

South Australia

# Heritage (Heritage Directions) Amendment Act 2005

An Act to amend the *Heritage Act 1993* and to make related amendments to the *Development Act 1993*, the *History Trust of South Australia Act 1981* and the *Valuation of Land Act 1971*.

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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 *Heritage (Heritage Directions) Amendment Act 2005*.

**2—Commencement**

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

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Heritage Act 1993*****4—Substitution of long title**

Long title—delete the long title and substitute:

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.

**5—Amendment of section 1—Short title**

Section 1—delete "*Heritage Act 1993*" and substitute:

*Heritage Places Act 1993*

**6—Insertion of section 2**

After section 1 insert:

**2—Objects of Act**

The objects of the Act are:

- (a) to recognise the importance of South Australia's heritage places and related objects in understanding the course of the State's history, including its natural history; and
- (b) to provide for the identification and documentation of places and related objects of State heritage significance; and

- (c) to provide for and promote the conservation of places and related objects of State heritage significance; and
- (d) to promote an understanding and appreciation of the State's heritage; and
- (e) to encourage the sustainable use and adaptation of heritage places in a manner consistent with high standards of conservation practice, the retention of their heritage significance, and relevant development policies.

### 7—Amendment of section 3—Interpretation

- (1) Section 3, definition of *Authority*—delete the definition and substitute:

*archaeological artefact* means any matter forming part of an archaeological deposit, or any artefact, remains or material evidence associated with an archaeological deposit, that relates to the non-Aboriginal settlement of South Australia, or to an activity undertaken by a person as part of the exploration of South Australia, but does not include the remains of a ship or an article associated with a ship;

*Council* means the South Australian Heritage Council established under Part 2;

- (2) Section 3, definition of *Fund*—delete the definition and substitute:

*Fund* means the *South Australian Heritage Fund*;

- (3) Section 3, definition of *heritage value*—delete the definition and substitute:

*heritage significance*—see section 16;

- (4) Section 3, definition of *land*—delete the definition and substitute:

*land* includes land covered with water;

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

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

- (5) Section 3, definition of *mining tenement*, (b)—delete paragraph (b) and substitute:

(ab) a precious stones tenement under the *Opal Mining Act 1995*; or

(b) a licence under the *Petroleum Act 2000*;

- (6) Section 3—after the definition of *mining tenement* insert:

*object* means a natural or manufactured object and includes—

(a) an archaeological artefact; or

(b) a geological, palaeontological or speleological specimen,

but does not include an Aboriginal object within the meaning of the *Aboriginal Heritage Act 1988*;

- (7) Section 3—after the definition of *owner* insert:

*place* means—

- (a) any site or area, with or without improvements;
- (b) any land;
- (c) any building, structure or other work, whether temporary or permanent or moveable or immovable (including an item or thing that is permanently fixed or moored);
- (d) any other location, item or thing that constitutes a place within the State,

and includes—

- (e) any fixtures or fittings;
- (f) any land where a place is situated;
- (g) any subsurface area;
- (h) any part of a place;

- (8) Section 3, definition of *Register*—delete the definition and substitute:

*Register* means the South Australian Heritage Register;

- (9) Section 3, definition of *registered place*—delete the definition

- (10) Section 3—after the definition of *State Heritage Area* insert:

*State Heritage Place* means—

- (a) a place entered, either as a provisional or confirmed entry, in the Register under Part 4; or
- (b) a place within an area established as a State Heritage Area; or
- (c) a place taken to be entered in the Register under Schedule 1 (as enacted on the commencement of this Act);

*structure* includes a fence, wall or ruin.

- (11) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) For the purposes of this Act, a place of geological, palaeontological, speleological or archaeological significance is a place so designated by the South Australian Heritage Council under section 14(7).

## **8—Substitution of heading to Part 2 Division 1**

Heading to Part 2 Division 1—delete the heading to Division 1 and substitute:

### **Division 1—South Australian Heritage Council**

## **9—Substitution of sections 4 and 5**

Sections 4 and 5—delete sections 4 and 5 and substitute:

### **4—South Australian Heritage Council**

The *South Australian Heritage Council* is established.

## **5—Composition of Council**

- (1) The Council consists of the following members appointed by the Governor:
  - (a) not less than 6 and not more than 8 persons who, in the opinion of the Governor, have knowledge of or experience in history, archaeology, architecture, the natural sciences, heritage conservation, public administration, urban and regional planning or property development (or any combination of 2 or more of these fields), or some other relevant field; and
  - (b) 1 person with knowledge of or experience in heritage conservation chosen from a panel of 3 such persons submitted to the Minister by the Local Government Association of South Australia.
- (2) Before filling a vacancy in the membership of the Council under subsection (1)(a), the Minister must, by advertisement published in a newspaper circulating throughout the State, invite interested members of the public to submit (within 14 days of the advertisement) the names of persons whom they regard as suitable candidates for the vacancy.
- (3) At least 1 member of the Council must be a woman and at least 1 member must be a man.
- (4) The Governor will designate a member of the Council to chair meetings of the Council.
- (5) The members of the Council will designate one of their members to chair meetings of the Council in the absence of the person designated under subsection (4) and that designation will apply for a period, not exceeding 12 months, determined by the members (and may then be renewed or revised as the members think fit).
- (6) The Governor may appoint a suitable person to act as a member of the Council in the absence of a member.

