

(Reprint No. 1)

**SOUTH AUSTRALIA**

**SOUTH AUSTRALIAN HERITAGE ACT, 1978**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 January 1992.*

*It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 14 August 1989.*

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# SOUTH AUSTRALIAN HERITAGE ACT, 1978

being

South Australian Heritage Act, 1978, No. 42 of 1978 [Assented to 6 April 1978]<sup>1</sup>

as amended by

South Australian Heritage Act Amendment Act (No. 2), 1979, No. 30 of 1979 [Assented to 15 March 1979]  
South Australian Heritage Act Amendment Act, 1980, No. 83 of 1980 [Assented to 27 November 1980]<sup>2</sup>  
Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]<sup>3</sup>  
South Australian Heritage Act Amendment Act, 1985, No. 89 of 1985 [Assented to 3 October 1985]<sup>4</sup>  
South Australian Heritage Act Amendment Act (No. 2), 1985, No. 90 of 1985 [Assented to 3 October 1985]<sup>5</sup>  
Aboriginal Heritage Act, 1988, No. 12 of 1988 [Assented to 17 March 1988]<sup>6</sup>  
Statute Law Revision Act, 1989, No. 39 of 1989 [Assented to 4 May 1989]<sup>7</sup>  
Native Vegetation Management Act 1991 No. 16 of 1991 [Assented to 18 April 1991]<sup>8</sup>

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.*

**An Act to preserve, protect and enhance the environmental, social and cultural heritage of the State; and for other purposes.**

The Parliament of South Australia enacts as follows:

## PART I PRELIMINARY

### Short title

1. This Act may be cited as the *South Australian Heritage Act, 1978*.

\* \* \* \* \*  
\* \* \* \* \*

### Interpretation

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

“the Authority” in relation to a heritage agreement means—

(a) where the Corporation is a party to a heritage agreement, the Corporation;

<sup>1</sup>Came into operation 6 July 1978: *Gaz.* 6 July 1978, p. 5.

<sup>2</sup>Came into operation 1 January 1981: *Gaz.* 18 December 1980, p. 2216.

<sup>3</sup>Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

<sup>4</sup>Came into operation 21 November 1985: *Gaz.* 21 November 1985, p. 1542.

<sup>5</sup>Came into operation 21 November 1985: *Gaz.* 7 November 1985, p. 1361.

<sup>6</sup>Came into operation 1 March 1989: *Gaz.* 9 February 1989, p. 354.

<sup>7</sup>Came into operation (except Sched. 2) 19 June 1989: *Gaz.* 25 May 1989, p. 1395; Sched. 2 came into operation 14 August 1989: *Gaz.* 3 August 1989, p. 300.

<sup>8</sup>Came into operation 18 April 1991: *Gaz.* 18 April 1991, p. 1294.

N.B. The amendments effected to this Act by the Statutes Amendment (State Heritage Conservation Orders) Act 1991 had not been brought into operation at the date of, and have not been included in, this reprint.

(ab) where the agreement was entered into under the *Native Vegetation Management Act 1985* or the *Native Vegetation Act 1991*, the Minister for the time being responsible for the administration of the *Native Vegetation Act 1991*;

(ac) where the agreement was entered into by the Minister responsible for the administration of the *Aboriginal Heritage Act, 1988*, that Minister;

or

(b) where a body corporate, acting with the approval of the Minister, enters into a heritage agreement, that body corporate:

“the Committee” means the *South Australian Heritage Committee* established under section 5:

“the Corporation” means the *Trustee of the State Heritage* established under section 17:

“the Fund” means the *State Heritage Fund* established under section 19:

“heritage agreement” means a heritage agreement under Part IIIA:

“inspector” means a person appointed as an inspector by the Minister pursuant to Part V:

“interim list” means a list of Items compiled pursuant to section 15:

“Item” means any land, building or structure and includes part of a building or structure:

“member” in relation to the Committee, includes the member for the time being appointed to preside at meetings of the Committee and the deputy of a member while acting as such:

“owner” in relation to land means—

(a) where the land is unalienated from the Crown, the Crown;

(b) where the land is alienated from the Crown by grant in fee simple, the owner of the estate in fee simple;

(c) where the land is held of the Crown by lease, the lessee;

or

(d) where the land is held of the Crown under an agreement to purchase, the person on whom the right of purchase is conferred by the agreement,

and includes a mortgagee or encumbrancee in possession of the land:

“Register” means the *Register of State Heritage Items* kept under section 11:

“Registered Item” means an item which is for the time being registered in the appropriate Register under section 12:

“State Heritage Area” means an area designated as a State Heritage Area under section 13 and includes part of such an area.

(2) In this Act, a reference to public notice is a reference to a notice published—

(a) in the *Gazette*;

and

(b) in a newspaper circulating throughout the State or a substantial part of the State.

*Note: For definition of divisional penalties see Appendix 2.*

#### **Act binds Crown**

4a. This Act binds the Crown.

PART II  
THE COMMITTEE

**Committee**

5. (1) The *South Australian Heritage Committee* is established.

(2) The Committee consists of twelve members appointed by the Governor.

(3) The Governor will appoint one of the members of the Committee to preside at meetings of the Committee.

(4) A member of the Committee will be appointed for such term of office, not exceeding three years, as the Governor may determine and specify in the instrument of appointment and is eligible for reappointment.

(5) The Governor may appoint a suitable person to be a deputy of a member of the Committee and that person while acting in the absence of that member will be taken to be a member of the Committee and has and may exercise all of the powers and functions of the member of whom he or she is appointed deputy.

(6) The Governor may remove a member of the Committee from office for—

(a) mental or physical incapacity;

(b) neglect of duties;

or

(c) dishonourable conduct.

(7) The office of a member of the Committee becomes vacant if the member—

(a) dies;

(b) completes a term of office;

(c) resigns by written notice addressed to the Governor;

or

(d) is removed by the Governor pursuant to subsection (6).

(8) On the office of a member of the Committee becoming vacant a person will be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Committee becomes vacant before the expiration of a term, the successor will be appointed only for the balance of that term.

**Validity of acts of the Committee**

6. An act or proceeding of the Committee is not invalid by reason only of a vacancy or vacancies in its membership.

**Business of Committee**

7. (1) Seven members of the Committee constitute a quorum of the Committee.

(2) A decision carried by a majority of the votes of the members present at a meeting of the Committee is a decision of the Committee.

(3) In the event of an equality of votes on a matter the person presiding at the meeting has a second or casting vote.

(4) In the absence of the member appointed to preside at meetings of the Committee, the members present at a meeting must decide who is to preside.

**Functions of the Committee**

8. (1) The functions of the Committee are as follows:

- (a) to advise the Minister on any matter relating to the entry of an Item in the Register and to the removal of any Item from that Register;
- (ab) to advise the Minister on any matter relating to the designation of land as a State Heritage Area under this Act;
- (ac) to advise the Minister on any matter relating to the making or revocation of an order under Part V;
- (b) to advise the Minister on the provision of financial assistance to persons or bodies for the preservation or enhancement of—
  - (i) Registered Items or State Heritage Areas;
  - (ii) the environmental, social or cultural heritage of the State;
- (ba) to advise the Minister on any matter relating to a heritage agreement or proposed heritage agreement;
- (c) to advise the Minister on any matter relating to the environmental, social or cultural heritage of the State;
- (d) such other functions as may be assigned by the Minister.

(2) The Committee has power to do all things necessary or incidental to the performance of its functions.

**Delegation**

9. (1) The Committee may by instrument in writing delegate to any member or to any members acting jointly any power or function of the Committee (except this power of delegation) and may by such an instrument revoke or amend any such delegation.

(2) The exercise or performance by a delegate of any power or function delegated under subsection (1) does not limit or restrict the exercise or performance by the Committee of that power or function.

**Remuneration**

10. A member of the Committee is entitled to receive such remuneration, fees or allowances as the Governor may from time to time in any particular case approve.

## PART III

## REGISTRATION OF HERITAGE ITEMS

**The Register**

11. (1) The Minister must cause to be kept a Register known as the *Register of State Heritage Items*.

(2) An Item cannot be entered on the Register otherwise than under and in accordance with this Part and an Item cannot be removed from the Register otherwise than under or in accordance with this Part.

