

House of Assembly—No 130

As laid on the table and read a first time, 6 May 2021

South Australia

**Martindale Hall (Protection and Management)
Bill 2021**

A BILL FOR

An Act to provide for the ongoing use, protection and management of Martindale Hall, to make a related amendment to the *Heritage Places Act 1993*, 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 *Martindale Hall (Protection and Management) Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

access agreement means an access agreement entered into under Part 5;

Heritage Conservation Policy means the policy prepared under section 10(1)(a);

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

Martindale Hall means the whole of the land included in allotment 1 in Deposited Plan 19214 (as that allotment exists on the commencement of this Act);

Material Contents Policy means the policy prepared under section 10(1)(b);

Minister—see section 5;

South Australian Heritage Register means the South Australian Heritage Register under the *Heritage Places Act 1993*.

4—Objects

The objects of this Act are—

(a) to ensure ongoing effective protection of the heritage values of Martindale Hall while allowing—

(i) new uses for the property; and

(ii) continued public access to the property; and

(b) to provide a framework for the assessment of any proposed use of Martindale Hall, and for the ongoing management of the property and moveable items associated with the property, consistently with the maintenance of those heritage values and public access.

5—Administration of Act

The administration of this Act must be committed to the Minister administering the *Heritage Places Act 1993*.

6—Interaction with other Acts

- (1) This Act has effect despite the provisions of any other Act.
- (2) A lease or licence over Martindale Hall may only be granted under this Act (and the operation of the *Crown Land Management Act 2009* is excluded to that extent).
- 5 (3) The *Retail and Commercial Leases Act 1995* does not apply to a lease granted by the Minister under this Act.

Part 2—Status of land

7—Conservation Park abolished and Martindale Hall freed from trusts etc

On the commencement of this section—

- 10 (a) the Martindale Hall Conservation Park established under the *National Parks and Wildlife Act 1972* is abolished; and
- (b) all trusts to which Martindale Hall was subject immediately before the commencement of this section are revoked; and
- 15 (c) the care, control and management of Martindale Hall is vested in the Minister.

8—Martindale Hall State Heritage Place to continue

- (1) The Heritage Council—
 - (a) may not remove the entry in the South Australian Heritage Register relating to Martindale Hall; and
 - 20 (b) may not alter the entry in the South Australian Heritage Register relating to Martindale Hall unless—
 - (i) the alteration only relates to moveable items and does not relate to the land or fixtures on the land; or
 - 25 (ii) the alteration consists only of the inclusion of additional information or detail regarding Martindale Hall; or
 - (iii) the alteration only fixes a typographical or clerical error; or
 - (iv) the alteration has been approved by a resolution passed by both Houses of Parliament.
- 30 (2) A resolution is not effective for the purposes of subsection (1)(b)(iv) unless the resolution is passed not less than 14 sitting days after—
 - (a) a notice of motion for the resolution was given; and
 - (b) a report of the Heritage Council relating to the proposed alteration, and outlining whether or not the Heritage Council supports the proposed alteration, was laid before each House of Parliament.

Part 3—Management of land and moveable items

9—Land may not be sold or granted

The Crown may not sell or grant the fee simple of any land forming part of Martindale Hall.

10—Minister to prepare policies

- (1) The Minister must, as soon as practicable after the commencement of this section, develop the following policies:
 - (a) a Heritage Conservation Policy dealing with the matters set out in Schedule 1;
 - (b) a Material Contents Policy dealing with the matters set out in Schedule 2.
- (2) The Minister may subsequently alter any policy prepared under this section.
- (3) The Minister must, once a draft of a proposed policy, or a draft of a proposed alteration to a policy, has been prepared, undertake consultation with affected parties in such manner as the Minister thinks fit.
- (4) The Minister must have regard to any advice provided by the Heritage Council in the course of such consultation in order to ensure consistency between the policies prepared under this section and any action taken under the *Heritage Places Act 1993*.
- (5) Following consultation under subsection (3), the Minister may adopt the proposed policy or alteration—
 - (a) without change; or
 - (b) with such changes as the Minister thinks reasonable in view of any representations made in the course of the consultation (but if it appears to the Minister that the changes are significant or substantial then the Minister must, before adopting the proposed policy or alteration, undertake additional consultation with affected parties in such manner as the Minister thinks fit).
- (6) A policy developed under this section, and any alteration to the policy, will have effect from the day on which it is published in the Gazette.
- (7) Except as provided in this Act, a policy under this section does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (8) A person or body involved in the administration of an Act must, in exercising powers and functions in relation to Martindale Hall, act consistently with and seek to further the policies under this section.
- (9) In this section—

affected parties, in relation to a proposed policy or a proposed alteration to a policy means—

 - (a) each person or body that holds a lease or licence granted under Part 4; and
 - (b) the Clare and Gilbert Valleys Council; and
 - (c) the Heritage Council; and
 - (d) any other persons or bodies who the Minister thinks would have an interest that may be affected by the proposed policy or proposed alteration.

