

South Australia



**DEVELOPMENT (PRIVATE CERTIFICATION) AMENDMENT ACT
1997**

No. 3 of 1997

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ELIZABETHAE II REGINAE

A.D. 1997

No. 3 of 1997

An Act to amend the Development Act 1993 and to make a related amendment to the Statutes Repeal and Amendment (Development) Act 1993.

[Assented to 27 February 1997]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Development (Private Certification) Amendment Act 1997*.
- (2) The *Development Act 1993* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Definitions

3. Section 4 of the principal Act is amended by striking out the definition of "the repealed Act" in subsection (1) and substituting the following definition:

"repealed Act" means the *Building Act 1971*, the *City of Adelaide Development Control Act 1976* or the *Planning Act 1982*;

Amendment of s. 33—Matters against which a development must be assessed

4. Section 33 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) A development will be taken to be an approved development when all relevant consents have been granted and a relevant authority has, in accordance with this Act, indicated that the development is approved.

Amendment of s. 36—Special provisions relating to assessment against the Building Rules

5. Section 36 of the principal Act is amended—

(a) by striking out paragraphs (a) to (d) (inclusive) of subsection (2) and substituting the following paragraph and word:

(a) that—

- (i) the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building work fails to conform with the Building Rules only in minor respects; and
- (ii) the adoption of a particular modification is warranted having regard to the objects of the Development Plan or the performance requirements of the Building Code of Australia and would achieve the objects of this Act as effectively, or more effectively, than if the modification were not to occur; or;

(b) by striking out subsection (5) and substituting the following subsection:

(5) No act or omission by a relevant authority in good faith in connection with the operation of subsections (3) or (4)(a) (other than where a certificate under subsection (4)(a) is given by a private certifier¹) subjects the relevant authority to any liability.

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

(c) by inserting after subsection (6) the following subsection:

(7) If a relevant authority determines to modify the application of the Building Rules to a particular development, the relevant authority must, in giving notice of its decision on the application for provisional building rules consent, specify (in the notice or in an accompanying document)—

- (a) the modification; and
- (b) the grounds on which the modification is being made.

Insertion of s. 68A

6. The following section is inserted after section 68 of the principal Act in Division 4 Part 6:

Private certifiers

68A. (1) A private certifier who has granted a provisional building rules consent for particular building work may also exercise the powers of a council under this Division in relation to the particular building.

(2) For the purposes of the operation of subsection (1)—

- (a) a reference in this Division to a council will be taken to include a reference to a private certifier acting under subsection (1); and
- (b) a decision of a private certifier under this Division has the same effect and is subject to appeal in the same way as a decision of the council that would otherwise be exercising the relevant function under this Division; and
- (c) a private certifier is subject to the same duties and requirements as the council that would otherwise be exercising the relevant function under this Division.

Amendment of s. 84—Enforcement notices

7. Section 84 of the principal Act is amended by striking out from subsection (2) "the repealed Act" and substituting "a repealed Act".

Amendment of s. 85—Applications to the Court

8. Section 85 of the principal Act is amended by striking out "the repealed Act" wherever it occurs and substituting, in each case, "a repealed Act".

Amendment of s. 89—Preliminary

9. Section 89 of the principal Act is amended—

(a) by inserting in subsection (1) "require information," after "any assessment,";

(b) by inserting after subsection (2) the following subsection:

(2a) An application to a private certifier for the purposes of this Act must be in a form determined by the Minister.;

(c) by striking out subsection (6) and substituting the following subsection:

(6) If a relevant authority receives a certificate given by a private certifier under this Act—

(a) the relevant authority incurs no liability if it relies on the certificate; and

(b) the relevant authority cannot be held liable for a subsequent act or omission of the relevant authority in relation to a matter within the ambit of the certificate.

Amendment of s. 93—Authority to be advised of certain matters

10. Section 93 of the principal Act is amended—

(a) by striking out subparagraph (ii) of paragraph (b);

(b) by striking out from paragraph (b)(iii) "other".

Revocation of s. 98

11. Section 98 of the principal Act is revoked.

Amendment of the Statutes Repeal and Amendment (Development) Act 1993

12. The *Statutes Repeal and Amendment (Development) Act 1993* is amended by inserting after subsection (4) of section 28 the following subsection:

(5) In this section—

"approval" means any form of development authorisation under the *Development Act 1993*;

"authority" includes a private certifier under the *Development Act 1993*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor