

South Australia

# Development Act 1993

An Act to provide for planning and regulate development in the State; to regulate the use and management of land and buildings, and the design and construction of buildings; to make provision for the maintenance and conservation of land and buildings where appropriate; 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 *Development Act 1993*.

### **3—Objects**

The object of this Act is to provide for proper, orderly and efficient planning and development in the State and, for that purpose—

- (a) to establish objectives and principles of planning and development; and
- (b) to establish a system of strategic planning governing development; and
- (c) to provide for the creation of Development Plans—
  - (i) to enhance the proper conservation, use, development and management of land and buildings; and
  - (ii) to facilitate sustainable development and the protection of the environment; and
  - (iia) to encourage the management of the natural and constructed environment in an ecologically sustainable manner; and
  - (iii) to advance the social and economic interests and goals of the community; and
- (d) to establish and enforce cost-effective technical requirements, compatible with the public interest, to which building development must conform; and
- (e) to provide for appropriate public participation in the planning process and the assessment of development proposals; and
- (ea) to promote or support initiatives to improve housing choice and access to affordable housing within the community; and
- (f) to enhance the amenity of buildings and provide for the safety and health of people who use buildings; and
- (g) to facilitate—
  - (i) the adoption and efficient application of national uniform building standards; and
  - (ii) national uniform accreditation of buildings products, construction methods, building designs, building components and building systems.

### **4—Interpretation**

- (1) In this Act, unless the contrary intention appears—

*Adelaide Dolphin Sanctuary* has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

*Adelaide Park Lands* has the same meaning as in the *Adelaide Park Lands Act 2005*;

**adjacent land** in relation to other land, means land—

- (a) that abuts on the other land; or
- (b) that is no more than 60 metres from the other land and is directly separated from the other land only by—
  - (i) a road, street, footpath, railway or thoroughfare; or
  - (ii) a watercourse; or
  - (iii) a reserve or other similar open space;

**adjoining owner** means the owner of land that abuts (either horizontally or vertically) on the land of a building owner;

**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;

**advertising hoarding** means a structure for the display of an advertisement or advertisements;

**the Advisory Committee** means the Development Policy Advisory Committee established under this Act;

**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*;

**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;

**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 of Australia*), 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;

**Building Code** means an edition of the *Building Code of Australia* published by the Australian Building Codes Board, as in force from time to time and as modified (from time to time) by the variations, additions or exclusions for South Australia contained in the code, but subject to the operation of subsection (7);

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

**the Building Rules** means any codes or regulations under this Act (or adopted under this Act) that regulate the performance, standard or form of building work and includes any standard or document adopted by or under those codes or regulations, or referred to in those codes or regulations;



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***Building Rules Assessment Commission*** means a committee of the Development Assessment Commission established in accordance with the regulations;

***building rules consent*** means a consent granted under section 33(1)(b);

***building work*** means work or activity in the nature of—

- (a) the construction, demolition or removal of a building (including any incidental excavation or filling of land); or
- (c) 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—

- (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;

***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;
- (d) to enlarge or extend the building;
- (e) to underpin the building;
- (f) to place or relocate the building on land;

***council*** means a municipal or district council;

***the Court*** means the Environment, Resources and Development Court;

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

***development*** means—

- (a) building work; or
- (b) a change in the use of land; 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
- (da) the creation of fortifications; or
- (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—the demolition, removal, conversion, alteration of, or addition to, the place, or any other work (not including painting but including, in the case of a tree, any tree-damaging activity) that could materially affect the heritage value of the place; or

- (fa) in relation to a significant tree—any tree-damaging activity; or
- (g) prescribed mining operations on land; or
- (h) an act or activity in relation to land (other than an act or activity that constitutes the continuation of an existing use of land) declared by regulation to constitute development,

(including development on or under water) but does not include an act or activity that is excluded by regulation from the ambit of this definition;

**Development Assessment Commission** means the Development Assessment Commission established under this Act;

**development authorisation** means any assessment, decision, permission, consent, approval, authorisation or certificate required by or under this Act or any other Act prescribed by the regulations for the purposes of this definition;

**Development Plan** means a Development Plan under this Act;

**development plan consent** means a consent granted under section 33(1)(a);

**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 six 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 six years or such longer period as may be prescribed; 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 regulation,

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;

**DR**—see subsection (6);

**EIS**—see subsection (4);

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

**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*;

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

***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;

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

***local heritage place*** means a place that is designated as a place of local heritage value by a Development Plan;

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

***Metropolitan Adelaide*** means Metropolitan Adelaide as defined by a plan deposited in the General Registry Office by the Minister for the purposes of this definition and identified by the Minister by notice in the Gazette;

***the Mining Acts*** means the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum Act 1940*, the *Petroleum (Submerged Lands) Act 1982* and the *Offshore Minerals Act 2000*;

***mining production tenement*** means—

- (a) a mining lease or miscellaneous purposes licence under the *Mining Act 1971*; or
- (ab) a precious stones tenement under the *Opal Mining Act 1995*; or
- (b) a petroleum licence or pipeline licence under the *Petroleum Act 1940*; or
- (c) a production licence or pipeline licence under the *Petroleum (Submerged Lands) Act 1982*; or
- (d) a mining licence (or a works licence for activities that are directly connected with activities that are carried out, or are to be carried out under a mining licence) under the *Offshore Minerals Act 2000*;

***Minister for the Adelaide Dolphin Sanctuary*** means the Minister to whom the administration of the *Adelaide Dolphin Sanctuary Act 2005* is committed;

***Minister for the River Murray*** means the Minister to whom the administration of the *River Murray Act 2003* is committed;

***Murray-Darling Basin*** has the same meaning as in the *Murray-Darling Basin Act 1993*;

***owner*** of land means—

- (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
- (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 two 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 of Australia*;

**PER**—see subsection (5);

**the Planning Strategy** means the Planning Strategy formulated under this Act;

**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;

**private certifier** means a person who may act as a private certifier pursuant to Part 12;

**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;

**the Registrar-General** includes the Registrar-General of Deeds;

**relative** in relation to a person, means the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

**relevant authority** means a body determined to be a relevant authority under section 34, subject to the operation of Divisions 2, 3 and 3A of Part 4, and Part 12;

**relevant interest** has the same meaning as in the *Corporations Law*;

**repealed Act** means the *Building Act 1971*, the *City of Adelaide Development Control Act 1976* or the *Planning Act 1982*;

**significant tree** means—

- (a) a tree within a class of trees declared to be significant trees by the regulations;  
or
- (b) a tree declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Development Plan;

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

**spouse**—a person is the 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 by a Development Plan;

***structure*** includes a fence or wall;

***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,

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;

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

- (2) Where 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.
- (3) Where 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.
- (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) A reference in this Act to a PER is a reference to a public environmental report, being a report on a development or project that includes—
  - (a) a detailed description and analysis of a limited number of issues and a description and analysis of other issues relevant to the development or project; or
  - (b) a description and analysis of a wide range of issues relevant to the development or project where a considerable amount of relevant information is already generally available,

and incorporates 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.

- (6) A reference in this Act to a DR is a reference to a development report, being a report that includes a description and analysis of general issues relevant to a development and the means by which those issues can be addressed.
- (7) Any alteration to the Building Code 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 in the Gazette; and
  - (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.
- (8) 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 two 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 per cent 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.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## **5—Interpretation of Development Plans**

- (1) Subject to subsection (2), if a term defined in this Part is used in a Development Plan then the term has, unless the contrary intention appears, the defined meaning.
- (2) The Governor may, by regulation, define a term used in a Development Plan, and such a definition, if inconsistent with a definition in this Part, operates to the exclusion of the latter.
- (3) The Governor cannot make a regulation under subsection (2) unless the Presiding Member of the Advisory Committee has certified that the requirements of subsection (5) have been complied with in relation to that regulation.
- (4) An allegation in legal proceedings that the certificate required by subsection (3) was issued on a particular day is, in the absence of proof to the contrary, sufficient proof of that fact.

- (5) The following provisions apply in relation to the making of regulations under subsection (2):
- (a) the Advisory Committee must cause to be published in the Gazette and in a newspaper circulating generally throughout the State an advertisement—
    - (i) containing a general explanation of the regulations that are (subject to this section) to be made; and
    - (ii) inviting interested persons to make written submissions to the Advisory Committee in relation to the proposed regulations within a specified period (being a period of not less than 28 days from the date of publication of the advertisement); and
    - (iii) appointing a place and time for the public hearing referred to in paragraph (b);
  - (b) at the time and place appointed for that purpose in the advertisement, the Advisory Committee, or a committee appointed by the Advisory Committee, must hold a public hearing at which any interested person may speak in favour of, or in opposition to, the proposed regulations;
  - (c) a copy of the proposed regulations must be sent to the Local Government Association of South Australia at an appropriate time determined by the Advisory Committee and the Advisory Committee must give the Local Government Association of South Australia a reasonable opportunity to make submissions in relation to the matter;
  - (d) the Advisory Committee must then make recommendations to the Minister in relation to the proposed regulations (including recommendations for the modification of the proposed regulations in view of the public comment and the submissions received from the Local Government Association of South Australia) and forward with those recommendations copies of any written submissions made to the Advisory Committee under this subsection;
  - (e) the Governor may then proceed to make such regulations as are appropriate.

## **6—Concept of change in the 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 subsection (2), 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 upon 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.
- (2) The revival of a use of land after a period of discontinuance will be regarded as the continuation of an existing use unless—
- (a) the period intervening between the discontinuance and revival of the use exceeds two years; 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; or

- (c) the Development Assessment Commission or a council has made a declaration under subsection (3) and the declaration remains unrevoked.
- (3) Where—
  - (a) a particular use of land has been discontinued for a period of six months or more (being a period that extends up to the date on which the Development Assessment Commission or a council acts under this subsection); and
  - (b) the revival of that use would in the opinion of the Development Assessment Commission or council be inconsistent with the relevant Development Plan and have an adverse effect on the locality in which the land is situated,the Development Assessment Commission or council may, by notice in writing served on the owner and the occupier of the land, declare that a revival of the use will be treated, for the purposes of this Act, as a change in the use of the land.
- (4) The owner or occupier may, within one month after service of a notice under subsection (3), or such extended period as may be allowed by the Court, appeal to the Court against the declaration.
- (5) On an appeal under subsection (4), the Court may confirm or revoke the declaration.
- (6) For the purposes of this section, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

## **7—Application of Act**

- (1) Subject to this section, this Act applies throughout the State.
- (2) This Act applies in relation to land whether or not it has been brought under the provisions of the *Real Property Act 1886*.
- (3) 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 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.
- (4) A regulation under subsection (3) must not provide for the modification of any provision of this Act which specifically provides for, restricts or prevents an appeal under this Act.



## Part 2—Administration

### Division 1—Constitution of State bodies

#### Subdivision 1—The Advisory Committee

#### 8—The Development Policy Advisory Committee

- (1) The *Development Policy Advisory Committee* (the ***Advisory Committee***) is established.
- (2) The Advisory Committee consists of the following members appointed by the Governor:
  - (a) a person who has wide experience in urban and regional planning, or a related discipline;
  - (b) two persons with wide experience of local government;
  - (c) a person with wide experience in building design or construction;
  - (d) a person with wide experience in environmental conservation;
  - (e) a person with wide experience in commerce and industry;
  - (f) a person with wide experience in agricultural development;
  - (g) a person with wide experience in housing or urban development;
  - (h) a person with wide experience in planning or providing community services;
  - (i) a person with wide experience of the utilities and services that form the infrastructure of urban development.
- (3) In making appointments to the Advisory Committee the Governor must have regard to the need for the Committee to be sensitive to cultural diversity in the population of the State.
- (4) At least one member of the Advisory Committee must be a woman and at least one member must be a man.
- (5) The Governor will appoint a member of the Advisory Committee to preside at its meetings.
- (6) In the absence of the person appointed under subsection (5) from a meeting of the Advisory Committee, a member chosen by those present will preside.
- (7) Subject to subsection (8), a member of the Advisory Committee holds office at the pleasure of the Governor.
- (8) A member of the Advisory Committee ceases to hold office at the expiration of two years, or such lesser period as the Governor may determine, from the date of appointment (or last reappointment) unless the Governor reappoints the member to the Advisory Committee.
- (9) The remuneration, allowances and conditions of appointment of a member of the Advisory Committee will be as determined by the Governor.

- (10) On the office of a member of the Advisory Committee becoming vacant, a person will be appointed in accordance with this Act to the vacant office.
- (11) An appointment can only be made under this section after the Minister has, by notice in a newspaper circulating generally throughout the State, invited interested persons with appropriate qualifications to submit (within a period specified in the notice) expressions of interest in appointment to the relevant office.

## **9—Functions of the Advisory Committee**

- (1) The Advisory Committee has the following functions:
  - (a) to advise the Minister on any matter relating to planning or development that should, in the opinion of the Advisory Committee, be brought to the Minister's attention;
  - (b) to advise the Minister on any matter relating to the design or construction of buildings that should, in the opinion of the Advisory Committee, be brought to the Minister's attention;
  - (c) to advise the Minister (on its own initiative or at the request of the Minister) on—
    - (i) the administration of this Act;
    - (ii) the policies that govern, or should govern, the administration of this Act;
    - (iii) proposals to make regulations under this Act, or to make amendments to this Act;
    - (iv) proposals to amend Development Plans;
  - (d) to perform other functions assigned to the Advisory Committee under this Act or by the Minister.
- (2) The Advisory Committee should, in the performance of its functions, take into account the provisions of the Planning Strategy.

## **Subdivision 2—The Development Assessment Commission**

### **10—The Development Assessment Commission**

- (1) The *Development Assessment Commission* is established.
- (2) The Development Assessment Commission is a body corporate.
- (3) The Development Assessment Commission consists of the following members appointed by the Governor:
  - (a) a Presiding Member;
  - (b) a Deputy Presiding Member;
  - (c) a person with practical knowledge of, and experience in, local government chosen from a panel of three such persons submitted to the Minister by the Local Government Association of South Australia;
  - (d) a person with practical knowledge of, and experience in, urban or regional development, commerce or industry;

- (e) a person with practical knowledge of, and experience in, environmental conservation or management, or the management of natural resources;
  - (f) a person with practical knowledge of, and experience in, the provision of facilities for the benefit of the community;
  - (g) a person with practical knowledge of, and experience in, urban design, building safety or landscape design.
- (4) The Presiding Member and Deputy Presiding Member must have qualifications and experience in urban and regional planning, building, environmental management, or a related discipline that are, in the opinion of the Governor, appropriate to the Presiding Member's functions and duties under this Act.
- (5) At least one member of the Development Assessment Commission must be a woman and at least one member must be a man.
- (6) The term of office for which a member of the Development Assessment Commission is appointed will be—
  - (a) in the case of the Presiding Member—a term not exceeding five years specified in the instrument of appointment; and
  - (b) in the case of other members—a term, not exceeding two years, specified in the instrument of appointment.
- (7) A member of the Development Assessment Commission is, on the expiration of a term of appointment, eligible for reappointment.
- (8) The remuneration, allowances and conditions of appointment of a member of the Development Assessment Commission—
  - (a) will be as determined by the Governor; or
  - (b) will, in the case of the Presiding Member, if the Governor so decides, be determined wholly or in part in accordance with the *Government Management and Employment Act 1985*.
- (9) The Governor may remove a member of the Development Assessment Commission from office for—
  - (a) breach of, or failure to comply with, the conditions of appointment;
  - (b) misconduct;
  - (c) neglect of duty;
  - (d) incapacity to carry out satisfactorily the duties of his or her office;
  - (e) failure to carry out satisfactorily the duties of his or her office;
  - (f) failure to comply with the requirements of section 11A or a breach of, or failure to comply with, a code of conduct under section 21A.
- (10) The office of a member of the Development Assessment Commission becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice addressed to the Minister; or

- (d) is removed from office by the Governor under subsection (9).
- (11) On the office of a member of the Development Assessment Commission becoming vacant, a person will be appointed in accordance with this Act to the vacant office.
- (12) In the absence of the Presiding Member from a meeting of the Development Assessment Commission the Deputy Presiding Member will preside, and in the absence of both the Presiding Member and the Deputy Presiding Member from a meeting of the Development Assessment Commission, a member chosen by those present will preside.
- (13) An appointment (other than an appointment under subsection (3)(c)) can only be made under this section after the Minister has, by notice in a newspaper circulating generally throughout the State, invited interested persons with appropriate qualifications to submit (within a period specified in the notice) expressions of interest in appointment to the relevant office.

#### **10A—Special provision relating to constitution of Development Assessment Commission**

- (1) When the Minister makes a declaration under section 46, the Minister may (but need not) appoint 1 or 2 persons to the Development Assessment Commission to act as additional members for the purposes of dealing with any matter relating to the declaration that involves the Development Assessment Commission under Part 4 Division 2 Subdivision 1.
- (2) A person appointed under subsection (1) will be selected from a list of persons established by the Minister for the purposes of this section.
- (3) A person will hold office under this section on terms and conditions determined by the Minister and, on the expiration of a term of office, is eligible for reappointment.
- (4) The Minister should, in establishing a list under this section, seek to obtain a wide range of expertise relevant to the consideration of major developments or projects within the State.
- (5) The Minister must consult with the Minister for the River Murray with a view to including on the list 1 or more persons who, in the opinion of the Minister for the River Murray, have extensive knowledge of, or experience in dealing with, issues that are relevant to the protection or management of the River Murray.
- (6) If it appears that a development or project may have a significant impact on any aspect of—
- (a) the River Murray within the meaning of the *River Murray Act 2003*—the Minister must make an appointment under subsection (1) and the person so appointed, or at least 1 person so appointed, must be a person approved by the Minister for the River Murray;
  - (b) the Adelaide Dolphin Sanctuary—the Minister must make an appointment under subsection (1) and the person so appointed, or at least 1 person so appointed, must be a person approved by the Minister for the Adelaide Dolphin Sanctuary.
- (7) The Minister must ensure that a list established by the Minister under this section is published on a website maintained by the Minister or the Minister's Department.

## 11—Functions of the Development Assessment Commission

- (1) The Development Assessment Commission has the following functions:
  - (a) to participate in the assessment of development proposals where appropriate;
  - (d) to perform other functions assigned to the Development Assessment Commission under this Act.
- (1a) The Development Assessment Commission may, as it thinks fit, provide advice and reports to the Minister on trends, issues and other matters that have become apparent or arisen through its assessment of applications under this Act.
- (2) Except where the Development Assessment Commission makes or is required to make a recommendation or report, is required to give effect to an order of a court or tribunal constituted by law, or has a discretion in relation to the granting of a development authorisation, the Development Assessment Commission is, in the exercise and discharge of its powers, functions or duties, subject to the direction and control of the Minister.

## 11A—Disclosure of financial interests

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

## Subdivision 3—Supplementary provisions

## 12—Interpretation

In this Subdivision—

*statutory body* means the Advisory Committee or the Development Assessment Commission.

## 13—Procedures

- (1) A quorum at a meeting of a statutory body consists of a number of members of the statutory body equal to—
  - (a) if the total number of members of the statutory body is even—half that number plus one; or
  - (b) if the total number of members of the statutory body is odd—the first integer that is greater than half that number,and no business may be transacted at a meeting of the statutory body unless a quorum is present.
- (2) A decision carried by a majority of the votes cast by members present at a meeting is a decision of the statutory body.
- (3) Each member present at a meeting of a statutory body is entitled to one 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 a statutory body if—
  - (a) a notice of the conference is given to all members in the manner determined by the statutory body 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 member of a statutory body who has a direct or indirect personal or pecuniary interest in a matter before the statutory body (other than an indirect interest that exists in common with a substantial class of persons)—
  - (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the statutory body; and
  - (b) must not take part in any hearings conducted by the statutory body, or in any deliberations or decision of the statutory body, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

Maximum penalty: Division 4 fine.

- (5a) Without limiting the effect of subsection (5), a member of a statutory body will be taken to have an interest in a matter for the purposes of that subsection if an associate of the member has an interest in the matter.
- (6) Subject to this Act, a statutory body may determine its own procedures.
- (7) A statutory body must have accurate minutes kept of its proceedings.

#### **14—Vacancies or defects in appointment of members**

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

#### **15—Immunity of members**

- (1) A member of a statutory body incurs no liability for an honest act done in the performance or purported performance of functions or duties under this Act.
- (2) Any liability that would, but for this section, attach to a member attaches instead to the Crown.

#### **16—Committees**

- (1) A statutory body—
  - (a) must establish such committees or subcommittees as the regulations may require; and
  - (b) may establish such other committees or subcommittees as the statutory body thinks fit,

to advise the statutory body on any aspect of its functions, or to assist the statutory body in the performance of its functions.

- (2) A committee or subcommittee established under subsection (1) may, but need not consist of, or include, members of the statutory body.

- (3) The procedures to be observed in relation to the conduct of the business of a committee or subcommittee will be—
  - (a) as prescribed by regulation;
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the statutory body;
  - (c) insofar as the procedure is not prescribed by regulation or determined by the statutory body—as determined by the relevant committee or subcommittee.

## **17—Staff**

- (1) There will be—
  - (a) a secretary to each statutory body (or to both statutory bodies);
  - (b) such other staff to assist each statutory body (or both statutory bodies) as the Governor thinks fit.
- (2) A secretary or other member of staff referred to in subsection (1) will be Public Service employees.
- (3) A statutory body may, with the approval of the Minister administering a department of the Public Service, make use of the services of officers of that department.
- (4) A statutory body may, with the approval of a council, make use of the services of officers or employees of that council.

## **Division 2—Authorised officers**

### **18—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.
- (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.
- (4) An authorised officer must 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 he or she or it has made, or vary or revoke a condition of such an appointment or impose a further such condition.
- (6) No liability attaches to an authorised officer for an act or omission by the authorised officer in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of any power, function or duty under this Act.

## 19—Powers of authorised officers to inspect and obtain information

- (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
    - (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—
    - (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;
  - (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;
  - (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;
  - (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;
  - (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;
  - (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.
- (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



- (b) that the warrant is otherwise reasonably required in the circumstances.
- (4) Where—
  - (a) a person whose native language is not English is suspected of having breached this Act; and
  - (b) the person is being interviewed by an authorised officer for the purposes of criminal proceedings in connection with that suspected breach; and
  - (c) the person is not reasonably fluent in English,the person is entitled to be assisted by an interpreter during the interview.
- (5) In the exercise of powers under this Act an authorised officer may be assisted by such persons as may be necessary or desirable in the circumstances.
- (6) 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 to be exercised.

Maximum penalty: Division 6 fine.
- (7) Subject to subsection (8), 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
  - (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
  - (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.

Maximum penalty: Division 6 fine.
- (8) 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.
- (9) If compliance by a 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).

- (10) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: Division 5 fine or division 5 imprisonment, or both.

- (11) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: Division 6 fine.

## **Division 3—Delegations**

### **20—Delegations**

- (1) The Minister, the Advisory Committee, the Development Assessment Commission or another authority established under this Act, or a council, may delegate a power or function vested or conferred 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; or
  - (iii) to a subsidiary established under the *Local Government Act 1999*; and
- (b) must in prescribed circumstances be made to a committee or subcommittee of the Advisory Committee or Development Assessment Commission established by the regulations; and
- (c) may be made subject to conditions and limitations specified in the instrument of appointment; and
- (d) subject to any other provision of this Act or the regulations, is revocable at will and does not derogate from the power of the delegator to act in a matter; and
- (e) in the case of a delegation by the Advisory Committee, the Development Assessment Commission or another authority under this Act—may continue despite a vacancy in the membership of the body.

- (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

- (4) Subject to subsection (7), a delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect private interest.

Maximum penalty: Division 5 fine or division 5 imprisonment.

- (5) It is a defence to a charge of an offence against subsection (4) to provide that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

- (6) In subsection (4)—

*delegate* includes a member of a body to which a power or function has been delegated.

- (7) Where a delegation is made—

- (a) to a council, or to a body of which a member, officer or employee of a council is a member; or
- (b) by a council to an officer or employee of the council, or to a body of which a member, officer or employee of the council is a member,

Chapter 5 Part 4 Division 3 and Chapter 7 Part 4 Division 3 of the *Local Government Act 1999* apply in respect of any conflict of interest involving a member, officer or employee of the council (in his or her capacity as such) to the exclusion of subsection (4).

- (8) Notice of a delegation under this section must, in prescribed circumstances, be given in the Gazette.
- (9) In any legal proceedings an apparently genuine certificate, purportedly signed by the delegator, containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## **Division 4—Annual report**

### **21—Annual report**

- (1) The Minister must, on or before 31 October in each year, prepare a report on the administration of this Act during the preceding financial year.
- (2) The Minister must, within six sitting days after completing the report, cause copies to be laid before both Houses of Parliament.

## **Division 5—Codes of conduct**

### **21A—Codes of conduct**

- (1) The Minister may adopt—
  - (a) a code of conduct to be observed by members of the Development Assessment Commission; and
  - (b) a code of conduct to be observed by members of regional development assessment panels; and
  - (c) a code of conduct to be observed by members of council development assessment panels established by councils; and
  - (d) a code of conduct to be observed by officers of relevant authorities or other agencies who are acting under delegations 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 subsection (1).

- (3) Before the Minister adopts or varies a code of conduct under this section, the Minister must take reasonable steps to consult with—
  - (a) the Environment, Resources and Development Committee of the Parliament;  
and
  - (b) the LGA.
- (4) If the Minister adopts or varies a code of conduct under this section, the Minister must—
  - (a) publish a notice of the adoption or variation in the Gazette; and
  - (b) ensure that a copy of the code of conduct (as adopted or varied) is kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations.

## Part 3—Planning schemes

### Division 1—The Planning Strategy

#### 22—The Planning Strategy

- (1) In this section—

*the appropriate Minister* means the Minister to whom the Governor has from time to time, by notice in the Gazette, assigned the functions of appropriate Minister for the purposes of this section.

- (2) The appropriate Minister must ensure that a Planning Strategy for development within the State is prepared and maintained.
- (3) The Planning Strategy may incorporate documents, plans, policy statements, proposals and other material designed to facilitate strategic planning and co-ordinated action on a State-wide, regional or local level.

- (3a) The Planning Strategy will be taken to include—

- (a) the *Objectives for a Healthy River Murray* under the *River Murray Act 2003* (as in force from time to time); and
- (b) the objectives of the *Adelaide Dolphin Sanctuary Act 2005*,

and the appropriate Minister may, as the appropriate Minister thinks fit, make textual alterations to the Planning Strategy to incorporate those objectives into the Planning Strategy.

- (3b) The Minister must ensure that the various parts of the Planning Strategy are reviewed at least once in every 5 years.

- (3c) Different parts may be reviewed at different times but any review must include—

- (a) an assessment of relevant trends in the strategies of the Government; and
- (b) an assessment of the consistency between the part or parts under review and other major policy documents and strategies of the Government that are relevant to the material under review (as determined by the Minister),

(and may include other matters as the Minister thinks fit).

- (4) The appropriate Minister must, in relation to any proposal to create or alter the Planning Strategy—

- (a) prepare a draft of the proposal; and
- (b) by public advertisement, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the Minister.

- (4a) Subsection (4) does not apply with respect to an alteration of the Planning Strategy pursuant to subsection (3a).

- (5) The appropriate Minister must—

- (a) make appropriate provision for the publication of the Planning Strategy; and

- (b) ensure that copies of the Planning Strategy are reasonably available for inspection (without charge) and purchase by the public at places determined by the Minister; and
  - (c) ensure that notice of any alteration to the Planning Strategy is published in the Gazette within a reasonable time after the alteration is made.
- (6) The appropriate Minister must, on or before 31 October of each year in respect of a preceding financial year, prepare a report on—
  - (a) the implementation of the Planning Strategy;
  - (b) any alteration to the Planning Strategy (including the general effect or implications of any such alteration);
  - (c) community consultation on the content, implementation, revision or alteration of the Planning Strategy;
  - (d) such other matters as the Minister thinks fit.
- (7) The appropriate Minister must, within six sitting days after completing the report, cause copies to be laid before both Houses of Parliament.
- (7a) The report required under subsection (6) may be incorporated into (and presented as part of) the annual report of the Minister under section 21.
- (8) The Planning Strategy is an expression of policy formed after consultation within government and within the community and does not affect rights or liabilities (whether of a substantive, procedural or other nature).
- (9) The Planning Strategy is not to be taken into account for the purposes of any application, assessment or decision under Part 4 (other than Division 2 of that Part).
- (10) No action can be brought on the basis—
  - (a) that a Development Plan, or an amendment to a Development Plan, approved under this Act is inconsistent with the Planning Strategy; or
  - (b) that an assessment or decision under this Act (including an assessment or decision under Division 2 of Part 4) is inconsistent with the Planning Strategy.

## **Division 2—Development Plans**

### **Subdivision 1—Creation of plans**

#### **23—Development Plans**

- (1) Development Plans will be prepared and published for the purposes of this Act.
- (2) A Development Plan may relate to any geographical part of the State (but no more than one plan may relate to a particular part of the State).
- (3) A Development Plan should seek to promote the provisions of the Planning Strategy and may set out or include—
  - (a) planning or development objectives or principles relating to—
    - (i) the natural or constructed environment and ecologically sustainable development;

- 
- (ii) social or socio-economic issues;
  - (iii) urban or regional planning;
  - (iv) the management or conservation of land, buildings, heritage places and heritage areas;
  - (v) management, conservation and use of natural and other resources;
  - (vi) economic issues;
  - (vii) the provision of affordable housing within the community;
  - (b) provisions enabling the transfer of development rights between sites;
  - (c) material prescribed by the regulations;
  - (d) such other material relating to planning or development as may be appropriate.
- (3a) A Development Plan may, in setting out objectives or principles under subsection (3)(a), describe the characteristics and other aspects of the natural or constructed environment that are desired within the community in order to provide clear directions with respect to development in the relevant area.
- (4) A Development Plan 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.
- (4aa) For the purposes of subsection (4):
- (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 may include any 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.
- (4a) A Development Plan may—
- (a) declare a tree to be a significant tree if—
    - (i) it makes an important contribution to the character or amenity of the local area; or

- (ii) it is indigenous to the local area and its species is listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species; or
  - (iii) it represents an important habitat for native fauna; or
  - (iv) it is part of a wildlife corridor or a remnant area of native vegetation; or
  - (v) it is important to the maintenance of biodiversity in the local environment; or
  - (vi) it is a notable visual element to the landscape of a local area;
- (b) declare a group of trees to be significant trees if—
  - (i) as a group they make an important contribution to the character or amenity of the local area; or
  - (ii) they are indigenous to the local area and, in respect of each tree, its species is listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species; or
  - (iii) as a group they represent an important habitat for native fauna; or
  - (iv) as a group they form part of a wildlife corridor or a remnant area of native vegetation; or
  - (v) as a group they are important to the maintenance of biodiversity in the local environment; or
  - (vi) as a group they are a notable visual element to the landscape of a local area,

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

- (5) A Development Plan may adopt, wholly or partially and with or without modification, any plan, policy, standard, document or code prepared or published under this or any other Act, or by a body prescribed by the regulations (either as in force at the time the Plan is made or as in force from time to time).
- (6) A Development Plan is a public document of which a court or tribunal will take judicial notice, without formal proof of its contents.
- (7) A Development Plan is created in the same manner as a Development Plan is amended (see Subdivision 2).