## **5A—Functions of the Council**

- (1) The Council has the following functions:
  - (a) to provide advice (especially from a strategic perspective) to the Minister on matters relating to—
    - (i) trends, shortcomings and opportunities with respect to heritage protection at the State and local level and, insofar as may be relevant, at the national level; and
    - (ii) the development and effectiveness of heritage conservation programs, policies, initiatives and incentives; and
    - (iii) the operation and enforcement of this Act; and

- (iv) other issues referred to the Council by the Minister for consideration and report;
  - (b) in connection with the administration of this Act—
    - (i) to administer the *South Australian Heritage Register*; and
    - (ii) to identify places, and related objects, of State heritage significance, and to enter them in the Register; and
    - (iii) to identify areas of State heritage significance, and to promote their establishment, in appropriate cases, as State Heritage Areas under the *Development Act 1993*; and
    - (iv) to initiate or support community awareness programs that promote public understanding and appreciation of the State's heritage, taking into account the objects of this Act; and
    - (v) to promote the objects of this Act in such other manner as the Council thinks fit, including through the work of other bodies or persons;
  - (c) to provide advice (especially from a strategic perspective) to the Minister to whom the administration of the *Development Act 1993* is committed on matters relating to—
    - (i) the interpretation or application of the criteria set out in section 23(4) of that Act (and, if appropriate, the consideration of any potential amendment with respect to those criteria); and
    - (ii) other matters on which that Minister is required to consult with the Council under the provisions of that Act;
  - (d) to perform any other function assigned to the Council by or under this or any other Act.
- (2) The Council may—
- (a) establish criteria that are to be taken into account when determining whether an area should be established as a State Heritage Area; and
  - (b) establish guidelines that are to be used in the interpretation or application of—
    - (i) the criteria that apply under paragraph (a);
    - (ii) the criteria set out in section 16.

- (3) The Council must establish and maintain a list of persons who are recognised by the Council as being appropriately qualified (including by virtue of their skills or experience) for the purposes of this Act, or for the purposes of those provisions of the *Development Act 1993* that are relevant to heritage.

#### **10—Amendment of section 6—Conditions of membership**

- (1) Section 6(1)—delete "the Authority" and substitute:  
the Council
- (2) Section 6(2)—delete "the Authority" and substitute:  
the Council
- (3) Section 6(3)—delete "the Authority" and substitute:  
the Council
- (4) Section 6(4)—delete subsection (4) and substitute:
  - (4) An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

#### **11—Amendment of section 7—Proceedings of Council**

- (1) Section 7(1) and (2)—delete subsections (1) and (2) and substitute:
  - (1) The member designated by the Governor to chair meetings of the Council will preside at a meeting of the Council or, in the absence of that member, the appropriate member designated by the members of the Council will preside or, in the absence of both of them, a member chosen by those present will preside.
  - (2) The prescribed number of members of the Council constitutes a quorum of the Council.
- (2) Section 7(3)—delete "the Authority" wherever occurring and substitute in each case:  
the Council
- (3) Section 7(4)—delete "the Authority" and substitute:  
the Council
- (4) Section 7(5)—delete "the Authority" and substitute:  
the Council
- (5) Section 7(6)—delete "Authority" wherever occurring and substitute in each case:  
Council
- (6) Section 7(6)—delete "heritage value" and substitute:  
heritage significance
- (7) Section 7(7)—delete "the Authority" and substitute:  
the Council



(8) Section 7—after subsection (7) insert:

- (8) In this section, the prescribed number of members of the Council is a number ascertained by dividing the total number of members of the Council for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

## **12—Insertion of section 7A**

After section 7 insert:

### **7A—Committees**

- (1) The Council—
- (a) must establish the committees required by the regulations; and
  - (b) may establish such other committees as the Council thinks fit,
- to advise or assist the Council.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the Council.
- (3) The procedures to be observed in relation to the conduct of business of a committee will be—
- (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the Council; or
  - (c) insofar as the procedure is not prescribed by regulation or determined by the Council—as determined by the committee.

## **13—Amendment of section 8—Delegation**

(1) Section 8(1)—delete subsection (1) and substitute:

- (1) Subject to this section, the Council may delegate a power or function under this Act—
- (a) to a member of the Council; or
  - (b) to a committee established by the Council; or
  - (c) to a person for the time being holding or acting in a particular office or position; or
  - (d) to any other person or body.

(2) Section 8(2)—delete "the Authority" and substitute:  
the Council

(3) Section 8(3)—delete "The Authority" and substitute:  
The Council

(4) Section 8(3)—delete paragraphs (c) and (d) and substitute:

- (c) to remove or alter an entry in the Register relating to a State Heritage Place under section 23.

#### **14—Amendment of section 9—Remuneration**

Section 9—delete "the Authority" and substitute:

the Council

#### **15—Substitution of heading to Part 2 Division 2**

Heading to Part 2 Division 2—delete the heading to Division 2 and substitute:

#### **Division 2—South Australian Heritage Fund**

#### **16—Amendment of section 10—South Australian Heritage Fund**

(1) Section 10(1)—delete subsection (1) and substitute:

- (1) The State Heritage Fund continues in existence as the *South Australian Heritage Fund*.

(2) Section 10(2)(c)—delete "the Authority" and substitute:

the Council

(3) Section 10(2)—after paragraph (e) insert:

and

- (f) any other money that is required or authorised by or under this Act to be paid into the Fund.

#### **17—Amendment of section 12—Application of money from Fund**

(1) Section 12—delete ", after seeking and considering the advice of the Authority,"

(2) Section 12—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The Minister must, in relation to the management and application of the Fund, seek and consider any advice (provided from a strategic perspective) from the Council.

#### **18—Substitution of heading to Part 3**

Heading to Part 3—delete the heading and substitute:

#### **Part 3—South Australian Heritage Register**

#### **19—Amendment of section 13—The Register**

(1) Section 13(1)—delete subsection (1) and substitute:

- (1) The State Heritage Register continues in existence as the *South Australian Heritage Register*.

