

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**DEVELOPMENT (SYSTEM IMPROVEMENT PROGRAM) AMENDMENT
ACT 2000**

No. 88 of 2000

[Assented to 21 December 2000]

An Act to amend the Development Act 1993 and to make related amendments to the Environment Protection Act 1993, the Environment, Resources and Development Court Act 1993, the Irrigation Act 1994, the Native Vegetation Act 1991, the Roads (Opening and Closing) Act 1991 and the Water Resources Act 1997.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 3—Objects
4. Amendment of s. 4—Definitions
5. Amendment of s. 20—Delegations
6. Amendment of s. 24—Council or Minister may amend a Development Plan
7. Amendment of s. 25—Amendments by a council
8. Amendment of s. 26—Amendments by the Minister
9. Amendment of s. 27—Parliamentary scrutiny
10. Amendment of s. 28—Interim development control
11. Amendment of s. 29—Certain amendments may be made without formal procedures
12. Substitution of heading of Part

PART 4**DEVELOPMENT ASSESSMENT**

13. Substitution of heading of Division

DIVISION 1—GENERAL SCHEME

14. Amendment of s. 33—Matters against which a development must be assessed
15. Amendment of s. 34—Determination of relevant authority
16. Amendment of s. 35—Special provisions relating to assessment against a Development Plan
17. Amendment of s. 41—Time within which decision must be made
18. Insertion of s. 45A
 - 45A. Investigation of development assessment performance
19. Amendment of s. 48—Governor to give decision on development
20. Amendment of s. 49—Crown development
21. Amendment of s. 49A—Development involving electricity infrastructure
22. Insertion of s. 50A
 - 50A. Carparking fund
23. Insertion of s. 56A
 - 56A. Councils to establish panels
24. Amendment of s. 57—Land management agreements
25. Amendment of s. 59—Notification during building
26. Amendment of s. 66—Classification of buildings
27. Amendment of s. 70—Preliminary
28. Amendment of s. 71—Fire safety
29. Insertion of new Division

DIVISION 6A—BUILDING INSPECTION POLICIES

- 71A. Building inspection policies
30. Amendment of s. 74—Advertisements
31. Amendment of s. 75—Applications for mining production tenements to be referred in certain cases to the Minister
32. Amendment of s. 86—General right to apply to Court
33. Amendment of s. 87—Building referees
34. Insertion of new Division

**DIVISION 3—INITIATION OF PROCEEDINGS TO GAIN A COMMERCIAL
COMPETITIVE ADVANTAGE**

- 88A. Preliminary
- 88B. Declaration of interest
- 88C. Right of action in certain circumstances
35. Amendment of schedule

SCHEDULE 1*Amendment of Other Acts***SCHEDULE 2***Transitional Provisions*

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Development (System Improvement Program) Amendment Act 2000*.

(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. 3—Objects

3. Section 3 of the principal Act is amended by inserting after subparagraph (ii) of paragraph (c) the following subparagraph:

(iia) to encourage the management of the natural and constructed environment in an ecologically sustainable manner; and.

Amendment of s. 4—Definitions

4. Section 4 of the principal Act is amended—

(a) by inserting in the definition of "the Mining Acts" in subsection (1) "the *Opal Mining Act 1995*," after "the *Mining Act 1971*,";

(b) by inserting after paragraph (a) of the definition of "mining production tenement" in subsection (1) the following paragraph:

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

(c) by striking out the definition of "relevant authority" in subsection (1) and substituting the following definitions:

"relative" in relation to a person, means the spouse, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

"relevant authority" means a body determined to be a relevant authority under section 34, subject to the operation of Divisions 2, 3 and 3A of Part 4, and Part 12;

"relevant interest" has the same meaning as in the *Corporations Law*;;

(d) by inserting after the definition of "repealed Act" in subsection (1) the following definition:

"spouse" includes a person who is a putative spouse (whether or not a declaration has been made under the *Family Relationships Act 1975* in relation to that person);;

(e) by inserting after subsection (7) the following subsection:

(8) For the purposes of this Act, a person is an associate of another person if—

- (a) the other person is a relative of the person or of the person's spouse; or
- (b) the other person—
 - (i) is a body corporate; and
 - (ii) the person or a relative of the person or of the person's spouse has, or two or more such persons together have, a relevant interest or relevant interests in shares of the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
- (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or a body corporate referred to in paragraph (b) is a beneficiary; or
- (d) the person is an associate of the other person within the meaning of the regulations.

Amendment of s. 20—Delegations

5. Section 20 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) The Minister, the Advisory Committee, the Development Assessment Commission or another authority established under this Act, or a council, may delegate a power or function vested or conferred under this Act.;

- (b) by striking out subparagraph (iii) of paragraph (a) of subsection (2) and substituting the following subparagraph:

(iii) to a subsidiary established under the *Local Government Act 1999*.;

- (c) by striking out paragraph (e) of subsection (2) and substituting the following paragraph:

(e) in the case of a delegation by the Advisory Committee, the Development Assessment Commission or another authority under this Act—may continue despite a vacancy in the membership of the body.;

- (d) by striking out from subsection (7) "sections 53 to 57A (inclusive), and section 80, of the *Local Government Act 1934*" and substituting "Chapter 5 Part 4 Division 3 and Chapter 7 Part 4 Division 3 of the *Local Government Act 1999*".

Amendment of s. 24—Council or Minister may amend a Development Plan

6. Section 24 of the principal Act is amended—

- (a) by inserting in subsection (1)(a)(iii) "to proceed with an amendment and" after "the Minister has requested the council";

- (b) by striking out subparagraph (iv) of paragraph (a) of subsection (1) and substituting the following subparagraphs:
- (iv) where the Minister considers that the council has demonstrated undue delay in the preparation of a Plan Amendment Report in accordance with the requirements of section 25(3) and (4)—by the Minister; or
 - (iva) where a Plan Amendment Report prepared by the council has lapsed under section 25, or the council has, after commencing the processes associated with making an amendment set out in section 25, subsequently decided not to proceed with the amendment after all—by the Minister; or;
- (c) by inserting in subsection (1)(g) "which in the opinion of the Minister is" after "because of a matter";
- (d) by inserting after paragraph (h) of subsection (1) the following word and paragraph:
- or
- (i) where the Minister considers that an amendment to a Development Plan is appropriate having regard to issues surrounding the consideration or approval of a development or project under Division 2 of Part 4—by the Minister.

Amendment of s. 25—Amendments by a council

7. Section 25 of the principal Act is amended—

- (a) by striking out from subsection (3) "draft";
- (b) by striking out subsections (5) to (14) (inclusive) and substituting the following subsections:
- (5) Subject to this section, the council must then—
 - (a) refer the Plan Amendment Report to any government Department or agency that has a direct interest in the matter for comment within six weeks or such lesser period as may be prescribed by the regulations; and
 - (b) release the Plan Amendment Report for public consultation in accordance with the regulations¹.

¹ The steps set out in subsection (5)(a) and (b) are to be undertaken concurrently (subject to the operation of subsection (6)).

(6) However—

- (a) the Minister may require that the council refer a draft of the Plan Amendment Report to the Minister and to any government Department or agency that has a direct interest in the matter before the release of the Plan Amendment Report for public consultation; and

- (b) the council must not release a Plan Amendment Report for public consultation unless or until the chief executive officer of the council has, on behalf of the council, issued a certificate in the prescribed form relating to the extent to which the proposed amendment—
- (i) accords with the Statement of Intent; and
 - (ii) accords with the Planning Strategy; and
 - (iii) accords with other parts of the Development Plan; and
 - (iv) complements the policies in the Development Plans for adjoining areas; and
 - (v) satisfies the matters prescribed in the regulations.