**Entry of Items in the Register**

12. (1) Subject to this section, where the Minister considers—

(a) that an Item that is not on the Register is part of the environmental, social or cultural heritage of the State;

and

(b) that the Item is of significant aesthetic, architectural, historical, cultural, archaeological, technological or scientific interest,

the Minister may enter that Item in the Register.

(2) The entry must include a description of the Item sufficient to identify it and the Minister may, by public notice, correct an error in the description of an Item at any time.

(3) The Minister cannot enter an Item in the Register unless—

(a) the Minister informs the Committee of the intention to enter the Item and has considered any representations of the Committee on the matter;

(b) the Minister has, by public notice—

(i) stated that he or she intends to enter the Item in the Register;

(ii) given a description of the Item sufficient to identify it;

(iii) notified persons of their right to make written objections to the entry of the Item in the Register;

(iv) specified the day, being a day not earlier than one month after the publication of the notice in the *Gazette*, by which objections are to be made;

and

(v) specified an address to which objections may be forwarded;

(c) the day specified in the notice has passed;

and

(d) if a person has, not later than the day specified in that notice, made written objections to the Minister to the entry of the Item in the Register, the Minister has given due consideration to those objections.

(4) Where, after the giving of the public notice referred to in subsection (3)(b) in relation to an Item, the Minister becomes of the opinion (whether by reason of consideration of objections or otherwise) that the Item should not be entered in the Register, the Minister must, by public notice, state that the Item is not to be entered in the Register.

(5) Forthwith after the giving of the public notice referred to in subsection (3) the Minister must cause to be served by post on the owner of each Item referred to in that notice a notice setting out the substance of the public notice so far as it relates to that Item.

(6) Where the Item is entered in the Register in accordance with this section the Minister must, by public notice, state that the Item has been so entered.

#### **Designation of State Heritage Areas**

**13.** (1) Subject to this section, where the Minister considers—

(a) that an area of land is part of the environmental, social or cultural heritage of the State;

and

(b) that the area is of significant aesthetic, architectural, historical, cultural, archaeological, technological or scientific interest,

the Minister may, by public notice, designate that area as a State Heritage Area.

(1a) Subject to this section, the Minister may, by public notice, revoke the designation of an area as a State Heritage Area.

(2) The Minister cannot designate an area under subsection (1) or revoke a designation under subsection (1a) unless the Minister has informed—

(a) the municipal or district council (if any) within whose municipality or district the area is situated;

and

(b) the Committee,

of his or her intention and has considered any representations of the council or Committee on the matter.

#### **Removal of an Item from Register**

**14.** (1) Where the Minister considers that an Item that is entered in the Register should not be so entered, the Minister must remove that Item from that Register.

(2) The Minister cannot remove an Item from the Register in accordance with subsection (1) unless—

(a) the Minister has informed the Committee of the intention to remove the Item and has considered any representations of the Committee on the matter;

(b) the Minister has, by public notice—

(i) stated that he or she intends to remove the Item from the Register;

(ii) notified persons of their right to make written objections to the removal of the Item from the Register;

(iii) specified the day, being a day not earlier than one month after the publication of the notice in the *Gazette*, by which objections are to be made;

and

(iv) specified an address to which objections may be forwarded;

(c) the day specified in that notice has passed;

and

(d) if a person has, not later than the day specified in that notice, made written objections to the Minister to the removal of the Item from the Register, the Minister has given due consideration to those objections.



(3) Where an Item has been removed from the Register in accordance with this section, the Minister must, by public notice, state that that Item has been so removed.

#### **Interim list**

15. (1) The Minister must enter a description of an Item on the interim list where—

(a) the Minister has, by public notice under this Part, stated the intention to enter the Item in the Register;

or

(b) in the Minister's opinion—

(i) the Item should be registered under this Part;

and

(ii) it is necessary or desirable to provide immediate protection in respect of the Item by making an order under Part V.

(1a) Where the Minister enters an Item on the interim list under subsection (1)(b), the Minister must immediately take proceedings under this Part to enter the Item in the Register.