## **Subdivision 2—Amendments to Development Plans**

### **24—Council or Minister may amend a Development Plan**

- (1) An amendment to a Development Plan may be prepared—
  - (a) where it relates to the area, or part of the area, of a council—
    - (i) by the council for the relevant area; or
    - (ii) by the Minister acting at the request of the council; or



- (iii) where the Minister has requested the council to proceed with an amendment and to prepare a Statement of Intent within a specified time and the council fails to do so, or the Minister and the council cannot reach an agreement on a Statement of Intent within three months after a date specified by the Minister—by the Minister; or
- (iv) where the Minister considers that the council has demonstrated undue delay in the preparation, consideration or finalisation of a Development Plan Amendment in accordance with the provisions of this Subdivision and that the amendment should proceed after taking into account the significance of the amendment and the provisions of the Planning Strategy—by the Minister; or
- (iva) where—
  - (A) a Development Plan Amendment prepared by the council has lapsed under section 25; or
  - (B) the council has, after commencing the processes associated with making an amendment set out in section 25, subsequently decided not to proceed with the amendment after all; or
  - (C) the council has, after being required by the Minister to take or complete any step associated with the finalisation of an amendment (including an amendment that has been divided under section 25(15)(f)), failed to take that step within a time specified by the Minister,by the Minister; or
- (v) where—
  - (A) the council has failed to comply with a requirement of section 30 relating to the preparation or completion of a report under that section; or
  - (B) the Minister considers that the council has, in connection with the preparation of a report under section 30, acted unreasonably in not agreeing with the Minister on the steps that the council will take to amend any relevant Development Plan under this Subdivision, or that the council has failed to comply with the terms of any relevant agreement with the Minister, or requirement prescribed by the regulations, under that section,by the Minister; or
- (b) where it relates to the areas, or parts of the areas, of two or more councils—
  - (i) by the Minister on the basis that he or she considers that the amendment is reasonably necessary to promote orderly and proper development within the relevant areas and that, after consultation with the relevant councils, the Minister considers that it is appropriate for the Minister to undertake the amendment; or

- (ii) by the relevant councils at the request or with the approval of the Minister (and, in such a case, this Subdivision will apply with any necessary modifications); or
- (c) where it relates to land that does not lie within the area of a council—by the Minister; or
- (d) where the same amendment, or substantially the same amendment, is to be made to two or more Development Plans—by the Minister; or
- (da) where the amendment—
  - (i) relates to the format of a Development Plan, or to the headings, terms, names, numbers or other forms of identifying or classifying material used in a Development Plan; or
  - (ii) relates to a set of objectives or principles that have been developed by the Minister with a view to providing or enhancing consistency in the policies, or specific classes of policies, that are to apply under this Act and that have been identified for the purposes of this provision by the Minister by notice in the Gazette,by the Minister (including an amendment that may only relate to 1 Development Plan in a particular circumstance); or
- (e) where the purpose of the amendment is to establish a State Heritage Area and impose development controls in relation to that area—by the Minister; or
- (f) where the purpose of the amendment is to impose controls in relation to a place that is entered, either on a provisional or permanent basis, in the South Australian Heritage Register—by the Minister; or
- (fa) where the purpose of the amendment is to promote the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act within the Murray-Darling Basin—by the Minister; or
- (fb) where the purpose of the amendment is to promote the objects or objectives of the *Adelaide Dolphin Sanctuary Act 2005*—by the Minister; or
- (fc) where a regional NRM board has requested a council to proceed with an amendment on the basis of a regional NRM plan approved under the *Natural Resources Management Act 2004* by the Minister responsible for the administration of that Act and the council has not acted under section 25 of this Act in relation to the matter within a period determined by the Minister responsible for the administration of this Act to be reasonable in the circumstances—by the Minister; or
- (g) where the Minister considers that an amendment to a Development Plan is appropriate because of a matter which in the opinion of the Minister is of significant social, economic or environmental importance—by the Minister; or
- (ga) where the Minister who is responsible for the administration of the Mining Acts has requested the Minister to take action under this Act to address a matter or matters relating to planning or development that may arise in connection with an area that may be subject to, or affected by, operations carried out under a Mining Act; or

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- (h) where the Minister considers that an amendment to a Development Plan is necessary to ensure or achieve consistency with the Planning Strategy—by the Minister; or
  - (i) where the Minister considers that an amendment to a Development Plan is appropriate having regard to issues surrounding the consideration or approval of a development or project under Division 2 of Part 4—by the Minister.
- (1a) Two or more councils may act jointly in preparing amendments to 1 or more Development Plans under subsection (1)(a)(i) or (b)(ii) and, in such a case, 1 set of amendments, and 1 DPA, may relate to all of the relevant Development Plans (and this Subdivision will apply with any necessary modifications).
  - (1b) The Minister must not act under subsection (1)(a)(v) unless the Minister has, by notice in writing to the relevant council, given the council at least 6 weeks to make submissions in relation to the matter, and considered any submission received from the council within the period specified by the Minister.
  - (2) The Minister must, in relation to the preparation of an amendment under subsection (1)(e) or (f), consult with the Minister responsible for the administration of the *Heritage Places Act 1993* and the South Australian Heritage Council.
  - (2a) The Minister must not act under subsection (1)(fc) unless the Minister has, by notice in writing to the relevant council, given the council an opportunity to make submissions (within a period specified in the notice) in relation to the matter, and considered any submission received within the specified period from the council.
  - (3) Subject to subsection (3a), if a proposed amendment to a Development Plan by a council or the Minister relates to any part of the Murray-Darling Basin, the Minister must, in relation to the preparation of the amendment, consult with and have regard to the views of the Minister for the River Murray.
  - (3a) The Governor may, by regulation, exclude specified categories of amendments from the operation of subsection (3).
  - (4) The Minister must, in relation to the preparation of an amendment by a council or the Minister under subsection (1) that relates to a Development Plan or Development Plans that relate (wholly or in part) to any part of the Adelaide Dolphin Sanctuary, consult with and have regard to the views of the Minister for the Adelaide Dolphin Sanctuary.
  - (5) The consultation required under subsections (2), (3) and (4) will be undertaken in accordance with any procedures or timelines determined under the regulations (and if, in a particular case, a response is not received by the Minister within a relevant period prescribed by the regulations then the Minister may assume that the entity under the relevant subsection does not desire to provide any comment).
  - (6) However—
    - (a) in a case involving a proposed amendment under subsection (3), the Minister for the River Murray may, if that Minister thinks fit, extend any period for consultation that would otherwise apply under subsection (5) in relation to the matter; and
    - (b) nothing in subsection (5) affects or limits the operation of section 22(5) of the *River Murray Act 2003*.

## 25—Amendments by a council

- (1) If a council is considering an amendment to a Development Plan, the council must first reach agreement with the Minister on a "Statement of Intent" prepared by the council in accordance with the regulations.
- (2) The Minister must, for the purposes of subsection (1), consult with the Advisory Committee if the Minister considers that the proposed amendment would be seriously at variance with the Planning Strategy (and may consult with the Advisory Committee with respect to any other matter that should, in the opinion of the Minister, be referred to the Advisory Committee for advice).
- (3) If or when agreement is reached, and the council decides to proceed, the council must prepare a proposal, to be called a "Development Plan Amendment" (or *DPA*), that complies with the following requirements:
  - (a) the DPA must be based on the outcome of investigations initiated by the council in accordance with the terms of the Statement of Intent and such other investigations (if any) as the council thinks fit;
  - (b) the DPA must include an assessment of the extent to which the proposed amendment—
    - (i) accords with the Planning Strategy; and
    - (ii) accords with the Statement of Intent; and
    - (iii) accords with other parts of the Development Plan; and
    - (iv) complements the policies in the Development Plans for adjoining areas; and
    - (v) satisfies the matters prescribed in the regulations;
  - (c) the DPA must include—
    - (i) an explanation of the intent of the proposed amendment, the relationship between that intent and the policy of the Statement of Intent, and a summary of the major policy changes (if any) that are proposed; and
    - (ii) a summary of the conclusions drawn from the investigations and assessments referred to above; and
    - (iii) a draft of the amendment, or a draft of the relevant section of the Development Plan as amended (with the amendments shown in a distinctive manner);
  - (d) the DPA must include an assessment of the extent to which the proposed amendment accords with relevant infrastructure planning (with respect to both physical and social infrastructure) identified by the council through strategic planning or other processes undertaken by the council under this Act or the *Local Government Act 1999* or identified by a Minister, or any other relevant government agency, in accordance with any scheme set out in the regulations, in connection with the preparation of the DPA under this Act;
  - (e) the DPA must include any other matter prescribed by the regulations.

- (4) A DPA may only be prepared after the council has considered the advice of a person with prescribed qualifications.
- (5) Despite a preceding subsection, a council cannot, except as authorised by the Minister, propose an amendment to a part of a Development Plan that has been declared by the Minister by notice in the Gazette as being part of a set of standard policy modules for the purposes of this Act.
- (6) When the council has prepared a DPA in accordance with the preceding subsections, the DPA will be dealt with in accordance with process A, B or C, as described below, depending on an agreement reached between the council and the Minister as part of the Statement of Intent, or at some later time if so determined or agreed by the Minister.
- (7) Process A is as follows:
  - (a) the council must first refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent, for comment within the period prescribed by the regulations;
  - (b) the Minister will then consider the matter and any comment from a Department, agency or other body to which the DPA has been referred, although if a response is not received by the council within the period that applies under paragraph (a), the council and the Minister may assume that the particular Department, agency or other body does not desire to provide any comment;
  - (c) the Minister may then give his or her approval to the release of the DPA or, after consultation with the council—
    - (i) require an alteration to the DPA (and in such a case the council must comply with the requirement); or
    - (ii) determine that the DPA be divided into parts (with or without alterations) and that each part be dealt with separately (and in such a case the determination will have effect according to its terms and each part will then be taken to be a separate DPA for the purposes of this Act);
  - (d) the council must then release the DPA for public consultation, in accordance with the regulations, over a period of at least 8 weeks.
- (8) Process B is as follows:
  - (a) if required by the Minister, the council must first refer the DPA to the Minister for consideration and the Minister may, after consultation with the council—
    - (i) require an alteration to the DPA (and in such a case the council must comply with the requirement); or
    - (ii) determine that the DPA be divided into parts (with or without alterations) and that each part be dealt with separately (and in such a case the determination will have effect according to its terms and each part will then be taken to be a separate DPA for the purposes of this Act);

- (b) subject to complying with paragraph (a) (if relevant), the council must—
  - (i) refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent, for comment within a period of 8 weeks (and if a response is not received by the council within this period then the council and the Minister may assume that the particular Department, agency or body does not desire to provide any comment); and
  - (ii) release the DPA for public consultation, in accordance with the regulations, over a period that is at least concurrent with the period that applies under subparagraph (i).
- (9) Process C is as follows:
  - (a) the council must refer the DPA to any government Department or agency that has a direct interest in the matter, and any other body specified in the Statement of Intent, for comment within a period of 4 weeks (and if a response is not received by the council within this period then the council and the Minister may assume that the particular Department, agency or body does not desire to provide any comment);
  - (b) the council must release the DPA for public consultation, in accordance with the regulations, over a period that is at least concurrent with the period that applies under paragraph (a);
  - (c) the council must, at the time that the DPA is released for public consultation, give—
    - (i) an owner or occupier of any land that is directly subject to the operation of the proposed amendment; and
    - (ii) an owner or occupier of each piece of adjacent land to land that is directly subject to the operation of the proposed amendment,a written notice in accordance with the regulations.
- (10) A council must not release a DPA for public consultation unless or until the chief executive officer of the council has, on behalf of the council, issued a certificate in the prescribed form relating to the extent to which the proposed amendment—
  - (a) accords with the Planning Strategy; and
  - (b) accords with the Statement of Intent; and
  - (c) accords with other parts of the Development Plan; and
  - (d) complements the policies in the Development Plans for adjoining areas; and
  - (e) satisfies the matters prescribed in the regulations.
- (11) In addition to any requirement prescribed by the regulations, a council must, for the purposes of undertaking the public consultation required above—
  - (a) allow interested persons to make representations in writing to the council in relation to the matter over the period that applies for the purposes of the public consultation; and

- (b) hold within its area at least 1 meeting where members of the public may attend and make representations in relation to the matter (although if no written representation under paragraph (a) indicates an interest to be heard, a meeting need not be held and, in a case where section 24(1a) applies, only 1 meeting need be held in the area of 1 relevant council); and
  - (c) appoint a committee (which may, but need not, include members of the council) to consider any representations made under paragraph (a) or (b) and to provide advice to the council in relation to these representations.
- (12) If a proposed amendment designates a place as a place of local heritage value, the council must, at or before the time when the DPA is released for public consultation, give each owner of land constituting the place proposed as a place of local heritage value a written notice—
  - (a) informing the owner of the proposed amendment; and
  - (b) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under the regulations.
- (13) The council must, after complying with the requirements of the preceding subsections—
  - (a) prepare a report on the matters raised during the consultation period, on the reasons for any failure to comply with any time set for any step under those subsections, and on any recommended alterations to the proposed amendment (but these alterations cannot have effect until approved by the Minister under subsection (15)); or
  - (b) if it thinks fit, by notice in writing to the Minister, decline to proceed any further with the amendment.
- (14) The council must send to the Minister, in accordance with the regulations—
  - (a) a copy of a report under subsection (13)(a); and
  - (b) a certificate from the chief executive officer of the council, in the prescribed form—
    - (i) confirming that the council has complied with the requirements of this section and that the proposed amendment is in a correct and appropriate form; and
    - (ii) if a report under subsection (13)(a) recommends an alteration or alterations to the proposed amendment—relating to the extent to which the amendment, as altered—
      - (A) accords with the Planning Strategy; and
      - (B) accords with other parts of the Development Plan; and
      - (C) complements the policies in the Development Plans for adjoining areas; and
      - (D) satisfies the matters prescribed in the regulations.

- (15) On the receipt of a report under subsection (13)(a)—
- (a) the Minister must seek the advice of the Advisory Committee if the Minister is of the opinion that the proposed amendment would not be in accordance with the Planning Strategy (and may seek the advice of the Advisory Committee with respect to any other matter that should, in the opinion of the Minister, be referred to the Advisory Committee for advice); and
  - (b) in the case of an amendment that designates a place as a place of local heritage value—the Minister must seek the advice of the Advisory Committee if the owner of the land objects to the amendment (and, in such a case, the owner of the land must be given a reasonable opportunity to make submissions to the Advisory Committee (in such a manner as the Advisory Committee thinks fit) in relation to the matter before the Advisory Committee reports back to the Minister),
- and thereafter the Minister may—
- (c) approve the amendment; or
  - (d) after consultation with the council, alter the amendment and approve the amendment as altered; or
  - (e) decline to approve the amendment (and, in such a case, the Minister must provide the council with written reasons for the Minister's decision); or
  - (f) after consultation with the council, divide the amendment into separate amendments (with or without alterations) and approve one or more of those amendments and, as to the remaining amendment or amendments, undertake consultation with the council in relation to the matter (and, in such a case, the Minister may then reconsider the amendment or amendments (with or without alterations) and exercise, in relation to the amendment or amendments, any power conferred on the Minister under this subsection to approve, alter or decline to approve the amendment or amendments).
- (16) The Minister is not required to consult with the council under subsection (15)(d) in relation to any alteration made—
- (a) in order to make a change of form (without altering the effect of an underlying policy reflected in the amendment); 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 amendment); or
    - (ii) correcting an error.
- (17) The Minister will give an approval under subsection (15) by notice in the Gazette.
- (18) A notice under subsection (17) must fix a day on which an approved amendment will come into operation (and the relevant Development Plan will then be taken, from that day, to be amended in the manner set out in the amendment).



- (19) Despite a preceding subsection (but subject to the operation of subsection (21)), the Minister may, by notice in writing to the council, determine that a DPA will lapse if the council has failed—
- (a) to refer the DPA to the Minister or a government Department or agency in accordance with the requirements of this section within the relevant period; or
  - (b) to release the DPA for public consultation in accordance with the requirements of this section within the relevant period; or
  - (c) to provide a report to the Minister on the matters raised during the public consultation period for the DPA in accordance with the requirements of this section within the relevant period,
- (and such a determination will have effect according to its terms).
- (20) A reference to the **relevant period** in paragraph (a), (b) or (c) of subsection (19) is a reference to a period specified by the relevant Statement of Intent or, if the Minister has granted the relevant council an extension of that period, a reference to that period as extended by the Minister (and if no period is so specified, is a period determined in accordance with the regulations).
- (21) The Minister must, before making a determination under subsection (19), consult with the council and give the council a reasonable opportunity to make submissions to the Minister.
- (21a) Despite a preceding subsection, if, in relation to a particular DPA—
- (a) any relevant period applying under subsection (19) has expired; and
  - (b) at least 5 years have elapsed since agreement was reached on the Statement of Intent under subsection (1),
- the DPA will lapse by force of this subsection at the end of a period prescribed by the regulations unless the Minister, by notice in the Gazette, exempts the DPA from the operation of this subsection.
- (21b) An exemption under subsection (21a) may include a condition that will result in the DPA lapsing in any event if the terms of the condition are not met.
- (22) The Minister may act or rely on a matter certified by the chief executive officer of a council under this section without further inquiry.
- (23) If a DPA or amendment is divided under this section, the Minister may, after consultation with the relevant council, modify the Statement of Intent to set new timelines or to make such other modifications as appear to the Minister to be reasonable in view of the division.

## 26—Amendments by the Minister

- (1) If the Minister is considering an amendment to a Development Plan, the Minister must first prepare a proposal, to be called a "Development Plan Amendment" (or **DPA**), that complies with the following requirements:
- (a) the DPA must be based on investigations initiated by the Minister for the purposes of this section;
  - (b) the DPA must include an assessment of the extent to which the proposed amendment—

- (i) accords with the Planning Strategy; and
    - (ii) accords with other parts of the Development Plan; and
    - (iii) complements the policies in Development Plans for adjoining areas; and
    - (iv) satisfies the requirements prescribed by the regulations;
  - (c) the DPA must include—
    - (i) an explanation of the proposed amendment and a summary of the major policy changes (if any) that are proposed; and
    - (ii) a summary of the conclusions drawn from the investigations and assessments referred to above; and
    - (iii) a draft of the amendment, or a draft of the relevant section of the Development Plan as amended (with the amendments shown in a distinctive manner);
  - (d) the DPA must include an assessment of the extent to which the proposed amendment accords with relevant infrastructure planning (with respect to both physical and social infrastructure) identified by the Minister for the purpose of this section;
  - (e) the DPA must include any other matter prescribed by the regulations.
- (2) The DPA may incorporate any material prepared by a council in relation to an amendment that was proposed under section 25.
- (3) A DPA may only be prepared after the Minister has considered the advice of a person with prescribed qualifications.
- (4) When the Minister has prepared a DPA in accordance with the preceding subsections, the DPA will be dealt with in accordance with process A, B or C, as described below, depending on the determination of the Minister.
- (5) Process A is as follows:
- (a) the Minister will first refer the DPA to any government Department or agency that, in the opinion of the Minister, has a direct interest in the matter (and any other body as the Minister thinks fit) for comment within the period prescribed by the regulations;
  - (b) the Minister will then consider the matter and any comment from a government Department, agency or other body to which the DPA has been referred, although if a response is not received by the Minister within the period that applies under paragraph (a), the Minister may assume that the particular Department, agency or other body does not desire to provide any comment;
  - (c) the Minister may then determine whether or not to alter the DPA;
  - (d) the Minister will then—
    - (i) refer the DPA to any council that, in the opinion of the Minister, has a direct interest in the matter for comment within a period of 8 weeks; and

- (ii) release the DPA for public consultation, in accordance with the regulations, over a period that is at least concurrent with the period that applies under subparagraph (i).

(5a) Process B is as follows:

- (a) the Minister will refer the DPA to any government Department or agency, and any council, that, in the opinion of the Minister, has a direct interest in the matter (and any other body as the Minister thinks fit) for comment within a period of 8 weeks (and if a response is not received by the Minister within this period then the Minister may assume that the particular Department, agency, council or other body does not desire to provide any comment);
- (b) the Minister will release the DPA for public consultation, in accordance with the regulations, over a period that is at least concurrent with the period that applies under paragraph (a).

(5b) Process C is as follows:

- (a) the Minister will refer the DPA to any government Department or agency, and any council, that, in the opinion of the Minister, has a direct interest in the matter (and any other body as the Minister thinks fit) for comment within a period of 4 weeks (and if a response is not received by the Minister within this period then the Minister may assume that the particular Department, agency, council or other body does not desire to provide any comment);
- (b) the Minister will release the DPA for public consultation, in accordance with the regulations, over a period that is at least concurrent with the period that applies under paragraph (a);
- (c) the Minister will, at the time that the DPA is released for public consultation, give—
  - (i) an owner or occupier of any land that is directly within the ambit of operation of the proposed amendment; and
  - (ii) an owner or occupier of each piece of adjacent land to land that is directly within the ambit of operation of the proposed amendment,a written notice in accordance with the regulations.

(5c) In addition to any requirement prescribed by the regulations, the Minister must, for the purposes of undertaking the public consultation required above—

- (a) allow interested persons to make representations in writing to the Minister in relation to the matter over the period that applies for the purposes of public consultation; and
- (b) ensure that at least 1 meeting is held where members of the public may attend and make representations in relation to the matter (although if no written representation under paragraph (a) indicates an interest to be heard, a meeting need not be held); and
- (c) arrange for a committee of the Advisory Committee (which may, but need not, include members of the Advisory Committee) to consider any representations made under paragraph (a) or (b) and to provide advice to the Minister in relation to those representations.

- (5d) The Minister may seek the advice of the Advisory Committee—
- (a) on any proposed alterations to the amendment; and
  - (b) on any other issue that should, in the opinion of the Minister, be referred to the Advisory Committee.
- (6) Where a proposed amendment designates a place as a place of local heritage value, the Minister must, on or before the day on which the DPA is released for public consultation, give each owner of land constituting the place proposed as a place of local heritage value a written notice—
- (a) informing the owner of the proposed amendment; and
  - (b) inviting the owner to make submissions on the amendment within the period provided for public consultation under this section.
- (7) The Minister must seek the advice of the Advisory Committee on any submissions made under subsection (6).
- (8) The Minister may then—
- (a) approve the amendment; or
  - (b) alter the amendment and approve the amendment as altered; or
  - (c) decline to approve the amendment; or
  - (d) divide the amendment into separate amendments (with or without alterations) and approve one or more of those amendments and, as to the remaining amendment or amendments, give further consideration to any outstanding issues and then, if or when the Minister thinks fit, reconsider the amendment or amendments (with or without alterations) and exercise, in relation to the amendment or amendments, any power conferred on the Minister under this subsection to approve, or to decline to approve, the amendment or amendments.
- (9) The Minister will give an approval under subsection (8) by notice in the Gazette.
- (10) A notice under subsection (9) must fix a day on which the amendment will come into operation (and the relevant Development Plan or Plans will then be taken, from that day, to be amended in the manner set out in the amendment).
- (11) Despite a preceding subsection (but subject to the operation of subsection (12)), if—
- (a) the Minister is authorised to proceed with the consideration of an amendment because of the operation of section 24(1)(a)(iv), (iva) or (v); and
  - (b) a DPA has been prepared by the relevant council under section 25; and
  - (c) the Minister is of the opinion that a policy contained in the DPA is of substantial interest to the Government of the State and should be adopted to achieve consistency with the Planning Strategy, or that the DPA remains valid and effective for the purposes of the consideration of the amendment under this Act,
- then—
- (d) the Minister may rely on a DPA (or part of a DPA) prepared by the council (with or without modifications made by the Minister); and

- (e) unless substantial modifications have been made under paragraph (d), the Minister is not required to undertake public consultation on a DPA (or part of a DPA) on which the Minister is relying under paragraph (d) if public consultation has already been undertaken on the DPA by a council under this Act; and
  - (f) the Minister is not required to seek the advice of the Advisory Committee under this section to the extent that advice has already been obtained under section 25.
- (12) The Minister must refer a proposal to act under subsection (11) to the relevant council for comment within a period (of at least six weeks) determined by the Minister and if during that period the council, by notice in writing, objects to the Minister's proposed action then the Minister must seek and consider the advice of the Advisory Committee before acting.

## **27—Parliamentary scrutiny**

- (1) If the Minister approves an amendment under this Subdivision, the Minister must, within 28 days, refer the amendment to the Environment, Resources and Development Committee of the Parliament (together with, in the case of an amendment approved under section 25, copies of the certificates of the chief executive officer of the relevant council required under that section).
- (2) An amendment under section 25 must be accompanied by a report from the Minister that sets out—
  - (a) the timelines that were agreed between the Minister and the council for the taking of each step in the process under this Subdivision, and any relevant timeline prescribed by the regulations; and
  - (b) the actual time taken for each such step; and
  - (c) a report on the reasons for any delays (prepared after taking into account any matter furnished as part of the council's report under section 25(13)); and
  - (d) if Process C was adopted under section 25—the reasons for doing so; and
  - (e) any other comment or material considered relevant by the Minister.
- (3) The Environment, Resources and Development Committee must, after receipt of an amendment under subsection (1)—
  - (a) resolve that it does not object to the amendment; or
  - (b) resolve to suggest amendments to the relevant Development Plan (as amended); or
  - (c) resolve to object to the amendment.
- (4) Subject to subsection (4b), if, at the expiration of 28 days from the day on which the amendment was referred to the Environment, Resources and Development Committee, the Committee has not made a resolution under subsection (3), it will be conclusively presumed that the Committee does not object to the amendment and does not itself propose to suggest any amendments to the Development Plan.

- (4a) Subject to subsection (4b), 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).
- (4b) If the period applying under subsection (4), including by virtue of subsection (4a), 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 Environment, Resources and Development 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 Environment, Resources and Development Committee is so reconstituted.
- (5) If an amendment is suggested under subsection (3)(b)—
  - (a) the Minister may, by notice in the Gazette, proceed to make such an amendment; or
  - (b) the Minister may report back to the Committee that the Minister is unwilling to make the amendment suggested by the Committee (and, in such a case, the Committee may resolve that it does not object to the amendment as originally made, or may resolve to object to that amendment).
- (6) If the amendment was proposed by a council, the Minister must consult with the council before making an amendment under subsection (5)(a).
- (7) If the Environment, Resources and Development Committee resolves to object to an amendment, copies of the amendment must be laid before both Houses of Parliament.
- (8) If either House of Parliament passes a resolution disallowing an amendment laid before it under subsection (7) then the amendment ceases to have effect (and the Development Plan will, from that time, apply as if it had not been amended by that amendment).
- (9) A resolution is not effective for the purposes of subsection (8) 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 amendment was laid before the House.
- (10) Where a resolution is passed under subsection (8), notice of that resolution must forthwith be published in the Gazette.

## **28—Interim development control**

- (1) Where 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 Development Plan should come into operation without delay, the Minister may, at the same time as, or at any time after, a DPA in relation to the amendment is released for public consultation under this Subdivision, and without the need for prior consultation with any council or other authority, by notice in the Gazette, declare that the amendment will come into operation on an interim basis on a day specified in the notice.
- (2) Where 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—
  - (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 27(7); or
  - (c) if the amendment has not been approved by the Minister under this Subdivision 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 Subdivision.
- (5) If an amendment ceases to operate by virtue of subsection (4)(b) or (c), notice of that 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 Development Plan will, from the date of cessation, apply as if it had not been amended by that amendment.

## **29—Certain amendments may be made without formal procedures**

- (1) The Minister may, by notice in the Gazette, amend a Development Plan in accordance with any plan, policy, standard, report, document or code which—
  - (a) is prepared, adopted or applied under any other Act; and
  - (b) falls within a class prescribed by the regulations for the purposes of this provision.
- (2) The Minister may, by notice in the Gazette, amend a Development Plan—
  - (a) in order to make a change of form (without altering the effect of an underlying policy reflected in the Development Plan); 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 Development Plan); or
    - (ii) correcting an error; or
  - (c) in order to provide consistency between the Development Plan and any provision made by the regulations (including to provide information in the Development Plan that relates to the content or effect of any regulation).
- (3) The Minister may, by notice in the Gazette, amend a Development Plan—
  - (a) in order to include a State heritage place in the plan; or

- (ab) 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
- (ac) 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
- (b) in order to remove a place that is no longer a State heritage place from the plan; or
- (c) in order to remove from the plan—
  - (i) a State heritage place or a local heritage place (as listed on the plan); or
  - (ii) any other place listed on the plan (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 takes effect as from a time stated in the notice of amendment.
- (5) The Minister may, by notice in the Gazette, amalgamate 2 or more Development Plans, and then make such consequential amendments as the Minister thinks fit to those Development Plans, so long as the Minister does not, in acting under this subsection, alter the effect of an underlying policy reflected in the Development Plans.

### **Subdivision 3—Review of plans by councils**

#### **30—Review of plans by council**

- (1) A council must carry out periodic reviews for the purpose of determining—
  - (a) the appropriateness of any Development Plan that applies in relation to its area (or a part of its area); and
  - (b) the consistency of any such Development Plan with the Planning Strategy.
- (2) A council must give public notice of a review to be carried out under this section and the notice must contain an invitation to interested persons to make written submissions to the council on the subject of the review within two months of the date of the notice or such longer period as may be allowed by the notice.
- (3) A council must give any person who makes written submissions in response to an invitation under subsection (2) an opportunity to appear personally or by representative before the council or a council committee and to be heard on those submissions.
- (4) The Advisory Committee may, at the request of a council, furnish advice on any matters arising in the course of a review under this section.
- (5) The council must prepare a report on the review and send a copy of the report to the Minister (and the council will not be taken to have completed the review until the report is received by the Minister).



- (5a) The council must make copies of the report prepared under subsection (5) available for inspection (without charge) by the public at the principal office of the council.
- (6) The first review to be carried out by a council under this section must be completed within four years after the commencement of this section, and each subsequent review must be completed within three years of the completion of the previous review or, if the Minister allows an extension of time on the application by the council, within five years of the completion of the previous review.
- (7) A failure of a council to comply with this section cannot be taken to affect the validity of a Development Plan that applies in relation to the area (or a part of the area) of the council.

#### **Subdivision 4—Supplementary provision**

##### **31—Copies of plans to be made available to the public**

- (1) The Minister must make appropriate provision for the publication and distribution of Development Plans under this Act.
- (2) The Minister must ensure that copies of every Development Plan, and of every authorised amendment to a Development Plan, are reasonably available for inspection (without charge) and purchase by the public at places determined by the Minister.
- (3) A council must make copies of a Development Plan published under subsection (1) that applies in relation to any part of its area available for inspection (without charge) and purchase by the public at an office of the council.
- (4) The Minister must, within a reasonable time after an amendment is made to a Development Plan, ensure that a consolidation of the Development Plan, as amended, is prepared and that copies of the consolidation are made available for inspection (without charge) and purchase by the public at places determined by the Minister.



## Part 4—Development assessment

### Division 1—General scheme

#### Subdivision 1—Approvals

#### 32—Development must be approved under this Act

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

#### 33—Matters against which a development must be assessed

- (1) 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):
  - (a) the provisions of the appropriate Development Plan (*development plan consent*);
  - (b) the provisions of the Building Rules (*building rules consent*);
  - (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):
    - (i) the allotments resulting from the division may be lawfully used for the purposes proposed by the applicant;
    - (ii) open space will be provided, or a payment will be made in accordance with the requirements imposed under this Act;
    - (iii) adequate provision is made for the creation of appropriate easements and reserves for the purposes of drainage, electricity supply, water supply and sewerage services;
    - (iv) the requirements of the South Australian Water Corporation relating to the provision of water supply and sewerage services are satisfied;
    - (iva) 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;
  - (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) each lot or unit that would be created or affected by the development is appropriate for separate occupation;
    - (ii) any encroachment of a lot or unit over other land has been dealt with in a satisfactory manner;

- (iii) where land is to be vested in a council or other authority—the council or authority consents to the vesting;
    - (iv) 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;
    - (v) the division of the land in the proposed manner is, having regard to the relevant Development Plan, appropriate;
    - (va) 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;
    - (vi) open space will be provided, or a payment will be made in accordance with the requirements imposed under this Act;
    - (vii) the requirements of the South Australian Water Corporation relating to the provision of water supply and sewerage services are satisfied;
    - (viiia) any building situated on the land complies with the Building Rules;
    - (viii) requirements set out in the regulations made for the purposes of this provision are satisfied;
  - (e) the requirement that any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) has been dealt with in a satisfactory manner;
  - (f) 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 one or more of those consents.
  - (3) A relevant authority may, in granting a development plan consent, reserve its decision on a specified matter until further assessment of the relevant development under this Act.
  - (4) 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.
  - (5) The provisions of the Building Rules that are relevant to the operation of subparagraph (viiia) of paragraph (d) of subsection (1) are the provisions of the Building Rules as in force at the time the application is made for consent in respect of the matters referred to in that paragraph.