(2) Section 13(2)—delete "the Authority" and substitute:

the Council

## 20—Substitution of section 14

Section 14—delete the section and substitute:

### 14—Content of Register

- (1) The Register will contain a description or notes with respect to—
  - (a) any place entered (either as a provisional or confirmed entry) in the Register under Part 4; and
  - (b) any place taken to be entered in the Register under Schedule 1 (as enacted on the commencement of this Act);
  - (c) any local heritage place designated by a Development Plan; and
  - (d) any State Heritage Area; and
  - (e) any local heritage zone or local heritage policy area established by a Development Plan; and
  - (f) any place within the State—
    - (i) entered in any register of places of natural or historic significance; or
    - (ii) declared to be a *World Heritage Property*, under a law of the Commonwealth; and
  - (g) any heritage agreement; and
  - (h) any other matter prescribed by the regulations.
- (2) The Council may, in relation to a place or area entered in the Register—
  - (a) include as part of the entry for the place any tree, component or other item, feature or attribute that, in the opinion of the Council, forms part of, or contributes to, the heritage significance of the place or area; or
  - (b) include as part of the Register any object (not necessarily being located at the relevant place or area) that is, in the opinion of the Council, an object of heritage significance.
- (3) Anything included or entered under subsection (2) will be taken to form part of the relevant place or area for the purposes of this Act, and this Act will apply to it in the same way as it applies to the place or area (subject to any provision made by this Act or any necessary modifications, or any modifications prescribed by the regulations in connection with the operation of this section).
- (4) If there is an inconsistency between the Register and a Development Plan—
  - (a) in a case involving an entry in the Register under subsection (1)(a) or (b)—the entry in the Register will prevail to the extent of the inconsistency;

- (b) in a case involving a place or area that may be entered in the Register under subsection (1)(c), (d), or (e)—any provision of the Development Plan will prevail to the extent of the inconsistency.
- (5) For the purposes of this section, the Council may—
  - (a) alter the Register at any time to reflect any change effected under this Act or the *Development Act 1993* that is relevant to information on the Register;
  - (b) note any variation to a heritage agreement under this Act;
  - (c) take such other steps as the Council thinks fit to keep the Register up-to-date.
- (6) The Council may include other information in the Register, or hold other information in association with the Register, as the Council thinks fit.
- (7) The Council may designate a State Heritage Place as—
  - (a) a place of geological, palaeontological or speleological significance; or
  - (b) a place of archaeological significance.

## **21—Amendment of section 15—Register to be available for public inspection**

- (1) Section 15(1)—delete subsection (1) and substitute:
  - (1) The Register must be kept available for public inspection during ordinary office hours at an office designated by the Minister.
  - (1a) The Register may be kept in the form of a computer record.
- (2) Section 15(2)—delete "The Authority" and substitute:

The Council
- (3) Section 15(2)—delete ", or in the inventory attached to the Register"
- (4) Section 15—after subsection (2) insert:
  - (3) The Council may make the Register available on a website established or approved by the Council.
  - (4) Despite a preceding subsection, if the Council considers that the public disclosure of the location of a particular place or object would put the protection or conservation of the place or object at risk, the Council may exclude the location of the place or object from public inspection or access under this section.

## **22—Amendment of section 16—Heritage significance**

- (1) Section 16—delete "heritage value" and substitute:

heritage significance

- (2) Section 16—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) An object is of heritage significance if—
- (a) it is an archaeological artefact, or any other form of artefact that satisfies 1 or more of the criteria set out in subsection (1); or
  - (b) it is a geological, palaeontological or speleological specimen that satisfies 1 or more of the criteria set out in subsection (1); or
  - (c) it is an object that is intrinsically related to the heritage significance of a State Heritage Place or a State Heritage Area.

### **23—Variation of section 17—Proposal to make entry in Register**

- (1) Section 17(1)—delete "The Authority" and substitute:  
The Council
- (2) Section 17(2)—delete "The Authority" and substitute:  
The Council
- (3) Section 17(2)(a)—delete "heritage value" and substitute:  
heritage significance
- (4) Section 17(2)(b)—delete "heritage value" and substitute:  
heritage significance
- (5) Section 17—after subsection (2) insert:
- (2a) Provisional entry of a place in the Register takes effect—
- (a) if the decision to provisionally enter the place in the Register is made by resolution of the Council—from the making of the resolution; or
  - (b) if the decision to provisionally enter the place in the Register is made by a person or body authorised to make the decision pursuant to a delegation under section 8—from the authorisation of the entry in writing by the person or body.
- (6) Section 17(3)—delete subsection (3)
- (7) Section 17(4)—delete "the Authority" wherever occurring and substitute in each case:  
the Council
- (8) Section 17(4)(a)(i)—delete "registration" and substitute:  
entry
- (9) Section 17(4)(a)(i)—delete "or palaeontological" and substitute:  
, palaeontological or speleological

- (10) Section 17(4)(a)(ii)—delete "registration" and substitute:  
entry
- (11) Section 17(4)(b)(ii)—delete "or palaeontological" and substitute:  
, palaeontological or speleological
- (12) Section 17(4)(b)(iii)—delete "registration" and substitute:  
entry
- (13) Section 17(4)(d)—delete paragraph (d) and substitute:  
(d) if the place is within the area of a local council—give written notice to the local council of the entry.
- (14) Section 17—after subsection (4) insert:  
(5) If the Council has, in relation to a place or area entered in the Register, also entered in the Register an object under section 14(2)(b), the Council must—  
(a) give the owner of the object a written notice—  
(i) stating the reasons for entering the object in the Register; and  
(ii) explaining that the owner has a right to make submissions, within 3 months from the date of the notice, in relation to the entry; and  
(b) give written notice to the Minister of the entry.  
(6) The entry of an object under section 14(2)(b)—  
(a) if the entry is in relation to a place, may occur on or after the provisional entry of the place in the Register (or after the confirmation of that entry); and  
(b) will, at first instance, be taken to be a provisional entry.

