

South Australia

Heritage Places Regulations 2005

under the *Heritage Places Act 1993*

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1—Short title

These regulations may be cited as the *Heritage Places Regulations 2005*.

2—Commencement

These regulations will come into operation on the day on which the *Heritage (Heritage Directions) Amendment Act 2005* comes into operation.

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—Establishment of statutory committee

(1) The Council must establish a committee to advise or assist the Council as to—

- (a) the making of an entry in the Register pursuant to section 14(2) of the Act; and
- (b) the designation of a State Heritage Place pursuant to section 14(7) of the Act; and

- (c) the provisional entry of a particular place in the Register pursuant to section 17 of the Act (on the basis that the committee will act as the Council's delegate in relation to this matter).
- (2) The members of the committee—
 - (a) will be appointed by the Council; and
 - (b) in accordance with terms and conditions determined by the Council.

5—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.

6—Notice

For the purposes of paragraph (a) of section 38A(5) of the Act, a notice of the Minister under that paragraph must be in the form prescribed by Schedule 1.

7—Fees

- (1) The fees set out in Schedule 2 are payable to the Council.
- (2) The Council may waive or reduce a fee if satisfied that it is appropriate to do so in a particular case.

8—Transitional provision for delegations

A delegation made by the State Heritage Authority may continue to operate as if it were a delegation made by the Council until that delegation is varied or revoked by the Council.

Schedule 1—Prescribed form

File No

Heritage Places Act 1993

NOTICE for the purposes of section 38A(5) of the Act

PART A—Notice

To:

Title: Mr/Mrs/Ms

Last
Name:

Given
Names:

Company Name
(if applicable):

Postal Address:

Street Address (if different
from above) or other
information relevant to service

- 1 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 **Part B** of this notice.
- 2 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 penalty 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".
- 3 **If you elect to be prosecuted rather than facing the civil penalty proceedings, you must serve a written notice on the Minister within 21 days after service of this notice.**
- 4 The following matters are relevant to the provision of a notice of election to the Minister:
 - (1) The notice must be addressed to the Minister as follows:

[Insert relevant information]

- (2) 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.

- (3) Please quote your name and the File Number shown at the top of this document.
- (4) Additional information about the Act can be obtained from www.environment.sa.gov.au/heritage. Information concerning this Notice can be obtained by telephone from the Manager, Heritage Branch—Telephone [insert relevant number]. There is also some additional general information set out below.
- (5) 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.

PART B—Particulars of alleged contravention

Name of State Heritage Place (if applicable): Register No:

Address or Location:

The details of the contravention are as follows:

Issued by: Date:

PART C—General information

1 Heritage Places Act 1993

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.

2 Section 38A—ERD Court

- Subsection (1) allows an order to be made only where a contravention of the Act has occurred.
- Subsection (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.

- Subsection (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 he or she 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.
- 3 Proceedings for a civil penalty are stayed if criminal proceedings are started or have already been started 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 guilty being made against the person.
- 4 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

- 1 I 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 No is:

- 2 In accordance with section 38A(5)(a) of the Act I HEREBY GIVE NOTICE that I elect to be prosecuted for the alleged contravention.

Name in full:

Signed:

Please also print signature here:

- 3 Contact details:

- 4 Date:

Schedule 2—Fees

1	Certified copy of an entry in the Register in relation to a State heritage place, or an object identified by the Council under section 14(2) of the Act	\$23
2	Application for certificate of exclusion in relation to land zoned "residential" under the relevant Development Plan—	
	(a) initial application fee	\$115
	plus	
	(b) if the Council determines to invite public submissions	\$1 042
3	Application for certificate of exclusion in relation to any other land	5% of Valuer-General's assessment of site value
4	Application for a permit under Part 5 Division 1 of the <i>Heritage Places Act 1993</i>	\$115

Schedule 3—Revocation of *Heritage Regulations 2005*

The *Heritage Regulations 2005* are revoked.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 17 November 2005

No 240 of 2005

ECO5/0065CS