### **34—Determination of relevant authority**

- (1) Subject to this Act, the relevant authority, in relation to a proposed development, is ascertained as follows:
  - (a) where the proposed development is to be undertaken within the area of a council, then, subject to paragraphs (ab) and (b), the council is the relevant authority (and, subject to paragraph (b)(ii), the council may act as the relevant authority even if it is to undertake some or all of the relevant development itself);

(ab) where—

(i) the proposed development is to be undertaken within an area in relation to which a regional development assessment panel has been constituted (see subsection (3)); and

(ii) the proposed development is development of a prescribed kind,

then, subject to paragraph (b), the regional development assessment panel is the relevant authority;

(b) where—

(i) the Development Assessment Commission is constituted by the regulations as the relevant authority in relation to a class of development in which the proposed development is comprised; or

(ii) the proposed development is development of a prescribed kind to be undertaken by a council; or

(iii) the Minister, acting at the request of a council or regional development assessment panel, declares, by notice in writing served personally or by post on the proponent, that the Minister desires the Development Assessment Commission to act as the relevant authority in relation to the proposed development in substitution for the council or regional development assessment panel (as the case may be); or

(iv) 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; or

(v) the Development Assessment Commission and a council would, apart from this provision, both be constituted as relevant authorities in relation to a particular development; or

(va) the Development Assessment Commission and a regional development assessment panel would, apart from this provision, both be constituted as relevant authorities in relation to a particular development; or

(vi) the Minister declares, by notice in writing served personally or by post on the proponent, and sent to the relevant council or regional development assessment panel within five business days after the declaration is made, that the Minister desires the Development Assessment Commission to act as (or to become) the relevant authority for the proposed development in substitution for the council or the regional development assessment panel because—

(A) in the Minister's opinion the council, or a council for an area in relation to which the regional development assessment panel has been constituted (as the case may be), has demonstrated a potential conflict of interest in the assessment of the development because of a publicly stated position on the particular development; or

- (B) in the Minister's opinion the proposed development would have significant impact beyond the boundaries of the council area in which the relevant land is situated; or
    - (C) the council or regional development assessment panel has failed to deal with an application for development authorisation for the development within the time prescribed under section 41; or
  - (vii) the Minister, acting at the request of the Minister for the River Murray, declares, by notice in writing served personally or by post on the proponent, that the Development Assessment Commission should act as the relevant authority in relation to the proposed development in substitution for the council or the regional development assessment panel (as the case may be) because, in the opinion of the Minister making the request, the proposed development may have a significant impact on an aspect of the River Murray within the meaning of the *River Murray Act 2003*; or
  - (viii) the Minister, acting at the request of the Minister for the Adelaide Dolphin Sanctuary, declares, by notice in writing served personally or by post on the proponent, that the Development Assessment Commission should act as the relevant authority in relation to the proposed development in substitution for the council or the regional development assessment panel (as the case may be) because, in the opinion of the Minister making the request, the proposed development may have a significant impact on an aspect of the Adelaide Dolphin Sanctuary,
- then the Development Assessment Commission is, subject to subsection (2), the relevant authority.
- (1a) Where the Minister has made a declaration under subsection (1)(b)(vi), the relevant council or regional development assessment panel may provide the Development Assessment Commission with a report, relating to the application for development authorisation, within the time prescribed by the regulations.
  - (1b) To avoid doubt, a council may act as the relevant authority in relation to a proposed development even though it has been involved in preliminary planning or other work associated with the proposal for the particular development, or has entered into an associated agreement or agreements in connection with that preliminary planning or other work (unless the Development Assessment Commission or a regional development assessment panel is constituted as the relevant authority by virtue of the operation of subsection (1)(ab) or (b) (including in a case where the Minister decides to take action under subsection (1)(b)(vi) in the particular circumstances)).
- (2) Where—
- (a) a proposed development involves the performance of building work; and
  - (b) the Development Assessment Commission or a regional development assessment panel is constituted as a relevant authority under subsection (1),
- the Development Assessment Commission or regional development assessment panel (as the case may be) 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 private certifier, or by some other person of a class determined by the Development Assessment Commission or regional development assessment panel for the purposes of this provision,

and in that case (unless the proposed development is not to be undertaken in the area of a council) the council for the area in which the development is to be undertaken will, subject to the regulations and any condition or limitation imposed by the Development Assessment Commission or regional development assessment panel, be taken to be a relevant authority for the purposes of this Act and, subject to any provision made by the regulations, to be the relevant authority to determine whether the development should be approved.

- (3) The Governor may, for the purposes of this section, by regulation, constitute a regional development assessment 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 regulation so provides, a part or parts of the State that are not within the area of a council.
- (4) The Governor may, in the regulation constituting a regional development assessment panel, or by subsequent regulation, make provision with the respect to—
  - (a) the membership of a regional development assessment panel, including—
    - (i) the number of members; and
    - (ii) the criteria for membership; and
    - (iii) the procedures to be followed with respect to the appointment of members (on the basis that appointments will, according to the terms of the regulation, be made by the relevant councils or, if appropriate, the Minister); and
    - (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
    - (vi) the appointment of deputy members;
  - (b) the procedures of a regional development assessment panel;
  - (c) staffing and other support issues associated with the creation or operations of a regional development assessment panel;
  - (d) any special accounting or financial issues that may arise in relation to a regional development assessment panel;
  - (e) reporting by a regional development assessment panel on its operations and decisions;

- (f) the proportions in which the councils for the areas in relation to which a regional development assessment panel is constituted will be responsible for costs and other liabilities associated with the regional development assessment panel;
  - (g) other matters considered by the Governor to be necessary or expedient for the purposes of a regional development assessment panel.
- (5) A member of a regional development assessment panel need not be a member of a council for an area in relation to which the regional development assessment panel is constituted.
- (6) Notice of the appointment of a member of a regional development assessment panel must be given in accordance with the regulations.
- (6a) A member of a regional development assessment panel who is not a member of a council must disclose his or her financial interests in accordance with Schedule 2.
- (7) A member of a regional development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the regional development assessment panel (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 panel; and
  - (b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

Maximum penalty: Division 4 fine.

- (8) Without limiting the effect of subsection (7), a member of a regional development assessment panel 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.
- (8a) Without limiting any provision made under subsection (4), the councils for the areas in relation to which a regional development assessment panel is constituted may remove a member from the panel for a failure to comply with the requirements of subsection (6a) or (7) or a breach of, or failure to comply with, a code of conduct under section 21A.
- (9) A member of a regional development assessment panel incurs no liability for an honest act done in the performance or purported performance of functions or duties under this Act.
- (10) Any liability that would, but for subsection (9), attach to a member of a regional development assessment panel attaches instead to the councils for the areas in relation to which the regional development assessment panel is constituted.
- (11) Subject to subsection (12), a meeting of a regional development assessment panel must be conducted in a place open to the public.
- (12) A regional development assessment panel may exclude the public from attendance—
  - (a) during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:



- 
- (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - (ii) information the disclosure of which—
    - (A) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
    - (B) would, on balance, be contrary to the public interest;
  - (iii) information the disclosure of which would reveal a trade secret;
  - (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
    - (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - (B) would, on balance, be contrary to the public interest;
  - (v) matters affecting the safety or security of any person or property;
  - (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - (vii) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - (viii) legal advice;
  - (ix) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;
  - (x) information the disclosure of which—
    - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of a council, or a person engaged by a council); and
    - (B) would, on balance, be contrary to the public interest; or
  - (b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.
- (13) A regional development assessment panel must ensure that accurate minutes are kept of its proceedings.
- (14) A disclosure under subsection (7)(a) must be recorded in the minutes of the regional development assessment panel.
- (15) Members of the public are entitled to reasonable access—
- (a) to agendas for meetings of a regional development assessment panel; and

- (b) to the minutes of meetings of a regional development assessment panel.
- (16) However, a regional development assessment panel may, before it releases a copy of any minutes under subsection (15), exclude from the minutes information about any matter dealt with on a confidential basis by the panel.
- (17) Minutes must be available under subsection (15)(b) within five days after their adoption by the members of the panel.
- (18) An act of a regional development assessment panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (18a) In addition to its functions as a relevant authority under this Act, a regional development assessment panel may, as it thinks fit, provide advice and reports to any council for the areas in relation to which the panel is constituted on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act.
- (18b) Each regional development assessment panel must have a public officer (who must not be a member of the panel) appointed by the panel.
- (18c) A regional development assessment panel must, on appointing a public officer, ensure that notice of the appointment (including the public officer's name and contact details) is published in the Gazette.
- (18d) The functions of a public officer include ensuring the proper investigation of complaints about the conduct of a member of the relevant regional development assessment panel (but nothing in this section prevents a person making a complaint to the Ombudsman at any time under the *Ombudsman Act 1972* or the public officer referring a complaint to another person or authority for investigation or determination).
- (19) The Governor may, by regulation—
  - (a) vary a regulation previously made under subsection (3) or (4);
  - (b) dissolve a regional development assessment panel (and make any provision necessary or expedient on account of the dissolution (including for the transfer to another authority of matters under the consideration of the panel immediately before its dissolution)).
- (20) The Minister must ensure that the councils for the areas in relation to which a regional development assessment panel is, or is to be, constituted concur before a regulation is made under subsection (1)(ab)(ii), (3), (4) or (19).
- (21) A council may, by giving the Minister at least two months notice in writing, withdraw from a regional development assessment panel.
- (22) If a council withdraws from a regional development assessment panel under subsection (21)—
  - (a) the council remains liable for its share of the costs and liabilities of the regional development assessment panel incurred or accrued before the date of withdrawal; and
  - (b) the Governor may, after the Minister has consulted with the remaining councils, by regulation, vary or revoke to a regulation previously made under subsection (3) or (4) on account of the withdrawal (and in this case subsection (20) does not apply).

- (23) A council must delegate its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent under this Act to—
- (a) its council development assessment panel; or
  - (b) a person for the time being occupying a particular office or position (but not including a person who is a member of the council); or
  - (c) a regional development assessment panel (if such a delegation is consistent with the extent to which the panel may act under the provisions of the regulations constituting the panel and in addition to the operation of subsection (1)(ab)).
- (24) A council may, in connection with the operation of subsection (23)—
- (a) make a series of delegations according to classes of development; and
  - (b) vary any delegation from time to time,
- but a council cannot at any time—
- (c) act in its own right in a matter that is subject to delegation under that subsection; or
  - (d) give a direction with respect to the exercise or performance of a power or function under the delegation.
- (25) A delegation under subsection (23), or the variation of a delegation under subsection (24), will not—
- (a) affect any application lodged under this Act before the making of the delegation; or
  - (b) affect any right or power created, established or exercisable before the making of the delegation; or
  - (c) affect any action, legal proceedings or remedy that may be taken, pursued or enforced on account of any application lodged under this Act before the making of the delegation.
- (26) A power or function delegated under subsection (23) may be further delegated (and any such further delegation may be made subject to specified conditions and limitations, is revocable at will and will not derogate from the power of the panel or person making the delegation to act in any matter).
- (27) A council must—
- (a) establish a policy relating to the basis upon which it will make the various delegations required by subsection (23); and
  - (b) ensure that a copy of that policy is available—
    - (i) for inspection at the principal office of the council during ordinary office hours; and
    - (ii) for inspection on the Internet.

### 35—Special provisions relating to assessment against a Development Plan

- (1) If a proposed development is of a kind described as a *complying* development under the regulations or the relevant Development Plan, the development must be granted a development plan consent (subject to such conditions or exceptions as may be prescribed by the regulations or the relevant Development Plan).
- (1a) However, a proposed development of a class prescribed for the purposes of section 37, or required to be referred to the Commissioner of Police under section 37A, will be taken not to be *complying* development (and will not be subject to the operation of subsection (1)).
- (2) Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the relevant Development Plan must not be granted consent.
- (3) A development that is of a kind described as a *non-complying* development under the relevant Development Plan must not be granted a development plan consent unless—
  - (a) where the relevant authority is the Development Assessment Commission—the Minister and, if the development is to be undertaken in the area of a council, that council, concur in the granting of the consent;
  - (b) in any other case—
    - (i) unless subparagraph (ii) applies—the Development Assessment Commission;
    - (ii) in prescribed circumstances—a regional development assessment panel,concurs in the granting of the consent.
- (3a) However, the concurrence of a council is not required under subsection (3)(a) if the Development Assessment Commission is the relevant authority by virtue of the operation of section 34(1)(b)(ii), (iii) or (vi)(A).
- (4) If a development is of a kind described as a *non-complying* development under the relevant Development Plan, no appeal lies against—
  - (a) a refusal of consent or concurrence under this Act at any stage in the process (including in the circumstances envisaged by section 39(4) and including without hearing (or further hearing) from the applicant); or
  - (b) a condition attached to a consent or approval that is expressed to apply by virtue of that non-compliance under the Development Plan,except in relation to a proposed development that has, or will, become necessary by reason of—
  - (c) a change, or a proposed change, in the law regulating an existing use of land; or
  - (d) an order under Division 5 or 6 of Part 6.
- (4a) To avoid doubt, nothing in a preceding subsection prevents a relevant authority refusing at any time to grant a development authorisation with respect to a *non-complying* development.

- (5) A proposed development that does not fall into a category of development mentioned in a preceding subsection will be *merit* development (and any such development must be assessed on its merit taking into account the provisions of the relevant Development Plan).

### **36—Special provisions relating to assessment against the Building Rules**

- (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 rules consent (subject to such conditions or exceptions as may be prescribed by the regulations or the Development Plan).
- (2) Subject to subsection (3), a development that is at variance with the Building Rules must not be granted a building rules consent unless—
  - (a) the variance is with the performance requirements of the Building Code and the Building Rules Assessment 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 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 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 Development Plan 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 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.
- (2a) No appeal lies against—
  - (a) a refusal of concurrence by the Building Rules Assessment Commission under subsection (2)(a); or
  - (b) a refusal of building rules consent by a relevant authority if the Building Rules Assessment 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.
- (2b) A relevant authority may, at the request or with the agreement of the applicant, refer proposed building work to the Building Rules Assessment Commission for an opinion on whether or not it complies with the performance requirements of the Building Code.

- (2c) In addition, regulations made for purposes of this subsection may provide that building work of a prescribed class must not be granted a building rules consent unless the Building Rules Assessment Commission concurs in the granting of the consent.
- (3) Where an inconsistency exists between the Building Rules and a Development Plan in relation to a State heritage place or a local heritage place—
  - (a) the Development Plan prevails and the Building Rules do not apply to the extent of the inconsistency; but
  - (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.
- (3a) A relevant authority must seek and consider the advice of the Building Rules Assessment Commission before imposing or agreeing to a requirement under subsection (3) that would be at variance with the performance requirements of the Building Code.
- (4) Subject to this Act, a relevant authority must accept that proposed building work complies with the Building Rules to the extent that—
  - (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 private certifier.
- (5) No act or omission by a relevant authority in good faith in connection with the operation of subsections (3) or (4)(a) (other than where a certificate under subsection (4)(a) is given by a private certifier<sup>1</sup>) subjects the relevant authority to any liability.
- (6) 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 particular classification would cease to conform with the requirements of the Building Rules for a building of that classification.
- (7) If a relevant authority decides to grant building rules 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 (in the notice or in an accompanying document)—
  - (a) the variance; and
  - (b) the grounds on which the decision is being made.

**Note—**

- 1 See section 89 with respect to certificates given by private certifiers.

**37—Consultation with other authorities or agencies**

- (1) The regulations may provide 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, where the relevant authority is a council, the Development Assessment 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 (3) (being an extension equal to that period of time that the applicant takes to comply with a request under subsection (2)), that the body does not desire to make a response, or concurs (as the case requires)).
- (2) 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.
- (3) Where a request is made under subsection (2)—
  - (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).
- (4) The regulations may, in relation to the operation of subsection (1)—
  - (a) provide that the relevant authority cannot consent to or approve the development—
    - (i) without having regard to the response of the prescribed body; or
    - (ii) 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—
    - (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).

- (5) Where 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 conditions.
- (6) Where a refusal or condition referred to in subsection (5) is the subject of an appeal under this Act, the prescribed body will be a party to the appeal.

### **37A—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 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 fortifications, 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.

## **Subdivision 2—Consultation**

### **38—Public notice and consultation**

- (1) There will be three categories of development for the purposes of this section—
  - (a) Category 1 development; and
  - (b) Category 2 development; and
  - (c) Category 3 development.
- (2) Subject to subsection (2a), the following provisions apply in relation to the assignment of developments to those categories:
  - (a) the regulations or a Development Plan may assign a form of development to Category 1 or to Category 2 and if a particular form of development is assigned to a category by both the regulations and a Development Plan, the assignment provided by the Development Plan will, to the extent of any inconsistency, prevail within the area to which the Development Plan relates; and
  - (b) any development that is not assigned to a category under paragraph (a) will be taken to be a Category 3 development for the purposes of this section.
- (2a) The assignment of a form of development to Category 1 under subsection (2)(a) cannot extend to a particular development if that development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*.
- (3) Where a person applies for a consent in respect of the Development Plan for a Category 1 development, the following provisions of this section do not apply.
- (4) Where a person applies for a consent in respect of the Development Plan for a Category 2 development, notice of the application must be given, in accordance with the regulations, to—
  - (a) an owner or occupier of each piece of adjacent land; and
  - (b) any other person of a prescribed class.
- (5) Where a person applies for a development assessment of a Category 3 development, notice of the application must be given, in accordance with the regulations, to—
  - (a) the persons referred to in subsection (4); and
  - (b) any other owner or occupier of land which, according to the determination of the relevant authority, would be directly affected to a significant degree by the development if it were to proceed; and
  - (c) the public generally.
- (6) Except as otherwise provided by the regulations, the subject matter of—
  - (a) any notice required under this section; or
  - (b) any representations under this section; or

- (c) any appeal against a decision on a Category 3 development by a person entitled to be given notice of the decision under subsection (12),  
must be limited to the following:
  - (d) what should be the decision of the relevant authority as to development plan consent;
  - (e) in a case where a prescribed body is empowered to direct that the application be refused, or that conditions be imposed in relation to the development—what should be the decision of the prescribed body in response to the application.
- (7) Where notice of an application for consent in respect of a Category 2 or Category 3 development has been given under this section, any person who desires to do so may, in accordance with the regulations, make representations in writing to the relevant authority in relation to the granting or refusal of consent.
- (8) The relevant authority to which the application is made must forward to the applicant a copy of the representations made and allow the applicant an opportunity to respond, in writing, to those representations.
- (9) The response referred to in subsection (8) must be made within the prescribed number of days after the relevant material is forwarded to the applicant.
- (10) In addition to the requirements of subsections (7), (8) and (9)—
  - (a) in the case of a Category 2 development—the relevant authority may, in its absolute discretion, allow a person who made a representation to appear personally or by representative before it to be heard in support of the representation; and
  - (b) in the case of a Category 3 development—the relevant authority must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the authority, a reasonable opportunity to appear personally or by representative before it to be heard in support of the representation.
- (11) If a person appears before the relevant authority under subsection (10), the relevant authority 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.
- (12) Where representations have been made under this section, the relevant authority must—
  - (a) give to each person who made a representation notice of its decision on the application and of the date of the decision and, in the case of a Category 3 development, of the person's appeal rights under this Act; and
  - (b) in the case of a Category 3 development—give notice to the Court—
    - (i) of its decision on the application and of the date of the decision; and
    - (ii) of the names and addresses of persons who made representations to the relevant authority under this section.
- (13) A notice under subsection (12) must be given within five business days from the date of the decision on the application.

- (14) An appeal against a decision on a Category 3 development by a person who is entitled to be given notice of the decision under subsection (12) must be commenced within 15 business days after the date of the decision.
- (15) If an appeal is lodged against a decision on a Category 3 development by a person who is entitled to be given notice of the decision under subsection (12)—
  - (a) the applicant for the relevant development authorisation must be notified by the Court of the appeal and will be a party to the appeal; and
  - (b) in a case where the decision of a prescribed body in response to the application for the development authorisation could be a subject matter of such an appeal—the prescribed body will be a party to the appeal.
- (16) A decision of a relevant authority in respect of a Category 3 development in respect of which representations have been made under this section does not operate—
  - (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) where 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).

### Subdivision 3—Procedural issues

#### 39—Application and provision of information

- (1) An application to a relevant authority for the purposes of this Division must—
  - (a) be in a form determined by the Minister for the purposes of this Act; and
  - (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.
- (1a) 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 significant tree that is located on adjoining land but is encroaching on to the relevant land.
- (2) A relevant authority may request an applicant—
  - (a) to provide such additional documents 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;

- (d) if the regulations so provide, to prepare a statement of effect in accordance with the regulations in relation to a development of a kind that is expressed to be a *non-complying* development under the relevant Development Plan;
  - (e) to comply with any other requirement prescribed by the regulations.
- (3) Where a request is made under subsection (2)—
  - (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 may refuse the application.
- (4) A relevant authority may—
  - (a) permit an applicant—
    - (i) to vary an application;
    - (ii) to vary any plans, drawings, specifications or other documents that 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;
  - (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) refuse an application that relates to a development of a kind that is described as a *non-complying* development under the relevant Development Plan without proceeding to make an assessment of the application;
  - (e) if there is an inconsistency between any documents lodged with the relevant authority for the purposes of this Division (whether by an applicant or any other person), or between any such document and a development authorisation that 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.
- (5) A relevant authority may grant a permission under subsection (4) unconditionally or subject to such conditions as the relevant authority thinks fit.
- (6) Subject to this section, 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).
- (7) An application to which subsection (6) applies—
  - (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, 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
  - (c) in a case where the development to which the development authorisation previously given was Category 3 development—must also be dealt with under section 38 as an application for Category 3 development if any representations were made under subsection (7) of that section, unless the relevant authority determines that no such representation related to any aspect of the development that is now under consideration on account of the application for variation and that, in the circumstances of the case, it is unnecessary to deal with the matter as Category 3 development; and
  - (d) unless otherwise approved by the relevant authority, cannot seek to extend the period for which the relevant authorisation remains operative.
- (7a) In addition, the variation of a development authorisation on application under subsection (6)—
- (a) cannot have effect so as to impose a new condition, or to vary an existing condition, with respect to a matter that does not fall within the ambit of the application for variation; and
  - (b) cannot affect the operation of a condition imposed with respect to the original authorisation unless the relevant authority has made specific provision for the variation of the condition in its decision on the application for variation.
- (8) 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.
- (9) 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).

#### **40—Determination of application**

- (1) A relevant authority must, on making a decision on an application under this Division, 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 Division remains operative for a period prescribed by the regulations.
- (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).

#### **41—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), the applicant may—
  - (a) after giving 14 days notice in writing to the relevant authority—apply to the Court for an order requiring the relevant authority to make its determination within a time fixed by the Court; or
  - (b) in the case of a proposed development that falls within the ambit of section 35(5)—give the relevant authority a notice in accordance with the regulations requiring the relevant authority to make its determination within 14 days after service of the notice.
- (3) If the Court makes an order under subsection (2)(a), 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—
    - (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
    - (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
  - (c) that an order for costs should not be made for some other reason.
- (4) If a notice is given under subsection (2)(b) and the relevant authority does not make a determination on the relevant application within 14 days after service of the notice, it will be taken that the relevant authority has refused to grant the application (and the relevant authority will be taken to have given notice of its decision at that time (and will not need to give any notice under section 40)).

## **42—Conditions**

- (1) A decision under this Division 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 prescribed by the regulations or otherwise imposed under this Act.
- (2) Any such condition—
  - (a) 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 undertaken; and

- (b) 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 Division.
- (3) 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
  - (c) that regulates maintenance of any land or building subject to development; or
  - (d) where 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.

#### **43—Cancellation by a relevant authority**

- (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.

#### **44—General offences**

- (1) A person must not undertake development contrary to this Division.  
Maximum penalty: \$120 000.  
Additional penalty.  
Default penalty: \$500.
- (2) A person must not undertake development contrary to a development authorisation under this Division.  
Maximum penalty: \$120 000.  
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 Division; and
  - (b) any plans, drawings, specifications or other documents submitted to a relevant authority for the purposes of this Division 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 Division.

Maximum penalty: \$120 000.

Additional penalty.

Default penalty: \$500.

#### **45—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 Division.

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 Part), and any other requirements imposed by or under this Division in respect of that work.

Maximum penalty: \$60 000.

Default penalty: \$200.

- (2a) If—

- (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 allowed under section 36); and
- (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.

- (2b) The fact that a person may have (or has) committed an offence against subsection (2a) does not affect the requirements imposed on a person by subsections (1) and (2).
- (3) 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.

- (4) In this section—

*item* includes any component, fitting, connection, mounting or accessory.

#### **45A—Investigation of development assessment performance**

- (1) If the Minister has reason to believe that a relevant authority has—

- (a) contravened or failed to comply with a provision of this Division in a significant respect or to a significant degree; or



- (b) failed to efficiently or effectively discharge a responsibility under this Division in a significant respect or to a significant degree,

then the Minister may appoint an investigator or investigators to carry out an investigation and to report on the matter.

- (2) The Minister must, before making an appointment under subsection (1), give the relevant authority an opportunity to explain its actions, and to make submissions (including, if relevant, an indication of undertakings that the relevant authority 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.
- (2a) If the Minister decides to proceed under subsection (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.
- (3) An investigator may, for the purposes of an investigation—
  - (a) require a member or employee of the relevant authority, or a public sector employee or council employee assigned or engaged to assist the relevant authority, to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief;
  - (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;
  - (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.
- (4) Subject to subsection (7), a person who refuses or fails to comply with a requirement under subsection (3) is guilty of an offence.  
Maximum penalty: \$20 000.
- (5) Subject to subsection (7), 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.
- (6) 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—
  - (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).
- (7) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

- (8) At the conclusion of an investigation, the investigator or investigators must present a written report to the Minister on the results of the investigation.
- (9) 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.
- (10) The Minister must supply the relevant authority with a copy of a report presented under subsection (8).
- (11) The Minister may, on the basis of a report presented under subsection (8)—
  - (a) make recommendations to the relevant authority; or
  - (b) if the Minister considers that the relevant authority has—
    - (i) contravened or failed to comply with a provision of this Division in a significant respect or to a significant degree; or
    - (ii) failed to efficiently or effectively discharge a responsibility under this Division in a significant respect or to a significant degree,give directions to the relevant authority to rectify the matter, or to take specified action with a view to preventing a recurrence of any act, failure or irregularity.
- (12) The Minister must, before taking action under subsection (11), give the relevant authority 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.
- (13) If—
  - (a) the Minister makes a recommendation to a relevant authority under subsection (11)(a); and
  - (b) the Minister subsequently considers that the relevant authority has not, within a reasonable period, taken appropriate action in view of the recommendation,the Minister may, after consultation with the relevant authority, give directions to it.
- (14) A relevant authority must comply with a direction under subsection (11) or (13).
- (15) No action in defamation lies in respect of the contents of a report under this section.
- (16) Nothing in this section limits or affects the operation of Chapter 13 Part 3 of the *Local Government Act 1999*.

## **Division 2—Major developments or projects**

### **Subdivision 1—Preparation of statements and reports**

#### **46—Declaration by Minister**

- (1) The Minister may, if of the opinion that a declaration under this section is appropriate or necessary for the proper assessment of development<sup>1</sup> or a project<sup>2</sup> of major environmental, social or economic importance, by notice in the Gazette, declare that this section applies, or applies to the extent specified in the notice, to—
  - (a) a development or project specified in the notice; or

- 
- (b) a kind of development or project specified in the notice (either in the State generally, or in a specified part of the State); or
    - (c) development generally within a specified part of the State<sup>3</sup>.
  - (1a) A development or project may be considered to be of major environmental, social or economic importance due to the fact that the cumulative effect of the development or project, 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 of major environmental, social or economic importance.
  - (1b) If the Minister considers that a development or project is not in itself of major environmental, social or economic importance but is directly related to a development or project of such importance that is within the ambit of a declaration under subsection (1), the Minister may, by notice in the Gazette, declare that this section applies, or applies to the extent specified in the notice, to the related development or project as well (and in such a case the related development or project will be taken to be a major development or project for the purposes of this section).
  - (2) A declaration under this section does not extend to—
    - (a) a development lawfully commenced by substantial work on the site of the development before publication of the notice in the Gazette; or
    - (b) a development in respect of which the Minister has, by notice in writing to the proponent, given an express undertaking that this Division would not apply to the development.
  - (3) Subsection (2)(b) operates subject to the following qualifications:
    - (a) the Minister may limit the operation of an undertaking to a specified period;
    - (b) the Minister may, by notice in writing to the proponent, bring the operation of an undertaking to an end if the Minister considers that the undertaking should no longer apply because there has been a significant change in circumstances.
  - (3a) A declaration under this section cannot apply with respect to a development or project within the Adelaide Park Lands.
  - (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under this section.
  - (5) If the Minister makes a declaration under this section then, subject to the regulations and the declaration—
    - (a) Division 1 does not apply to a development within the ambit of the declaration; and
    - (b) any application under Division 1 that relates to a development within the ambit of the 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
    - (c) any development authorisation previously given under Division 1 in relation to a development within the ambit of the declaration ceases to have effect; and

- (d) a person must not undertake a development within the ambit of the declaration without the approval of the Governor under Subdivision 2; and
  - (e) unless section 48(2)(a) applies, a development or project within the ambit of the declaration becomes, according to a determination of the Development Assessment Commission under this section, subject to the processes and procedures prescribed by this Subdivision with respect to the preparation and consideration of an EIS, a PER or a DR<sup>4</sup>.
- (6) Subject to the regulations, a determination of the Minister under this section, or a determination of the Governor under section 48(2)(a) (in the case of a development), the proponent of a major development or project must lodge with the Minister—
  - (a) in the case of a development—an application;
  - (b) in the case of a project—a project proposal,that complies with the following requirements:
  - (c) the application or project proposal must be in a form determined by the Minister; and
  - (d) the application or project proposal must include, or be accompanied by—
    - (i) a description of the development or project;
    - (ii) a description of the locality where the development or project is to be situated;
    - (iii) a description of the expected environmental, social or economic effects of the development or project;
    - (iv) a statement on how those effects could be managed;
    - (v) a statement assessing consistency with any relevant Development Plan and the Planning Strategy;
    - (vi) information concerning the application and operation of the *Environment Protection Act 1993* with respect to the development or project (if relevant);
    - (vii) other information reasonably required by the Minister; and
  - (e) the application or project proposal must be accompanied by such plans, drawings, specifications or other documents as may be prescribed, or required by the Minister.
- (7) Subject to a determination of the Governor under section 48(2)(a) (in the case of a development), the Minister must refer a major development or project under this section to the Development Assessment Commission—
  - (a) to determine whether the major development or project will be subject to the processes and procedures prescribed by this Subdivision with respect to the preparation of an EIS, a PER or a DR; and
  - (b) to formulate guidelines to apply with respect to the preparation of the EIS, PER or DR (as determined by the Development Assessment Commission).

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- (9) The Development Assessment Commission must, in considering the level of assessment that should apply to a major development or project (ie whether a major development or project should be subject to the processes and procedures associated with the preparation of an EIS, a PER or a DR), take into account criteria prescribed by the regulations.
- (10) If a major development or project involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the Development Assessment Commission must, in formulating guidelines under this section, consult with the Environment Protection Authority within the time prescribed by the regulations.
- (11) The Development Assessment Commission must, in formulating guidelines under this section, classify the issues identified by the Development Assessment Commission as being relevant to the proper assessment of the major development or project according to categories of importance so as to indicate the levels of attention that should be given to those issues in the preparation of the relevant EIS, PER or DR, and the Assessment Report.
- (12) The Development Assessment Commission must, after completing the processes referred to above, report to the Minister on—
- (a) its determination with respect to the level of assessment that should apply to the major development or project; and
  - (b) the guidelines to apply under this Subdivision with respect to the preparation of the relevant EIS, PER or DR.
- (13) The Minister must, on the receipt of a report under subsection (12)—
- (a) give a copy of the report to the proponent; and
  - (b) by public advertisement, give notice of—
    - (i) the Development Assessment Commission's determination under this section; and
    - (ii) the place or places at which copies of the guidelines formulated by the Development Assessment Commission are available for inspection and purchase.
- (14) The Development Assessment Commission should deal with a referral as quickly as possible and in any event, unless the Minister otherwise approves, within the time specified by the Minister (taking into account the time periods prescribed by the regulations for the purposes of this Division).
- (15) The Minister or the Development Assessment Commission may require a proponent to furnish specified information (additional to the information required under subsection (6)) for the purposes of the operation of this section.
- (16) The prescribed fee is payable in accordance with the regulations when a development or project comes within the ambit of a declaration under this section.