(7) The Minister may impose a requirement under subsection (6)(a)—

- (a) at or before the time when agreement is reached on the Statement of Intent; or
- (b) at any other time after consultation with the council.

(8) If the Minister imposes a requirement under subsection (6)(a), the council must not release the Plan Amendment Report for public consultation unless or until the Minister has considered the matter and any comment from a government Department or agency to which the Plan Amendment Report has been referred (although if a response is not received from a Department or agency within six weeks or such lesser period as may be prescribed by the regulations, it will be taken that the Department or agency does not desire to provide a comment) and given his or her approval to the public release of the Plan Amendment Report.

(9) The Minister may, after consultation with the council—

- (a) require an alteration to the Plan Amendment Report before giving his or her approval to its release under subsection (8);
- (b) determine that the Plan Amendment Report be divided into parts (with or without alterations) and that each part be dealt with separately (and, in such a case, the determination will have effect according to its terms and each part will then be taken to be a separate Plan Amendment Report for the purposes of this Act).

(10) The council must ensure that a copy of a certificate under subsection (6)(b) is—

- (a) provided to the Minister in accordance with the regulations; and
- (b) kept available for public inspection in conjunction with the Plan Amendment Report to which it relates.

(11) If the Minister considers that a certificate should not have been given under subsection (6)(b), the Minister may, after consultation with the council, require action to be taken to rectify the matter and any step under a preceding subsection to be recommenced or repeated (and any such requirement must then be complied with in accordance with its terms).

(12) If a proposed amendment designates a place as a place of local heritage value, the council must, at or before the time when the Plan Amendment Report is released for public consultation, give each owner of land constituting the place proposed as a place of local heritage value a written notice—

- (a) informing the owner of the proposed amendment; and
- (b) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under the regulations.

(13) The council must, after complying with the requirements of the preceding subsections—

- (a) prepare a report on the matters raised during the consultation period and on any recommended alterations to the proposed amendment; or
- (b) if it thinks fit, by notice in writing to the Minister, decline to proceed any further with the amendment.

(14) The council must send to the Minister, in accordance with the regulations—

- (a) a copy of a report under subsection (13)(a); and
- (b) a certificate from the chief executive officer of the council, in the prescribed form—
 - (i) confirming that the council has complied with the requirements of this section and that the proposed amendment is in a correct and appropriate form; and
 - (ii) if a report under subsection (13)(a) recommends an alteration or alterations to the proposed amendment—relating to the extent to which the amendment, as altered—
 - (A) accords with the Planning Strategy; and
 - (B) accords with other parts of the Development Plan; and
 - (C) complements the policies in the Development Plans for adjoining areas; and
 - (D) satisfies the matters prescribed in the regulations.

(15) The Minister must, on the receipt of a report under subsection (13)(a), seek the advice of the Advisory Committee—

- (a) if the Minister is of the opinion—

- (i) that the proposed amendment would not be in accordance with the Planning Strategy; or
 - (ii) that there is substantial public opposition to the whole or part of the proposed amendment; or
 - (iii) that the council has recommended that substantial alterations be made to the amendment; or
- (b) in the case of an amendment that designates a place as a place of local heritage value—if the owner of the land objects to the amendment (and, in such a case, the owner of the land must be given a reasonable opportunity to make submissions to the Advisory Committee (in such a manner as the Advisory Committee thinks fit) in relation to the matter before the Advisory Committee reports back to the Minister),

and thereafter the Minister may—

- (c) approve the amendment; or
- (d) after consultation with the council, alter the amendment and approve the amendment as altered; or
- (e) decline to approve the amendment (and, in such a case, the Minister must provide the council with written reasons for the Minister's decision); or
- (f) after consultation with the council, divide the amendment into separate amendments (with or without alterations) and approve one or more of those amendments and, as to the remaining amendment or amendments, undertake consultation with the council in relation to the matter (and, in such a case, the Minister may then reconsider the amendment or amendments (with or without alterations) and exercise, in relation to the amendment or amendments, any power conferred on the Minister under this subsection to approve, alter or decline to approve the amendment or amendments).