#### **24—Amendment of section 18—Submissions and confirmation or removal of entries**

- (1) Section 18(1)—delete subsection (1) and substitute:  
(1) Subject to this section, if the Council gives notice that it has made a provisional entry in the Register, any person may, within 3 months after the notice is given, make written representations to the Council on whether the entry should be confirmed.  
(1a) If the Minister is of the opinion that the period that applies under subsection (1) should be extended in the public interest, the Minister may, by notice in the Gazette, extend that period for a further period of up to 3 months.
- (2) Section 18(2)—delete "the Authority" wherever occurring and substitute in each case:  
the Council

- (3) Section 18(3)—delete "The Authority" and substitute:  
The Council
- (4) Section 18(4), (5), (6) and (7)—delete subsections (4), (5), (6) and (7) and substitute:
- (4) If, after considering the representations (if any) made under this section, the Council is of the opinion that the entry in the Register should be confirmed, the Council may, subject to any direction of the Minister under this section, confirm the entry.
  - (5) Confirmation of an entry in the Register takes effect from the making of the resolution by the Council to confirm the entry.
  - (6) If the Minister is of the opinion that the confirmation of a provisional entry in the Register may be contrary to the public interest, the Minister may, by instrument in writing, direct the Council to defer making a decision on whether or not to confirm the entry until the Minister determines the matter (and the Council must comply with any direction of the Minister under this subsection).
  - (7) If the Minister is of the opinion that the confirmation of a provisional entry in the Register would be contrary to the public interest (whether or not the Minister has acted under subsection (6)), the Minister may, after consultation with the Council, by instrument in writing, direct that the entry be removed from the Register.
  - (7a) The Minister must, when acting under subsection (7), set out the grounds on which he or she considers that the confirmation of the provisional entry would be contrary to the public interest.
  - (7b) The Minister may act under subsection (6) or (7) at any time after the provisional entry has been made in the Register.
  - (7c) If—
    - (a) the Council, after considering the representations (if any) made under this section, is of the opinion that a provisional entry should not be confirmed; or
    - (b) the Minister directs the removal of a provisional entry from the Register,the Council must remove the provisional entry from the Register.
  - (7d) Notice of the confirmation or removal of a provisional entry must be given—
    - (a) by written notice to the owner of land constituting the relevant place and, if the entry relates to or includes an object under section 14(2)(b), to the owner of the object; and
    - (b) by advertisement published in a newspaper circulating throughout the State; and
    - (c) by written notice to the Minister; and
    - (d) if the relevant place is within the area of a local council—by written notice to the local council.

- (5) Section 18(9)—delete "Authority" wherever occurring and substitute in each case:

Council

- (6) Section 18(9)—after "allowed by the Minister" insert:

under this subsection

## **25—Amendment of section 19—Registration in Lands Titles Registration Office**

Section 19—delete "the Authority" and substitute:

the Council

## **26—Amendment of section 20—Appeals**

- (1) Section 20(1)—delete subsection (1) and substitute:

(1) If an owner of land constituting a place provisionally entered in the Register makes written representations to the Council with respect to that entry, the owner may, subject to this section, appeal to the Court against a decision to confirm or not to confirm the provisional entry.

(1a) If an owner of an object provisionally entered in the Register makes written representations to the Council with respect to that entry, the owner may, subject to this section, appeal to the Court against a decision to confirm or not to confirm the provisional entry.

(1b) No appeal lies under this section against the removal of a provisional entry at the direction of the Minister under this Division.

- (2) Section 20(3)(b)—delete "the Authority" and substitute:

the Council

## **27—Amendment of section 21—Correction of errors**

- (1) Section 21—delete "The Authority" and substitute:

The Council

- (2) Section 21—after "inaccuracies" insert:

or errors

- (3) Section 21—delete ", or in an inventory attached to the Register,"

- (4) Section 21—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) If the Council takes action under subsection (1), the Council must give written notice of the correction to any person who, in the opinion of the Council, has a direct interest in the matter.

(3) Subsection (2) does not apply if the Council determines that the correction is only of minor significance.

## **28—Amendment of section 22—Certificate of exclusion**

- (1) Section 22(1)—delete "the Authority" and substitute:

the Council



- (2) Section 22(3) and (4)—delete subsections (3) and (4) and substitute:
- (3) The Council may (in its discretion) determine whether or not to invite public submissions on the question of whether the application should be granted (but must, in deciding whether or not to invite public submissions, take into account the extent to which the criteria set out in Division 1 may apply to the relevant land).
- (3) Section 22(5)—after "in respect of land," insert:
- any place within
- (4) Section 22(5)—after "in the Register" insert:
- under this Part

### **29—Substitution of heading to Part 4 Division 4**

Heading to Part 4 Division 4—delete the heading to Division 4 and substitute:

#### **Division 4—Removal or alteration of designation**

### **30—Amendment of section 23—Council may act if registration at State level not justified**

- (1) Section 23(1)—delete subsection (1) and substitute:
- (1) If the Council (after taking into account the criteria set out in Division 1) is of the opinion that an entry relating to a place in the Register as a State Heritage Place is no longer justified, or that an entry relating to a State Heritage Place should be altered by excluding part of the place to which the entry applies, it may give notice of its intention to alter the Register by removing or altering the entry and invite written representations on the proposal—
- (a) by notice in writing to the owner of land constituting the place and, if the entry relates to or includes an object under section 14(2)(b), to the owner of the object; and
- (b) by advertisement in a newspaper circulating throughout the State; and
- (c) if the place is within the area of a local council—by notice in writing to the local council.
- (2) Section 23(2)—delete "The Authority" and substitute:
- The Council
- (3) Section 23(3)—delete "the Authority" and substitute:
- the Council
- (4) Section 23(4)—after "constituting the place" insert:
- (and, if relevant, the owner or owners of any object)
- (5) Section 23(4)—delete "a council, the council" and substitute:
- a local council, the local council

### **31—Substitution of section 24**

Section 24—delete the section and substitute:

#### **24—Alteration of Register if place to be designated as place of local heritage value**

- (1) If the Council is of the opinion that a place, or a part of a place, entered in the Register as a State Heritage Place should instead be designated as being a place of local heritage value, the Council must invite written representations on the matter—
  - (a) from the owner of the land constituting the place; and
  - (b) from the local council in whose area the place is situated (if the place is within the area of a local council),within a period (being a period of at least 28 days) specified by the Council.
- (2) The Council must also, on the basis of a request made within the period that applies under subsection (1) (or within such longer period as the Council may allow), allow the owner of the land or, in the case of a local council, a representative of the local council, to appear personally before the Council to make oral representations.
- (3) If, after considering the representations (if any) made under this section, the Council is of the opinion that the relevant place should be designated as being a place of local heritage value, the Council may—
  - (a) recommend to the Minister to whom the administration of the *Development Act 1993* is committed that an amendment be made to a Development Plan under section 29 of that Act so that the place or part of the place (as the case may be) is designated as a place of local heritage value; and
  - (b) if or when the amendment is made to the Development Plan, make any alteration to the Register as it thinks fit.
- (4) Written notice of an alteration to the Register under this section must be given to the Minister, the Registrar-General, the owner or owners of land constituting the place and, if the place is within the area of a local council, the local council.

### **32—Substitution of heading to Part 5 Division 1**

Heading to Part 5 Division 1—delete the heading to Division 1 and substitute:

#### **Division 1—Places or objects of particular significance**

### **33—Amendment of section 25—Places of geological, palaeontological or speleological significance**

- (1) Section 25—delete "the Authority" and substitute:  
the Council

- (2) Section 25(a)—delete "registered place" and insert:  
State Heritage Place
- (3) Section 25—delete "or palaeontological" wherever occurring and substitute in each case:  
, palaeontological or speleological
- (4) Section 25, penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$75 000.

### **34—Amendment of section 26—Places of archaeological significance**

- (1) Section 26—delete "the Authority" and substitute:  
the Council
- (2) Section 26(a)—delete "registered place" and substitute:  
State Heritage Place
- (3) Section 26(b)—delete "cultural artefacts" and substitute:  
archaeological artefacts
- (4) Section 26, penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$75 000.

### **35—Substitution of sections 27 and 28**

Sections 27 and 28—delete sections 27 and 28 and substitute:

#### **27—Protection of archaeological artefacts**

- (1) A person must not, without a permit from the Council—
  - (a) excavate or disturb any land (not designated as a place of archaeological significance) for the purpose of searching for or recovering archaeological artefacts of heritage significance; or
  - (b) excavate or disturb any land (not designated as a place of archaeological significance) knowing or having reasonable cause to suspect that the excavation or disturbance will or is likely to result in an archaeological artefact of heritage significance being discovered, exposed, moved, damaged or destroyed.

Maximum penalty: \$75 000.

- (2) A person who is aware or believes that he or she may have discovered or located an archaeological artefact of heritage significance (other than a person acting under the authority of a permit) must—
  - (a) cease to excavate or disturb the place where the relevant object has been discovered (if relevant);
  - (b) within the period specified by the regulations—

- (i) notify the Council of the location of the relevant object, unless the person has reasonable grounds to believe that the Council is aware of the location of the relevant object; and
    - (ii) furnish the Council with such information as the Council may reasonably require;
  - (c) take no further action in relation to the recovering of the relevant object without a permit or other authorisation from the Council;
  - (d) if required by the Council, surrender the relevant object to the Crown.
- Maximum penalty: \$25 000.
- (3) The Council may, by notice in the Gazette, create exceptions to this section, either conditionally or unconditionally, in respect of any of the following:
- (a) any object of a specified kind or description;
  - (b) any excavation or disturbance of a specified kind or description;
  - (c) any excavation or disturbance of land in a specified location or having specified features or attributes;
  - (d) any excavation or disturbance of land in respect of which an archaeological assessment approved by the Council indicates—
    - (i) that there is little likelihood of there being any archaeological artefacts in the land; or
    - (ii) that any archaeological artefacts in the land are unlikely to be of heritage significance;
  - (e) any other circumstance determined to be appropriate by the Council.
- (4) Subsection (2) does not apply in relation to a person who discovered the relevant object before the commencement of this section.
- (5) This section does not prevent a person from excavating or disturbing land in accordance with an authority or permit under—
- (a) the *Aboriginal Heritage Act 1988*; or
  - (b) the *Historic Shipwrecks Act 1981*; or
  - (c) any other Act prescribed by the regulations for the purposes of this subsection.

## **28—Damage to or disposal of objects**

- (1) A person must not, without a permit from the Council, damage, destroy or dispose of—
  - (a) a geological, palaeontological or speleological specimen removed from a State Heritage Place designated as a place of geological, palaeontological or speleological significance (whether removed before or after the entry of that place in the Register); or
  - (b) an archaeological artefact removed from a State Heritage Place designated as a place of archaeological significance (whether removed before or after the entry of that place in the Register).

Maximum penalty: \$75 000.

- (2) A person must not, without a permit from the Council, damage, destroy or dispose of an object entered in the Register (either as a provisional or confirmed entry) under section 14(2)(b).

Maximum penalty: \$75 000.

- (3) A person must not, without a permit from the Council, alter an object entered in the Register (either as a provisional or confirmed entry) under section 14(2)(b) in a way that would materially affect the heritage significance of the object.

Maximum penalty: \$75 000.

- (4) It is a defence to a charge of an offence under subsection (1), (2) or (3) if it is proved that the defendant did not know, and could not by the exercise of reasonable diligence be expected to have known, that the specimen or artefact came from a State Heritage Place with the relevant designation, or that the object was entered in the Register (as the case may be).