(2) The Minister must cause to be struck out of the list an Item when—

(a) that Item is entered on the Register;

(b) a public notice under section 12(4) has been given;

or

(c) the period of twelve months, next following the day on which the Item was entered on the list, has expired and that Item has not otherwise been struck out of the list.

#### **Inspection of Register or interim list**

16. (1) Any person may inspect the Register or the interim list.

(2) A person is entitled, on payment of the prescribed fee, to a copy of the Register or the interim list or an extract from the Register or the interim list.

PART IIIA  
HERITAGE AGREEMENTS

**Heritage agreements**

**16a.** (1) The Minister, in his or her capacity as the Corporation, or, with the approval of the Minister, any other body corporate, may enter into a heritage agreement with the owner of—

(a) a Registered Item;

(b) an Item that the Minister proposes to register under Part III;

or

(c) an Item that the Minister considers should be preserved or enhanced having regard—

(i) to its aesthetic, architectural, historical, cultural, archaeological, technological or scientific value or interest;

(ii) to its relationship to a Registered Item;

or

(iii) to the effect of the Item on the environment.

(2) The Minister cannot enter into a heritage agreement or give approval to another body corporate entering into a heritage agreement unless the Minister has informed the Committee of the intention to do so and has considered any representations of the Committee on the matter.

(3) The Minister for the time being responsible for the administration of the *Native Vegetation Act 1991*, may enter into a heritage agreement with the owner of an Item comprising land on which native vegetation is growing or is situated if the Minister considers that the vegetation should be preserved or enhanced.

(4) The Minister responsible for the administration of the *Aboriginal Heritage Act, 1988*, may enter into a heritage agreement with the owner of an Item comprising land on which an Aboriginal site or object within the meaning of that Act is situated.

**Terms and effect of heritage agreements**

**16b.** (1) A heritage agreement may contain terms—

(a) binding on the owner of the Item—

(i) restricting the use of the Item;

(ii) requiring the owner to refrain from activity, or activity of a specified kind, that would adversely affect the Item or imposing conditions on which any such activity takes place;

(iii) requiring the owner to carry out, or to permit the Authority to carry out, works for the preservation or enhancement of the Item;

(iv) requiring the owner to permit the Authority to inspect the Item;

(v) requiring the owner to indemnify the Authority in respect of or contribute towards costs incurred by the Authority in carrying out works in respect of the Item;

(vi) specifying the manner in which money provided by the Authority is to be applied by the owner;

- (vii) requiring the owner to repay any amount paid to the owner by the Authority if a specified breach of the agreement occurs;
  - (viii) where the owner, a predecessor in title of the owner, or both, have by virtue of the agreement obtained relief from the payment of rates or taxes—to repay to the appropriate rating or taxing authority, in the event of contravention or failure to comply with the agreement, the aggregate value of that relief;
- or
- (viii) providing for any other matter (whether like or unlike any of the above) relating to the preservation or enhancement of the Item;
- (b) binding on the Authority providing for the provision of financial assistance, for the provision of technical advice or assistance or for any other matter relating to the preservation or enhancement of the Item;
- and
- (c) where the agreement was entered into for the purpose of preserving or enhancing native vegetation (whether the agreement was entered into under the *Native Vegetation Management Act, 1985*, or not)—releasing the owner of the Item wholly, or to a specified extent, from the obligation to pay rates (including council rates) and taxes in relation to the Item.

(1a) A term of a heritage agreement—

- (a) releasing a person from the obligation to pay rates or taxes has effect notwithstanding any Act or law to the contrary;
- (b) releasing a person wholly or in part from the obligation to pay council rates does not operate before the commencement of the second rating year next following the date of the agreement.

(2) A heritage agreement will be taken to have effect as a contract binding on and enforceable by the Authority and, subject to subsection (3), the owner who entered into the agreement.

(3) Where the Registrar-General has, pursuant to section 26a, registered the fact that a heritage agreement has come into force in respect of an Item, the rights and liabilities under or in respect of the agreement of the owner of the Item who entered into the agreement pass to and are binding on and enforceable by the owner's successors in title, and all such persons will be taken to have notice of the agreement.

(4) Subsection (3) does not affect a right of action for damages or payment of money where the right of action arose before the passing of title.