11—Heritage Council to consider moveable items

The Heritage Council must, at the request of the Minister made before the adoption of the Material Contents Policy, consider whether any moveable items (including items of furniture and contents) should be included in the South Australian Heritage Register as part of, or related to, the entry for Martindale Hall.

Part 4—Dealings with land by Minister

12—Application of Part

A lease or licence may not be granted under this Part unless a Heritage Conservation Policy and a Material Contents Policy have been adopted under section 10.

13—Minister may grant leases and licences

- (1) The Minister may grant a lease or licence in relation to Martindale Hall in accordance with this section.
- (2) The Minister must not grant a lease or licence under this section unless the Minister is satisfied that the lease or licence is consistent with the Heritage Conservation Policy and the Material Contents Policy and that the lessee or licensee will exercise rights under the lease or licence in a manner that is consistent with those policies.
- (3) Subject to this Act, the terms and conditions on which leases and licences will be granted or renewed under this Act (including the rents or licence fees payable) will be as fixed by the Minister.
- (4) A licence (other than a licence granted to a Crown agency) may not be granted or renewed under this Act for a term exceeding 10 years.
- (5) The Minister may at any time, by written notice to a licensee, vary the terms and conditions of a licence (including the licence fees payable).
- (6) A lease or licence granted under this Act cannot be transferred or otherwise dealt with without the consent of the Minister.
- (7) If a lease or licence granted under this Act is transferred—
 - (a) all accrued and accruing liabilities to the Crown pass to the transferee; and
 - (b) any such liabilities that had accrued before the date of the transfer may be enforced against the transferor (who will be regarded as jointly and severally liable with the transferee).
- (8) The powers of the Minister under this Act in relation to a lease or a licence are in addition to, and do not derogate from, the provisions of the lease or licence but where a provision of the lease or licence is inconsistent with this Act, the Act prevails to the extent of the inconsistency.
- (9) The conferral or exercise of a right to occupy any land under a lease or licence under this Act will not constitute the division of any land for the purposes of the *Planning, Development and Infrastructure Act 2016*.

14—Cancellation of licence

- (1) The Minister may cancel a licence—
 - (a) if a condition of the licence has been breached—by notice in writing to the licensee; or
 - (b) in any other case—by not less than 1 month's notice in writing to the licensee.
- (2) Subject to the regulations, no compensation is payable by the Crown in respect of the cancellation of a licence under this section.

15—Cancellation of lease

- (1) The Minister may cancel a lease if satisfied that it was obtained by false statement.
- (2) The Minister may, if satisfied that a breach of a condition of a lease has occurred (including a condition as to the payment of rent), cancel the lease.
- (3) The Minister must not, however, cancel a lease under subsection (2) unless satisfied—
 - (a) that the lessee has been allowed a reasonable opportunity to make good the breach but has failed to do so; or
 - (b) that cancellation is necessary in order to prevent or arrest damage to the heritage values of Martindale Hall (as defined in the Heritage Conservation Policy).
- (4) If the Minister cancels a lease under subsection (2), the lessee or the holder of any registered interest in, or caveat over, the lease may apply to the Land and Valuation Court for an order requiring the Minister to pay compensation for loss suffered as a result of the cancellation to such extent as the Court thinks fit (but the total amount payable under all such orders must not exceed the market value of any saleable improvements belonging to the lessee on the land less costs incurred by the Minister in taking action under this section).
- (5) The Land and Valuation Court may, when making an order under this section, make such ancillary orders as the Court thinks fit.
- (6) Before a lease is cancelled under this section, the Minister must give written notice to all persons who have a registered interest in, or caveat over, the lease.

16—Surrender of lease

- (1) A lease can be wholly or partially surrendered with the consent of the Minister and, subject to subsection (2), the consent of all persons who have a registered interest in, or caveat lodged over, the lease.
- (2) If the Minister believes that the consent of the holder of a registered interest in or caveat lodged over the lease has been unreasonably withheld and is satisfied that the interests of that person would not be prejudiced by the surrender, the Minister may accept the surrender despite the absence of that consent.

Part 5—Public access to land

17—Access agreements

- (1) The Minister must not grant any lease or licence in relation to Martindale Hall unless it is subject to an access agreement under this Part.

- 5
- (2) An access agreement must specify rights of public access applying to land the subject of the lease or licence and may specify that a right of public access is only exercisable on payment of a fee or in other circumstances specified in the agreement.
- (3) The Minister must ensure that each access agreement is published on a website determined by the Minister.
- (4) An access agreement entered into under this section in respect of a lease attaches to the land and is binding on every other person who holds a lease or licence in relation to Martindale Hall.
- 10 (5) The Minister must take reasonable steps to ensure that a person who is not a party to an access agreement but who is to be, or is, bound by an access agreement in accordance with subsection (4) is consulted before the agreement is entered into, or is varied or terminated under section 18.

