Section 222—after subsection (6) insert:

(6a) This section does not apply to the use of a public road approved as part of a development authorisation under the *Planning, Development and Infrastructure Act 2015*.

23—Insertion of section 234AA

After section 234 insert:

234AA—Interaction with processes associated with development authorisations

(1) A person who—

(a) alters a public road; or

(b) uses a public road for business purposes,

as part of a development authorisation under the *Planning, Development and Infrastructure Act 2015*—

(c) must comply with any design standard or other requirement that applies under the *Planning, Development and Infrastructure Act 2015*; and

(d) is not required to comply with any code of practice or other requirement that applies under this Act to the extent of any inconsistency between—

(i) any design standard or other requirement referred to in paragraph (a); and

(ii) any code of practice or other requirement that applies under this Act.

5 (2) If a person to whom section 221(3)(b) or 222(6a) applies considers that an act of a council is unreasonably preventing or delaying the ability of the person to undertake development in accordance with the relevant development authorisation, the person may apply to the ERD Court for a review of the matter.

10 (3) The ERD Court may, in acting on an application under subsection (2), examine and review the act of the council on such basis as the ERD Court thinks fit.

(4) The ERD Court may, on a review under this section—

15 (a) dismiss the application; or

(b) remit the subject matter of the application to the council for further consideration; or

20 (c) order the council to take such action as the ERD Court thinks fit,

and, in doing so, may make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

25 (5) A reference in subsections (2) and (3) to an act includes a reference to an omission.

(6) Nothing in this section—

30 (a) requires a person to take any other step under this Act before taking action under this section; or

35 (b) limits the ability of a person from taking action under any other section of this Act.

(7) In this section—

ERD Court means the Environment, Resources and Development Court.

30 **Part 8—Amendment of *Public Sector Act 2009***

24—Insertion of section 10A

After section 10 insert:

10A—Agencies to organise activities according to planning regions

35 (1) The Premier may give directions to public sector agencies requiring them to provide services and infrastructure, undertake planning and organise their activities on the basis of the planning regions established under the *Planning, Development and Infrastructure Act 2015*.

- (2) A direction under this section is not binding on a public sector agency to the extent (if any) to which it would impede or affect the performance of a quasi-judicial or statutorily independent function of the agency.

5 **Part 9—Amendment of *Urban Renewal Act 1995***

25—Amendment of section 5—Functions

Section 5(d)—delete "section 37 of the *Development Act 1993*" and substitute:
section 115 of the *Planning, Development and Infrastructure Act 2015*

26—Amendment of section 7C—Functions of URA

10 Section 7C(1)(f)—delete "section 37 of the *Development Act 1993*" and substitute:
section 115 of the *Planning, Development and Infrastructure Act 2015*

27—Amendment of section 7G—Preliminary

(1) Section 7G, definition of *Development Assessment Commission*—delete the definition

15 (2) Section 7G, definition of *Planning Minister*—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2015

(3) Section 7G—after the definition of *precinct plan* insert:

20 *State Planning Commission* means the State Planning Commission established under the *Planning, Development and Infrastructure Act 2015*.

28—Amendment of section 7H—Establishment of precincts

(1) Section 7H(1)(d)—delete "that promotes the purposes of the Planning Strategy" and substitute:

25 , having regard to any relevant provisions of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

(2) Section 7H(3)(b)—delete "the Planning Strategy" and substitute:

any relevant provisions of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

(3) Section 7H(5)—delete "Development Policy Advisory Committee" and substitute:

30 State Planning Commission

(4) Section 7H—delete "Development Assessment Commission" wherever occurring and substitute, in each case:

State Planning Commission

29—Amendment of section 7I—Precinct plans

35 (1) Section 7I(2)—delete "the provisions of the Planning Strategy" and substitute:

any relevant provisions of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

(2) Section 7I(2)(f)—delete paragraph (f) and substitute:

(f) make provision in relation to any matter which the Planning and Design Code under the *Planning, Development and Infrastructure Act 2015* may provide for, including specifying classes of development within the area that will be taken to be deemed-to-satisfy development for the purposes of that Act; and

(3) Section 7I(2)(g)—delete "section 50 of the *Development Act 1993*" and substitute: section 185 of the *Planning, Development and Infrastructure Act 2015*

(4) Section 7I(4)—delete "the provisions of the Planning Strategy" and substitute: any relevant provisions of a state planning policy under the *Planning, Development and Infrastructure Act 2015*

(5) Section 7I(5)—delete subsection (5) and substitute:

(5) The precinct authority must, in preparing a precinct plan, have regard to any relevant provisions of the Planning and Design Code.

(6) Section 7I(12) and (16)—delete "Development Assessment Commission" wherever occurring and substitute, in each case:

State Planning Commission

(7) Section 7I(14)—delete subsection (14) and substitute:

(14) Section 70 of the *Planning, Development and Infrastructure Act 2015* applies to the adoption or amendment of a precinct master plan as if references in that section to an approval or amendment of a designated instrument under Part 5 of that Act were references to the adoption or amendment of a precinct master plan under this section.

30—Amendment of section 7J—Certain matters to apply for the purposes of the *Planning, Development and Infrastructure Act 2015*

(1) Section 7J(1)—delete subsection (1) and substitute:

(1) A relevant authority within the meaning of the *Planning, Development and Infrastructure Act 2015* must accept that—

(a) a proposed development in a precinct is deemed-to-satisfy development for the purposes of that Act to the extent that the development is certified by the precinct authority as being deemed-to-satisfy development under section 7I(2)(f) of this Act; and

(b) a proposed division of land in a precinct satisfies the conditions specified in section 95(1)(c) or (d) of the *Planning, Development and Infrastructure Act 2015* to the extent that such satisfaction is certified by the precinct authority.

(2) Section 7J(3)—delete "Development Assessment Commission under section 50 of the *Development Act 1993*" and substitute:

State Planning Commission under section 185 of the *Planning, Development and Infrastructure Act 2015*

- (3) Section 7J(4)(a)—delete "*Development Act 1993*" and substitute:
Planning, Development and Infrastructure Act 2015