(5) Damages cannot be awarded against the owner of an Item to which a heritage agreement relates for breach of the agreement unless the breach arose from an intentional or reckless act or omission on the part of the owner.

(6) In assessing damages for breach of a heritage agreement by the owner of the Item to which the agreement relates, a court must have regard to—

- (a) any detriment to the public interest resulting from the breach;
- (b) any financial or other benefit that the owner sought to gain by committing the breach;

and

- (c) any other matter it considers relevant.

(7) A heritage agreement comes into force on a day specified, or on the happening of an event specified, in the agreement.

(8) A heritage agreement may be varied or terminated—

(a) by agreement between the Authority and the owner of the Item;

or

(b) in the manner or in the circumstances provided for in the agreement.

(9) In subsection (3)—

“successors in title” includes a mortgagee or encumbrancee in possession of an Item pursuant to a mortgage or encumbrance registered before the registration of the fact that the heritage agreement had come into force in respect of that Item.

#### **Heritage agreements and section 48 of Planning Act**

**16c.** (1) A heritage agreement in respect of a Registered Item may provide that section 48 of the *Planning Act, 1982*, does not apply to or in relation to that Registered Item.

(2) Where a heritage agreement contains a provision of the kind referred to in subsection (1), section 48 of the *Planning Act, 1982*, does not apply to or in relation to the Registered Item while the heritage agreement is in force under this Act.

#### **Proof of heritage agreements facilitated**

**16d.** (1) Where a heritage agreement is entered into, the Minister must, if satisfied that the agreement conforms with this Act, certify that fact on each executed copy of the agreement.

(2) In any legal proceedings, an apparently genuine document purporting to be a copy of a heritage agreement certified in the manner referred to in subsection (1) is, in the absence of proof to the contrary, proof of the agreement and its terms.

#### **Register of heritage agreements**

**16e.** (1) The Minister must cause a register to be kept containing copies of every heritage agreement that is in force under this Act.

(2) The register must be open for public inspection and a person is entitled, on payment of the prescribed fee, to a copy of the register or an extract from the register.

## PART IV

## THE CORPORATION AND THE FUND

**Corporation**

17. (1) A corporation under the name *Trustee of the State Heritage* is established.

(2) The Corporation—

(a) is a body corporate with perpetual succession and a common seal;

(b) is capable in its corporate name of acquiring, holding and disposing of real and personal property;

(c) is capable of acquiring or incurring any other legal rights or liabilities and of suing and being sued;

and

(d) has the powers, authorities, duties and obligations prescribed by or under this Act.

(3) The Corporation is constituted of the Minister.

(4) Where an apparently genuine document purports to bear the common seal of the Corporation, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Corporation was duly affixed to that document.

**Functions of the Corporation**

18. (1) The functions of the Corporation are as follows:

(a) to authorize payments from the Fund;

(b) out of the money standing to the credit of the Fund to make grants or loans with or without interest to persons or bodies (whether corporate or unincorporate) for the preservation or enhancement of Registered Items or State Heritage Areas;

(c) in consultation with the Committee to make grants for purposes of preserving or enhancing the environmental, cultural or social heritage of the State;

and

(d) such other functions as are in its opinion necessary for the preserving or enhancing of the environmental, cultural or social heritage of the State.

(2) The Corporation has power to do all things necessary or incidental to the performance of its functions and in particular, without limiting the generality of the foregoing—

(a) acquire either by agreement or compulsorily, any Registered Items;

(b) enter into and enforce any agreement with any person relating to the preservation or enhancement of the environmental, social or cultural heritage of the State.

**Delegation**

18a. (1) The Corporation may delegate any of its functions or powers to any person.

(2) A delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the power of the Corporation to act in any matter;

and

(c) is revocable at will.

(3) A person who has a personal interest, or a direct or indirect pecuniary interest, in any matter may not act as a delegate under this section in relation to that matter.

#### **The Fund**

**19.** (1) There must be established at the Treasury a fund to be known as the *State Heritage Fund*.

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

- (a) any money received from the Government of the Commonwealth for the purpose;
- (b) any money appropriated by Parliament for the purpose;
- (c) any money received by the Corporation by way of gift, bequest or otherwise;
- (d) any income derived from the investment of money standing to the credit of the Fund;

and

(e) any other money received by the Corporation.