18—Variation or termination of access agreement

- 15 (1) Subject to subsection (3), the Minister may, by agreement with a person who holds a lease or licence that is subject to an access agreement, vary or terminate the access agreement.
- (2) An agreement varying or terminating an access agreement must be made in a manner and form determined by the Minister.
- 20 (3) Subject to subsection (5), an access agreement may only be terminated in accordance with a resolution passed by both Houses of Parliament.
- (4) Notice of a motion for a resolution under subsection (3) must be given at least 14 sitting days before the motion is passed.
- 25 (5) An access agreement entered into in relation to an interest in Martindale Hall will be taken to have been validly terminated despite the fact that no resolution has been passed in accordance with subsection (3) if a replacement access agreement is entered into in relation to that lease or licence within the period of 30 days after the termination.
- (6) The Minister must ensure that notice of a variation or termination of an access agreement is published on a website determined by the Minister.

19—Offence

A person must not, without lawful authority, obstruct a member of the public exercising a right of access in accordance with an access agreement under this Part.

Maximum penalty: \$1 250.

Part 6—Miscellaneous

20—Development assessment

- 35 (1) The Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* will be taken to provide that Martindale Hall is an area or zone that may be used predominantly for the purposes described in the Heritage Conservation Policy.
- 40 (2) To the extent of any inconsistency between subsection (1) and the Planning and Design Code referred to in that subsection, subsection (1) will prevail.

- (3) The State Planning Commission will be taken to be the relevant authority under the *Planning, Development and Infrastructure Act 2016* in relation to any proposed development at Martindale Hall.

21—Duties of Registrar-General

- 5 (1) The Registrar-General must, at the request of the Minister, do such acts and make such amendments to any relevant instrument of title as the Registrar-General thinks are necessary or desirable as a consequence of this Act.
- 10 (2) Subject to subsection (3), when the Minister enters into an access agreement in relation to Martindale Hall under this Act, or an agreement varying or terminating such an access agreement, the Registrar-General must, on application by the Minister or another party to the agreement, note the agreement against the relevant entry in the Crown land register.
- (3) Subsection (2) does not apply to an access agreement entered into in relation to a licence.

15 22—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may do any of the following:
- 20 (a) require that a person seek and consider the advice of a person with prescribed qualifications, or a person recognised by the South Australian Heritage Council for that purpose, in relation to a matter arising under this Act that is declared by the regulations to be a matter on which such advice should be sought;
- 25 (b) make any provision in relation to fees for the purposes of this Act;
- (c) impose penalties, not exceeding \$10 000, for a contravention of, or failure to comply with, a regulation;
- (d) fix expiation fees, not exceeding \$315, for alleged contravention of, or failure to comply with, a regulation;
- 30 (e) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act;
- (f) be of general or limited application;
- 35 (g) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another specified person or body.
- (3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019* (including fees for the making of applications to the Minister under this Act or in relation to the grant of any lease or licence under this Act).
- 40 (4) A fee notice may provide for the waiver, reduction or remission of fees.

Schedule 1—Heritage Conservation Policy

The Heritage Conservation Policy must—

- (a) define the heritage values of Martindale Hall; and
- (b) provide for the ongoing protection and management of those heritage values,
5 including (without limitation) by—
 - (i) setting out processes for assessment of any proposed or current use of Martindale Hall; and
 - (ii) setting out duties in relation to the care and management of Martindale Hall; and
 - 10 (iii) setting out the purposes for which Martindale Hall may be used (being purposes that are, in the opinion of the Minister, consistent with the heritage values defined in the policy); and
 - (iv) setting out the purposes for which Martindale Hall may not be used (being
15 purposes that are, in the opinion of the Minister, inconsistent with the heritage values defined in the policy).

Schedule 2—Material Contents Policy

The Material Contents Policy—

- (a) must—
 - 20 (i) list the moveable items (including items of furniture and contents) that are to be located and kept at Martindale Hall as items that enhance the heritage values of Martindale Hall (as defined in the Heritage Conservation Policy); and
 - (ii) specify the criteria by which items are assessed for inclusion in the list; and
 - 25 (iii) specify the criteria for temporary removal of a listed item from Martindale Hall (for the purpose of loan, conservation or otherwise); and
 - (iv) specify the criteria for removal of a listed item from the list; and
 - (v) provide for the ongoing protection and management of the listed items, including (without limitation) by setting out duties in relation to the care and management of the items; and
- 30 (b) will be taken to include, in the list referred to in paragraph (a)(i), any moveable items included in the South Australian Heritage Register as part of the entry for Martindale Hall.

Schedule 3—Related amendment and transitional provision

Part 1—Interpretation

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—Related amendment to *Heritage Places Act 1993*

2—Insertion of section 3A

After section 3 insert:

3A—Relationship with other Acts

5

This Act has effect subject to the provisions of the *Martindale Hall (Protection and Management) Act 2021*.

Part 3—Transitional provision

3—Act does not affect existing licence

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Nothing in this Act affects a licence relating to Martindale Hall that is in force immediately before the commencement of this Act.