## **36—Amendment of section 29—Permits**

- (1) Section 29(1)—delete "the Authority" and substitute:  
the Council
- (2) Section 29(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:
  - (b) provide for the notification of the discovery or recovery of any specified classes of specimens, artefacts or other objects under the permit;
  - (c) provide that geological, palaeontological or speleological specimens, archaeological artefacts or other objects recovered or removed in the course of the operations are to belong to the Crown;
  - (d) make provision for the protection and curation of any such specimens, artefacts or other objects.
- (3) Section 29(2)—delete "the Authority" and substitute:  
the Council

- (4) Section 29(3)—delete "the Authority" and substitute:  
the Council
- (5) Section 29—after subsection (3) insert:
- (4) The Council may, at any time by notice given to the holder of a permit—
- (a) vary or revoke the permit; or
  - (b) vary or revoke a condition of a permit.
- (5) A person must not contravene or fail to comply with a condition of a permit.  
Maximum penalty: \$75 000.
- (6) A person who is dissatisfied with a decision of the Council—
- (a) with respect to his or her application for a permit; or
  - (b) in the exercise of a power under subsection (1) or (4),
- may appeal to the Minister.
- (7) On an appeal, the Minister may—
- (a) confirm, vary or reverse the decision under appeal; or
  - (b) remit the matter to the Council for further consideration or reconsideration.
- (8) A decision of the Minister under subsection (7)(a) will have effect as if it were a decision of the Council.

### **37—Insertion of section 29A**

After section 29 insert:

#### **29A—Related matters—objects**

- (1) A person must not, without the consent of the Council, buy or sell an object that the person knows, or has reasonable grounds to believe, has been recovered in contravention of this Division.  
Maximum penalty: \$10 000.
- (2) If the Council believes on reasonable grounds that a person has possession of an object that has been recovered in contravention of this Division, the Council may, by notice in writing, require the person to surrender the object to the Crown.
- (3) A person must not fail to comply with a requirement under subsection (2).  
Maximum penalty: \$10 000.
- (4) No compensation is payable to a person as a consequence of the surrender of an object to the Crown under this Division.

### **38—Amendment of section 30—Stop orders**

- (1) Section 30(1)—delete "the Authority" wherever occurring and substitute in each case:  
the Council
- (2) Section 30(1)—delete "heritage value" wherever occurring and substitute in each case:  
heritage significance
- (3) Section 30(2)—delete "four" and substitute:  
12
- (4) Section 30(3)—delete "the Authority" wherever occurring and substitute in each case:  
the Council
- (5) Section 30(4)—delete "the Authority's" wherever occurring and substitute in each case:  
the Council's
- (6) Section 30—after subsection (5) insert:
  - (6) A person who contravenes or fails to comply with an order under this section is guilty of an offence.  
Maximum penalty: \$120 000.

### **39—Repeal of section 31**

Section 31—delete the section

### **40—Amendment of section 32—Heritage agreements**

- (1) Section 32(1)—delete "the Authority" and substitute:  
the Council
- (2) Section 32(1)—delete "a registered place or State Heritage Area" and substitute:  
a State Heritage Place
- (3) Section 32(2)—delete subsection (2) and substitute:
  - (2) A heritage agreement attaches to the land and is binding on—
    - (a) the current owner of the land, whether or not that owner was the person with whom the heritage agreement was made;  
and
    - (b) to the extent specified in the agreement—the current occupier of the land (as may be the case from time to time).
- (4) Section 32(3)—delete "the Authority" and substitute:  
the Council
- (5) Section 32(3)—before "agreement" third occurring insert:  
heritage

(6) Section 32(4)—delete subsection (4) and substitute:

- (4) An agreement varying or terminating a heritage agreement must be made in a manner and form determined by the Minister.
- (5) The Minister must take reasonable steps to ensure that the occupier of the land is consulted before a heritage agreement is entered into or varied so as to bind the occupier in the manner contemplated by subsection (2)(b).

#### **41—Amendment of section 33—Effect of heritage agreement**

(1) Section 33(1)—delete "registered places and State Heritage Areas" and substitute:

State Heritage Places

(2) Section 33(3)—delete "council" wherever occurring and substitute in each case:

local council

#### **42—Amendment of section 34—Registration of heritage agreements**

(1) Section 34(1)—delete subsection (1)

(2) Section 34(2)—delete ", or an agreement varying or terminating a heritage agreement,"

(3) Section 34—after subsection (2) insert:

- (3) When the Minister enters into an agreement varying or terminating a heritage agreement, the Registrar-General must, on application by the Minister or another party to the agreement, enter an appropriate note 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.

#### **43—Substitution of section 36**

Section 36—delete section 36 and substitute:

##### **36—Damage or neglect**

- (1) A person who—
  - (a) intentionally or recklessly damages a State Heritage Place;  
or
  - (b) engages in conduct knowing that it will or might, or being recklessly indifferent as to whether it will or might, destroy or reduce the heritage significance of a State Heritage Place,is guilty of an offence.  
Maximum penalty: \$120 000.
- (2) A person who undertakes any action that—
  - (a) damages a State Heritage Place; or
  - (b) destroys or reduces the heritage significance of a State Heritage Place,



is guilty of an offence.

Maximum penalty: \$50 000.

- (3) A person who—
- (a) fails to take reasonable care of a State Heritage Place; or
  - (b) fails to comply with any prescribed requirement concerning—
    - (i) the protection of a State Heritage Place; or
    - (ii) the state of repair of a State Heritage Place,

is guilty of an offence.

Maximum penalty: \$25 000.

- (4) It is a defence for a charge against subsection (3) if it is proved that the defendant did not know, and could not reasonably be expected to know, that a place was a State Heritage Place.
- (5) This section does not apply to damage resulting from action authorised by an approval or authorisation under the *Development Act 1993* or from operations authorised under the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum Act 2000*, the *Petroleum (Submerged Lands) Act 1982* or the *Offshore Minerals Act 2000*.

#### **44—Repeal of section 37**

Section 37—delete the section

#### **45—Amendment of section 38—No development orders**

- (1) Section 38(1)—delete "section 31" and substitute:  
section 30
- (2) Section 38(1)—delete "heritage value" and substitute:  
heritage significance
- (3) Section 38(2)(b)—delete paragraph (b) and substitute:  
(b) if the land is within the area of a local council—the local council,
- (4) Section 38(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$120 000.