(3) The Corporation may, with the approval of the Treasurer, invest any money standing to the credit of the Fund that is not immediately required for the purposes of this Act, in such manner as may be approved of by the Treasurer.

#### **Power of Corporation to borrow**

**19a.** (1) The Corporation may, with the consent of the Treasurer, borrow money from any person for the purpose of performing its functions under this Act.

(2) Any liability incurred with the consent of the Treasurer under subsection (1) is guaranteed by the Treasurer.

(3) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) is to be satisfied out of the Consolidated Account which is, to the necessary extent, appropriated accordingly.

#### **Accounts and audit**

**19b.** (1) The Corporation must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Corporation.

## PART V

## CONSERVATION ORDERS

## DIVISION I—CONSERVATION ORDERS

**Application of Part**

20. Unless the contrary intention appears, this Part applies to an Item or State Heritage Area that is the subject of an order under this Division.

**Making of conservation orders**

21. (1) Where, in the opinion of the Minister, it is necessary or desirable to do so, the Minister may, by public notice, order that this Part apply to—

(a) a Registered Item or an Item on the interim list or to part of such an Item;

or

(b) a State Heritage Area.

(2) The Minister must, before making an order under subsection (1)—

(a) by public notice—

(i) describe the Item or State Heritage Area that will be the subject of the order;

(ii) invite interested persons to make written submissions in relation to the proposed order within a period specified in the notice (being not less than one month from the date of publication of the notice);

(b) immediately after publication of the notice referred to in paragraph (a), serve a copy of the notice on the owner of the Item or State Heritage Area—

(i) personally;

(ii) by posting it to the owner's last known address;

or

(iii) by fixing it in a prominent position on the Item or State Heritage Area;

(c) consult the Committee in relation to the proposed order.

(3) When making an order under subsection (1), the Minister must have regard to—

(a) the submissions (if any) made by the owner of the Item or State Heritage Area or any other interested person;

and

(b) any representations made by the Committee.

(4) The Minister must, immediately after making an order under subsection (1), fix notice of the order in a prominent position on the Item or State Heritage Area concerned.

**Making of order in urgent cases**

22. (1) Where, in the opinion of the Minister, it is necessary or desirable to provide immediate protection in respect of—

(a) a Registered Item or an Item on the interim list or part of such an Item;

or

(b) a State Heritage Area,

the Minister may, by fixing a copy of the order in a prominent position on the Item or State Heritage Area concerned, order that this Part apply to that Item (or to part of that Item) or to that State Heritage Area.

(2) The Minister must—

- (a) immediately after making an order under subsection (1), comply with the requirements of section 21(2);
- (b) within 60 days (or such longer period, not exceeding 6 months, as is fixed by the Planning Appeal Tribunal under subsection (3)) after making the order, by public notice, confirm or revoke the order;

and

- (c) when confirming or revoking the order, have regard to the submissions (if any) made by the owner of the Item or State Heritage Area or any other interested person and any representations made by the Committee.

(3) The Planning Appeal Tribunal may, on the application of the Minister, extend the period referred to in subsection (2)(b).

#### Cessation of order

23. An order made under this Division ceases to operate if—

- (a) the Item in respect of which it was made is removed from the Register or is struck out of the interim list for any reason other than its entry in the Register;
- (b) the notice designating the State Heritage Area in respect of which it was made is revoked;

or

- (c) (i) in the case of an order that must be confirmed or revoked after it has been made—the order is not confirmed within the required period;

or

- (ii) in any other case—the Minister has, by public notice and after consultation with the Committee, revoked the order.

#### Offence

24. A person who damages or destroys an Item or a State Heritage Area is guilty of an offence.

Penalty: Division 4 fine.

### DIVISION II—REGULATIONS AND PERMITS

#### Regulations

25. (1) The Governor may make regulations—

(a) prohibiting or regulating—

- (i) the entry of persons onto an Item or a State Heritage Area;
- (ii) the bringing of vehicles, machinery or equipment or materials or substances of any kind onto an Item or State Heritage Area;
- (iii) any activity on an Item or State Heritage Area;

(b) prescribing fines not exceeding a division 7 fine for contravention of any regulation.



