

South Australia

# Heritage Places Regulations 2020

under the *Heritage Places Act 1993*

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### 1—Short title

These regulations may be cited as the *Heritage Places Regulations 2020*.

### 2—Commencement

These regulations come into operation on 1 August 2020.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Heritage Places Act 1993*;

*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.

### 4—Period within which Council to be notified

For the purposes of section 27(2)(b) of the Act—

- (a) the prescribed period for notifying the Council of the location of an object is 5 business days from the date of discovery; and
- (b) the prescribed period for furnishing information to the Council is 10 business days from the date on which the Council requested the provision of the relevant information, or such longer period as the Council may allow.

## 5—Notice

For the purposes of section 38A(5)(a)(i) of the Act, the form set out in Schedule 1 is prescribed.

## 6—Fees

The Council may waive or reduce a prescribed fee if satisfied that it is appropriate to do so in a particular case.

# Schedule 1—Forms

## Form 1

(regulation 5)

### Notice of option to elect to be prosecuted for contravention

File number [*insert file number*]

To [*insert name of person to whom notice is given*], of [*insert address of person*],

It is alleged that you have engaged in conduct in contravention of the *Heritage Places Act 1993* ("the Act"). The particulars of the alleged contravention are set out in this notice.

The purposes of this notice is to give you the opportunity to elect to be prosecuted for the alleged contravention under section 38A(5)(a) of the Act. If you do not elect to be prosecuted, the Minister, a local council, or any other person acting with the leave of the Environment, Resources and Development Court may commence civil proceedings under section 38A(1)(c) of the Act for the purposes of obtaining an order from the Court that you pay into the South Australian Heritage Fund an amount as a monetary penalty on account of the contravention. In these civil proceedings, any contravention of the Act would only need to be proved on the balance of probabilities.

If you elect to be prosecuted rather than facing civil penalty proceedings, you must serve a written notice on the Minister within 21 days after service of this notice.

The following matters are relevant to the provision of a notice of election to the Minister:

- (a) The notice must be addressed to the Minister as follows: [*insert relevant information*];
- (b) You may choose to use the pro forma notice to the Minister attached to this document, or you may inform the Minister by letter if you so wish;
- (c) The notice must contain your name and the File Number shown at the top of this document;
- (d) Additional information about the Act can be obtained from [www.environment.sa.gov.au/heritage](http://www.environment.sa.gov.au/heritage);
- (e) Additional information concerning this notice can be obtained by calling [*insert relevant phone number*];
- (f) If you do not respond within 21 days after service of this notice, proceedings may be commenced to recover the civil penalty in the Environment, Resources and Development Court.

### Particulars of alleged contravention

Name of State Heritage Place (if applicable) [*insert name of State Heritage Place*]

Register number [*insert register number*]

Address or location [*insert address or location of State Heritage Place*]

Details of alleged contravention [*insert details of alleged contravention*]

Issued by [*insert name of person by whom the notice is issued*]

Date [*insert date*]

### **General information**

The *Heritage Places Act 1993* is an Act to make provision for the identification, recording and conservation of places and objects of non-Aboriginal heritage significance, to establish the South Australian Heritage Council and for other purposes.

Section 38A(1) of the Act allows an Environment, Resources and Development Court order to be made only where a contravention of the Act has occurred. Section 38A(1)(c) allows the Court to order a monetary penalty to be paid into the South Australian Heritage Fund on account of the breach. A monetary penalty such as this is sometimes known as a civil penalty because it is a financial penalty imposed by a Court in civil proceedings. The penalty is intended as a deterrent.

Section 38A(5)(a)(i) imposes limits on the circumstances and manner of application and use of a civil penalty order. A person who is faced with the possibility of a civil penalty may elect to be prosecuted for a criminal offence, which must be proved at the higher standard of beyond reasonable doubt.

For the purposes of allowing a person to make an election, the Minister must serve a notice on the person advising the person that they may, by written notice to the Minister, elect to be prosecuted for the contravention, and allowing the person not less than 21 days to do so. This is the reason for the service of this notice.

Proceedings for a civil penalty are stayed if criminal proceedings are initiated or have already been initiated against the person for an offence that is the same (or substantially the same) as the conduct alleged to constitute the contravention to which the proceedings relate. They may be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.

If an amount is paid in the civil proceedings, criminal proceedings may not be initiated against the person for an offence constituted by conduct that is the same (or substantially the same) as the conduct alleged to constitute the contravention in relation to which the amount has been paid.

### **Attachment—Notice to the Minister**

I, [*insert name of person electing to be prosecuted*], have received a notice from the Minister under section 38A(5)(a) of the *Heritage Places Act 1993* ("the Act") in connection with the proposed commencement of civil penalty proceedings in respect of a contravention of the Act.

The file number is [*insert file number*]

In accordance with section 38A(5)(a) of the Act, I hereby give notice that I elect to be prosecuted for the alleged contravention.

Signed [*insert signature*]

Date [*insert date*]

Contact details [*insert contact details of person electing to be prosecuted*]

## **Schedule 2—Revocation of *Heritage Places Regulations 2005***

The *Heritage Places Regulations 2005* are revoked.

## Legislative history

### Notes

- 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 regulations

| Year | No | Reference                    | Commencement  |
|------|----|------------------------------|---------------|
| 2020 | 56 | <i>Gazette 7.5.2020 p909</i> | 1.8.2020: r 2 |