**Notes—**

- 1 Development has a defined meaning under this Act.
- 2 A project is an activity or circumstance that does not require approval under this Act (because it is not within the ambit of the definition of *development* under this Act), but that may require approval under another Act.

- 3 A development or project within the ambit of a declaration under subsection (1) will be known as a **major development or project** for the purposes of this section.
- 4 In the case of a development, the principal purpose for the preparation of an EIS, PER or DR is to assist the Governor in his or her assessment of the development under Subdivision 2. In the case of a project, the principal purpose for the preparation of an EIS or PER is to identify issues of significance relevant to whether the project should proceed and, if it does proceed, to identify the conditions that should apply.

#### **46B—EIS process—Specific provisions**

- (1) This section applies if an EIS must be prepared for a proposed development or project.
- (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 guidelines determined by the Development Assessment Commission under this Subdivision.
- (4) The EIS must include a statement of—
  - (a) the expected environmental, social and economic effects of the development or project;
  - (b) the extent to which the expected effects of the development or project are consistent with the provisions of—
    - (i) any relevant Development Plan; and
    - (ii) the Planning Strategy; and
    - (iii) any matters prescribed by the regulations;
  - (c) if the development or project 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 or project 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;
  - (ca) if the development or project is to be undertaken within the Murray-Darling Basin, the extent to which the expected effects of the development or project are consistent with—
    - (i) the objects of the *River Murray Act 2003*; and
    - (ii) the *Objectives for a Healthy River Murray* under that Act; and
    - (iii) the general duty of care under that Act;
  - (cb) if the development or project is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development or project are consistent with—
    - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and

- (ii) the general duty of care under that Act;
  - (d) 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 or project on the environment;
  - (e) other particulars in relation to the development or project 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 or project 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
    - (ia) must, if the EIS relates to a development or project that is to be undertaken within the Murray-Darling Basin, refer the EIS to the Minister for the River Murray; and
    - (ib) must, if the EIS relates to a development or project that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the EIS to the Minister for the Adelaide Dolphin Sanctuary; and
    - (ii) must refer the EIS to the relevant council (or councils), and to any prescribed authority or body; and
    - (iii) 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 that copies of the EIS are available for public inspection and purchase (during normal office hours) for at least 30 business days at a place or places determined by the Minister and, by public advertisement, 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 by the Minister for the purposes of this paragraph.
- (6) The Minister must appoint a suitable person to conduct a public meeting during the period that applies under subsection (5)(b) in accordance with the requirements of the regulations.
- (7) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.
- (8) The proponent must then prepare a written response to—
  - (a) matters raised by a Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, 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 Minister must then prepare a report (an *Assessment Report*) that sets out or includes—
  - (a) the Minister's assessment of the development or project; 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, a council or other authority or body for inclusion in the report; and
  - (d) other comments or matter as the Minister thinks fit.
- (10) The Minister must—
  - (a) notify a person who made a written submission under subsection (5) of the availability of the Assessment Report in the manner prescribed by the regulations; and
  - (b) by public advertisement, 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 Minister for a period determined by the Minister.
- (12) If a proposed development or project to which an EIS relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the EIS, the proponent's response under subsection (8), and the Assessment Report to the council.

#### **46C—PER process—Specific provisions**

- (1) This section applies if a PER must be prepared for a proposed development or project.
- (2) The Minister will, after consultation with the proponent—
  - (a) require the proponent to prepare the PER; or
  - (b) determine that the Minister will arrange for the preparation of the PER.
- (3) The PER must be prepared in accordance with guidelines determined by the Development Assessment Commission under this Subdivision.
- (4) The PER must include a statement of—
  - (a) the expected environmental, social and economic effects of the development or project;
  - (b) the extent to which the expected effects of the development or project are consistent with the provisions of—
    - (i) any relevant Development Plan; and
    - (ii) the Planning Strategy; and
    - (iii) any matters prescribed by the regulations;



- (c) if the development or project 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 or project 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;
  - (ca) if the development or project is to be undertaken within the Murray-Darling Basin, the extent to which the expected effects of the development or project are consistent with—
    - (i) the objects of the *River Murray Act 2003*; and
    - (ii) the *Objectives for a Healthy River Murray* under that Act; and
    - (iii) the general duty of care under that Act;
  - (cb) if the development or project is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development or project are consistent with—
    - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
    - (ii) the general duty of care under that Act;
  - (d) 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 or project on the environment;
  - (e) other particulars in relation to the development or project required—
    - (i) by the regulations; or
    - (ii) by the Minister.
- (5) After the PER has been prepared, the Minister—
- (a) —
    - (i) must, if the PER relates to a development or project that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the PER to the Environment Protection Authority; and
    - (ia) must, if the PER relates to a development or project that is to be undertaken within the Murray-Darling Basin, refer the PER to the Minister for the River Murray; and
    - (ib) must, if the PER relates to a development or project that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the PER to the Minister for the Adelaide Dolphin Sanctuary; and
    - (ii) must refer the PER to the relevant council (or councils), and to any prescribed authority or body; and

- (iii) may refer the PER 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 that copies of the PER are available for public inspection and purchase (during normal office hours) for at least 30 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of copies of the PER and invite interested persons to make written submissions to the Minister on the PER within the time determined by the Minister for the purposes of this paragraph.
- (6) The Minister must appoint a suitable person to conduct a public meeting during the period that applies under subsection (5)(b) in accordance with the requirements of the regulations.
- (7) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.
- (8) The proponent must then prepare a written response to—
  - (a) matters raised by a Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, 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 within the time prescribed by the regulations.
- (9) The Minister must then prepare a report (an *Assessment Report*) that sets out or includes—
  - (a) the Minister's assessment of the development or project; and
  - (b) the Minister's comments (if any) on—
    - (i) the PER; 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, a council or other authority or body for inclusion in the report; and
  - (d) other comments or matter as the Minister thinks fit.
- (10) The Minister must, by public advertisement, give notice of the place or places at which copies of the Assessment Report are available for inspection and purchase.
- (11) Copies of the PER, 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 Minister for a period determined by the Minister.
- (12) If a proposed development or project to which a PER relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the PER, the proponent's response under subsection (8), and the Assessment Report to the council.

**46D—DR process—Specific provisions**

- (1) This section applies if a DR must be prepared for a proposed development.
- (2) The Minister will, after consultation with the proponent—
  - (a) require the proponent to prepare the DR; or
  - (b) determine that the Minister will arrange for the preparation of the DR.
- (3) The DR must be prepared in accordance with guidelines determined by the Development Assessment Commission under this Subdivision.
- (4) The DR must 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 Development Plan; and
    - (ii) the Planning Strategy; and
    - (iii) 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;
  - (ca) if the development is to be undertaken within the Murray-Darling Basin, the extent to which the expected effects of the development are consistent with—
    - (i) the objects of the *River Murray Act 2003*; and
    - (ii) the *Objectives for a Healthy River Murray* under that Act; and
    - (iii) the general duty of care under that Act;
  - (cb) if the development is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, the extent to which the expected effects of the development are consistent with—
    - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
    - (ii) the general duty of care under that Act;
  - (d) 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;
  - (e) other particulars in relation to the development required—
    - (i) by the regulations; or
    - (ii) by the Minister.

- (5) After the DR has been prepared, the Minister—
- (a) —
    - (i) must, if the DR 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 DR to the Environment Protection Authority;
    - (ia) must, if the DR relates to a development that is to be undertaken within the Murray-Darling Basin, refer the DR to the Minister for the River Murray;
    - (ib) must, if the DR relates to a development that is to be undertaken within, or is likely to have a direct impact on, the Adelaide Dolphin Sanctuary, refer the DR to the Minister for the Adelaide Dolphin Sanctuary;
    - (ii) must refer the DR to the relevant council (or councils), and to any prescribed authority or body; and
    - (iii) may refer the DR 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 that copies of the DR are available for public inspection and purchase (during normal office hours) for at least 15 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of copies of the DR and invite interested persons to make submissions to the Minister on the DR within the time determined by the Minister for the purposes of this paragraph.
- (6) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.
- (7) The proponent may then prepare a written response to—
- (a) matters raised by a Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, for consideration by the proponent; and
  - (b) all submissions referred to the proponent under subsection (6),
- and provide a copy of that response to the Minister within the time prescribed by the regulations.
- (8) The Minister must then prepare a report (an ***Assessment Report***) on the matter taking into account—
- (a) any submissions made under subsection (5); and
  - (b) the proponent's response (if any) under subsection (7); and
  - (c) comments provided by the Environment Protection Authority, a council or other authority or body; and
  - (d) other comments or matter as the Minister thinks fit.

- (9) Copies of the DR, any response under subsection (7) and the Assessment Report must be kept available for inspection and purchase at a place determined by the Minister for a period determined by the Minister.
- (10) If a proposed development to which a DR relates will, if the development proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the DR, any response under subsection (7) and the Assessment Report to the council.

#### **47—Amendment of EIS, PER or DR**

- (1) An EIS, a PER or a DR, 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, PER, DR or Assessment Report.
- (2) However—
  - (a) the Minister cannot amend an EIS, PER or DR prepared by a proponent but the proponent must, at the direction of the Minister, undertake a review of an EIS, PER or DR 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, PER or DR, the amendment must not be made before interested persons have been invited, by public advertisement, to make written submissions on the amendment and the Minister has considered the submissions (if any) received in response to the advertisement.
- (3) If an EIS, PER, DR or Assessment Report is amended under this section, the Minister must, by public advertisement, 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.

### **Subdivision 2—Governor to give decision on development**

#### **48—Governor to give decision on development**

- (1) This section applies to a proposed development—
  - (a) that is within the ambit of a declaration of the Minister under section 46; or
  - (b) that is the subject of a direction of the Minister under section 49(16a) or 49A(20).

- (2) The Governor 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 Governor; or
    - (ii) refuse approval to the development.
- (3) However, the Governor must not grant a development authorisation under this section unless—
- (a) an EIS, PER or DR, and an Assessment Report, have been prepared in relation to the development in accordance with the requirements of this Division (as appropriate); or
  - (b) the Governor is satisfied that an appropriate EIS, PER or DR, and an Assessment Report, that encompass the development have previously been prepared.
- (4) If more than five years have elapsed since an EIS, PER or DR that relates to a development to which this section applies was completed and placed on public exhibition (or in the case of an EIS prepared under the repealed Act, since the EIS was officially recognised), 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 under section 47 (and, if amendment is found to be necessary, unless or until it is amended).
- (5) The Governor must, before the Governor approves a development to which this section applies, have regard to—
- (a) the provisions of the appropriate Development Plan and the regulations (so far as they are relevant); and
  - (b) if relevant, the Building Rules; and
  - (c) the Planning Strategy; and
  - (d) 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
  - (da) if it appears to the Governor that the development may have an impact on any aspect of the River Murray within the meaning of the *River Murray Act 2003*—
    - (i) the objects of that Act; and
    - (ii) the *Objectives for a Healthy River Murray* under that Act; and

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- (iii) the general duty of care under that Act; and
    - (iv) any obligations or requirements under the Agreement approved under the *Murray-Darling Basin Act 1993*, or under any resolution of the Ministerial Council under that Agreement; and
  - (db) if it appears to the Governor that the development may have an impact on any aspect of the Adelaide Dolphin Sanctuary—
    - (i) the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*; and
    - (ii) the general duty of care under that Act; and
  - (e) any relevant EIS, PER or DR, and the relevant Assessment Report, and may, in making a decision, take into account other matters considered relevant by the Governor.
  - (6) The Governor may grant a provisional development authorisation under this section, reserving a decision on a specified matter until further assessment of the development for the purposes of this Act.
  - (7) The Governor 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 him or her 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.
  - (7a) The Governor may, on the application of a person who has the benefit of the development authorisation under this section, by notice in the Gazette, vary a development authorisation that has been given under this section.
  - (8) The Governor may, by notice in the Gazette, delegate a power or function under this section to the Minister or the Development Assessment Commission.
  - (9) A delegation—
    - (a) may be made subject to conditions and limitations specified in the notice of delegation; and
    - (b) unless the instrument of delegation otherwise provides, allows for subdelegation of the delegated power or function; and
    - (c) is revocable by further notice in the Gazette and does not derogate from the power of the Governor to act in the matter.
  - (10) A decision of the Governor under this section must be published in the Gazette.

(11) If—

- (a) the Governor 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 Governor as part of the development authorisation, within that time,

the Governor may, by notice in writing to any owner or occupier of the relevant land, cancel the development authorisation.

(12) No appeal lies against a decision under this section.

(13) A person—

- (a) who undertakes development to which this section applies without the consent of the Governor; 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: Division 2 fine.

Additional penalty.

Default penalty: \$1 000.

(14) 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: Division 4 fine.

### **Subdivision 3—Related matters**

#### **48A—Exclusion of particular development or project**

- (1) The Governor may, by notice in the Gazette, declare that a development or project (or a part or stage of a development or project) otherwise within the ambit of a declaration under section 46 is excluded from the operation of this Division.
- (2) If a declaration is made under subsection (1) then, subject to the regulations and the terms of the declaration (which may include provisions of a saving or transitional nature)—
  - (a) this Division will cease to apply to the development or project (or the relevant part or stage); and
  - (b) in the case of a development, Division 1 will apply to the development (or part or stage) to the extent to which the development (or part or stage) has not been approved under this Division.



**48B—Variation of application**

The Governor or the Minister may permit a proponent to vary an application (and any associated documents) lodged under this Division (provided that the relevant development or project remains within the ambit of an EIS, PER or DR, and an Assessment Report (either as originally prepared or as amended under this Division)).

**48C—Testing and monitoring**

- (1) The Minister may—
  - (a) by notice in writing to a person—
    - (i) who is undertaking a development or project to which this Division applies; or
    - (ii) who has the benefit of a development or project to which this Division applies,require the person to do either or both of the following:
    - (iii) to carry out specified tests and monitoring relevant to the development or project 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 programme specified by the Minister to the satisfaction of the Minister;
  - (b) after giving notice in writing to a person—
    - (i) who is undertaking a development or project to which this Division applies; or
    - (ii) who has the benefit of a development or project to which this Division applies,cause to be carried out specified tests and monitoring relevant to the development or project.
- (2) A person to whom a notice is directed under subsection (1) must—
  - (a) in the case of a notice under subsection (1)(a)—comply with the terms of the notice;
  - (b) in the case of a notice under subsection (1)(b)—provide reasonable assistance to facilitate the testing or monitoring specified in the notice.

Maximum penalty: Division 4 fine.

**48D—Costs**

- (1) The Minister may recover, as a debt due from the proponent, reasonable costs incurred in relation to—
  - (a) the preparation and publication of material under Subdivision 1; and
  - (b) the making of a decision on a development under Subdivision 2.
- (2) The Minister may recover, as a debt due from a person who receives a notice under section 48C(1)(b), reasonable costs incurred in carrying out tests and monitoring specified by that notice.

## 48E—Protection from proceedings

No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—

- (a) a decision or determination of the Governor, the Minister or the Development Assessment Commission under this Division; or
- (b) proceedings or procedures under this Division; or
- (c) an act, omission, matter or thing incidental or relating to the operation of this Division.

## Division 3—Crown development and public infrastructure

### 49—Crown development and public infrastructure

- (1) In this section—

*the Crown* means the Crown in right of the State;

*public infrastructure* means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, or the drainage or treatment of waste water or sewage;
- (b) roads and their supporting structures and works;
- (c) ports, wharfs, jetties, railways, tramways and busways;
- (d) schools, hospitals and prisons;
- (e) all other facilities that have traditionally been provided by the State (but not necessarily only by the State) as community or public facilities;

*State agency* means—

- (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,

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

- (2) Subject to this section, if—

- (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 public infrastructure (whether or not in partnership or joint venture with a person or body that is not a State agency); or
- (c) a person proposes to undertake development initiated or supported by a State agency for the purposes of the provision of public 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 Development Assessment Commission.

- (3) 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 (4a), if the development is of a kind excluded from the provisions of this section by regulation.
- (4) The Development Assessment Commission may request the State agency to provide additional documents or information (including calculations and technical details) in relation to the application.
- (4a) If an application relates to development within the area of a council, the Development Assessment Commission must give notice containing prescribed particulars of the development to the council in accordance with the regulations.
- (5) A council may report to the Development Assessment Commission on any matters contained in a notice under subsection (4a).
- (6) Where a notice is given to a council under subsection (4a), and a report from the council is not received by the Development Assessment Commission within two months of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.
- (7) The Development Assessment Commission must assess an application lodged with it under this section.
- (7a) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Development Assessment 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.
- (7b) A prescribed body may, before it provides a report under subsection (7a), 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.
- (7c) If an application is referred to a prescribed body under subsection (7a) and a report from the prescribed body is not received by the Development Assessment 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.
- (7d) 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 \$4 000 000, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development Assessment Commission must—
  - (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 the Development Assessment 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).
- (7e) The Development Assessment Commission will then prepare a report to the Minister on the matter.
- (8) If it appears to the Development Assessment Commission that the proposal is seriously at variance with—
  - (a) the provisions of the appropriate Development Plan (so far as they are relevant); or
  - (b) any code or standard prescribed by the regulations for the purposes of this provision,specific reference to that fact must be included in the report.
- (9) If a council has, in relation to any matters referred to the council under subsection (4a), expressed opposition to the proposed development in its report under subsection (5), a copy of the report must be attached to the Development Assessment Commission's report (unless the council has, since providing its report, withdrawn its opposition).
- (9a) If a prescribed body has provided a report under subsection (7a), a copy of the report must also be attached to the Development Assessment Commission's report.
- (10) The Development Assessment Commission must, unless the Minister grants an extension of time, furnish its report within the time prescribed by the regulations.
- (11) Where 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 (10).
- (12) The Minister may, after receipt of the report of the Development Assessment 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.
- (13) 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.
- (14) 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 private 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.

(14aa) A person acting under subsection (14) must—

- (a) seek and consider the advice of the Building Rules Assessment 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.

(14a) 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 (14); and
- (b) comply with the Building Rules (subject to any certificate under subsection (14) that provides for a variance with the Building Rules), and any other requirements imposed under this section.

Maximum penalty: Division 4 fine.

(15) If—

- (a) a council has, in a report under this section, expressed opposition to a development that is approved by the Minister (and the council has not, since providing its report, withdrawn its opposition); or
- (b) the Minister approves a development that is, according to the report of the Development Assessment Commission, seriously at variance with a Development Plan, or a prescribed code or standard,

the Minister must, as soon as practicable, prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

(16) 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 6) 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).

(16a) Despite a preceding subsection, if the Minister directs that an EIS, PER or DR 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 State agency must not undertake the development without the approval of the Governor under section 48; and

- (c) unless section 48(2)(a) applies, the development becomes, according to a determination of the Development Assessment Commission, subject to the processes and procedures prescribed by Division 2 with respect to the preparation and consideration of an EIS, a PER or a DR.
- (17) No appeal lies against a decision of the Minister under this section.
- (18) Subject to subsection (19), this section does not apply to any development within the Adelaide Park Lands (and any such development must be assessed under another Division (other than Division 3A)).
- (19) Subsection (18) does not apply—
  - (a) so as to exclude the Governor making a regulation under subsection (3) with respect to minor works of a prescribed kind; or
  - (b) so as to exclude from the operation of this section development within any part of the *Institutional District* of the City of Adelaide that has been identified by regulations made for the purposes of this paragraph by the Governor on the recommendation of the Minister.
- (20) Before making a recommendation to the Governor to make a regulation identifying a part of the *Institutional District* of the City of Adelaide for the purposes of paragraph (b) of subsection (19), the Minister must take reasonable steps to consult with the Adelaide Park Lands Authority.
- (21) A regulation under subsection (19)(b) cannot apply with respect to any part of the *Institutional District* of the City of Adelaide that is under the care, control or management of The Corporation of the City of Adelaide.
- (22) For the purpose of this section, the *Institutional District* of the City of Adelaide is constituted by those parts of the area of The Corporation of the City of Adelaide that are identified and defined as—
  - (a) the Institutional (Riverbank) Zone; and
  - (b) the Institutional (Government House) Zone; and
  - (c) the Institutional (University/Hospital) Zone,by the Development Plan that relates to the area of that Council, as that Development Plan existed on 1 February 2006.

## **Division 3A—Electricity infrastructure development**

### **49A—Electricity infrastructure development**

- (1) Subject to this section, if a prescribed person proposes to undertake development for the purposes of the provision of electricity infrastructure (within the meaning of the *Electricity Act 1996*), not being development of a kind referred to in section 49(2) or (3), the person must lodge an application for approval containing prescribed particulars with the Development Assessment Commission.
- (2) This section does not apply to development for the purposes of the provision of—
  - (a) electricity generating plant with a generating capacity of more than 30 MW;or

- (b) a section of powerlines (within the meaning of the *Electricity Act 1996*) designed to convey electricity at more than 66 kV extending over a distance of more than five kilometres.
- (3) 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 (4a), if the development is of a kind excluded from the provisions of this section by regulation.
- (4) The Development Assessment Commission may request the proponent to provide additional documents or information (including calculations and technical details) in relation to the application.
- (4a) If an application relates to development within the area of a council, the Development Assessment Commission must give notice containing prescribed particulars of the development to the council in accordance with the regulations.
- (5) A council may report to the Development Assessment Commission on any matters contained in a notice under subsection (4a).
- (6) Where a notice is given to a council under subsection (4a), and a report from the council is not received by the Development Assessment Commission within two months of the date of the notice, it will be conclusively presumed that the council does not intend to report on the matter.
- (7) The Development Assessment Commission must assess an application lodged with it under this section.
- (7a) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Development Assessment 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.
- (7b) A prescribed body may, before it provides a report under subsection (7a), 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.
- (7c) If an application is referred to a prescribed body under subsection (7a) and a report from the prescribed body is not received by the Development Assessment 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.
- (7d) 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 \$4 000 000, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development Assessment Commission must—
  - (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 the Development Assessment 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).
- (7e) The Development Assessment Commission will then prepare a report to the Minister on the matter.
- (8) If it appears to the Development Assessment Commission that the proposal is seriously at variance with—
  - (a) the provisions of the appropriate Development Plan (so far as they are relevant); or
  - (b) any code or standard prescribed by the regulations for the purposes of this provision,specific reference to that fact must be included in the report.
- (9) If a council has, in relation to any matters referred to the council under subsection (4a), expressed opposition to the proposed development in its report under subsection (5), a copy of the report must be attached to the Development Assessment Commission's report (unless the council has, since providing its report, withdrawn its opposition).
- (9a) If a prescribed body has provided a report under subsection (7a), a copy of the report must also be attached to the Development Assessment Commission's report.
- (10) The Development Assessment Commission must, unless the Minister grants an extension of time, furnish its report within the time prescribed by the regulations.
- (11) Where 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 (10).
- (12) The Minister may, after receipt of the report of the Development Assessment 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.
- (13) 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.
- (14) 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 private 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.



- (15) A person acting under subsection (14) must—
- (a) seek and consider the advice of the Building Rules Assessment 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.
- (16) 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 (14); and
  - (b) comply with the Building Rules (subject to any certificate under subsection (14) that provides for a variance with the Building Rules), and any other requirements imposed under this section.

Maximum penalty: Division 4 fine.

Default penalty: \$200.

- (17) A person must not contravene, or fail to comply with, a condition of an approval under this section.
- Maximum penalty: Division 3 fine.
- Additional penalty.
- Default penalty: \$500.

- (18) If—
- (a) a council has, in a report under this section, expressed opposition to a development that is approved by the Minister (and the council has not, since providing its report, withdrawn its opposition); or
  - (b) the Minister approves a development that is, according to the report of the Development Assessment Commission, seriously at variance with a Development Plan, or a prescribed code or standard,
- the Minister must, as soon as practicable, prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.
- (19) 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 6) 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).

- (20) Despite a preceding subsection, if the Minister directs that an EIS, PER or DR 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 Governor under section 48; and
  - (c) unless section 48(2)(a) applies, the development becomes, according to a determination of the Development Assessment Commission, subject to the processes and procedures prescribed by Division 2 with respect to the preparation and consideration of an EIS, a PER or a DR.
- (21) No appeal lies against a decision of the Minister under this section.
- (22) Subject to subsection (23), this section does not apply to any development within the Adelaide Park Lands (and any such development must be assessed under another Division (other than Division 3)).
- (23) Subsection (22) does not apply so as to exclude the Governor making a regulation under subsection (3) with respect to minor works of a prescribed kind.

## **Division 4—Supplementary provisions**

### **50—Open space contribution scheme**

- (1) Where an application under this Part provides for the division of land into more than 20 allotments, and one or more allotments is less than one 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 Development Assessment Commission,
- may require—
- (c) that up to 12.5 per cent 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 (7),
- according to the determination and specification of the council or the Development Assessment Commission and, in so acting, the council or the Development Assessment Commission must have regard to any relevant provision of the Development Plan that designates any land as open space and, in the case of a council, must not take any action that is at variance with that Development Plan without the concurrence of the Development Assessment Commission.
- (2) Where an application under this Part provides for—
- (a) the division of land into 20 allotments or less, and one or more allotments is less than one 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 Development Assessment Commission may require the applicant to pay to the Development Assessment Commission the contribution prescribed by the regulations in accordance with the requirements of this section; or
  - (d) the Development Assessment 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).
- (3a) Where an application under this Part 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 Development Assessment Commission may require—
- (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 Development Assessment Commission), with some or all of this area to be vested in the Crown or, with the concurrence of the council, a council; or
  - (b) that the applicant pay the contribution prescribed by the regulations to the Development Assessment 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 Development Assessment Commission under this section.
- (3b) The percentage prescribed under subsection (3a)(a) must not exceed 12.5 per cent.
- (4) The council and the Development Assessment Commission must ensure that there is consistency between—
- (a) a requirement imposed under subsection (1), (2) or (3a), or an agreement entered into under subsection (2); and
  - (b) the terms of any development authorisation given under this Act.
- (5) 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 Development Plans.

- (7) The contribution that may be required under subsection (1)(e) will be determined in accordance with the following formula:

$$P = PC \left[ \frac{(12.5 - OS)}{12.5} \times NA \right]$$

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

**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 one hectare in area.

- (8) For the purposes of this section, where 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 where 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.
- (9) 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 Development Assessment Commission.
- (10) Money received under this section—
- (a) in the case of money received by a council—must be immediately paid into a special 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 Development Assessment Commission—must be paid into the Fund or, in the case of money received under subsection (3a), dealt with in any other manner prescribed by the regulations.
- (11) Where a council or the Development Assessment 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.

(12) This section does not apply to a development approved under Division 3 unless—

- (a) the approval provides for the division of land into five or more allotments; and
- (b) the Minister, at the time that the approval is given under that Division, by notice in writing to the relevant State agency, the Development Assessment Commission and the council in whose area the land is situated, determines that this section will apply.

(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*;

**the relevant area** means the area of land delineated on the relevant plan, excluding any allotment that exceeds one hectare in area other than a road, street, thoroughfare, reserve or similar open space delineated on the relevant plan.

## 50A—Carparking fund

- (1) A council may, with the approval of the Minister, establish a carparking fund for an area designated by the council (a **designated area**)<sup>1</sup>.
- (2) The establishment of a fund will be effected by notice in the Gazette.
- (3) A designated area must be defined by reference to an area established by the relevant Development Plan.
- (4) A fund will consist of—
  - (a) all amounts paid to the credit of the fund under subsection (5); and
  - (b) any income paid into the fund under subsection (7).
- (5) If—
  - (a) a person is proposing to undertake development within a designated area; and
  - (b) application for development plan consent is made under this Part; and
  - (c) the relevant authority determines, after taking into account the provisions of the relevant Development Plan, that the proposal does not provide for sufficient spaces for the parking of cars at the site of the development; and
  - (d) the relevant authority and the applicant agree that the applicant will make a contribution to the relevant carparking fund in lieu of providing a certain number of spaces for the parking of cars at the site of the development,

then the applicant must make a contribution to the carparking fund of an amount calculated in accordance with a determination of the relevant council (and the development may proceed despite the situation with respect to carparking at the site of the development).

- (6) A determination of a council for the purposes of calculating amounts to be paid into a carparking fund—
  - (a) has effect when published in the Gazette; and
  - (b) may be varied by the council from time to time by further notice in the Gazette.
- (7) Any money in a carparking fund that is not for the time being required for the purpose of the fund may be invested by the council and any resultant income must be paid into the fund.
- (8) The money standing to the credit of a carparking fund may be applied by the council for any of the following purposes (and for no other purpose):
  - (a) to provide carparking facilities within the designated area; or
  - (b) to provide funds for (or towards) the maintenance, operation or improvement of carparking facilities within the designated area; or
  - (c) to provide funds for (or towards) the establishment, maintenance or improvement of transport facilities within the area of the council with a view to reducing the need or demand for carparking facilities within the designated area.

**Note—**

- 1 Money standing to the credit of a carparking fund may only be used for specific purposes—see subsection (8).

## **51—Certificate in respect of the division of land**

- (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 Development Assessment 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.
- (2) Before the Development Assessment 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.
- (4) The Development Assessment 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 Development Assessment 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 Development Assessment Commission within the period prescribed by the regulations, lapse at the end of that prescribed period.

## 52—Saving provisions

- (1) A development for which development authorisation has been granted may be undertaken and completed in accordance with that authorisation notwithstanding an amendment to a Development Plan 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 Development Plan or Building Rules).
- (2) An activity that becomes a development by virtue of an amendment to this Act, but was lawfully commenced within three years before the amendment took effect, may be continued and completed, without any development authorisation, within three years after the date on which the amendment took effect.
- (3) Where—
  - (a) a consent, approval or authorisation is required under an Act or Acts (but not this Act) for a proposed activity or development; and
  - (b) an amendment is made to this Act that requires approval to be obtained for a development of that kind, or an amendment is made to the relevant Development Plan so that development of that kind becomes a *non-complying* development; and
  - (c) on the date on which the amendment to the Act or the Development Plan takes effect, all the required, consents, approvals and authorisations had been obtained but the activity or development had not been commenced,

the activity or development will, for the purposes of this section, be presumed to have commenced on the date of the consent, approval or authorisation or, where more than one was required, the date of the consent, approval or authorisation that was last obtained.
- (4) A relevant authority may, in order to avoid or reduce hardship, extend the limitation period referred to in subsection (2).
- (5) 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.
- (6) In this section—
 

*activity* means an act or activity.

## 52A—Avoidance of duplication of procedures etc

- (1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where an activity requires development authorisation under this Act and approval under the Commonwealth Act.