- (2) A regulation made under subsection (1)—
- (a) may be made in respect of—
    - (i) Items and State Heritage Areas generally;
    - (ii) a particular Item or State Heritage Area;
    - or
    - (iii) an Item or a State Heritage Area of a particular class;
  - (b) has effect notwithstanding any other Act or law.

(3) Signs that are, in the opinion of the Minister, desirable for the purpose of providing public notice of restrictions applying under this Act may be erected by the Minister on, or near, an Item or State Heritage Area.

### Permits

**25a.** (1) The Minister may, either absolutely or conditionally, issue a permit to any person authorizing a specified act or activity in relation to an Item or State Heritage Area.

(2) The Minister may vary or revoke a permit at any time.

(3) It is a defence to a charge for an offence against a regulation made under this Division to prove that the defendant acted under the authority of a permit granted under subsection (1).

## DIVISION III—INSPECTORS

### Appointment of inspectors

**25b.** (1) The Minister may appoint a suitable person as an inspector for the purposes of this Part.

(2) An appointment under this section may be subject to such limitations and conditions as the Minister thinks fit.

(3) The Minister may vary or revoke such an appointment at any time.

(4) An inspector must be provided with a certificate evidencing the inspector's appointment under this section.

(5) An inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, any power under this Part, produce, for the inspection of that person, the certificate of appointment furnished under this section.

### Powers of inspectors

**25c.** An inspector may, subject to the conditions of the inspector's appointment, at any time—

- (a) inspect an Item or State Heritage Area;
- (b) require a person who the inspector believes has committed, or is about to commit, an offence under this Part—
  - (i) to state that person's full name and usual place of residence;
  - (ii) to leave the Item or State Heritage Area immediately;
- (c) require a person who is on an Item or State Heritage Area without lawful authority to leave immediately;

- (d) take possession of any vehicle, machinery or equipment or any material or substance that the inspector suspects has been used in, or in connection with, the commission of an offence under this Part;
- (e) require a person who has custody of records of, or relating to, the Item or State Heritage Area or to the administration of this Part to produce those records;
- (f) take extracts from, or make copies of, those records;
- (g) require a person who the inspector reasonably believes has knowledge concerning any matter relating to an Item or State Heritage Area, or the administration of this Part, to answer questions in relation to those matters.

**Penalty for hindering, etc., inspector**

**25d.** (1) A person who, without reasonable excuse—

- (a) hinders an inspector in the exercise of powers conferred by this Division;
- (b) fails to comply with a requirement of an inspector under this Division;
- (c) fails to answer a question put by an inspector under this Division to the best of that person's knowledge, information and belief,

is guilty of an offence.

Penalty: Division 8 fine or division 8 imprisonment.

(2) A person is excused from answering a question put under this Division or producing records in compliance with a requirement under this Division if the answer to the question or the records concerned would tend towards self-incrimination.

(3) An inspector may, without a warrant, arrest a person who the inspector reasonably believes has committed an offence under subsection (1)(a) or (b).

(4) When making an arrest under subsection (3), the inspector must produce to the person arrested the certificate evidencing the inspector's appointment under this Division.

(5) The inspector must forthwith bring the person arrested before a justice of the peace or other proper authority to be dealt with in accordance with law.

(6) Nothing in this section prevents the arrest of a person in accordance with any other law.

**Powers of access, etc.**

**25e.** (1) For the purpose of exercising powers under this Division, an inspector may, subject to subsection (2)—

- (a) enter an Item or State Heritage Area;
- (b) traverse any land in order to gain access to an Item or State Heritage Area;
- (c) authorize such persons as the inspector thinks necessary to provide assistance.

(2) An inspector must give reasonable notice to the occupier of a dwelling before entering the dwelling pursuant to subsection (1).

\* \* \* \* \*

PART VII  
MISCELLANEOUS

**Entry on land or in building**

26. (1) Any person authorized by the Minister may at any reasonable time enter or remain on any land or in any building for the purposes of this Act.