(16) The Minister is not required to consult with the council under subsection (15)(d) in relation to any alteration made—

- (a) in order to make a change of form (without altering the effect of an underlying policy reflected in the amendment); or
- (b) in order to take action which, in the opinion of the Minister, is—
 - (i) addressing or removing irrelevant material or a duplication or inconsistency (without altering the effect of an underlying policy reflected in the amendment); or
 - (ii) correcting an error.

(17) The Minister will give an approval under subsection (15) by notice in the *Gazette*.

(18) A notice under subsection (17) must fix a day on which an approved amendment will come into operation (and the relevant Development Plan will then be taken, from that day, to be amended in the manner set out in the amendment).

(19) Despite a preceding subsection (but subject to the operation of subsection (21)), the Minister may, by notice in writing to the council, determine that a Plan Amendment Report will lapse if the council has failed—

- (a) to refer the Plan Amendment Report to the Minister or a government Department or agency in accordance with the requirements of this section within the relevant period; or
- (b) to release the Plan Amendment Report for public consultation in accordance with the requirements of this section within the relevant period; or
- (c) to provide a report to the Minister on the matters raised during the public consultation period for the Plan Amendment Report in accordance with the requirements of this section within the relevant period,

(and such a determination will have effect according to its terms).

(20) A reference to the relevant period in paragraph (a), (b) or (c) of subsection (19) is a reference to a period specified by the relevant Statement of Intent or, if the Minister has granted the relevant council an extension of that period, a reference to that period as extended by the Minister.

(21) The Minister must, before making a determination under subsection (19), consult with the council and give the council a reasonable opportunity to make submissions to the Minister.

(22) The Minister may act or rely on a matter certified by the chief executive officer of a council under this section without further inquiry.

Amendment of s. 26—Amendments by the Minister

8. Section 26 of the principal Act is amended—

(a) by striking out subsections (4) and (5) and substituting the following subsection:

(4) The Minister must then—

- (a) refer the Plan Amendment Report to any council that in the opinion of the Minister has a direct interest in the matter for comment within the time determined by the Minister (being not less than the time that applies under paragraph (b)); and
- (b) release the Plan Amendment Report for public consultation in accordance with the regulations¹.

¹ The steps set out in subsection (4)(a) and (b) may be undertaken concurrently.;

(b) by striking out from subsection (6) "consultation under subsection (5)" and substituting "consultation under subsection (4)";

- (c) by striking out from subsection 6(b) "subsection (5)" and substituting "subsection (4)(b)";
- (d) by striking out from subsection (7)(a) "subsection (5)" and substituting "subsection (4)";
- (e) by inserting after paragraph (c) of subsection (8) the following word and paragraph:

or

- (d) divide the amendment into separate amendments (with or without alterations) and approve one or more of those amendments and, as to the remaining amendment or amendments, give further consideration to any outstanding issues and then, if or when the Minister thinks fit, reconsider the amendment or amendments (with or without alterations) and exercise, in relation to the amendment or amendments, any power conferred on the Minister under this subsection to approve, or to decline to approve, the amendment or amendments.;
- (f) by inserting after subsection (8) the following subsections:

(9) The Minister will give an approval under subsection (8) by notice in the *Gazette*.

(10) A notice under subsection (9) must fix a day on which the amendment will come into operation (and the relevant Development Plan or Plans will then be taken, from that day, to be amended in the manner set out in the amendment).