- (2) Despite any other provision of this Act, the Governor, the Minister, the Development Assessment Commission, a council or other authority under this Act may—
- (a) accept a Commonwealth Act document as an application, notice or other document for the purposes of this Act if (subject to subsection (7)) the document complies with the requirements of this Act; and
  - (b) direct that a procedure taken under the Commonwealth Act in relation to a Commonwealth Act document that has been accepted by the authority under paragraph (a) will be taken to have fulfilled the requirement for a procedure in relation to the relevant document under this Act if the requirements of this Act in relation to the procedure have been complied with; and
  - (c) instead of the authority, or some other person, preparing a plan, report, statement, assessment or other document under this Act, adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used, or to be used, for the purposes of the Commonwealth Act as the document required under this Act if (subject to subsection (7)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.
- (4) When preparing an Assessment Report as required by section 46B(9), 46C(9) or 46D(8), the Minister may include in the Report the whole or part of an assessment report (as defined in subsection (9)) if, subject to subsection (7), the assessment report, or the relevant part of it, complies with the requirements of this Act.
- (5) To avoid doubt, where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which a development authorisation is required under this Act, the authority may, when considering an application for a development authorisation, or for the variation of a development authorisation, for the activity, use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give his or her approval to the controlled action under that Act.
- (6) Where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which a development authorisation is required under this Act, the authority—
- (a) must, if—
    - (i) the Commonwealth Minister has given his or her approval to the controlled action; and
    - (ii) the applicant for the development authorisation or the Commonwealth Minister has informed the authority of that fact, consider whether the conditions (if any) to be attached to the development authorisation should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act;
  - (b) may attach a condition to the development authorisation that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.
- (7) A document accepted or adopted under this section—
- (a) may be in a form that does not comply with the requirements of this Act; and



- (b) may include information or other material that is irrelevant for the purposes of this Act.
- (8) Once a document is accepted or adopted under this section or a direction has been given in relation to a procedure under subsection (2)(b), the document or procedure will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.
- (9) In this section—

**assessment report** means—

- (a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or
- (b) a report under section 121 of the Commonwealth Act;

**the authority** means the Governor, the Minister, the Development Assessment Commission, a council or other authority under this Act or an authority to which a proposed development has been referred under this Act;

**Commonwealth Act** means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

**Commonwealth Act document** means—

- (a) a referral under section 68, 69 or 71 of the Commonwealth Act; or
- (b) information given by a person to the Minister under the Commonwealth Act under section 86 of that Act; or
- (c) information and invitation published by a proponent under section 93 of the Commonwealth Act; or
- (d) guidelines prepared under section 97 or 102 of the Commonwealth Act; or
- (e) a draft report prepared under section 98 of the Commonwealth Act; or
- (f) a finalised report prepared under section 99 of the Commonwealth Act; or
- (g) a draft statement prepared under section 103 of the Commonwealth Act; or
- (h) a finalised statement prepared under section 104 of the Commonwealth Act; or
- (i) an assessment report.

### 53—Law governing proceedings under this Act

- (1) Where 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.
- (2) The provisions of a Development Plan that are relevant to the consideration of an application for a development plan 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 relevant Development Plan 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 rules 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.
- (4) Where 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) Where a place that is 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.

### **53A—Requirement to up-grade building in certain cases**

- (1) If an application for a building rules consent relates to building work in the nature of an alteration to a building constructed before the prescribed date and the building is, in the opinion of the relevant authority, unsafe, structurally unsound or in an unhealthy condition, the relevant authority may require, as a condition of 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.
- (2) If—
  - (a) application is made for building rules consent for building work in the nature of an alteration of a kind prescribed by the regulations to a building constructed before 1 January 1980; and
  - (b) the relevant authority is of the opinion that the facilities for access to or within the building for people with disabilities are inadequate,the relevant authority may require, as a condition of consent, that building work or other measures be carried out to the extent reasonably necessary to ensure that the facilities for such access will be adequate.
- (3) In this section—

*prescribed date* is—

  - (a) 15 January 1994; or
  - (b) if a later date is prescribed by the regulations for the purposes of this definition—that date.

### **54—Urgent building work**

- (1) Where building work must be performed as a matter of urgency—
  - (a) to protect any person or building; or
  - (b) to provide accommodation for students at an educational institution; or
  - (c) in any other circumstance of a prescribed kind,

a person may, despite any other provision of this Part (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) where 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.

- (3) If building work is lawfully undertaken under subsection (1) by the Crown (or an agency or instrumentality of the Crown), the Crown (or agency or instrumentality) is not liable for any costs incurred by any person in complying with subsection (2).

#### **54A—Urgent work in relation to trees**

- (1) If a tree-damaging activity must be undertaken in relation to a significant 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 Part (but subject to subsection (2)), undertake the activity.

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

- (3) If an activity is lawfully undertaken under subsection (1) by the Crown (or an agency or instrumentality of the Crown), the Crown (or agency or instrumentality) is not liable for any costs incurred by any person in complying with subsection (2).

## **54B—Interaction of controls on trees with other legislation**

- (1) The requirement to obtain approval under this Part for a tree-damaging activity in relation to a significant 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 Part for a tree-damaging activity in relation to a significant tree does not apply if the activity is being carried out—
  - (a) under Part 5 of the *Electricity Act 1996*; or
  - (b) under, or in connection with the operation of, an order under section 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.

## **55—Removal of work if development not substantially completed**

- (1) Where—
  - (a) an approval is granted under this Part; but
  - (b) 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,a relevant 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:
  - (a) the applicant; and
  - (b) any owner or occupier of the relevant land; and
  - (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—
  - (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) make any further or other order the Court thinks fit.
- (4) A person contravenes, or fails to comply with, an order under this section is guilty of an offence.

Maximum penalty: \$60 000.  
Default penalty: \$200.
- (5) Where the Court makes an order under subsection (3)(a) or (b) and a person fails to comply with the order within the period specified by the Court, the relevant 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.

- (6) Where an amount is recoverable from a person by a relevant authority under subsection (5)—
- (a) the relevant 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 charge so payable is until paid a charge in favour of the relevant authority on any land owned by the person.

- (7) In this section—

**relevant authority** includes, if the development has been approved under Division 2, the Minister.

## 56—Completion of work

- (1) Where—

- (a) an approval is granted under this Part; but
- (b) the development to which the approval relates has been substantially but not fully completed within the period prescribed by the regulations for the lapse of the approval,

a relevant 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 relevant authority may cause the necessary work to be carried out.
- (3) The reasonable costs and expenses incurred by the relevant authority (or any person acting on behalf of the relevant authority) under this section may be recovered by the relevant authority as a debt due from the owner.
- (4) Where an amount is recoverable from a person by a relevant authority under this section—
- (a) the relevant 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 charge so payable is until paid a charge in favour of the relevant 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—
- relevant authority** includes, if the development has been approved under Division 2, the Minister.

### 56A—Councils to establish development assessment panels

- (1) A council must establish a panel (a *council development assessment panel*) for the purposes of this Part.
- (2) The functions of a council development assessment panel are—
  - (a) to act as a delegate of the council in accordance with the requirements of this Act; and
  - (b) as it thinks fit, to provide advice and reports to the council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act; and
  - (c) to perform other functions (other than functions involving the formulation of policy) assigned to the panel by the council.
- (3) The following provisions will apply in relation to the constitution and membership of a council development assessment panel:
  - (a) a panel must consist of 7 members or, with the approval of the Minister—
    - (i) in the case of a council with an area that lies wholly outside Metropolitan Adelaide—5 or 9 members; or
    - (ii) in the case of a council with an area that lies wholly or partially within Metropolitan Adelaide—9 members;
  - (b) the presiding member will be appointed by the council taking into account the following requirements:
    - (i) the presiding member must not be a member or officer of the council;
    - (ii) the presiding member must be a fit and proper person to be a member of a development assessment panel;
    - (iii) subject to any provision made by the regulations, the presiding member must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of this Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel;
  - (c) the remaining members of the panel will be appointed by the council taking into account the following requirements:
    - (i) up to half of the remaining members may comprise:
      - (A) council members; or
      - (B) officers of the council (although any such officer may only be a member of the panel if the council has taken steps to ensure that the officer is not directly involved in the assessment of applications under this Act (other than as a member of the panel), or in the preparation of any council report to the panel on the assessment of particular applications),(in any combination);

- (ii) with respect to the members of the panel who are not within the ambit of subparagraph (i):
  - (A) each must be a fit and proper person to be a member of a council development assessment panel; and
  - (B) subject to any provision made by the regulations, each must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of this Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel; and
  - (C) the qualifications and experience of these members, when considered in conjunction with the qualifications and experience of the presiding member, must provide a reasonable balance across the fields that are relevant to the activities of the panel;
- (d) the council—
  - (i) must, unless granted an exemption by the Minister, ensure that at least 1 member of the panel is a woman and at least 1 member is a man; and
  - (ii) should, insofar as is reasonably practicable, ensure that the panel consists of equal numbers of men and women;
- (e) the term of office of a member will be for a period, not exceeding 2 years, determined by the council (and, at the expiration of a term of appointment, a member is eligible for reappointment);
- (f) the other conditions of appointment of the members of the panel will be determined by the council;
- (g) the council may remove a member of the panel from office for—
  - (i) breach of, or failure to comply with, the conditions of appointment; or
  - (ii) misconduct; or
  - (iii) neglect of duty; or
  - (iv) incapacity to carry out satisfactorily the duties of his or her office; or
  - (v) failure to carry out satisfactorily the duties of his or her office; or
  - (vi) failure to comply with a requirement under subsection (6) or (7) or a breach of, or failure to comply with, a code of conduct under section 21A;
- (h) the office of a member of the panel will become vacant if the member—
  - (i) dies; or
  - (ii) completes a term of office and is not reappointed; or
  - (iii) resigns by written notice to the council; or
  - (iv) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

- (v) is convicted of an indictable offence punishable by imprisonment; or
  - (vi) is removed from office by the council under paragraph (g).
- (4) A reference to an officer of a council under subsection (3) will be taken to include a reference to a person who is a consultant engaged by the council.
- (4a) A member of a council development assessment panel whose term of office expires may nevertheless continue to act as a member, for a period of up to 6 months, until he or she is reappointed or a successor is appointed (as the case may be).
- (4b) The members of a council development assessment panel will appoint the deputy presiding member of the panel.
- (5) A council must, within 14 days after appointing a person as a member of a council development assessment panel, give notice of the appointment by publishing the prescribed particulars in a newspaper circulating in the area of the council.
- (6) A member of a council development assessment panel who is not a member of the council must disclose his or her financial interests in accordance with Schedule 2.
- (7) A member of a council development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (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 panel; and
  - (b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

Maximum penalty: Division 4 fine.

- (8) Without limiting the effect of subsection (7), a member of a council development assessment panel 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.
- (9) The provisions of Chapter 13 Part 1 of the *Local Government Act 1999* extend to council development assessment panels and to members of council development assessment panels as if—
  - (a) a reference to a member of a council were a reference to a member of a council development assessment panel; and
  - (b) a reference to section 74 of that Act were a reference to subsections (7) and (8) of this section; and
  - (c) a reference to any office under the *Local Government Act 1999* were a reference to the office of a member of a council development assessment panel under this Act; and
  - (d) a reference to a council were a reference to a council development assessment panel; and
  - (e) a reference to a public official included a reference to a public officer of a council development assessment panel appointed under subsection (22) of this section.



- (10) A member of a council development assessment panel incurs no liability for an honest act done in the exercise or performance, or purported exercise or performance, of powers or functions under this Part.
- (11) Subject to subsection (12), a meeting of a council development assessment panel must be conducted in a place open to the public.
- (12) A council development assessment panel may exclude the public from attendance—
- (a) during so much of a meeting as is necessary to receive, discuss or consider in confidence any of the following information or matters:
    - (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
    - (ii) information the disclosure of which—
      - (A) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
      - (B) would, on balance, be contrary to the public interest;
    - (iii) information the disclosure of which would reveal a trade secret;
    - (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
      - (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
      - (B) would, on balance, be contrary to the public interest;
    - (v) matters affecting the safety or security of any person or property;
    - (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
    - (vii) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
    - (viii) legal advice;
    - (ix) information relating to actual litigation, or litigation that the panel believes on reasonable grounds will take place;
    - (x) information the disclosure of which—
      - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
      - (B) would, on balance, be contrary to the public interest; or

- (b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.
- (13) A council development assessment panel must ensure that accurate minutes are kept of its proceedings.
- (14) A disclosure under subsection (7)(a) must be recorded in the minutes of the council development assessment panel.
- (15) Members of the public are entitled to reasonable access—
  - (a) to the agendas for meetings of a council development assessment panel; and
  - (b) to the minutes of meetings of a council development assessment panel.
- (16) However, a council development assessment panel may, before it releases a copy of any minutes under subsection (15), exclude from the minutes information about any matter dealt with on a confidential basis by the panel.
- (17) Minutes must be available under subsection (15)(b) within five days after their adoption by the members of the panel.
- (18) An act of a council development assessment panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (18a) A quorum at a meeting of a council development assessment panel is a number ascertained by dividing the total number of members of the panel for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.
- (18b) Each member of a council development assessment panel present at a meeting of the panel is entitled to 1 vote on any matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.
- (19) Subject to this Act, the procedures to be observed in relation to the conduct of the business of a council development assessment panel will be—
  - (a) as prescribed by regulation; or
  - (b) insofar as a procedure is not prescribed under paragraph (a)—as determined by the panel.
- (20) A council must, at the request of the Minister, provide information to the Minister—
  - (a) about the constitution of a council development assessment panel under this section; or
  - (b) about the powers and functions delegated to a council development assessment panel under this section.
- (21) Except as otherwise provided in this section, the *Local Government Act 1999* does not apply to, or in relation to, a council development assessment panel established under this section (including with respect to its members when acting under this section or its processes or procedures).
- (22) Each council development assessment panel must have a public officer (who must not be a member of the panel) appointed by the council.
- (23) A council must, on appointing a public officer, ensure that notice of the appointment (including the public officer's name and contact details) is published in the Gazette.

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



## Part 5—Land management agreements

### 57—Land management agreements

- (1) The Minister may enter into an agreement relating to the development, management, preservation or conservation of land with the owner of the land.
- (1a) Subject to subsection (1b), 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.
- (1b) A greenway authority that is not the Minister under the *Recreational Greenways Act 2000* may only enter into an agreement under subsection (1a) if the agreement has been approved by that Minister.
- (2) A council may enter into an agreement relating to the development, management, preservation or conservation of land within the area of the council with the owner of the land.
- (2a) The Minister or a council 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 appropriate Development Plan 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 Minister or a council should not be used as a substitute to proceeding with an amendment to a Development Plan under this Act.
- (2b) Agreements entered into under this section after the commencement of this subsection must be registered in accordance with the regulations (and any such agreement will have no force or effect unless or until it is so registered).
- (2c) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- (2d) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (2b).
- (2e) If an agreement is (or is to be) entered into under this section in connection with the granting of development plan consent with respect to a Category 2 or Category 3 development, a note of the existence of the agreement (or of the proposal to enter into the agreement), and of the availability of copies of the agreement for public inspection under this Act, must be included on the notice of the relevant authority's decision under this Act.
- (3) The Minister, a greenway authority or a council has power to carry out on private land any work for which provision is made by agreement under this section.

- (3a) An agreement under this section to which the Minister or a greenway authority is a party 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.
- (3b) A provision under subsection (3a) 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.
- (4) 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.
- (5) 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.
- (6) An agreement under this section has no force or effect under this Act until a note is made under subsection (5).
- (7) Where a note has been entered under subsection (5), 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*.
- (8) The Registrar-General must, if satisfied on the application of the Minister, the greenway authority, the council 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.
- (9) An agreement under this section may record the fact that development rights have been transferred from the land pursuant to a Development Plan.
- (10) 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.
- (11) An agreement under this section entered into by a greenway authority or a council 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.
- (12) The existence of an agreement under this section may be taken into account when assessing an application for a development authorisation under this Act.
- (13) In this section—  
**a 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.

### **57A—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 appropriate Development Plan; 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 a Development Plan 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) Agreements entered into under this section must be registered in accordance with the regulations.
- (6) A register must be kept available for public inspection (without charge) in accordance with the regulations.
- (7) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (5).
- (8) If an agreement is entered into under this section in connection with an application for a development authorisation with respect to a Category 2 or Category 3 development, a note of the existence of the agreement must be included on the notice of the relevant authority's decision under this Act.
- (9) 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.

Maximum penalty: \$90 000.

Additional penalty.

Default penalty: \$500.

- (10) 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.
- (11) 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).
- (12) An owner of land must not enter into an agreement, or give a consent under subsection (11), unless all other persons with a legal interest in the land consent.
- (13) A consent must be given in a manner and form determined by the Registrar-General.
- (14) 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 under the provisions of the *Real Property Act 1886*, against the land.
- (15) Where a note has been entered under subsection (14), 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 (11), and notwithstanding the provisions of the *Real Property Act 1886*.
- (16) 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.
- (17) The fact that the Minister or a council is a party to an agreement under this section does not prevent the Development Assessment Commission or the council (or a delegate of the Development Assessment Commission or the council) from acting as a relevant authority under this Act in relation to the proposed development.
- (18) If an agreement under this section does not have effect under this section (see subsection (10)) within the period prescribed by the regulations, the relevant 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).
- (19) 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.
- (20) Nothing in this section affects or limits the operation of section 57.
- (21) In this section—  
**designated authority** means—
  - (a) the Minister; or
  - (b) another Minister designated by the Governor, by notice in the Gazette, as being a designated authority for the purposes of this section; or
  - (c) a council.



## Part 6—Regulation of building work

### Division 1—Preliminary

#### 58—Interpretation

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

#### 59—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,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 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 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—Building work affecting other land

### 60—Work that affects stability

- (1) Where a building owner proposes to carry out building work of a prescribed nature that is, in accordance with the regulations, to be treated for the purposes of this section as building work that affects the stability of other land or premises (the *affected land or premises*), the following provisions apply:
  - (a) the building owner must, at least 28 days before the building work is commenced, cause to be served on the owner of the affected land or premises a notice of intention to perform the building work and the nature of that work; and
  - (b) the building owner must (in addition to complying with any condition imposed by a relevant authority at the time of approval) take such precautions as may be prescribed to protect the affected land or premises and must, at the request of the owner of the affected land or premises, carry out such other building work in relation to that land or premises as that adjoining owner is authorised by the regulations to require; and
  - (c) nothing in this section relieves the building owner from liability for injury resulting from the performance of any building work.
- (2) A building owner who fails to comply with a provision under subsection (1) is guilty of an offence.  
Maximum penalty: \$10 000.
- (3) A building owner may apply to the Court for a determination of what proportion (if any) of the expense incurred by the building owner in the performance of the building work requested by the owner of affected land or premises under subsection (1) should be borne by the owner of that land or premises, and the building owner may recover an amount determined by the Court from the owner of the affected land or premises as a debt.

### 61—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 the land of another, 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 two 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.

## 62—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 building work in relation to the party wall prescribed by the regulations.
- (2) 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.
- (3) The building owner cannot, except with the consent in writing of the adjoining owner, exercise any right under this section unless, at least six weeks 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 building work and when it is to commence.
- (4) Where 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 building work on, or in relation to, the 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 so would cause loss or damage to the building owner, or would cause undue inconvenience or delay.
- (5) The adjoining owner is liable for all expenses incurred by the building owner under subsection (4).
- (6) The building owner must, in the exercise of any right under this section, take reasonable steps to protect any adjoining land or premises.

- (7) 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.

### **63—Power of entry**

- (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 building work in accordance with sections 60, 61 or 62, and may perform any act that the nature of the building work requires.
- (2) The building owner must serve, personally or by post, on the adjoining owner, at least 14 days 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.
- (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.

### **64—Appropriation of expense**

- (1) The expense of building a party wall, or carrying out any building 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.
- (2) The building owner must, within 28 days after the completion of any building work in respect of which a contribution is payable by the adjoining owner, serve, personally or by post, on the adjoining owner 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.
- (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**

### **65—Buildings owned or occupied by the Crown**

This Division does not apply in respect of any building owned or occupied by the Crown (or an agency or instrumentality of the Crown), or to any building work carried on by the Crown (or by an agency, instrumentality, officer or employee of the Crown).

### **66—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.
- (4) Where 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.

- (5) 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.
- (6) 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.  
Maximum penalty: \$10 000.  
Default penalty: \$100.

## **67—Certificates of occupancy**

- (1) A person must not—
  - (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.
- (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
  - (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)).
- (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.
- (7) A certificate of occupancy does not constitute a certificate of compliance with the Building Rules.
- (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.

- (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.
- (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.

## **68—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.
- (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.

## **68A—Private certifiers**

- (1) A private certifier who has granted a building rules consent for particular building work may also exercise the powers of a council under this Division in relation to the particular building.
- (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 private certifier acting under subsection (1); and
  - (b) a decision of a private 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
  - (c) a private 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

### 69—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
  - (b) because of a threat to any State heritage place or local heritage place.
- (1a) However, the power conferred by subsection (1)(a) may only be exercised by an authorised officer who holds prescribed qualifications.
- (2) An emergency order may require the owner of any building or land to do any one or more of the following things:
  - (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.
- (3) 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.
- (4) 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) 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.
- (6) Where an amount is recoverable from a person by the council under this section—
  - (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
  - (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.
- (7) 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: Division 7 fine.
- (8) 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.
- (9) If the direction is given orally under subsection (8), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 p.m. on the next business day.

- (10) 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.
- (11) 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.
- (12) A person who contravenes or fails to comply with an order under this section is guilty of an offence.  
Maximum penalty: Division 5 fine.  
Default penalty: \$50.
- (13) It is a defence to a prosecution under subsection (12) 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.
- (14) In this section—  
*building* includes a building in the course of construction;  
*excavation* includes a well or hole.

## Division 6—Building safety

### 70—Preliminary

Except as otherwise provided by the regulations, this Division does not apply in respect of—

- (a) any building owned or occupied by the Crown (or an agency or instrumentality of the Crown), or to any building work carried on by the Crown (or by any agency, instrumentality, officer or employee of the Crown).

### 71—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.
- (1a) 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.
- (2) 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.
- (3) A notice under subsection (2) 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—
    - (i) require the owner to carry out a programme 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
  - (iv) require the owner to take such other action prescribed by the regulations.
- (4) A report under subsection (3)(a) must be provided to the appropriate authority within two months, or within such longer period as the appropriate authority may allow.  
Maximum penalty: Division 7 fine.
- (5) The owner may, during the period referred to in subsection (4), 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.
- (6) An appropriate authority may, after receiving a report under subsection (3) (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—
  - (a) require the owner to seek an appropriate development authorisation under this Act and, if granted, to carry out a programme of work or to take other measures to ensure that the fire safety of the building is adequate; or
  - (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.
- (10) 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.  
Maximum penalty: Division 7 fine.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) A person who contravenes or fails to comply with a notice under subsection (3)(b) or (6) is guilty of an offence.  
Maximum penalty: Division 5 fine.  
Default penalty: \$50.
- (15) This section does not authorise any action inconsistent with the *Heritage Places Act 1993* or a provision of the relevant Development Plan that relates to heritage.
- (16) 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;

- (c) thirdly, an acceptable fire fighting environment,  
in accordance with the fire safety objectives and performance criteria of the *Building Code of Australia*.
- (17) 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.
- (18) For the purposes of this section, an ***appropriate authority*** is a body established by a council, or by two or more councils, under subsection (19) and designated by the council or councils as an appropriate authority under this section.
- (19) The following provisions apply with respect to the establishment of an appropriate authority:
- (a) the appropriate authority will be constituted of—
    - (i) a person who holds prescribed qualifications in building surveying appointed by the council or councils; and
    - (ii) a person nominated by the Chief Officer of the South Australian Metropolitan Fire Service or the Chief Officer of the South Australian Country Fire Service (determined by the council or councils after taking into account the nature of its area or their areas); and
    - (iii) a person with expertise in the area of fire safety appointed by the council or councils; and
    - (iv) if so determined by the council or councils—a person selected by the council or councils;
  - (b) the term of office of a member of the appropriate authority will be a period not exceeding three years determined by the council or councils;
  - (c) the office of a member of the appropriate authority 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).
- (20) 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 6A—Building inspection policies**

### **71A—Building inspection policies**

- (1) A council must prepare and adopt a building inspection policy.
- (2) A council must, in its building inspection policy, specify—
  - (a) a level or levels of audit inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and
  - (b) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.
- (3) A council may from time to time alter its building inspection policy.
- (4) A council must, when preparing its building inspection policy under subsection (2) or considering an alteration under subsection (3), take into account the following matters (and may take into account other matters):
  - (a) the financial and other resources of the council, and of its local community; and
  - (b) the impact that a failure to inspect a certain number of buildings of the relevant classes over a period of time may have on its local community; and
  - (c) past practices of the council with regard to inspections and the assessment of building work in its area; and
  - (d) whether the area, or a particular part of the area, of the council is known to be subject to poor building conditions; and
  - (e) information in the possession of the council on poor building standards within its local community; and
  - (f) the public interest in monitoring the standard of building work within the community and in taking steps to provide for the safety and health of people who use buildings.
- (4a) A building inspection policy must comply with any regulation prescribing a minimum level of inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12).
- (4b) A regulation under subsection (4a) may prescribe different levels for different classes of buildings.
- (4c) A regulation cannot be made under subsection (4a) unless the Minister has given the LGA notice of the proposal to make a regulation under that subsection and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.
- (5) This section does not derogate from the operation of section 99.

## **Division 7—Liability**

### **72—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 two 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 one 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.

### **73—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 7—Regulation of advertisements

### 74—Advertisements

- (1) Where, in the opinion of the Development Assessment 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 relevant Development Plan,
- the Development Assessment Commission or council may, by notice in writing served 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).
- (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 Act; or
  - (c) an advertisement for the sale or lease of land situated on the land concerned.
- (3) Where 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 Development Assessment 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
  - (b) the person on whom the notice was served is guilty of an offence.

Maximum penalty: Division 6 fine.

Default penalty: \$50.

- (4) A notice under this section—
- (a) need not name the person to whom it is addressed; and
  - (b) may be served—
    - (i) personally; or
    - (ii) by post; or
    - (iii) where the identity or whereabouts of the person on whom it is to be served is not readily ascertainable—by affixing it in a prominent position on the advertisement or advertising hoarding to which it relates.

- (5) Where 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 erection or display of the advertisement is required under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999*.
- (6) A person against whom an order is made under this section may, within one month after service of the notice or such longer period as may be allowed by the Court, appeal against the order and, on an appeal, the Court may confirm, vary or quash 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 8—Special provisions relating to mining

### 75—Applications for mining tenements to be referred in certain cases to the Minister

- (1) In this section—  
*the appropriate Authority* or *the Authority* means the Minister of the Crown for the time being administering the Mining Acts.
- (2) The appropriate Authority may refer any application for a mining production tenement to the Minister for advice and, where an application is such that it is required by the regulations to be referred to the Minister, the Authority must refer the application to the Minister for advice.
- (3) Copies of any submissions received under the Mining Acts as a result of public consultation on the application must be forwarded to the Minister for the purposes of subsection (2).
- (4) Where, 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 Subdivision 1 of Part 4 Division 2 with respect to the preparation of an environmental impact statement or a public environmental report; and
  - (b) in the case of such a determination, that Subdivision will then apply in relation to the preparation of an environmental impact statement or a public environmental report, and a related Assessment Report—
    - (i) subject to the qualification that any reference under that Subdivision to the Development Assessment 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 statement or report 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.
- (4a) However—
- (a) the Minister may only exercise the powers conferred on the Development Assessment Commission under this Act in relation to public environmental reports if the Minister considers that the outcome of the environment impact assessment processes under the relevant Mining Act will not be equivalent (or superior) to the outcome that can be achieved if a public environmental report is prepared; and
  - (b) if the appropriate Authority and the Minister cannot agree in a specific case on an exercise of powers under this Act in relation to public environmental reports then the matter must be referred to the Governor.

- (5) The Minister, after obtaining and considering a report from the Development Assessment Commission on an application referred for advice under this section and after considering the terms of any relevant environmental impact statement or public environmental report, must advise the appropriate Authority whether the application should or should not be granted and, if so, what conditions should be included in the tenement in order to avoid, or manage and control, any potentially adverse effects on the environment that may result from the conduct of mining operations in pursuance of the tenement.
- (6) Where the appropriate Authority does not agree with advice tendered under subsection (5) (either as to the granting of the tenement or the conditions that should be included in the tenement), 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 environmental impact statement or public environmental report).
- (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 in the Gazette, combine the assessment of the proposed development with the assessment of the relevant mining operations and, in such a case—
  - (a) the proposed development associated with the mining operations must also be considered under the relevant environmental impact statement or public environmental report; and
  - (b) the Governor may deal with the development under Subdivision 2 of Part 4 Division 2 as if it were within the ambit of a declaration of the Minister under section 46 (and that Subdivision, together with Subdivision 3 of Part 4 Division 2, will then apply in respect of the development).

#### **75A—Ministerial declarations—related matters**

- (1) This Part does not limit the ability of the Minister to make a declaration under Part 4 Division 2 Subdivision 1 in respect of a proposal that involves—
  - (a) proposed mining operations on a mining tenement; and
  - (b) proposed development associated with the mining operations.
- (2) For the avoidance of doubt, a determination under this Part with respect to the preparation of an environmental impact statement or public environmental report does not bring the relevant mining operations within the ambit of Subdivision 2 of Part 4 Division 2 (but may bring an associated development within the ambit of that Subdivision by virtue of the operation of section 75(7)).

#### **76—This Act not to affect operations carried on in pursuance of Mining Acts except as provided in this Part**

- (1) 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.
- (2) This Act does not prevent, or otherwise affect, the operation of a private mine.



- (4) The operation of subsections (1) and (2) 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.



## **Part 9—Acquisition of land**

### **77—Purchase of land by agreement**

- (1) The Minister may purchase land by agreement for the purpose of development or redevelopment of that land or for any public purpose.
- (2) The *Land Acquisition Act 1969* does not apply to the acquisition of land in pursuance of this section.

### **78—Compulsory acquisition of land**

- (1) The Minister may acquire land under this section where he or she considers that the acquisition of the land is reasonably necessary for the operation or implementation of a Development Plan, or to further the objects of this Act.
- (2) The *Land Acquisition Act 1969* applies to the acquisition of land in pursuance of this section.



## Part 10—The Fund

### 79—Continuance of the Fund

- (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; and
  - (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; and
  - (c) all loans raised by the Minister for the purposes of this Act; and
  - (d) all other money that is required to be paid into the Fund by, or under this or any other Act.

### 80—Borrowing

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

### 81—Application of the Fund

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

- (a) the acquisition, management and development of land, or any purpose related to the acquisition, management and 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 and other charges due and payable by the Minister in respect of land vested in or held by the Minister;
- (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 and 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 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.

### 82—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.



## Part 11—Enforcement, disputes and appeals

### Division 1—Enforcement

#### 83—Interpretation—Breach of Act

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 5.

#### 84—Enforcement notices

- (1) In this section—

*relevant authority* means—

- (a) the Development Assessment Commission; or
  - (b) a council; or
  - (c) the South Australian Heritage Council; or
  - (d) a prescribed body under section 37 that is brought within the ambit of this definition by a regulation made for the purposes of this section.
- (2) If a relevant authority has reason to believe on reasonable grounds that a person has breached this Act or a repealed Act, the relevant authority may do such of the following as the relevant 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.
- (3) A direction under subsection (2) must be given by notice in writing unless the relevant authority considers that the direction is urgently required, in which case it may be given orally by an authorised officer.
- (4) If a direction is given orally under subsection (3), the authorised officer who gave the direction must confirm the direction by notice in writing by 5 p.m. on the next business day.
- (5) A written notice under subsection (3) or (4) must set out any appeal rights that the person may have under this Act.
- (6) If a person fails to comply with a direction under subsection (2)(b) within the time specified in the notice, the relevant authority may cause the necessary action to be taken.

- (7) The reasonable costs and expenses incurred by a relevant authority (or any person acting on behalf of the relevant authority) under this section may be recovered by the relevant authority as a debt due from the person whose failure gave rise to the action.
- (8) Where an amount is recoverable from a person by a relevant authority under this section—
  - (a) the relevant 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 charge so payable is until paid a charge in favour of the relevant authority on any land owned by the person.
- (9) 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.
- (10) Subject to any order of the Court to the contrary, the operation of a direction is not suspended pending the determination of an appeal.
- (10a) In an appeal against a notice issued by a relevant 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.  
Default penalty: \$500.  
Expiation fee: \$750.
- (12) A direction cannot be given under this section if it appears that the breach occurred more than 12 months previously.

## **85—Applications to Court**

- (1) Any person may apply to the Court for an order to remedy or restrain a breach of this Act or a 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 relevant authority, the applicant must serve a copy of the application on the relevant authority within three 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*.



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- (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 a 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 (other than an authorisation granted by the Governor);
  - (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 relevant 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) Where 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 relevant 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) Where an amount is recoverable from a person by a relevant authority under subsection (12)—
- (a) the relevant 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 charge so payable is until paid a charge in favour of the relevant 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 a 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,
- 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.
- (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.
- (17a) The Court may make such orders in relation to costs of proceedings under this section as it thinks fit.