(2) A person must not hinder or obstruct a person authorized by the Minister and exercising a power conferred on that person by subsection (1).

Penalty: Division 11 fine.

**Duty of Registrar-General**

26a. Where—

(a) an Item is registered under Part III;

or

(b) a heritage agreement in respect of the Item comes into force under Part IIIA, the Registrar-General must, on the application of the Minister, register that fact by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he or she thinks appropriate.

**Summary offences**

27. Offences against this Act are summary offences.

**Regulations**

28. The Governor may make such regulations as are necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, those regulations may—

(a) require the owner or occupier of a Registered Item or Registered Item of a prescribed class or kind to provide such information to the Minister in relation to that Item as is prescribed;

and

(b) prescribe fines not exceeding a division 9 fine for contravention of any regulation.

## APPENDIX 1

## Legislative History

The *South Australian Heritage Act, 1978*, amended the following Acts:

*Planning and Development Act, 1966*

*City of Adelaide Development Control Act, 1976*

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 14 August 1989. A schedule of these alterations was laid before Parliament on 3 August 1989.

Long title:	amended by 89, 1985, s. 3
Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 3:	amended by 83, 1980, s. 3; 62, 1982, s. 3(12) (Sched. Pt. XII); 89, 1985, s. 4; deleted in pursuance of the <i>Acts Republication Act, 1967</i> ; see Summary of Provisions
Section 4(1):	definition of "the Authority" inserted by 83, 1980, s. 4(a); amended by 90, 1985, s. 3; 12, 1988, Sched. 2; 16, 1991, Sched. 3 definition of "heritage agreement" inserted by 83, 1980, s. 4(b) definition of "inspector" inserted by 89, 1985, s. 5(a) definition of "interim list" inserted by 89, 1985, s. 5(a) definition of "Item" amended by 89, 1985, s. 5(b) definition of "owner" inserted by 83, 1980, s. 4(c) definition of "State Heritage Area" amended by 89, 1985, s. 5(c)
Section 4a:	inserted by 89, 1985, s. 6
Section 8(1):	amended by 83, 1980, s. 5; 89, 1985, s. 7
Heading preceding section 11:	substituted by 83, 1980, s. 6
Section 12(1):	amended by 89, 1985, s. 8(a), (b)
Section 12(2):	substituted by 89, 1985, s. 8(c)
Section 12(3):	amended by 89, 1985, s. 8(d)
Section 13(1):	amended by 89, 1985, s. 9(a), (b)
Section 13(1a):	inserted by 89, 1985, s. 9(c)
Section 13(2):	amended by 89, 1985, s. 9(d), (e)
Section 15(1):	substituted by 89, 1985, s. 10
Section 15(1a):	inserted by 89, 1985, s. 10
Section 16:	substituted by 89, 1985, s. 11
	Part IIIA comprising ss. 16a - 16e and heading inserted by 83, 1980, s. 7
Section 16a(1):	amended by 89, 1985, s. 12
Section 16a(3):	inserted by 90, 1985, s. 4; substituted by 16, 1991, Sched. 3
Section 16a(4):	inserted by 12, 1988, Sched. 2
Section 16b(1):	amended by 90, 1985, s. 5(a), (b)
Section 16b(1a):	inserted by 90, 1985, s. 5(c)
Section 16b(9):	inserted by 90, 1985, s. 5(d)
Section 16c(1) and (2):	amended by 62, 1982, s. 3(12) (Sched. Pt. XII)
Section 16e(2):	substituted by 89, 1985, s. 13
Section 18(1):	amended by 89, 1985, s. 14
Section 18a:	inserted by 89, 1985, s. 15
Sections 19a and 19b:	inserted by 30, 1979, s. 2
	Part V comprising ss. 20 - 23 and heading repealed by 62, 1982, s. 3(12) (Sched. Pt. XII); Part V comprising ss. 20 - 25e and headings inserted by 89, 1985, s. 16
	Part VI comprising ss. 24, 25 and heading repealed by 62, 1982, s. 3(12) (Sched. Pt. XII)
Section 26a:	inserted by 83, 1980, s. 8

**APPENDIX 2**

## Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
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
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

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