## **46—Insertion of section 38A**

After section 38 insert:

### **38A—ERD Court orders**

- (1) If a person has engaged in conduct in contravention of this Act, an application may be made to the Court for 1 or more of the following orders:
  - (a) an order restraining the person, or an associate of the person, from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person, or an associate of the person, to take such action as may appear appropriate to the Court in the circumstances (including an order to rectify the consequences of any conduct (including an order to make good, to the satisfaction of the Minister, any damage caused by any conduct), or to ensure that a further contravention does not occur);
  - (b) an order that the person pay into the Fund an amount, determined by the Court to be appropriate in the circumstances, on account of any financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the contravention;
  - (c) an order that the person pay into the Fund an amount as a monetary penalty on account of the contravention.
- (2) Any question that falls to be determined for the purposes of an application under subsection (1) will be determined on the balance of probabilities.
- (3) The power conferred by subsection (1) may only be exercised by a Judge of the Court.
- (4) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised whether or not it appears to the Court that the person intends to continue to engage in conduct of that kind.
- (5) The following additional provisions apply in connection with the operation of paragraph (c) of subsection (1):
  - (a) an application may not be made under that paragraph to recover an amount from a person as a civil penalty in respect of a contravention of a provision that constitutes an offence—

- (i) unless the Minister has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the Minister, elect to be prosecuted for the contravention and the person has been allowed not less than 21 days after service of the Minister's notice to make such an election; or
  - (ii) if the person serves written notice on the Minister, before the making of such an application, that the person elects to be prosecuted for the contravention;
- (b) the maximum amount that may be required to be paid under that paragraph in respect of a contravention of a provision that constitutes an offence is the amount specified by this Act as the criminal penalty in relation to that contravention;
- (c) if conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered in relation to the contravention of any one or more of those provisions (provided that the person is not liable to pay more than one amount under that paragraph in respect of the same conduct);
- (d) in determining the amount to be paid by a person, regard must be had to the following matters:
  - (i) the nature and extent of the contravention;
  - (ii) the heritage significance of any place or object affected by the contravention and any detriment to the public interest resulting from the contravention;
  - (iii) whether the relevant person has previously been found, in proceedings under this Act, to have engaged in similar conduct;
  - (iv) any other matter considered to be relevant;
- (e) the recovery of an amount under that paragraph constitutes an alternative to any relevant criminal proceedings and accordingly:
  - (i) if an amount is paid under that paragraph, criminal proceedings may not be initiated against the relevant 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; and

- (ii) proceedings for an order under that paragraph, or for the enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the relevant person for an offence constituted by conduct that is the same (or substantially the same) as the conduct alleged to constitute the contravention to which the proceedings relate, and may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person;
  - (f) evidence of information given or evidence of the production of documents by a person in the course of discussions or proceedings with respect to the making of an order under that paragraph in relation to a contravention of this Act is not admissible in criminal proceedings against the relevant person if the conduct alleged to constitute the offence is the same (or substantially the same) as the conduct alleged to constitute the contravention, other than where the criminal proceedings relate to the making of a false or misleading statement.
- (6) An application under this section may be made—
  - (a) by the Minister; or
  - (b) by a local council; or
  - (c) by any other person acting with the leave of the Court.
- (7) 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.
- (8) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (9) A person who fails to comply with an order under subsection (1)(a) is guilty of an offence.  
Maximum penalty: \$120 000.
- (10) If a person fails to carry out any work required by an order under subsection (1), the Minister may cause the necessary work to be carried out and recover the cost of doing so, as a debt, from the person against whom the order was made.
- (11) For the purposes of this section, a person is an associate of another if—
  - (a) they are partners; or
  - (b) one is a spouse, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

- (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5 per cent or more of the share capital of the body corporate or other entity; or
  - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (g) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (12) For the purposes of subsection (11), a *beneficiary* of a trust includes an object of a discretionary trust.

#### **47—Amendment of section 39—Right of entry**

- (1) Section 39(1)—delete "the Authority" wherever occurring and substitute in each case:  
the Minister
- (2) Section 39(1)—delete "heritage value" and substitute:  
heritage significance
- (3) Section 39—after subsection (1) insert:
  - (1a) A person authorised by the Minister may enter and inspect a place, or inspect any object in a place—
    - (a) for the purpose of determining whether a provision of this Act is being, or has been, complied with; or
    - (b) for the purpose of investigating any alleged contravention of this Act.

#### **48—Insertion of section 39A**

After section 39 insert:

##### **39A—Protection orders**

- (1) The Minister may issue an order under this section if the Minister believes that the order is reasonably necessary to ensure or secure compliance with any requirement imposed by or under this Act.
- (2) An order under this section—
  - (a) must be in the form of a written notice served on the person to whom the notice is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must state the grounds on which it is made with reasonable particularity; and

- (d) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:
    - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister or a person specified by the Minister;
    - (ii) a requirement that the person take specified action to protect any place or object from damage or deterioration;
    - (iii) a requirement that the person secure any place or object to a standard specified by the Minister;
    - (iv) a requirement that the person take specified action, including action to make good, to the satisfaction of the Minister, any damage or situation caused, or apparently caused, by the person;
    - (v) a requirement that a person control any specified activity; and
  - (e) must state that the person may, within 21 days, appeal to the Court against the order or any subsequent variation of the order.
- (3) The Minister may, by written notice served on a person to whom an order has been issued under this section, vary or revoke the order.
  - (4) A person to whom an order is issued must comply with the order.  
Maximum penalty: \$50 000.
  - (5) If a person fails to comply with the requirements of an order, the Minister may cause any action contemplated by the order to be carried out and recover the cost of doing so, as a debt, from the person against whom the order was made.
  - (6) A person taking action under subsection (5) may enter any relevant land at any reasonable time.
  - (7) A person to whom an order has been issued under this section may appeal to the Court against the order, or any variation of the order, within 21 days after the order is issued or the variation is made.
  - (8) The Court may, if satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed under subsection (7).
  - (9) Subject to subsection (10), the making of an appeal does not affect the operation of the order to which the appeal relates or prevent the taking of action to implement or enforce the order.
  - (10) The Court or the Minister may, on its or the Minister's own initiative or on application by a party to the appeal, suspend the operation of an order until the determination of an appeal.