- (18) Proceedings under this section may be commenced at any time within three years after the date of the alleged breach or, with the authorisation of the Attorney-General, at any later time.
- (19) 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.

## **Division 2—Disputes and appeals**

### **86—General right to apply to Court**

- (1) The following applications may be made to the Court—
  - (a) a person who has applied for a development authorisation may appeal to the Court against—
    - (ai) 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
    - (i) a refusal to grant the authorisation; or
    - (ii) the imposition of conditions in relation to the authorisation; or
    - (iii) 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;
  - (b) a person who is entitled to be given a notice of a decision in respect of a Category 3 development under section 38 may appeal to the Court against that decision (subject to the limitations imposed by that section);
  - (c) 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;
  - (d) a person who has—
    - (i) been served with an order under section 55 or 56; or
    - (ii) been served with an enforcement notice under section 84; or
    - (iii) been served with a notice or order under Part 6,may appeal to the Court against the notice or order;
  - (e) 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
    - (iii) whether or not an application for a building rules 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 necessary for the satisfaction of those requirement; 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,may apply to the Court for determination of the dispute;
- (f) 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 a piece of adjacent land, may apply to the Court for a review of the matter with respect to—
  - (i) a decision under the Act as to the nature of the development, including any decision that is relevant to the operation of section 35;
  - (ii) a decision under section 38 as to the category of the development.
- (1a) A right of review under paragraph (f) of subsection (1) does not limit or restrict the ability of an applicant for the relevant development authorisation to institute an appeal under paragraph (a) of that subsection.
- (2) Subsection (1) does not—
  - (a) derogate from any other provision of this Act that confers a right to apply to the Court in specified circumstances;
  - (b) derogate from any other provision of this Act that prevents or restricts a right to apply to the Court in specified circumstances.
- (3) Where 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.
- (3a) Where an application relates to the decision, direction, act, consent, approval, order or determination of a regional development assessment panel (see section 34), then, subject to subsection (3b), each council in relation to which the regional development assessment panel is constituted will be a respondent.
- (3b) The Court may exclude a council from being a respondent under subsection (3a).
- (3c) The Minister may intervene in proceedings that relate to a decision, direction, act, consent, approval, order or determination of a regional development assessment panel.
- (4) An application 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 two 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.
- (5) If—
  - (a) an appeal is commenced before the Court against an order under section 69(1)(a); or

- (b) an application that involves a dispute relating to a matter referred to in subsection (1)(c) or (e) (and no other dispute) is made to the Court,

the matter must, in accordance with the Rules of the Court, be referred to a commissioner or commissioners of the Court for resolution under section 87.

- (6) Any other application, other than an application of a prescribed class, 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).

## 87—Building referees

- (1) The commissioner or commissioners to whom a matter is referred under section 86(5) 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 1986*.
- (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.

## 88—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;
  - (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 appropriate to the subject matter of the proceedings, order—
    - (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);
  - (da) 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;
  - (e) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.
- (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;
  - (b) if—
    - (i) a person who has applied for a development authorisation is appealing against a refusal to grant the authorisation; or
    - (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 or a person who was entitled to be given notice of a decision in respect of a Category 3 development under section 38 (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.

## **Division 3—Initiation of proceedings to gain a commercial competitive advantage**

### **88A—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.

- (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.
- (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 a Development Plan, or to the amendment of a Development Plan, that affects a development.
- (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.

### **88B—Declaration of interest**

- (1) If—

- (a) a person—

- (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—

- (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,

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.
- (4) A person who fails to make a disclosure in accordance with the requirements of this section is guilty of an offence.

Maximum penalty: Division 3 fine.

### **88C—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 in a court of competent jurisdiction, 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 12—Private certification**

### **89—Preliminary**

- (1) Subject to this Part, a private certifier may exercise the powers of a relevant authority to make any assessment, require information, give any consent or approval or make any other decision in relation to a proposed development or a particular aspect of a proposed development.
- (2) A private certifier may only exercise a power under subsection (1) to the extent prescribed or authorised by the regulations.
- (2a) An application to a private certifier for the purposes of this Act must be in a form determined by the Minister.
- (3) A private certifier cannot grant a development plan consent.
- (4) Subject to this Part, a decision of a private certifier in relation to a proposed development has the same effect and is subject to appeal in the same way as a decision of the relevant authority that would otherwise be exercising the relevant function under this Act.
- (5) A private certifier is subject to the same duties and requirements as the relevant authority that would otherwise be exercising the function under this Act.
- (6) If a relevant authority receives a certificate given by a private certifier for the purposes of this Act—
  - (a) the relevant authority incurs no liability if it relies on the certificate; and
  - (b) the relevant authority cannot be held liable for a subsequent act or omission of the relevant authority in relation to a matter within the ambit of the certificate.

### **90—When may a private certifier be used?**

A person (including a public authority) may, in accordance with the regulations, engage a private certifier to give any consent or approval or make any assessment or decision that the private certifier is authorised to give or make under this Part.

### **91—Who may act as a private certifier?**

- (1) A person may act as a private certifier if (and only if)—
  - (a) in the case of a natural person—the person—
    - (i) holds the appropriate qualifications prescribed by the regulations; and
    - (ii) has the necessary experience prescribed by the regulations; or
  - (b) in the case of a company—the company acts through an officer or employee who—
    - (i) holds the appropriate qualifications prescribed by the regulations; and
    - (ii) has the necessary experience prescribed by the regulations.

Maximum penalty: Division 4 fine.

- (2) A person must not act as a private certifier if he or she—
- (a) is disqualified from acting as a private certifier by virtue of the regulations; or
  - (b) is disqualified from acting as a private certifier by the Minister by notice in the Gazette.

Maximum penalty: Division 4 fine.

## **92—Circumstances in which a private certifier may not act**

- (1) A private certifier must not exercise any functions of a private certifier in relation to a development—
- (a) if he or she has been involved in any aspect of the planning or design of the development (other than through the provision of preliminary advice of a routine or general nature); or
  - (b) 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; or
  - (c) if he or she is employed by any person or body associated with any aspect of the development; or
  - (d) if he or she is excluded from acting pursuant to the regulations.
- (2) Subsections (1)(b) and (c) do not apply to an officer or employee of the Crown (when acting in his or her capacity as such).
- (3) A person must not act as a private certifier in relation to development in the area of a council if he or she is employed by the council of that area.

- (4) A person who contravenes a provision of this section is guilty of an offence.

Maximum penalty: Division 4 fine.

## **93—Authority to be advised of certain matters**

- (1) A private certifier must—
- (a) notify the relevant authority as soon as practicable after being engaged to perform a function under this Act; and
  - (b) on making a decision of a prescribed kind in relation to any aspect of building work—
    - (i) notify the relevant authority in writing of the decision; and
    - (iii) provide such information or documentation as may be prescribed by the regulations or as the relevant authority may require.

Maximum penalty: Division 5 fine.

- (2) A private certifier must, in the notification furnished under subsection (1)(b)(i), specify any variation that has been made to any plan or other documentation on account of a requirement under this or any other Act (and such a variation may then be taken into account for the purposes of providing any development authorisation under this Act).

## **94—Referrals**

- (1) A private certifier may, at any time and with the consent of a relevant authority, refer a particular matter to the relevant authority for exercise by that authority of any function under this Act.
- (2) A referral may be made without the consent of the person who proposes to undertake the development.
- (3) The private certifier must pay to the relevant authority any fees, costs or expenses agreed with the relevant authority for the referral.

## **95—Referrals to other private certifiers**

- (1) Subject to subsection (2), a private certifier may refer a particular matter to another private certifier for exercise by that other certifier of the certifier's functions under this Act.
- (2) A referral may not be made under subsection (1) unless it is consented to by—
  - (a) the Minister; and
  - (b) the other private certifier; and
  - (c) the person who proposes to undertake the development.

Maximum penalty: Division 5 fine.

## **96—Removal etc of private certifier**

- (1) A private certifier who has not completed the functions of a private certifier in relation to a particular development may not be removed from his or her engagement as a private certifier unless the Minister consents to that removal.  
Maximum penalty: Division 5 fine.
- (2) If a private certifier resigns from an engagement or dies or becomes incapable for any other reason of carrying out the functions of a certifier in respect of a particular development for which the private certifier has been engaged, the matter may be referred to a relevant authority or, with the consent or at the direction of the Minister, to another private certifier.

## **97—Duties of private certifiers**

- (1) A private certifier must—
  - (a) act in accordance with the public interest and the objects of this Act; and
  - (b) ensure that any development authorisation given by the private certifier is consistent with any other development authorisation that has already been given in respect of the same proposal.  
Maximum penalty: \$30 000.
- (2) A private certifier 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: \$30 000.

(3) The Minister may, for the purposes of this Part, by notice in the Gazette, establish or vary a code of practice to be observed by private certifiers under this Act.

(4) A private certifier who contravenes or fails to comply with a provision of the code of practice is guilty of an offence.

Maximum penalty: \$30 000.

(5) A person who improperly gives, offers or agrees to give a benefit to a private certifier 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 private certifier in the performance of a function under this Act is guilty of an offence.

Maximum penalty: \$30 000.

(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 a private certifier under this Act.

## Part 13—Miscellaneous

### 98—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:

- (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 one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one 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 one 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 one commissioner,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.

### 99—Exemption from certain action

No act or omission in good faith in relation to a particular development by—

- (a) the Minister, the Development Assessment Commission, a council or other authority under this Act; or
- (b) an authorised officer; or
- (c) a private certifier,

after the development has been approved under this Act subjects that person or body to any liability.

### 100—Insurance requirements

The regulations may require prescribed classes of persons to have professional indemnity or other insurance of a kind prescribed by the regulations.

### 101—Professional advice to be obtained in relation to certain matters

- (1) A relevant authority, authorised officer or private certifier may, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.
- (2) A relevant authority, authorised officer or private certifier must seek and consider the advice of a person with prescribed qualifications, or a person approved by 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.

- (4) No act or omission by a person or body in good faith on 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: Division 4 fine.

### **102—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: Division 5 fine or division 5 imprisonment.

- (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: Division 5 fine or division 5 imprisonment.

### **103—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: Division 5 fine.

### **104—Accreditation of building products etc**

- (1) Any building product, building method, design, component, equipment or system accredited by a person or body 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 person or body from time to time and remains in force until the accreditation is revoked by the person or body.

- (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 person or body and it complies with any such accreditation.

## **105—General provisions relating to offences**

- (1) For the purposes of proceedings for an offence against this Act—
  - (a) the conduct or state of mind of a director, 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 or 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) For the purposes of subsection (1), a reference to conduct includes a reference to failure to act.
- (3) Where a body corporate is guilty of an offence against this Act, the directors and the chief executive officer of the body corporate are each guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless it is proved that the principal offence did not result from any failure on his or her part to take all reasonable and practicable measures to prevent the commission of the offence.
- (4) The offences constituted by this Act lie within the criminal jurisdiction of the Court.
- (5) A prosecution for an offence against this Act may be commenced at any time within three years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within ten years after the date of the alleged commission of the offence.
- (6) 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.
- (7) Where—
  - (a) proceedings for an offence against this Act relating to land wholly within the area of a council are commenced by the council; and
  - (b) a fine is imposed by a court for the offence; and
  - (c) the fine is paid to the clerk of the court,the clerk must pay the amount of the fine to the council.

## 106—Order to rectify breach

Where, 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 one 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);
- (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 (other than an authorisation granted by the Governor);
- (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.

## 107—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 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.
- (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.

## **108—Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Those regulations may, for example, be made with respect to any of the matters specified in Schedule 1.
- (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—
  - (a) a code 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 a code.
- (5) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.
- (6) The regulations or a code adopted by the regulations may—
  - (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 persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Development Assessment Commission, a council, an authorised person or any other prescribed authority.
- (7) The regulations may 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.
- (8) Where—
  - (a) a code is adopted by the regulations; or
  - (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,then—

- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
  - (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
  - (e) the code, standard or other document has effect as if it were a regulation made under this Act.
- (9) A regulation cannot be made under item 9 of Schedule 1 unless the Minister has given the LGA notice of the proposal to make a regulation under that item and given consideration to any submission made by the LGA within a period (of between 3 and 6 weeks) specified by the Minister.

## Schedule 1—Regulations

- 1 The procedures to be followed when a Development Plan amendment is proposed.
- 2 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.
- 3 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.
- 4 The giving of public notice and public consultation in relation to any prescribed class of matter.
- 5 The form, manner and mode of giving other forms of notice under this Act.
- 6 The provision of returns, documents and other forms of information to the Minister or any other prescribed person or body for the purposes of this Act.
- 6A 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 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 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).
- 10A The review of delegations made by a person or body under this Act.
- 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 a Development Plan (or Development Plans generally).
- 14 The incorporation of material into any Development Plan (or Development Plans generally).
- 15 The classification of various forms of development for the purposes of this Act.
- 16 The formulation and classification of zones for the purposes of this Act.
- 17 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;
  - (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;
  - (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;
  - (l) the health, safety or welfare of the occupants of any building.
- 17A 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
  - (c) land used in conjunction with a building; or
  - (d) fixtures, fittings or other items associated with land comprising the site of any building,
- 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.
- 18 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.
- 19 The classification of buildings and the application of the regulations to different classes of buildings.
- 20 The regulation, restriction or prohibition of the occupation of buildings.
- 21 The restriction or prohibition of building work in prescribed circumstances.
- 22 The regulation, restriction or prohibition of building work over a public place (including the requirement to obtain any necessary licence or consent), and the standards to which a building over a public place must conform.
- 23 Utility, safety and hygiene services located in, or related to, buildings.

- 24 The regulation of projections from buildings and dangers arising from projections from building work.
- 25 Access to and within buildings, and egress from buildings.
- 26 The manner of alteration and demolition of, and additions to, buildings.
- 27 The creation of registers of certificates of occupancy under this Act and other matters relating to such certificates.
- 28 The inspection or testing of buildings, building work, fixtures, fittings, plant, materials, products, components, equipment or systems.
- 29 The accreditation of building products, building methods, designs, components, equipment or systems (including the issue of certificates of accreditation in prescribed circumstances).
- 30 The form and content of plans and specifications under this Act.
- 31 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).
- 32 The prescription, and payment, of fees (including differential fees), and the recovery of expenses and the distribution of fees between relevant authorities.
- 33 The ability of any prescribed class of person or body to remit, reduce, waive or refund a fee payable under this Act.
- 34 The application of any amount payable under this Act.
- 35 Exemptions under this Act.
- 36 The prescription of time limits for the purposes of this Act.
- 37 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.
- 38 The registration of private certifiers by the Minister under this Act (whether on terms or conditions prescribed by the regulations, or on such terms or conditions as the Minister thinks fit).
- 39 The provision of a notice to a person or body in prescribed circumstances.
- 40 The service of any notice or document under this Act.
- 41 The transfer of development rights between sites.
- 42 The practice and 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 the Fund.
- 45 The imposition of penalties, not exceeding \$10 000, for breaches of the regulations.
- 46 The fixing of an expiation fee in respect of any offence against this Act or the regulations (being a fee equal to 5 per cent of the maximum fine that a court could impose as a penalty for the particular offence or a fee of \$315, whichever is the greater) and the designation of persons who are authorised to give expiation notices.

## Schedule 2—Disclosure of financial interests

### 1—Interpretation

(1) In this Schedule—

***assessment panel*** means—

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

***family***, in relation to a prescribed member, means—

- (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 an assessment panel who is required to disclose his or her financial interests pursuant to section 11A, 34 or 56A;

***relevant official*** means—

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

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

## **2—Disclosure of interests**

- (1) A prescribed member of an assessment panel must—
- (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 an assessment panel will be taken to have a pecuniary interest for the purposes of this clause if a person related to the member has that interest.
- (3) A prescribed member who has submitted a return under this Schedule may at any time notify the relevant official of a change or variation in the information appearing on the register in respect of the member.

## **3—Register**

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

## **4—Compliance with Schedule**

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

## **5—Restrictions on publication**

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

Maximum penalty: \$10 000.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.7.2007
Part 2	26.4.2007
Part 3	27.9.2007
Part 4	1.7.2007
Part 5	26.4.2007
Part 6	26.4.2007
Part 7	26.4.2007
Part 8	26.4.2007
Part 9	26.4.2007
Part 10	26.4.2007
Part 11	26.4.2007
Part 12	26.4.2007
Part 13	26.4.2007
Schedules	1.6.2007
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	55	<i>Development Act 1993</i>	27.5.1993	15.1.1994 ( <i>Gazette</i> 27.10.1993 p1888)
1993	76	<i>Environment Protection Act 1993</i>	27.10.1993	1.5.1995 ( <i>Gazette</i> 27.4.1995 p1563) except Sch 2 (cl 4(c))—27.10.1995 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1994	18	<i>Parliamentary Committees (Miscellaneous) Amendment Act 1994</i>	12.5.1994	12.5.1994 ( <i>Gazette</i> 12.5.1994 p1188)
1995	53	<i>Development (Review) Amendment Act 1995</i>	3.8.1995	23.11.1995 ( <i>Gazette</i> 23.11.1995 p1412)
1996	38	<i>Statutes Amendment (Community Titles) Act 1996</i>	9.5.1996	ss 5—7—4.11.1996 ( <i>Gazette</i> 31.10.1996 p1460)
1996	63	<i>Development (Major Development Assessment) Amendment Act 1996</i>	15.8.1996	2.1.1997 ( <i>Gazette</i> 2.1.1997 p4)

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1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	ss 13 & 14—2.1.1997 ( <i>Gazette</i> 2.1.1997 p4)
1997	3	<i>Development (Private Certification) Amendment Act 1997</i>	27.2.1997	1.9.1997 ( <i>Gazette</i> 14.8.1997 p336)
1997	35	<i>Statutes Amendment (Water Resources) Act 1997</i>	19.6.1997	Pt 2 (s 4)—2.7.1997 ( <i>Gazette</i> 26.6.1997 p3052)
1997	70	<i>Development (Building Rules) Amendment Act 1997</i>	18.12.1997	1.1.1998 ( <i>Gazette</i> 24.12.1997 p1864)
1999	36	<i>Electricity Corporations (Restructuring and Disposal) Act 1999</i>	1.7.1999	Sch 4 (c11—3)—29.7.1999 ( <i>Gazette</i> 29.7.1999 p528)
1999	73	<i>Mining (Private Mines) Amendment Act 1999</i>	25.11.1999	s 8—1.9.2000 ( <i>Gazette</i> 31.8.2000 p970)
2000	3	<i>Development (Significant Trees) Amendment Act 2000</i>	20.4.2000	20.4.2000 ( <i>Gazette</i> 20.4.2000 p2194)
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	4.5.2002 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2000	61	<i>Recreational Greenways Act 2000</i>	27.7.2000	16.11.2000 ( <i>Gazette</i> 16.11.2000 p3196)
2000	88	<i>Development (System Improvement Program) Amendment Act 2000</i>	21.12.2000	2.4.2001 ( <i>Gazette</i> 29.3.2001 p1436) except ss 23, 25, 27, 28 & 29—2.7.2001 ( <i>Gazette</i> 21.6.2001 p2270)
2001	16	<i>Statutes Amendment (Avoidance of Duplication of Environmental Procedures) Act 2001</i>	17.5.2001	Pt 2 (s 4)—14.6.2001 ( <i>Gazette</i> 14.6.2001 p2221)
2003	35	<i>River Murray Act 2003</i>	31.7.2003	Sch (cl 5)—24.11.2003 ( <i>Gazette</i> 20.11.2003 p4203)
2003	46	<i>Statutes (Anti-Fortification) Act 2003</i>	30.10.2003	Pt 2 (ss 4—7)—1.2.2004 ( <i>Gazette</i> 15.1.2004 p197)
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Pt 5 (s 8)—1.9.2004 ( <i>Gazette</i> 26.8.2004 p3402)
2005	5	<i>Adelaide Dolphin Sanctuary Act 2005</i>	14.4.2005	Sch 2 (c11 8—16)—1.7.2005 ( <i>Gazette</i> 2.6.2005 p1684)
2005	39	<i>Heritage (Heritage Directions) Amendment Act 2005</i>	14.7.2005	Sch 1 (c11 2—8)—17.11.2005 ( <i>Gazette</i> 17.11.2005 p3972)
2005	40	<i>Fire and Emergency Services Act 2005</i>	14.7.2005	Sch 6 (c11 2 & 3)—1.10.2005 ( <i>Gazette</i> 29.9.2005 p3547)
2005	58	<i>River Murray (Miscellaneous) Amendment Act 2005</i>	17.11.2005	Sch 1 (cl 2)—8.12.2005 ( <i>Gazette</i> 8.12.2005 p4194)
2005	69	<i>Adelaide Park Lands Act 2005</i>	8.12.2005	Sch 1 (c11 3, 4, new s 49(18), (19)(a) (as inserted by cl 5) and cl 6)—14.12.2006 ( <i>Gazette</i> 7.12.2006 p4269); new s 49(19)(b), (20)—(22) (as inserted by cl 5)—26.4.2007 ( <i>Gazette</i> 26.4.2007 p1348)
2005	79	<i>Development (Miscellaneous) Amendment Act 2005</i>	8.12.2005	Pt 2 (ss 4(1), (5), 5—10, 12—16, 22—28)—12.1.2006 ( <i>Gazette</i> 12.1.2006 p43); ss 4(2), (3), 11, 21—20.4.2006 ( <i>Gazette</i> 20.4.2006 p1127); s 17—1.7.2007 ( <i>Gazette</i> 28.6.2007 p2826); ss 4(4), 18—20—uncommenced

2006	15	<i>Development (Panels) Amendment Act 2006</i>	29.6.2006	Pt 2 (ss 4—13)—23.11.2006 ( <i>Gazette</i> 23.11.2006 p4078)
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 27 (s 107)—4.9.2006 ( <i>Gazette</i> 17.8.2006 p2831)
<b>2006</b>	<b>25</b>	<b><i>Development (Development Plans) Amendment Act 2006</i></b>	<b>23.11.2006</b>	<b>Pt 2 (ss 4—9, 14(1), (3), 15, 18—25, 26(1), (2), 27—29) &amp; Sch 1 (cll 4, 7 &amp; 8)—14.12.2006 (<i>Gazette</i> 14.12.2006 p4364); Sch 1 cl 5(7)—22.3.2007 (<i>Gazette</i> 22.3.2007 p864); s 26(3)—26.4.2007 (<i>Gazette</i> 26.4.2007 p1350); ss 10—13, 14(2) &amp; Sch 1 (cl 5(1)—(6))—27.9.2007 (<i>Gazette</i> 27.9.2007 p3841); ss 16, 17, 30 &amp; Sch 1 (cl 6)—uncommenced</b>
2006	38	<i>Development (Building Safety) Amendment Act 2006</i>	14.12.2006	14.12.2006 ( <i>Gazette</i> 14.12.2006 p4363)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 28 (ss 90 & 91)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2007	17	<i>Development (Assessment Procedures) Amendment Act 2007</i>	5.4.2007	Pt 2 (ss 4—8, 10(6), 11—21, 22(1), 23(2), 24—28, 30—37)—26.4.2007 ( <i>Gazette</i> 26.4.2007 p1349); ss 9, 10(1)—(5), (7), (8), 22(2), 23(1) & 29—uncommenced
2007	20	<i>Statutes Amendment (Affordable Housing) Act 2007</i>	14.6.2007	Pt 7 (ss 95 & 96)—1.7.2007 ( <i>Gazette</i> 28.6.2007 p2826); ss 97 & 98—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
s 3	amended by 88/2000 s 3	2.4.2001
	amended by 20/2007 s 95	1.7.2007
s 4		
s 4(1)		
Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 (cl 8(1))	1.7.2005
Adelaide Park Lands	inserted by 69/2005 Sch 1 cl 3	14.12.2006
allotment	substituted by 38/1996 s 5(a)	4.11.1996
Building Code	inserted by 70/1997 s 3(a)	1.1.1998
	substituted by 79/2005 s 4(1)	12.1.2006
Building Rules Assessment Commission	inserted by 70/1997 s 3(b)	1.1.1998

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building rules consent	inserted by 17/2007 s 4(1)	26.4.2007
building work	amended by 79/2005 s 4(2)	20.4.2006
	(b) deleted by 79/2005 s 4(3)	20.4.2006
development	amended by 3/2000 s 3(a), (b)	20.4.2000
	amended by 46/2003 s 4(1)	1.2.2004
	amended by 79/2005 s 4(4)	uncommenced—not incorporated
development plan consent	inserted by 17/2007 s 4(2)	26.4.2007
division	amended by 38/1996 s 5(b)	4.11.1996
domestic partner	inserted by 43/2006 s 90(1)	1.6.2007
DR	inserted by 63/1996 s 3(a)	2.1.1997
EIS	inserted by 63/1996 s 3(a)	2.1.1997
Environment Protection Authority	inserted by 76/1993 Sch 2 cl 4(a)	1.5.1995
fire authority	amended by 40/2005 Sch 6 cl 2	1.10.2005
fortification	inserted by 46/2003 s 4(2)	1.2.2004
LGA	inserted by 79/2005 s 4(5)	12.1.2006
locality	inserted by 25/2006 s 4(1)	14.12.2006
<i>Major Developments Panel</i>	<i>inserted by 63/1996 s 3(b)</i>	<i>2.1.1997</i>
	<i>deleted by 25/2006 s 4(2)</i>	<i>14.12.2006</i>
the Mining Acts	amended by 88/2000 s 4(a)	2.4.2001
	amended by 11/2000 Sch 2	4.5.2002
mining production tenement	amended by 88/2000 s 4(b)	2.4.2001
	amended by 11/2000 Sch 2	4.5.2002
Minister for the Adelaide Dolphin Sanctuary	inserted by 5/2005 Sch 2 (cl 8(2))	1.7.2005
Minister for the River Murray	inserted by 35/2003 Sch cl 5(a)	24.11.2003
Murray-Darling Basin	inserted by 35/2003 Sch cl 5(a)	24.11.2003
PER	inserted by 63/1996 s 3(c)	2.1.1997
<i>provisional building rules consent</i>	<i>deleted by 17/2007 s 4(3)</i>	<i>26.4.2007</i>
<i>provisional development plan consent</i>	<i>deleted by 17/2007 s 4(4)</i>	<i>26.4.2007</i>
relative	inserted by 88/2000 s 4(c)	2.4.2001
	amended by 43/2006 s 90(2)	1.6.2007
relevant authority	substituted by 88/2000 s 4(c)	2.4.2001
relevant interest	inserted by 88/2000 s 4(c)	2.4.2001

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repealed Act	substituted by 3/1997 s 3	1.9.1997
significant tree	inserted by 3/2000 s 3(c)	20.4.2000
South Australian Heritage Council	inserted by 39/2005 Sch 1 cl 2(1)	17.11.2005
spouse	inserted by 88/2000 s 4(d)	2.4.2001
	substituted by 43/2006 s 90(3)	1.6.2007
<i>State Heritage Authority</i>	<i>deleted by 39/2005 Sch 1 cl 2(2)</i>	<i>17.11.2005</i>
tree-damaging activity	inserted by 3/2000 s 3(d)	20.4.2000
s 4(4)—(6)	inserted by 63/1996 s 3(d)	2.1.1997
s 4(7)	inserted by 70/1997 s 3(c)	1.1.1998
s 4(8)	inserted by 88/2000 s 4(e)	2.4.2001
	amended by 43/2006 s 90(4)—(6)	1.6.2007
Pt 2		
Pt 2 Div 1		
s 10		
s 10(3)	amended by 15/2006 s 4(1), (2)	23.11.2006
s 10(9)	amended by 15/2006 s 4(3)	23.11.2006
s 10A	inserted by 25/2006 s 5	14.12.2006
s 11		
s 11(1)	(b) and (c) deleted by 25/2006 s 6(1)	14.12.2006
s 11(1a)	inserted by 25/2006 s 6(2)	14.12.2006
s 11A	inserted by 15/2006 s 5	23.11.2006
s 13		
s 13(5)	substituted by 15/2006 s 6	23.11.2006
s 13(5a)	inserted by 15/2006 s 6	23.11.2006
s 17		
s 17(2)	substituted by 79/2005 s 5	12.1.2006
Pt 2 Div 3		
s 20		
s 20(1)	substituted by 88/2000 s 5(a)	2.4.2001
s 20(2)	amended by 88/2000 s 5(b), (c)	2.4.2001
	amended by 15/2006 s 7	23.11.2006
s 20(7)	amended by 88/2000 s 5(d)	2.4.2001
Pt 2 Div 4		
s 21		
s 21(1)	amended by 25/2006 s 7	14.12.2006
Pt 2 Div 5	inserted by 79/2005 s 6	12.1.2006
s 21A		
s 21A(1)	amended by 15/2006 s 8	23.11.2006
Pt 3		
Pt 3 Div 1		
s 22		

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s 22(3a)	inserted by 35/2003 Sch cl 5(b)	24.11.2003
	substituted by 5/2005 Sch 2 (cl 9)	1.7.2005
s 22(3b) and (3c)	inserted by 25/2006 s 8(1)	14.12.2006
s 22(4a)	inserted by 35/2003 Sch cl 5(c)	24.11.2003
s 22(6)	amended by 25/2006 s 8(2)	14.12.2006
s 22(7a)	inserted by 25/2006 s 8(3)	14.12.2006
Pt 3 Div 2		
Pt 3 Div 2 Subdiv 1		
s 23		
s 23(3)	amended by 20/2007 s 96	1.7.2007
s 23(3a)	inserted by 25/2006 s 9	14.12.2006
s 23(4)	amended by 3/2000 s 4(a)	20.4.2000
s 23(4aa)	inserted by 39/2005 Sch 1 cl 3	17.11.2005
s 23(4a)	inserted by 3/2000 s 4(b)	20.4.2000
Pt 3 Div 2 Subdiv 2		
s 24		
s 24(1)	amended by 53/1995 s 3	23.11.1995
	amended by 88/2000 s 6	2.4.2001
	amended by 35/2003 Sch cl 5(d)	24.11.2003
	amended by 5/2005 Sch 2 (cl 10(1))	1.7.2005
	amended by 39/2005 Sch 1 cl 4(1)	17.11.2005
	amended by 79/2005 s 7(1)	12.1.2006
	<b>amended by 25/2006 s 10(1)—(7)</b>	<b>27.9.2007</b>
<b>s 24(1a) and (1b)</b>	<b>inserted by 25/2006 s 10(8)</b>	<b>27.9.2007</b>
s 24(2)	amended by 39/2005 Sch 1 cl 4(2)	17.11.2005
s 24(2a)	inserted by 79/2005 s 7(2)	12.1.2006
s 24(3)	inserted by 35/2003 Sch cl 5(e)	24.11.2003
	substituted by 58/2005 Sch 1 cl 2(1)	8.12.2005
s 24(3a)	inserted by 58/2005 Sch 1 cl 2(1)	8.12.2005
s 24(4)	inserted by 5/2005 Sch 2 (cl 10(2))	1.7.2005
s 24(5) and (6)	inserted by 58/2005 Sch 1 cl 2(2)	8.12.2005
s 25		
<b>s 25(2)</b>	<b>amended by 25/2006 s 11(1)</b>	<b>27.9.2007</b>
s 25(3)	amended by 88/2000 s 7(a)	2.4.2001
	<b>substituted by 25/2006 s 11(2)</b>	<b>27.9.2007</b>
<b>s 25(4)</b>	<b>substituted by 25/2006 s 11(2)</b>	<b>27.9.2007</b>
s 25(5)—(11)	substituted by 88/2000 s 7(b)	2.4.2001
	<b>substituted by 25/2006 s 11(2)</b>	<b>27.9.2007</b>
s 25(12)	substituted by 88/2000 s 7(b)	2.4.2001
	<b>amended by 25/2006 s 11(3)</b>	<b>27.9.2007</b>
s 25(13)	substituted by 88/2000 s 7(b)	2.4.2001
	<b>amended by 25/2006 s 11(4), (5)</b>	<b>27.9.2007</b>
s 25(14)	substituted by 88/2000 s 7(b)	2.4.2001