(11) Despite a preceding subsection (but subject to the operation of subsection (12)), if—

- (a) the Minister is authorised to proceed with the consideration of an amendment because of the operation of section 24(1)(a)(iva); and
- (b) a Plan Amendment Report has been prepared by the relevant council under section 25; and
- (c) the Minister is of the opinion that a policy contained in the Plan Amendment Report is of substantial interest to the Government of the State and should be adopted to achieve consistency with the Planning Strategy,

then—

- (d) the Minister may rely on a Plan Amendment Report (or part of a Plan Amendment Report) prepared under section 25 rather than under this section (with or without modifications made by the Minister); and
- (e) unless substantial modifications have been made under paragraph (d), the Minister is not required to undertake public consultation on a Plan Amendment Report (or part of a Plan Amendment Report) on which the Minister is relying under paragraph (d) if public consultation has already been undertaken on the Plan Amendment Report by a council under section 25; and

- (f) the Minister is not required to seek the advice of the Advisory Committee under this section to the extent that advice has already been obtained under section 25.

(12) The Minister must refer a proposal to act under subsection (11) to the relevant council for comment within a period (of at least six weeks) determined by the Minister and if during that period the council, by notice in writing, objects to the Minister's proposed action then the Minister must seek and consider the advice of the Advisory Committee before acting.

Amendment of s. 27—Parliamentary scrutiny

9. Section 27 of the principal Act is amended—

- (a) by striking out subsections (1) and (2) and substituting the following subsection:

(1) If the Minister approves an amendment under this subdivision, the Minister must, within 28 days, refer the amendment to the Environment, Resources and Development Committee of the Parliament (together with, in the case of an amendment approved under section 25, copies of the certificates of the chief executive officer of the relevant council required under that section).;

- (b) by striking out from subsection (3) "subsection (2)" and substituting "subsection (1)";

- (c) by striking out paragraphs (a) and (b) of subsection (5) and substituting the following paragraphs:

(a) the Minister may, by notice in the *Gazette*, proceed to make such an amendment; or

(b) the Minister may report back to the Committee that the Minister is unwilling to make the amendment suggested by the Committee (and, in such a case, the Committee may resolve that it does not object to the amendment as originally made, or may resolve to object to that amendment).;

- (d) by striking out from subsection (6) "a recommendation is made" and substituting "making an amendment".

Amendment of s. 28—Interim development control

10. Section 28 of the principal Act is amended by striking out from subsection (4)(c) "authorised by the Governor" and substituting "approved by the Minister".

Amendment of s. 29—Certain amendments may be made without formal procedures

11. Section 29 of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (2) and substituting the following paragraphs:

(a) in order to make a change of form (without altering the effect of an underlying policy reflected in the Development Plan); or

(b) in order to take action which, in the opinion of the Minister, is—

- (i) addressing or removing irrelevant material or a duplication or inconsistency (without altering the effect of an underlying policy reflected in the Development Plan); or
- (ii) correcting an error.

Substitution of heading of Part

12. The heading to Part 4 of the principal Act is repealed and the following heading is substituted:

**PART 4
DEVELOPMENT ASSESSMENT**

Substitution of heading of Division

13. The heading to Division 1 of Part 4 of the principal Act is repealed and the following heading is substituted:

DIVISION 1—GENERAL SCHEME

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

14. Section 33 of the principal Act is amended—

(a) by inserting after subparagraph (vii) of subsection (1)(d) the following subparagraph:

(viia) any building situated on the land complies with the Building Rules;;

(b) by inserting after subsection (4) the following subsection:

(5) The provisions of the Building Rules that are relevant to the operation of subparagraph (viia) of paragraph (d) of subsection (1) are the provisions of the Building Rules as in force at the time the application is made for consent in respect of the matters referred to in that paragraph.