- (11) A suspension under subsection (10) may be made subject to specified conditions, and may be varied or revoked by the Court or the Minister (as the case requires) at any time.
- (12) The Court may, on hearing an appeal—
  - (a) confirm, vary or revoke the order appealed against, or substitute any order that should have been made in the first instance;
  - (b) remit the subject matter of the appeal to the Minister;
  - (c) order or direct a person 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) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

**49—Amendment of section 40—Erection of signs**

Section 40—delete "The Authority" and substitute:

The Council

**50—Amendment of section 41—Obstruction**

Section 41, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

**51—Insertion of section 41B**

After section 41A insert:

**41B—Immunity from personal liability**

- (1) No personal liability attaches to a member of the Council or any other person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

**52—Amendment of section 42—General provisions relating to offences**

Section 42—after subsection (4) insert:

- (5) The offences constituted by this Act lie within the criminal jurisdiction of the Court.

**53—Amendment of section 43—Service of notices**

Section 43—after paragraph (c) insert:

- (ca) by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the document will be taken to have been given or served at the time of transmission);

## **54—Amendment of section 44—Evidence**

- (1) Section 44(1)—delete ", or inventory attached to the Register,"
- (2) Section 44(3)—delete "the Authority" and substitute:  
the Council

## **55—Substitution of section 45**

Section 45—delete the section and substitute:

### **45—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require that a person seek and consider the advice of a person with prescribed qualifications, or a person recognised by the Council for that purpose, in relation to a matter arising under this Act that is declared by the regulations to be a matter on which such advice should be sought; and
  - (b) fix or regulate fees (which may be differential fees) for the provision of information or other services by the Council or the making of applications to the Council; and
  - (c) be of general or limited application; 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 Council or another prescribed authority; and
  - (e) impose penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

## **Schedule 1—Related amendments and transitional provisions**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Development Act 1993***

#### **2—Amendment of section 4—Definitions**

- (1) Section 4(1), before the definition of *spouse* insert:

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



- (2) Section 4(1), definition of *State Heritage Authority*—delete the definition

### **3—Amendment of section 23—Development Plans**

Section 23—after subsection (4) insert:

(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.

### **4—Amendment of section 24—Council or Minister may amend a Development Plan**

- (1) Section 24(1)(f)—delete "State Heritage Register" and substitute:

South Australian Heritage Register

- (2) Section 24(2)—delete *Heritage Act 1993* and the State Heritage Authority" and substitute:

*Heritage Places Act 1993* and the South Australian Heritage Council

### **5—Amendment of section 29—Certain amendment may be made without formal procedures**

Section 29(3)—after paragraph (a) insert:

- (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

### **6—Amendment of section 53—Law governing proceedings under Act**

Section 53(5)—delete "*Heritage Act 1993*" and substitute:

*Heritage Places Act 1993*

### **7—Amendment of section 71—Fire safety**

Section 71(15)—delete "*Heritage Act 1993*" and substitute:

*Heritage Places Act 1993*

## **8—Amendment of section 84—Enforcement notices**

Section 84(1), definition of *relevant authority* (c)—delete paragraph (c) and substitute:

- (c) the South Australian Heritage Council.

## **Part 3—Amendment of *History Trust of South Australia Act 1981***

### **9—Amendment of section 14—Functions and powers of the Trust**

Section 14(1)(k)—after "to the State" insert:

- (and, as appropriate, to assume the management of such objects)

## **Part 4—Amendment of *Valuation of Land Act 1971***

### **10—Amendment of section 22B—Heritage land**

- (1) Section 22B(1)—delete "forms part of the State heritage" and substitute:  
is on a State/local heritage list
- (2) Section 22B(1)(a)—delete "forms part of the State heritage" and substitute:  
is on a State/local heritage list
- (3) Section 22B(1)(b)—delete "as part of the State Heritage" and substitute:  
as a place of State or local heritage significance or value
- (4) Section 22B(4)—delete "becomes part of the State heritage" and substitute:  
is placed on a State/local heritage list
- (5) Section 22B(5)—delete "that forms part of the State heritage" and substitute:  
that is on a State/local heritage list
- (6) Section 22B(6)—delete subsection (6) and substitute:
  - (6) For the purposes of this Act, land is on a State/local heritage list if—
    - (a) the land, or any place within the land, is a State Heritage Place under the *Heritage Places Act 1993*; or
    - (b) the land, or any place within the land, is designated as a place of local heritage value by a Development Plan under the *Development Act 1993*; or
    - (c) the land is, by virtue of the regulations, to be treated as if it were on a State/local heritage list.
- (7) Section 22B(7), definition of *State Heritage Area*—delete the definition

## Part 5—Transitional provisions

### 11—Transitional provisions

- (1) A decision or determination of the State Heritage Authority in force immediately before the commencement of this clause may continue to have force or effect after that commencement as if it were a decision or determination of the South Australian Heritage Council (and may then be varied or revoked by the Council).
- (2) A reference in any other Act to the State Heritage Authority will be taken to be a reference to the South Australian Heritage Council.
- (3) To avoid doubt, a person holding office as a member of the State Heritage Authority immediately before the commencement of this clause will, on that commencement, cease to hold that office.
- (4) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (5) A provision of a regulation made under subclause (4) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (6) To the extent to which a provision takes effect under subclause (5) 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.
- (7) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this clause, apply to any amendment or repeal effected by this Schedule.