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s 25(15)	inserted by 88/2000 s 7(b)	2.4.2001
	<b>amended by 25/2006 s 11(6)—(8)</b>	<b>27.9.2007</b>
s 25(16)—(18)	inserted by 88/2000 s 7(b)	2.4.2001
s 25(19)	inserted by 88/2000 s 7(b)	2.4.2001
	<b>amended by 25/2006 s 11(9)</b>	<b>27.9.2007</b>
s 25(20)	inserted by 88/2000 s 7(b)	2.4.2001
	<b>amended by 25/2006 s 11(10)</b>	<b>27.9.2007</b>
s 25(21)	inserted by 88/2000 s 7(b)	2.4.2001
<b>s 25(21a) and (21b)</b>	<b>inserted by 25/2006 s 11(11)</b>	<b>27.9.2007</b>
s 25(22)	inserted by 88/2000 s 7(b)	2.4.2001
<b>s 25(23)</b>	<b>inserted by 25/2006 s 11(12)</b>	<b>27.9.2007</b>
s 26		
<b>s 26(1)—(3)</b>	<b>substituted by 25/2006 s 12(1)</b>	<b>27.9.2007</b>
s 26(4)	substituted by 88/2000 s 8(a)	2.4.2001
	<b>substituted by 25/2006 s 12(1)</b>	<b>27.9.2007</b>
s 26(5)	deleted by 88/2000 s 8(a)	2.4.2001
	<b>inserted by 25/2006 s 12(1)</b>	<b>27.9.2007</b>
<b>s 26(5a)—(5d)</b>	<b>inserted by 25/2006 s 12(1)</b>	<b>27.9.2007</b>
s 26(6)	amended by 88/2000 s 8(b), (c)	2.4.2001
	<b>amended by 25/2006 s 12(2)—(4)</b>	<b>27.9.2007</b>
s 26(7)	amended by 88/2000 s 8(d)	2.4.2001
	<b>substituted by 25/2006 s 12(5)</b>	<b>27.9.2007</b>
s 26(8)	amended by 88/2000 s 8(e)	2.4.2001
s 26(9) and (10)	inserted by 88/2000 s 8(f)	2.4.2001
s 26(11)	inserted by 88/2000 s 8(f)	2.4.2001
	<b>amended by 25/2006 s 12(6)—(13)</b>	<b>27.9.2007</b>
s 26(12)	inserted by 88/2000 s 8(f)	2.4.2001
s 27		
s 27(1)	substituted by 88/2000 s 9(a)	2.4.2001
s 27(2)	deleted by 88/2000 s 9(a)	2.4.2001
	<b>inserted by 25/2006 s 13(1)</b>	<b>27.9.2007</b>
s 27(3)	amended by 88/2000 s 9(b)	2.4.2001
<b>s 27(4)</b>	<b>amended by 25/2006 s 13(2)</b>	<b>27.9.2007</b>
<b>s 27(4a) and (4b)</b>	<b>inserted by 25/2006 s 13(3)</b>	<b>27.9.2007</b>
s 27(5)	amended by 88/2000 s 9(c)	2.4.2001
s 27(6)	amended by 88/2000 s 9(d)	2.4.2001
s 28		
s 28(1)	amended by 25/2006 s 14(1)	14.12.2006
	<b>amended by 25/2006 s 14(2)</b>	<b>27.9.2007</b>
s 28(4)	amended by 88/2000 s 10	2.4.2001
	amended by 25/2006 s 14(3)	14.12.2006
s 29		
s 29(1)	amended by 35/1997 s 4	2.7.1997

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s 29(2)	amended by 88/2000 s 11	2.4.2001
	amended by 25/2006 s 15(1)	14.12.2006
s 29(3)	amended by 39/2005 Sch 1 cl 5	17.11.2005
	amended by 25/2006 s 15(2)	14.12.2006
s 29(5)	inserted by 25/2006 s 15(3)	14.12.2006
Pt 3 Div 2 Subdiv 3		
s 30		
s 30(5)	substituted by 53/1995 s 4(a)	23.11.1995
s 30(5a)	inserted by 53/1995 s 4(a)	23.11.1995
s 30(6)	amended by 53/1995 s 4(b)	23.11.1995
	amended by 63/1996 s 4	2.1.1997
Pt 3 Div 2 Subdiv 3	substituted by 25/2006 s 16	uncommenced—not incorporated
s 30		
s 30(1)	amended by 20/2007 s 97	uncommenced—not incorporated
Pt 3 Div 2 Subdiv 4		
s 31A	inserted by 25/2006 s 17	uncommenced—not incorporated
Pt 4		
heading	substituted by 88/2000 s 12	2.4.2001
Pt 4 Div 1		
heading	substituted by 88/2000 s 13	2.4.2001
s 33		
s 33(1)	amended by 53/1995 s 5	23.11.1995
	amended by 38/1996 s 6	4.11.1996
	amended by 88/2000 s 14(a)	2.4.2001
	amended by 79/2005 s 8(1)—(4)	12.1.2006
	amended by 17/2007 s 5(1), (2)	26.4.2007
s 33(3)	amended by 17/2007 s 5(3)	26.4.2007
s 33(4)	inserted by 3/1997 s 4	1.9.1997
s 33(5)	inserted by 88/2000 s 14(b)	2.4.2001
s 34		
s 34(1)	amended by 63/1996 s 5(a)—(c)	2.1.1997
	amended by 88/2000 s 15(a)—(e)	2.4.2001
	amended by 35/2003 Sch cl 5(f)	24.11.2003
	amended by 5/2005 Sch 2 (cl 11)	1.7.2005
s 34(1a)	inserted by 63/1996 s 5(d)	2.1.1997
	amended by 88/2000 s 15(f)	2.4.2001
s 34(1b)	inserted by 17/2007 s 6(1)	26.4.2007
s 34(2)	amended by 88/2000 s 15(g)—(j)	2.4.2001
	amended by 17/2007 s 6(2)	26.4.2007
s 34(3)	inserted by 88/2000 s 15(k)	2.4.2001
	substituted by 17/2007 s 6(3)	26.4.2007
s 34(4)—(6)	inserted by 88/2000 s 15(k)	2.4.2001
s 34(6a)	inserted by 15/2006 s 9(1)	23.11.2006

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s 34(7)	inserted by 88/2000 s 15(k)	2.4.2001
	amended by 15/2006 s 9(2), (3)	23.11.2006
s 34(8)	inserted by 88/2000 s 15(k)	2.4.2001
s 34(8a)	inserted by 15/2006 s 9(4)	23.11.2006
s 34(9)—(11)	inserted by 88/2000 s 15(k)	2.4.2001
s 34(12)	inserted by 88/2000 s 15(k)	2.4.2001
	amended by 15/2006 s 9(5)	23.11.2006
s 34(13)—(18)	inserted by 88/2000 s 15(k)	2.4.2001
s 34(18a)—(18d)	inserted by 15/2006 s 9(6)	23.11.2006
s 34(19)—(22)	inserted by 88/2000 s 15(k)	2.4.2001
s 34(23)—(27)	inserted by 15/2006 s 9(7)	23.11.2006
s 35		
s 35(1)	amended by 17/2007 s 7(1)	26.4.2007
s 35(1a)	inserted by 88/2000 s 16(a)	2.4.2001
	amended by 46/2003 s 5	1.2.2004
s 35(3)	amended by 17/2007 s 7(2), (3)	26.4.2007
s 35(3a)	inserted by 88/2000 s 16(b)	2.4.2001
s 35(4)	amended by 79/2005 s 9(1)	12.1.2006
s 35(4a)	inserted by 17/2007 s 7(4)	26.4.2007
s 35(5)	inserted by 79/2005 s 9(2)	12.1.2006
s 36		
s 36(1)	amended by 17/2007 s 8(1)	26.4.2007
s 36(2)	amended by 3/1997 s 5(a)	1.9.1997
	substituted by 70/1997 s 4(a)	1.1.1998
	(b)—(d) deleted by 3/1997 s 5(a)	1.9.1997
	amended by 17/2007 s 8(2)	26.4.2007
s 36(2a)	inserted by 70/1997 s 4(a)	1.1.1998
	amended by 17/2007 s 8(3)	26.4.2007
s 36(2b)	inserted by 70/1997 s 4(a)	1.1.1998
s 36(2c)	inserted by 17/2007 s 8(4)	26.4.2007
s 36(3)	amended by 70/1997 s 4(b)	1.1.1998
	amended by 17/2007 s 8(5)	26.4.2007
s 36(3a)	inserted by 70/1997 s 4(c)	1.1.1998
s 36(5)	substituted by 3/1997 s 5(b)	1.9.1997
s 36(7)	inserted by 3/1997 s 5(c)	1.9.1997
	substituted by 70/1997 s 4(d)	1.1.1998
	amended by 17/2007 s 8(6)	26.4.2007
s 37		
s 37(1)	amended by 46/2003 s 6	1.2.2004
s 37AA	inserted by 17/2007 s 9	uncommenced—not incorporated
s 37A	inserted by 46/2003 s 7	1.2.2004
s 38		
s 38(1)	amended by 17/2007 s 10(1), (2)	uncommenced—not incorporated

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s 38(2)	amended by 76/1993 Sch 2 cl 4(b)	1.5.1995
	substituted by 17/2007 s 10(3)	uncommenced—not incorporated
s 38(2a)	inserted by 76/1993 Sch 2 cl 4(c)	27.10.1995
s 38(2b) and (2c)	inserted by 17/2007 s 10(4)	uncommenced—not incorporated
s 38(3a)	inserted by 17/2007 s 10(5)	uncommenced—not incorporated
s 38(6)	substituted by 76/1993 Sch 2 cl 4(d)	1.5.1995
	amended by 17/2007 s 10(6)	26.4.2007
s 38(7)	amended by 76/1993 Sch 2 cl 4(e)	1.5.1995
	amended by 17/2007 s 10(7)	uncommenced—not incorporated
s 38(10)	amended by 76/1993 Sch 2 cl 4(f)	1.5.1995
s 38(14) and (15)	substituted by 76/1993 Sch 2 cl 4(g)	1.5.1995
s 38(17) and (18)	inserted by 17/2007 s 10(8)	uncommenced—not incorporated
s 39		
s 39(1a)	inserted by 3/2000 s 5	20.4.2000
s 39(4)	amended by 79/2005 s 10	12.1.2006
s 39(6)	amended by 17/2007 s 11(1), (2)	26.4.2007
s 39(7)	amended by 17/2007 s 11(3)	26.4.2007
s 39(7a)	inserted by 17/2007 s 11(4)	26.4.2007
s 41		
s 41(2)	substituted by 79/2005 s 11	20.4.2006
s 41(3)	substituted by 88/2000 s 17	2.4.2001
	substituted by 79/2005 s 11	20.4.2006
s 41(4)	inserted by 79/2005 s 11	20.4.2006
s 44		
s 44(1)	amended by 17/2007 s 12(1)	26.4.2007
s 44(2)	amended by 17/2007 s 12(2)	26.4.2007
s 44(3)	amended by 17/2007 s 12(3)	26.4.2007
s 44(4)	amended by 17/2007 s 12(4)	26.4.2007
s 45		
s 45(1)	amended by 17/2007 s 13(1)	26.4.2007
s 45(2)	amended by 17/2007 s 13(2)	26.4.2007
s 45(2a)	inserted by 79/2005 s 12(1)	12.1.2006
	amended by 17/2007 s 13(3)	26.4.2007
s 45(2b)	inserted by 79/2005 s 12(1)	12.1.2006
s 45(4)	inserted by 79/2005 s 12(2)	12.1.2006
s 45A	inserted by 88/2000 s 18	2.4.2001
s 45A(2)	substituted by 25/2006 s 18(1)	14.12.2006
s 45A(2a)	inserted by 25/2006 s 18(1)	14.12.2006
s 45A(4)	amended by 25/2006 s 18(2)	14.12.2006
s 45A(12)	substituted by 25/2006 s 18(3)	14.12.2006
Pt 4 Div 2	amended by 76/1993 Sch 2 cl 4(h)—(m)	1.5.1995
	substituted by 63/1996 s 6	2.1.1997
s 46		

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s 46(1a) and (1b)	inserted by 25/2006 s 19(1)	14.12.2006
s 46(3a)	inserted by 69/2005 Sch 1 cl 4	14.12.2006
s 46(4)	amended by 25/2006 s 19(2)	14.12.2006
s 46(5)	amended by 25/2006 s 19(3), (4)	14.12.2006
s 46(7)	amended by 25/2006 s 19(5)	14.12.2006
s 46(8)	<i>deleted by 25/2006 s 19(6)</i>	14.12.2006
s 46(9)	amended by 25/2006 s 19(7)	14.12.2006
s 46(10)	amended by 25/2006 s 19(8)	14.12.2006
s 46(11)	amended by 25/2006 s 19(9)	14.12.2006
s 46(12)	amended by 25/2006 s 19(10)	14.12.2006
s 46(13)	amended by 25/2006 s 19(11), (12)	14.12.2006
s 46(14)	amended by 25/2006 s 19(13)	14.12.2006
s 46(15)	amended by 25/2006 s 19(14)	14.12.2006
<i>s 46A before deletion by 25/2006</i>		
s 46A(8)	<i>inserted by 35/2003 Sch cl 5(g)</i>	24.11.2003
s 46A(10)	<i>inserted by 5/2005 Sch 2 (cl 12)</i>	1.7.2005
s 46A	<i>deleted by 25/2006 s 20</i>	14.12.2006
s 46B		
s 46B(3)	amended by 25/2006 s 21	14.12.2006
s 46B(4)	amended by 35/2003 Sch cl 5(h)	24.11.2003
	amended by 5/2005 Sch 2 cl (13(1))	1.7.2005
s 46B(5)	amended by 35/2003 Sch cl 5(i)	24.11.2003
	amended by 5/2005 Sch 2 (cl 13(2))	1.7.2005
s 46B(8)	amended by 35/2003 Sch cl 5(j)	24.11.2003
s 46C		
s 46C(3)	amended by 25/2006 s 22	14.12.2006
s 46C(4)	amended by 35/2003 Sch cl 5(k)	24.11.2003
	amended by 5/2005 Sch 2 (cl 14(1))	1.7.2005
s 46C(5)	amended by 35/2003 Sch cl 5(l)	24.11.2003
	amended by 5/2005 Sch 2 (cl 14(2))	1.7.2005
s 46C(8)	amended by 35/2003 Sch cl 5(m)	24.11.2003
s 46D		
s 46D(3)	amended by 25/2006 s 23	14.12.2006
s 46D(4)	amended by 35/2003 Sch cl 5(n)	24.11.2003
	amended by 5/2005 Sch 2 (cl 15(1))	1.7.2005
s 46D(5)	amended by 35/2003 Sch cl 5(o)	24.11.2003
	amended by 5/2005 Sch 2 (cl 15(2))	1.7.2005
s 46D(7)	amended by 35/2003 Sch cl 5(p)	24.11.2003
s 48		
s 48(1)	amended by 36/1999 Sch 4 (cl 2)	29.7.1999
	amended by 88/2000 s 19	2.4.2001
s 48(5)	amended by 35/2003 Sch cl 5(q)	24.11.2003

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	amended by 5/2005 Sch 2 (cl 16)	1.7.2005
s 48(7)	amended by 25/2006 s 24(1)	14.12.2006
s 48(7a)	inserted by 25/2006 s 24(2)	14.12.2006
s 48(8)	amended by 25/2006 s 24(3)	14.12.2006
s 48E	amended by 25/2006 s 25	14.12.2006
Pt 4 Div 3		
heading	substituted by 79/2005 s 13	12.1.2006
s 49		
s 49(1)		
public infrastructure	inserted by 63/1996 s 7(a)	2.1.1997
s 49(2)	substituted by 63/1996 s 7(b)	2.1.1997
	(d) and (e) deleted by 79/2005 s 14(1)	12.1.2006
	amended by 79/2005 s 14(1)	12.1.2006
s 49(3)	amended by 25/2006 s 26(1)	14.12.2006
s 49(4a)	inserted by 79/2005 s 14(2)	12.1.2006
s 49(5)	amended by 79/2005 s 14(3)	12.1.2006
s 49(6)	amended by 79/2005 s 14(4)	12.1.2006
s 49(7)	substituted by 88/2000 s 20(a)	2.4.2001
s 49(7a)—(7e)	inserted by 88/2000 s 20(a)	2.4.2001
s 49(9)	amended by 79/2005 s 14(5)	12.1.2006
s 49(9a)	inserted by 88/2000 s 20(b)	2.4.2001
s 49(10)	amended by 88/2000 s 20(c)	2.4.2001
s 49(11)	amended by 88/2000 s 20(d)	2.4.2001
s 49(14)	amended by 70/1997 s 5(a)	1.1.1998
s 49(14aa)	inserted by 70/1997 s 5(b)	1.1.1998
s 49(14a)	inserted by 53/1995 s 6	23.11.1995
	amended by 70/1997 s 5(c)	1.1.1998
s 49(16a)	inserted by 63/1996 s 7(c)	2.1.1997
	amended by 25/2006 s 26(2)	14.12.2006
s 49(18)	inserted by 69/2005 Sch 1 cl 5	14.12.2006
s 49(19)	inserted by 69/2005 Sch 1 cl 5	14.12.2006 except (b)—26.4.2007
s 49(20) and (21)	inserted by 69/2005 Sch 1 cl 5	26.4.2007
s 49(22)	inserted by 69/2005 Sch 1 cl 5	26.4.2007
	substituted by 25/2006 s 26(3)	26.4.2007
Pt 4 Div 3A	inserted by 36/1999 Sch 4 (cl 3)	29.7.1999
heading	substituted by 79/2005 s 15	12.1.2006
s 49A		
s 49A(1)	amended by 79/2005 s 16(1)	12.1.2006
s 49A(3)	amended by 25/2006 s 27(1)	14.12.2006
s 49A(4a)	inserted by 79/2005 s 16(2)	12.1.2006
s 49A(5)	amended by 25/2006 s 27(2)	14.12.2006
s 49A(6)	amended by 79/2005 s 16(3)	12.1.2006

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s 49A(7)	substituted by 88/2000 s 21(a)	2.4.2001
s 49A(7a)—(7e)	inserted by 88/2000 s 21(a)	2.4.2001
s 49A(9)	amended by 79/2005 s 16(4)	12.1.2006
s 49A(9a)	inserted by 88/2000 s 21(b)	2.4.2001
s 49A(10)	amended by 88/2000 s 21(c)	2.4.2001
s 49A(11)	amended by 88/2000 s 21(d)	2.4.2001
s 49A(20)	amended by 25/2006 s 27(3)	14.12.2006
s 49A(22) and (23)	inserted by 69/2005 Sch 1 cl 6	14.12.2006
Pt 4 Div 4		
s 50		
s 50(1)	amended by 38/1996 s 7(a)	4.11.1996
	amended by 79/2005 s 17(1), (2)	1.7.2007
s 50(2)	amended by 38/1996 s 7(b)	4.11.1996
	amended by 79/2005 s 17(3), (4)	1.7.2007
s 50(3a) and (3b)	inserted by 79/2005 s 17(5)	1.7.2007
s 50(4)	amended by 79/2005 s 17(6)	1.7.2007
s 50(5)	amended by 38/1996 s 7(c)	4.11.1996
	substituted by 79/2005 s 17(7)	1.7.2007
s 50(6)	<i>deleted by 79/2005 s 17(7)</i>	1.7.2007
s 50(7)		
PC	amended by 79/2005 s 17(8)	1.7.2007
NA	amended by 38/1996 s 7(d)	4.11.1996
s 50(8)	amended by 38/1996 s 7(e), (f)	4.11.1996
s 50(10)	amended by 17/2007 s 14	26.4.2007
s 50(10)	amended by 79/2005 s 17(9)	1.7.2007
s 50(13)	amended by 38/1996 s 7(g)	4.11.1996
allotment	substituted by 38/1996 s 7(g)	4.11.1996
strata lot	inserted by 38/1996 s 7(g)	4.11.1996
unit	<i>deleted by 38/1996 s 7(h)</i>	4.11.1996
s 50A	inserted by 88/2000 s 22	2.4.2001
s 50A(5)	amended by 17/2007 s 15	26.4.2007
s 52A	inserted by 16/2001 s 4	14.6.2001
s 52A(2)	amended by 25/2006 s 28(1)	14.12.2006
s 52A(3)	<i>deleted by 25/2006 s 28(2)</i>	14.12.2006
s 52A(9)		
the authority	amended by 25/2006 s 28(3)	14.12.2006
s 53		
s 53(2)	amended by 17/2007 s 16(1)	26.4.2007
s 53(3)	amended by 17/2007 s 16(2)	26.4.2007
s 53(5)	amended by 39/2005 Sch 1 cl 6	17.11.2005
s 53A	inserted by 70/1997 s 6	1.1.1998
s 53A(1)	amended by 38/2006 s 4(1)	14.12.2006
	amended by 17/2007 s 17(1)	26.4.2007

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s 53A(2)	amended by 17/2007 s 17(2)	26.4.2007
s 53A(3)	inserted by 38/2006 s 4(2)	14.12.2006
s 54		
s 54(2)	amended by 17/2007 s 18	26.4.2007
s 54A	inserted by 3/2000 s 6	20.4.2000
s 54A(2)	amended by 17/2007 s 19	26.4.2007
s 54B	inserted by 3/2000 s 6	20.4.2000
s 55		
s 55(1)	amended by 79/2005 s 18(1)	uncommenced—not incorporated
s 55(3)	amended by 79/2005 s 18(2)	uncommenced—not incorporated
s 55(4)	amended by 17/2007 s 20	26.4.2007
s 55(5)	amended by 79/2005 s 18(3)	uncommenced—not incorporated
s 55(7)	inserted by 63/1996 s 8	2.1.1997
relevant authority	substituted by 79/2005 s 18(4)	uncommenced—not incorporated
s 56		
s 56(7)	inserted by 63/1996 s 9	2.1.1997
relevant authority	substituted by 79/2005 s 19	uncommenced—not incorporated
s 56A	inserted by 88/2000 s 23	2.7.2001
s 56A(1) and (2)	substituted by 15/2006 s 10(1)	23.11.2006
s 56A(3)	substituted by 15/2006 s 10(1)	23.11.2006
	amended by 17/2007 s 21	26.4.2007
s 56A(4)	substituted by 15/2006 s 10(1)	23.11.2006
s 56A(4a) and (4b)	inserted by 15/2006 s 10(1)	23.11.2006
s 56A(5)	amended by 15/2006 s 10(2)	23.11.2006
s 56A(6)	substituted by 15/2006 s 10(3)	23.11.2006
s 56A(7)	amended by 15/2006 s 10(4)—(6)	23.11.2006
s 56A(8)	amended by 15/2006 s 10(7)	23.11.2006
s 56A(9)	substituted by 15/2006 s 10(8)	23.11.2006
s 56A(10)	amended by 15/2006 s 10(9)	23.11.2006
s 56A(11)	amended by 15/2006 s 10(10)	23.11.2006
s 56A(12)	amended by 15/2006 s 10(11)—(13)	23.11.2006
s 56A(13)	amended by 15/2006 s 10(14)	23.11.2006
s 56A(14)	amended by 15/2006 s 10(15)	23.11.2006
s 56A(15)	amended by 15/2006 s 10(16), (17)	23.11.2006
s 56A(16)	amended by 15/2006 s 10(18)	23.11.2006
s 56A(18)	amended by 15/2006 s 10(19)	23.11.2006
s 56A(18a) and (18b)	inserted by 15/2006 s 10(20)	23.11.2006
s 56A(19)	substituted by 15/2006 s 10(21)	23.11.2006
s 56A(20)	amended by 15/2006 s 10(22), (23)	23.11.2006
s 56A(21)	amended by 15/2006 s 10(24), (25)	23.11.2006
s 56A(22)—(29)	inserted by 15/2006 s 10(26)	23.11.2006
s 56B	inserted by 79/2005 s 20	uncommenced—not incorporated

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## Pt 5

## s 57

s 57(1)	amended by 88/2000 s 24(a)	2.4.2001
s 57(1a) and (1b)	inserted by 61/2000 Sch cl 1(a)	16.11.2000
s 57(2)	amended by 88/2000 s 24(b)	2.4.2001
s 57(2a)—(2d)	inserted by 88/2000 s 24(c)	2.4.2001
s 57(2e)	inserted by 88/2000 s 24(c)	2.4.2001
	amended by 17/2007 s 22(1)	26.4.2007
	amended by 17/2007 s 22(2)	uncommenced—not incorporated
s 57(3)	amended by 61/2000 Sch cl 1(b)	16.11.2000
s 57(3a)	inserted by 53/1995 s 7	23.11.1995
	amended by 61/2000 Sch cl 1(c)	16.11.2000
s 57(3b)	inserted by 53/1995 s 7	23.11.1995
s 57(7)	amended by 88/2000 s 24(d)	2.4.2001
s 57(8)	amended by 61/2000 Sch cl 1(d)	16.11.2000
s 57(11)	amended by 61/2000 Sch cl 1(e)	16.11.2000
s 57(13)		
a greenway authority	inserted by 61/2000 Sch cl 1(f)	16.11.2000
owner	substituted by 88/2000 s 24(e)	2.4.2001
s 57A	inserted by 79/2005 s 21	20.4.2006
s 57A(8)	amended by 17/2007 s 23(1)	uncommenced—not incorporated
s 57A(9)	amended by 17/2007 s 23(2)	26.4.2007

## Pt 6

## Pt 6 Div 2

## s 59

s 59(1)	substituted by 88/2000 s 25(a)	2.7.2001
s 59(2)	amended by 88/2000 s 25(b)	2.7.2001
	amended by 17/2007 s 24(1)	26.4.2007
s 59(3)	amended by 17/2007 s 24(2)	26.4.2007

## Pt 6 Div 3

## s 60

s 60(2)	amended by 17/2007 s 25	26.4.2007
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## Pt 6 Div 4

## s 66

s 66(1) and (2)	substituted by 88/2000 s 26(a)	2.4.2001
s 66(3)	<i>deleted by 88/2000 s 26(a)</i>	2.4.2001
s 66(4)	amended by 88/2000 s 26(b)	2.4.2001
s 66(6)	amended by 17/2007 s 26	26.4.2007

## s 67

s 67(1)	amended by 17/2007 s 27	26.4.2007
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## s 68A

s 68A(1)	amended by 17/2007 s 28	26.4.2007
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s 70	(b) deleted by 88/2000 s 27	2.7.2001
s 71		
s 71(1)	substituted by 88/2000 s 28(a)	2.7.2001
s 71(1a)	inserted by 88/2000 s 28(a)	2.7.2001
s 71(2)	amended by 88/2000 s 28(b)	2.7.2001
s 71(3)	amended by 88/2000 s 28(c)	2.7.2001
s 71(6)	amended by 88/2000 s 28(d)	2.7.2001
s 71(7)—(9)	<i>deleted by 88/2000 s 28(e)</i>	2.7.2001
s 71(14)	amended by 88/2000 s 28(f)	2.7.2001
s 71(15)	amended by 39/2005 Sch 1 cl 7	17.11.2005
s 71(18)	substituted by 88/2000 s 28(g)	2.7.2001
s 71(19)	inserted by 88/2000 s 28(g)	2.7.2001
	amended by 40/2005 Sch 6 cl 3	1.10.2005
s 71(20)	inserted by 88/2000 s 28(g)	2.7.2001
s 71AA	inserted by 17/2007 s 29	uncommenced—not incorporated

**Pt 6 Div 6A** inserted by 88/2000 s 29

2.7.2001

**s 71A**

s 71A(4a)—(4c)	inserted by 79/2005 s 22	12.1.2006
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**Pt 7**

s 74		
s 74(2)	amended by 88/2000 s 30(a)	2.4.2001
s 74(5)	amended by 88/2000 s 30(b)	2.4.2001

**Pt 8**

s 75		
s 75(4)	amended by 63/1996 s 10(a)—(c)	2.1.1997
	amended by 25/2006 s 29(1)	14.12.2006
	amended by 17/2007 s 30(1)	26.4.2007
s 75(4a)	inserted by 63/1996 s 10(d)	2.1.1997
	amended by 25/2006 s 29(2)	14.12.2006
s 75(5)	amended by 63/1996 s 10(e)	2.1.1997
	amended by 88/2000 s 31	2.4.2001
s 75(6)	amended by 17/2007 s 30(2)	26.4.2007
s 75(7)	inserted by 17/2007 s 30(3)	26.4.2007
s 75A	inserted by 17/2007 s 31	26.4.2007
s 76		
s 76(2)	amended by 73/1999 s 8(a)	1.9.2000
s 76(3)	<i>deleted by 73/1999 s 8(b)</i>	1.9.2000

**Pt 11****Pt 11 Div 1**

s 84		
s 84(1)		
relevant authority	amended by 39/2005 Sch 1 cl 8	17.11.2005



	amended by 17/2007 s 32(1)	26.4.2007
s 84(2)	amended by 3/1997 s 7	1.9.1997
s 84(9)	amended by 63/1996 s 11	2.1.1997
s 84(10a)	inserted by 67/1996 s 13	2.1.1997
s 84(11)	amended by 17/2007 s 32(2), (3)	26.4.2007
s 85		
s 85(1)	amended by 3/1997 s 8	1.9.1997
s 85(4)	amended by 17/2006 s 107(1), (2)	4.9.2006
s 85(6)	amended by 3/1997 s 8	1.9.1997
s 85(11)	amended by 17/2006 s 107(3)	4.9.2006
s 85(15)	amended by 76/1993 Sch 2 cl 4(n)	1.5.1995
s 85(16)	amended by 3/1997 s 8	1.9.1997
s 85(17a)	inserted by 67/1996 s 14	2.1.1997
Pt 11 Div 2		
s 86		
s 86(1)	amended by 76/1993 Sch 2 cl 4(o)	1.5.1995
	amended by 70/1997 s 7	1.1.1998
	amended by 17/2007 s 33(1)—(3)	26.4.2007
s 86(1a)	inserted by 17/2007 s 33(4)	26.4.2007
s 86(3a)—(3c)	inserted by 88/2000 s 32(a)	2.4.2001
s 86(5)	substituted by 88/2000 s 32(b)	2.4.2001
s 87		
s 87(1)	amended by 88/2000 s 33(a)	2.4.2001
s 87(2)	amended by 70/1997 s 8	1.1.1998
	amended by 88/2000 s 33(b)	2.4.2001
s 88		
s 88(1)	s 88 amended and redesignated as s 88(1) by 17/2007 s 34(1), (2)	26.4.2007
s 88(2)	inserted by 17/2007 s 34(2)	26.4.2007
Pt 11 Div 3	inserted by 88/2000 s 34	2.4.2001
Pt 12		
s 89		
s 89(1)	amended by 3/1997 s 9(a)	1.9.1997
s 89(2a)	inserted by 3/1997 s 9(b)	1.9.1997
s 89(3)	amended by 17/2007 s 35	26.4.2007
s 89(6)	substituted by 3/1997 s 9(c)	1.9.1997
	amended by 79/2005 s 23	12.1.2006
s 92		
s 92(1)	amended by 79/2005 s 24	12.1.2006
s 93		
s 93(1)	s 93(b)(ii) deleted by 3/1997 s 10(a)	1.9.1997
	s 93 amended by 3/1997 s 10(b)	1.9.1997
	s 93 redesignated as s 93(1) by 79/2005 s 25	12.1.2006

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s 93(2)	inserted by 79/2005 s 25	12.1.2006
s 97		
s 97(1)	amended by 17/2007 s 36(1)	26.4.2007
s 97(2)	amended by 17/2007 s 36(2)	26.4.2007
s 97(4)	amended by 17/2007 s 36(3)	26.4.2007
s 97(5)	amended by 17/2007 s 36(4)	26.4.2007
s 98	<i>deleted by 3/1997 s 11</i>	1.9.1997
Pt 13		
s 98	inserted by 23/2004 s 8	1.9.2004
s 101A	inserted by 25/2006 s 30	uncommenced—not incorporated
s 101A(2)	amended by 20/2007 s 98	uncommenced—not incorporated
s 108		
s 108(2)	amended by 79/2005 s 26(1)	12.1.2006
s 108(7)	amended by 53/1995 s 9	23.11.1995
	substituted by 79/2005 s 26(2)	12.1.2006
s 108(9)	deleted by 18/1994 Sch cl 1	12.5.1994
	inserted by 15/2006 s 11	23.11.2006
Sch 1	Sch redesignated as Sch 1 by 79/2005 s 27	12.1.2006
heading	substituted by 79/2005 s 27	12.1.2006
item 6A	inserted by 88/2000 s 35	2.4.2001
item 9	substituted by 15/2006 s 12	23.11.2006
item 10	amended by 17/2007 s 37(1)	26.4.2007
item 10A	inserted by 17/2007 s 37(2)	26.4.2007
item 17A	inserted by 17/2007 s 37(3)	26.4.2007
item 45	amended by 17/2007 s 37(4)	26.4.2007
item 46	inserted by 79/2005 s 28	12.1.2006
	amended by 17/2007 s 37(5)	26.4.2007
Sch 2	inserted by 15/2006 s 13	23.11.2006
cl 1		
cl 1(1)		
family	amended by 43/2006 s 91	1.6.2007

## Transitional etc provisions associated with Act or amendments

*Statutes Repeal and Amendment (Development) Act 1993, ss 3, 15—29 (as amended by Development (Major Development Assessment) Amendment Act 1996, s 13, the Development (Private Certification) Amendment Act 1997, s 12, the Statutes Repeal and Amendment (Development) (Environmental Impact Statements) Amendment Act 1997, s 3 and the Development (Building Rules) Amendment Act 1997, s 9)*

### 3—Interpretation

In this Act—

*the relevant day* means a day fixed by proclamation as the relevant day for the purposes of this Act.

Note—

The relevant day has been fixed as 15 January 1994 (*Gazette* 27.10.1993 p1889)

### 15—General

- (1) A reference in any Act, regulation, rule, by-law or other instrument to the *Planning Act 1982*, or to the *Real Property Act 1886* (insofar as the reference relates to Part 19AB of that Act (as repealed by this Act)), will, unless the contrary intention appears, to be taken to include a reference to the *Development Act 1993*.
- (2) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Act, apply to any repeal or amendment effected by this Act.
- (3) For the purpose of the application of the *Acts Interpretation Act 1915*, this Act and the *Development Act 1993* will be read together and construed as if the two Acts constituted a single Act.

### 16—Development Plans

- (1) The following are adopted and applied as Development Plans under the *Development Act 1993*:
  - (a) for each area of a council (other than the City of Adelaide)—that Council portion of the Development Plan under the *Planning Act 1982*, together with the relevant regional part of the Development Plan under that Act, in effect immediately before the relevant day;
  - (b) for the City of Adelaide—the Principles established under Part 2 of the *City of Adelaide Development Control Act 1976* in effect immediately before the relevant day;
  - (c) for any part of the State outside an area of a council—the relevant "out-of-Council" part of the Development Plan under the repealed Act, together with the relevant regional part of the Development Plan under the repealed Act, in effect immediately before the relevant day.

- (2) Subject to this section, a Supplementary Development Plan which, before the relevant day, is prepared or accepted by the Minister as a basis for public submissions under section 41 of the *Planning Act 1982* will continue to be subject to the provisions of the *Planning Act 1982* (as if that Act had not been repealed) until it is approved or laid aside by the Minister under section 41(11b) of that Act, and then will be subject to the *Development Act 1993*.
- (3) A Supplementary Development Plan which before the relevant day has been approved by the Minister under section 41(11b) of the *Planning Act 1982* will continue to be subject to the provisions of the *Planning Act 1982* (as if that Act had not been repealed) until the plan is disallowed or brought into action (and, where the plan is brought into action, it will be taken that the amendments effected by the Supplementary Development Plan are amendments to the relevant Development Plan under the *Development Act 1993*).
- (4) A Supplementary Development Plan prepared or accepted by the Minister more than three years before the relevant day that has not been approved by the Minister under section 41(11b) of the *Planning Act 1982* before the relevant day has no further effect.
- (5) A Supplementary Development Plan given interim effect under section 43 of the *Planning Act 1982* before the relevant day will be considered part of the Development Plan for the purposes of subsection (1) (but will continue to be subject to the operation of sections 41 and 43 of the *Planning Act 1982* until it ceases to operate under section 43 of that Act or, if relevant, is superseded by an amendment to a Development Plan under the *Development Act 1993*).
- (6) An amendment to the Principles given notice under section 7(3) of the *City of Adelaide Development Control Act 1976* before the repeal of that Act may continue to the approval stage under section 10 of that Act (as if that Act had not been repealed), and any amendment effected under section 10 of that Act will, for the purposes of this Act, be considered to be an authorised amendment to a Development Plan under the *Development Act 1993*.
- (7) A regulation (whether under the *Planning Act 1982* or any other Act) in effect immediately before the relevant day may be made as a regulation under the *Development Act 1993* without the need to comply with Part 1 of the *Development Act 1993*.
- (8) An advertisement published before the relevant day under section 42A(5) of the *Planning Act 1982* in relation to a proposed regulation will be taken to be a notice published by the Advisory Committee under Part 1 of the *Development Act 1993*.
- (9) Where a regulation has been publicly exhibited under section 44(3)(a) of the *City of Adelaide Development Control Act 1976* before the relevant day, the proposed regulation (with or without modification) may, with the approval of the Minister, be incorporated into the Development Plan that applies in the area of the City of Adelaide without complying with any procedure set out in the *Development Act 1993*.
- (10) A reference in the Development Plan under the *Planning Act 1982*, or in any Act, regulation, rule, by-law or other instrument, to development which is "permitted" or "prohibited" under section 47 of the *Planning Act 1982* will be taken respectively as a reference to complying or non-complying development under the *Development Act 1993*.

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- (11) A reference in the Development Plan under the *Planning Act 1982*, or in any Act, regulation, rule, by-law or other instrument, to development which is "permitted" subject to a certificate will be taken as a reference to a complying development under the *Development Act 1993* subject to the relevant authority under that Act being satisfied as to those matters to which the certificate relates.
  - (12) A reference to development or use of land as "prohibited" in the Principles made under Part 2 of the *City of Adelaide Development Control Act 1976* will be taken as a reference to non-complying development under the *Development Act 1993*, and development that would contravene the requirements of a diagram in the Principles made under Part 2 of the *City of Adelaide Development Control Act 1976* will also be classified as non-complying development under the *Development Act 1993*.
  - (13) The Schedule entitled the Register of City of Adelaide Heritage Items set out in the *City of Adelaide Development Control Regulations 1987* is, subject to amendment under the *Development Act 1993*, declared to be a part of the Development Plan that applies in the area of the City of Adelaide, and a reference to the Register in the Principles in that Plan will be construed accordingly.
  - (14) In the event of any inconsistency between the Principles under Part 2 of the *City of Adelaide Development Control Act 1976* and a regulation under the *Development Act 1993*, the Principles will prevail.
  - (15) If any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day sets out, provides for or otherwise affects any procedure relating to the formulation, consideration, amendment or approval of a Supplementary Development Plan, it will be taken that that Act, regulation, rule, by-law or other instrument also operates in the same manner with respect to any relevant amendment to a Development Plan under the *Development Act 1993*.
  - (16) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the referral of a Supplementary Development Plan, or any report relating to a Supplementary Development Plan, to the Advisory Committee under that Act will be taken to include a reference to the referral of a Plan Amendment Report, or any other report relating to an amendment to a Development Plan, to the Advisory Committee under the *Development Act 1993*.
  - (17) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the public display of, or public consultation on, a Supplementary Development Plan will be taken to include a reference to the public display of, or public consultation on, a Plan Amendment Report (and the relevant Development Plan amendment) under the *Development Act 1993*.
  - (18) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to those provisions of the *Planning Act 1982* that relate to the referral of a Supplementary Development Plan to the Environment, Resources and Development Committee under that Act will be taken to include a reference to the referral of an amendment to a Development Plan to the Environment, Resources and Development Committee under the *Development Act 1993*.
  - (19) A reference in any Act, regulation, rule, by-law or other instrument—
    - (a) to the Development Plan under the *Planning Act 1982*; or
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- (b) to a Supplementary Development Plan that has been approved under the *Planning Act 1982*,

will be taken to be a reference to the relevant Development Plan under the *Development Act 1993*.

## 17—Division of land

- (1) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to a "Statement of Requirements" issued by a council under the *Real Property Act 1886* will be taken to include a reference to any conditions imposed under section 33(1)(c) of the *Development Act 1993*.
- (2) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to a "Statement of Requirements" issued by the South Australian Planning Commission under the *Real Property Act 1886* will be taken to include a reference to any conditions imposed under section 33(1)(c) of the *Development Act 1993*, and to any conditions or terms imposed or required under section 51 of the *Development Act 1993*.
- (3) A reference in any Act, regulation, rule, by-law or other instrument in effect immediately before the relevant day to any Certificate of Approval under Part 19AB of the *Real Property Act 1886* will be taken to include a reference to a certificate under section 51 of the *Development Act 1993*.
- (4) Subject to subsection (5), a division proposal lodged or granted approval under the *Planning Act 1982* prior to the relevant day may be the subject of applications for Certificates of Approval under Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988* (as in force immediately before the relevant day as if the *Development Act 1993* and this Act had not been enacted), provided that any approval under the *Planning Act 1982* has not lapsed.
- (5) Subsection (4) is subject to the qualification that section 50 of the *Development Act 1993* will apply in relation to the proposal instead of the relevant provision of Part 19AB of the *Real Property Act 1886*.
- (6) A Certificate of Approval under Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988* in force immediately before the relevant day will continue in force and effect notwithstanding any repeal or amendment effected by this Act, and may be dealt with as if the *Development Act 1993* and this Act had not been enacted.

## 18—Environmental impact statements

- (1) An environmental impact statement officially recognised under the *Planning Act 1982* will be taken to be an environmental impact statement under the *Development Act 1993* (but not so as to impose any additional or other procedure that is inconsistent with a procedure under the *Planning Act 1982*).

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- (2) A requirement for an environmental impact statement under the *Planning Act 1982* or the *City of Adelaide Development Control Act 1976* will be taken to be a requirement imposed under the *Development Act 1993*, and an environmental impact statement which was the subject of notice under the *Planning Act 1982* or the *City of Adelaide Development Control Act 1976* before the relevant day may, provided that such notice was given not more than three years prior to the relevant day, continue to the stage of official recognition under either Act (as if the Act had not been repealed), and then will be taken to be an environmental impact statement under the *Development Act 1993*.
  - (3) A development that is the subject of an environmental impact statement officially recognised under the *Planning Act 1982* (including by virtue of this section and including an environmental impact statement that is then amended under the *Development Act 1993*) will be assessed under section 48 of the *Development Act 1993* (being, from the commencement of the *Development (Major Development Assessment) Amendment Act 1996*, section 48 as amended by that Act and despite subsection (1) of that section).
  - (4) An environmental impact statement officially recognised under the *Planning Act 1982* will be taken to have been prepared in accordance with the requirements of Division 2 of Part 4 of the *Development Act 1993* (and, subject to any amendment under that Division, to be sufficient for the purposes of that Division, including as to the preparation of an Assessment Report).
  - (5) An assessment report prepared for the purposes of an environmental impact statement under the *Planning Act 1982* will be taken to be an Assessment Report under the *Development Act 1993*.
  - (6) A requirement for an environmental impact statement under section 46 of the *Development Act 1993* before the commencement of the *Development (Major Development Assessment) Amendment Act 1996* will continue in force and effect as if it were a determination of the Major Developments Panel under section 46 of the *Development Act 1993* (and, subject to any regulations under the *Development Act 1993*, on the basis that the provisions of the *Development Act 1993* (as amended by the *Development (Major Development Assessment) Amendment Act 1996*) will then apply to any process commenced by virtue of that requirement from the stage reached immediately before the commencement of the *Development (Major Development Assessment) Amendment Act 1996*).
  - (7) A development that is the subject of an environmental impact statement under the *Development Act 1993* by virtue of the operation of section 46 or 48 of that Act before the commencement of the *Development (Major Development Assessment) Amendment Act 1996* or by virtue of this section (including an environmental impact statement that is amended after the commencement of the *Development (Major Development Assessment) Amendment Act 1996*) will be assessed under section 48 of the *Development Act 1993* (being, from the commencement of the *Development (Major Development Assessment) Amendment Act 1996*, section 48 as amended by that Act and despite subsection (1) of that section).

## 19—Declarations

A declaration made under section 50 of the *Planning Act 1982* will continue in force and effect as if it were a declaration of the Governor under the corresponding provision of the *Development Act 1993*.

## 20—Agreements

An agreement in force under section 61 of the *Planning Act 1982* immediately before the relevant day will be taken to be an agreement under the corresponding provision of the *Development Act 1993* (and will have the same force and effect as it had immediately before the relevant day).

## 21—Proclamation of open space

A proclamation made under section 62 of the *Planning Act 1982* (or made under section 61 of the *Planning and Development Act 1966* or section 29 of the *Town Planning Act 1929*) will continue in force and effect as if the *Planning Act 1982* had not been repealed (and that Act will be taken to continue to apply in relation to any such proclamation).

## 22—Development schemes

A scheme in force under section 63 of the *Planning Act 1982* immediately before the relevant day will continue in force and effect as if that Act had not been repealed (and that Act will be taken to continue to apply in relation to any such scheme).

## 23—Approved qualifications

An approval under section 73 of the *Planning Act 1982* will be taken to be an approval under the corresponding provision of the *Development Act 1993* (subject to the conditions (if any) that applied to the approval under the *Planning Act 1982*).

## 24—Existing procedures etc

- (1) A reference in any Act, regulation, rule, by-law or other instrument to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to a Building Referee, will be taken to be a reference to the Environment, Resources and Development Court.
- (2) Except as otherwise provided by this Act, an application, appeal or other proceeding commenced under the *Planning Act 1982*, any Act that was repealed by the *Planning Act 1982*, the *City of Adelaide Development Control Act 1976*, the *Building Act 1971*, Part 19AB of the *Real Property Act 1886* or the *Strata Titles Act 1988*, or regulations under those Acts, but which had not been finally determined at the relevant day, may be continued and completed as if the *Development Act 1993* and this Act had not been enacted, except that a reference to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to a Building Referee, will be taken as a reference to the Environment, Resources and Development Court.
- (3) A right of appeal in existence before the relevant day may be exercised as if the *Development Act 1993* and this Act had not been enacted, except that a reference to the Planning Appeal Tribunal or City of Adelaide Planning Appeals Tribunal, or to or a Building Referee, will be taken as a reference to the Environment, Resources and Development Court.
- (4) Any proceedings before the Planning Appeal Tribunal, the City of Adelaide Planning Appeals Tribunal or a Building Referee immediately before the relevant day will, subject to such directions as the Presiding Member of the Court thinks fit, be transferred to the Environment, Resources and Development Court where they may proceed as if they had been commenced before that Court.



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- (5) The Environment, Resources and Development Court may—
- (a) receive in evidence any transcript of evidence in proceedings before the tribunal or referee before which the proceedings were commenced, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of that tribunal or referee that may be relevant to the proceedings.
- (6) A development application lodged or approved under the *Planning Act 1982* or *City of Adelaide Development Control Act 1976* for building work prior to the relevant day may be the subject of application for approval under the *Building Act 1971* following its repeal, provided that any approval under the *Planning Act 1982* or *City of Adelaide Development Control Act 1976* has not lapsed.
- (7) A condition attached to, or applying in relation to, an approval or authorisation granted under the *Planning Act 1982*, the *City of Adelaide Development Control Act 1976* or the *Building Act 1971* will remain in force as if granted under the *Development Act 1993* and bind the owners and occupiers of the land to which the condition relates.
- (8) The repeal of any Act by this Act does not affect any rights that accrued under the Act so repealed, the validity of any decision or authorisation made or granted under the Act so repealed, or any notice or order given or made under the Act so repealed.

## 25—Administrative arrangements

- (1) Any power, duty, function or obligation vested in the South Australian Planning Commission or the City of Adelaide Planning Commission immediately before the relevant day (other than in respect of Part 2 of the *City of Adelaide Development Control Act 1976*) is exercisable by, or attaches to, the Development Assessment Commission under the *Development Act 1993*.
- (2) Any power, duty, function or obligation vested in the Advisory Committee on Planning, the Building Advisory Committee or the City of Adelaide Planning Commission in respect of Part 2 of the *City of Adelaide Development Control Act 1976* immediately before the relevant day is exercisable by, or attaches to, the Advisory Committee under the *Development Act 1993*.
- (3) A reference in any Act, regulation, rule, by-law or other instrument to the Metropolitan Planning Area, or to Metropolitan Adelaide, as constituted or defined under the *Planning Act 1982* will, unless the contrary intention appears, be taken as a reference to Metropolitan Adelaide under the *Development Act 1993*.
- (4) A reference in any Act, regulation, rule, by-law or other instrument to a planning authority or planning authorisation under the *Planning Act 1982* will, unless the contrary intention appears, be taken to include a reference to a relevant authority or development authorisation (as the case may be) under the *Development Act 1993*.

## 26—Lapse of approvals under the Planning and Development Act

Any development approval granted and current at the relevant day under the *Planning and Development Act 1966* will lapse at the expiration of 12 months from commencement of this Act unless—

- (a) the approval is, as at the relevant day, subject to any proceedings before a court or tribunal constituted by law; or

- (b) the development had substantially commenced prior to that time; or
- (c) if land division, application for division has been lodged with the Registrar-General; or
- (d) application for extension is granted in response to application under the *Development Act 1993*; or
- (e) the approval has been specifically granted for a longer specific period.

## 27—Certificates of classification

A certificate of classification issued under the *Building Act 1971* in force immediately before the relevant day will be taken to be a certificate of occupancy under the *Development Act 1993*.

## 28—Buildings specifically

- (1) Except as otherwise expressly provided by the *Development Act 1993* or the regulations under that Act, a building that was lawfully erected or constructed before the relevant day or was taken pursuant to the *Building Act 1971* to conform with the provisions of that Act will be taken to conform with the *Development Act 1993* if—
  - (a) it conformed with the law of this State as in force at the time of its erection or construction; or
  - (b) where it has been altered since the time of its erection or construction, the alteration has been made pursuant to the law of this State as in force at the time of the alteration, or pursuant to the *Development Act 1993*.

## 29—Existing appointments

- (1) Subject to subsection (2), a person who was, immediately before the relevant day, a full-time commissioner of the Tribunal under the *Planning Act 1982* will continue in office as a commissioner of the Environment, Resources and Development Court on the same terms and conditions as applied to the person immediately before the relevant day.
- (2) A person to whom subsection (1) applies must retire—
  - (a) on or before the retirement age that applied to the person immediately before the relevant day; or
  - (b) if no such retirement age applied—on or before the person attains the age of 65 years or, if he or she has attained that age before the relevant day, on the relevant day.

## ***Development (Major Development Assessment) Amendment Act 1996***

### **14—Transitional provisions**

- (1) A declaration made under section 48 of the principal Act before the commencement of this Act (including a declaration under section 50 of the *Planning Act 1982* continued in force by virtue of the *Statutes Repeal and Amendment (Development) Act 1993*) will continue in force and effect as if it were a declaration of the Minister under section 46 of the principal Act (as amended by this Act) (and, subject to the regulations, on the basis that the provisions of the principal Act (as amended by this Act) will then apply to any process commenced by virtue of that declaration from the stage reached immediately before the commencement of this Act).
- (2) Section 48E of the principal Act, as enacted by this Act, does not apply so as to affect the rights of any person in respect of a proposed development or project that has been the subject of Supreme Court proceedings relating to an application under Division 1 of Part 4 of the principal Act commenced before 30 July 1996 (even if those proceedings have been settled or determined).
- (3) For the purposes of subsection (2), a proposed development or project that is a variation on a proposed development or project that has been the subject of Supreme Court proceedings will be taken to have also been the subject of Supreme Court proceedings before the relevant date (provided that the essential nature of the development or project has not changed).

## ***Development (Significant Trees) Amendment Act 2000***

### **7—Transitional provision**

The inclusion of paragraph (fa) in the definition of *development* in section 4 of the principal Act does not affect, or apply in relation to, any activity that is within the scope of, or undertaken for the purposes of, a development that is the subject of an application, or that is within the ambit of an approval, under Part 4 of the principal Act before the commencement of this section.

## ***Development (System Improvement Program) Amendment Act 2000,*** ***Sch 2—Transitional provisions***

- 1 (1) This clause sets out the transitional provisions that relate to the amendment of sections 25, 27 and 28 of the principal Act by this Act.
- (2) If, immediately before the commencement of this clause, agreement has not been reached on a Statement of Intent under section 25(1) and (2) of the principal Act, sections 25, 27 and 28 of the principal Act, as amended by this Act, will apply to any proposed amendment to a Development Plan under section 25 of the principal Act.
- (3) If, immediately before the commencement of this clause, agreement has been reached on a Statement of Intent but the council has not released a Plan Amendment Report for public consultation under subsections (11) and (12) of section 25 of the principal Act (as in existence immediately before the commencement of this clause), then the council may proceed to the public consultation stage set out in those subsections and thereafter section 25(13), (14), (15), (16), (17) and (18), and sections 27 and 28, of the principal Act, as enacted or amended by this Act, will apply.

- (4) A council must, before releasing a report for public consultation under subclause (3), ensure that the chief executive officer of the council issues a certificate that complies with the requirements of section 25(6)(b) of the principal Act, as enacted by this Act, and thereafter section 25(10) and (11) of the principal Act, as enacted by this Act, will apply with respect to that certificate.
- (5) If, immediately before the commencement of this clause, a council has reached (or passed) the stage referred to in subclause (3) but not reached the end of the stages set out in subsections (13) and (14) of section 25 of the principal Act (as in existence immediately before the commencement of this clause), then the council may proceed to the end of the stages set out in those subsections and thereafter—
  - (a) the Minister will give notice of any approval in accordance with section 25(17) and (18) of the principal Act, as enacted by this Act; and
  - (b) sections 27 and 28 of the principal Act, as amended by this Act, will apply.
- (6) If, immediately before the commencement of this clause, the Minister has approved an amendment under section 25(14) of the principal Act (as in existence immediately before the commencement of this clause) but the Governor has not declared the amendment to be an authorised amendment under the principal Act, then—
  - (a) the Minister will give notice of the approval in accordance with section 25(17) and (18) of the principal Act, as enacted by this Act; and
  - (b) sections 27 and 28 of the principal Act, as amended by this Act, will apply.
- 2 A register of agreements under Part 5 of the principal Act established under section 57 of the principal Act (as amended by this Act) need only relate to agreements entered into after the commencement of this clause (but may relate to agreements entered into before that commencement).
- 3 The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.

***Local Government (Lochiel Park Lands) Amendment Act 2005,***  
***Sch 1—Amendment of Development Plan***

**1—Interpretation**

In this Schedule—

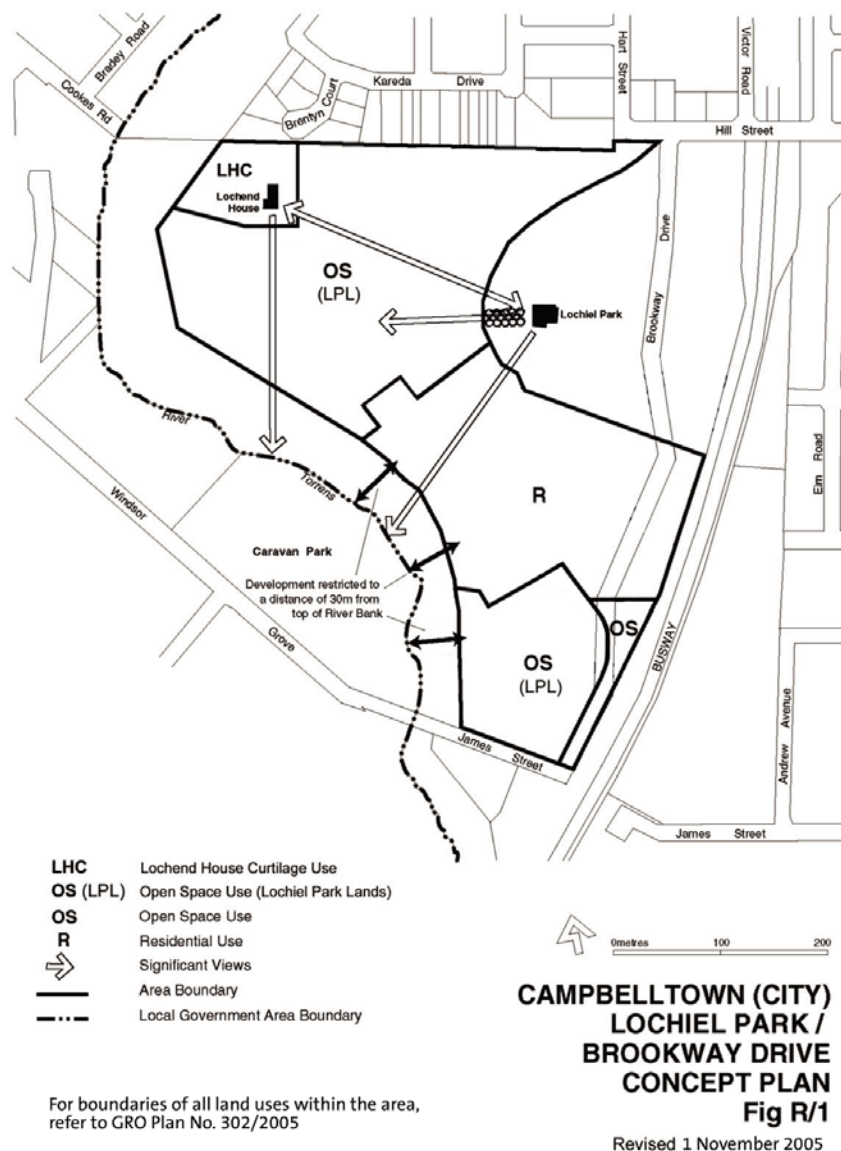
***Development Plan*** means the Development Plan under the *Development Act 1993* that relates to Campbelltown (City), as consolidated on 10 March 2005.

**2—Amendment of Development Plan**

The Development Plan is amended in the following manner:

- (a) page 59, under the heading "Campbelltown Desired Future Character Statement", fourth paragraph—after "and to be utilised" insert:

, as the Lochiel Park Lands in accordance with Schedule 8 clause 11 of the *Local Government Act 1999*,
- (b) Concept Plan Figure R/1—delete Concept Plan Figure R/1 and substitute:



- (c) page 63, under the heading "Lochiel Park", principle number 5—after "and to be utilised" insert:

, as the Lochiel Park Lands in accordance with Schedule 8 clause 11 of the *Local Government Act 1999*,

### ***Development (Panels) Amendment Act 2006, Sch 1***

### **3—Transitional provisions**

- (1) The Governor may, by regulation, make provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of regulations made under this Schedule, apply to any amendment effected by this Act.

### ***Development (Development Plans) Amendment Act 2006, Sch 1—Transitional provisions***

#### **4—Interpretation**

In this Part—

*principal Act* means the *Development Act 1993*.

#### **5—Plan Amendment Reports**

- (1) If a council has, before the commencement of this clause, reached an agreement with the Minister on a Statement of Intent with respect to an amendment to a Development Plan, or taken steps to prepare a Plan Amendment Report on the basis of such a Statement of Intent, then, subject to subclause (2), the council may continue with the process as set out in section 25 of the principal Act (as in force immediately before the commencement of this clause) as if this Act had not been enacted until the relevant amendment is approved (with or without alteration) or otherwise dealt with by the Minister under section 25(15) of the principal Act, subject to the qualification that the relevant Plan Amendment Report may be referred to as a Development Plan Amendment.
- (2) A council and the Minister may agree on a Statement of Intent that is to supersede a Statement of Intent agreed between the council and Minister before the commencement of this clause (and in such a case the process will continue under section 25 of the principal Act as amended by this Act).
- (3) A Plan Amendment Report which, before the commencement of this clause—
  - (a) was prepared on the basis of a Statement of Intent that does not specify any relevant periods for the purposes of section 25(19) of the principal Act; and
  - (b) was released for public consultation at least 5 years before that commencement; but
  - (c) has not been approved by the Minister under section 25 of the principal Act within 6 months after that commencement,will, at the expiration of 6 months after that commencement, lapse by force of this subclause unless the Minister, by notice in the Gazette, exempts the Plan Amendment Report from the operation of this subclause.
- (4) A notice under subclause (3) may relate to a particular Plan Amendment Report or to all Plan Amendment Reports within a particular class.

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- (5) A period prescribed by regulations made for the purposes of subsection (20) of section 25 of the principal Act (as amended by this Act) may extend to (and operate in relation to) a Plan Amendment Report prepared before the commencement of this clause.
  - (6) A Plan Amendment Report which, before the commencement of this clause, has been initiated by the Minister under section 26(1) of the principal Act (as in force immediately before that commencement) may continue to be subject to the provisions of the principal Act as if this Act had not been enacted until the relevant amendment is approved (with or without alteration) or otherwise dealt with by the Minister under section 26(8) of the principal Act, subject to the qualification that the relevant Plan Amendment Report may be referred to as a Development Plan Amendment.
  - (7) The Development Plan Amendment entitled "City of Onkaparinga—Coromandel Valley Desired Character (Stage 2) Plan Amendment" approved by the Minister under section 25(15) of the principal Act by notice in the *Gazette* on 23 February 2006 is again referred by force of this subclause to the Environment, Resources and Development Committee of the Parliament under section 27(1) of the principal Act (and section 27 of the principal Act will then apply again in relation to the amendment as if the amendment had been referred by the Minister on the commencement of this subclause under subsection (1) of that section).

## 6—Strategic Directions Reports

*Note—*

*Clause 6 had not come into operation at the date of the publication of this version.*

- (1) *For the purposes of section 30(2)(b) of the principal Act (as enacted by this Act), a report received by the Minister under section 30 of the principal Act before the commencement of this clause will be taken to be a completed report.*
- (2) *Subject to any determination or direction of the Minister under this subclause, any process or procedure commenced under section 30 of the principal Act before the commencement of this clause may be continued and applied for the purposes of section 30 of the principal Act as enacted after the commencement of this clause.*

## 7—Major Developments Panel

If, in relation to a declaration under section 46 of the principal Act made before the commencement of this clause—

- (a) the Major Developments Panel has not, before that commencement, proceeded to the stage of publishing a notice under section 46(8)(b) of the principal Act (as in force immediately before that commencement), the Development Assessment Commission will assume the role of the Major Developments Panel and proceed to deal with the matter under the principal Act as amended by this Act (and for this purpose the Development Assessment Commission may adopt any decision or document made or prepared by the Major Developments Panel in relation to the matter);
- (b) the Major Developments Panel has, before that commencement, proceeded to the stage of publishing a notice under section 46(8)(b) of the principal Act (as in force immediately before that commencement), the Major Developments Panel will continue in existence and continue to deal with the matter under the principal Act as if this Act had not been enacted.

## 8—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.

## Historical versions

Reprint No 1—12.5.1994  
Reprint No 2—1.5.1995  
Reprint No 3—27.10.1995  
Reprint No 4—23.11.1995  
Reprint No 5—4.11.1996  
Reprint No 6—2.1.1997  
Reprint No 7—2.7.1997  
Reprint No 8—1.9.1997  
Reprint No 9—1.1.1998  
Reprint No 10—29.7.1999  
Reprint No 11—20.4.2000  
Reprint No 12—1.9.2000  
Reprint No 13—16.11.2000  
Reprint No 14—2.4.2001  
Reprint No 15—14.6.2001  
Reprint No 16—2.7.2001  
Reprint No 17—4.5.2002  
Reprint No 18—24.11.2003  
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1.9.2004  
1.7.2005  
1.10.2005  
17.11.2005  
8.12.2005  
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20.4.2006  
4.9.2006



23.11.2006  
14.12.2006  
22.3.2007 (electronic only)  
26.4.2007  
1.6.2007  
1.7.2007

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*