Amendment of s. 34—Determination of relevant authority

15. Section 34 of the principal Act is amended—

(a) by striking out from subsection (1)(a) "subject to paragraph (b)" and substituting "subject to paragraphs (ab) and (b)";

(b) by inserting after paragraph (a) of subsection (1) the following paragraph:

(ab) where—

- (i) the proposed development is to be undertaken within an area in relation to which a regional development assessment panel has been constituted (*see* subsection (3)); and
- (ii) the proposed development is development of a prescribed kind,

then, subject to paragraph (b), the regional development assessment panel is the relevant authority;;

- (c) by striking out subparagraph (iii) of subsection (1)(b) and substituting the following subparagraph:
- (iii) the Minister, acting at the request of a council or regional development assessment panel, declares, by notice in writing served personally or by post on the proponent, that the Minister desires the Development Assessment Commission to act as the relevant authority in relation to the proposed development in substitution for the council or regional development assessment panel (as the case may be); or;
- (d) by inserting after subparagraph (v) of subsection (1)(b) the following subparagraph:
- (va) the Development Assessment Commission and a regional development assessment panel would, apart from this provision, both be constituted as relevant authorities in relation to a particular development; or;
- (e) by striking out subparagraph (vi) of subsection (1)(b) and substituting the following subparagraph:
- (vi) the Minister declares, by notice in writing served personally or by post on the proponent, and sent to the relevant council or regional development assessment panel within five business days after the declaration is made, that the Minister desires the Development Assessment Commission to act as (or to become) the relevant authority for the proposed development in substitution for the council or the regional development assessment panel because—
- (A) in the Minister's opinion the council, or a council for an area in relation to which the regional development assessment panel has been constituted (as the case may be), has demonstrated a potential conflict of interest in the assessment of the development because of a publicly stated position on the particular development; or
- (B) in the Minister's opinion the proposed development would have significant impact beyond the boundaries of the council area in which the relevant land is situated; or
- (C) the council or regional development assessment panel has failed to deal with an application for development authorisation for the development within the time prescribed under section 41,;
- (f) by inserting in subsection (1a) "or regional development assessment panel" after "council";
- (g) by inserting in subsection (2)(b) "or a regional development assessment panel" after "the Development Assessment Commission";

- (h)* by striking out from subsection (2) "the Development Assessment Commission may" and substituting "the Development Assessment Commission or regional development assessment panel (as the case may be) may";
- (i)* by inserting in subsection (2)(d) "or regional development assessment panel" after "the Development Assessment Commission";
- (j)* by inserting in subsection (2) "or regional development assessment panel" after "imposed by the Development Assessment Commission";
- (k)* by inserting after subsection (2) the following subsections:

(3) The Governor may, for the purposes of this section, by regulation, constitute a regional development assessment panel in relation to the areas of two or more councils (being council areas that are contiguous) and, if the regulation so provides, in relation to a contiguous area of the State not within the area of a council.

(4) The Governor may, in the regulation constituting a regional development assessment panel, or by subsequent regulation, make provision with the respect to—

- (a)* the membership of a regional development assessment panel, including—
 - (i)* the number of members; and
 - (ii)* the criteria for membership; and
 - (iii)* the procedures to be followed with respect to the appointment of members (on the basis that appointments will, according to the terms of the regulation, be made by the relevant councils or, if appropriate, the Minister); and
 - (iv)* the terms of office of members; and
 - (v)* conditions of appointment of members, or the method by which those conditions will be determined, and the grounds on which, and the procedures by which, a member may be removed from office; and
 - (vi)* the appointment of deputy members;
- (b)* the procedures of a regional development assessment panel;
- (c)* staffing and other support issues associated with the creation or operations of a regional development assessment panel;
- (d)* any special accounting or financial issues that may arise in relation to a regional development assessment panel;
- (e)* reporting by a regional development assessment panel on its operations and decisions;

- (f) the proportions in which the councils for the areas in relation to which a regional development assessment panel is constituted will be responsible for costs and other liabilities associated with the regional development assessment panel;
- (g) other matters considered by the Governor to be necessary or expedient for the purposes of a regional development assessment panel.

(5) A member of a regional development assessment panel need not be a member of a council for an area in relation to which the regional development assessment panel is constituted.

(6) Notice of the appointment of a member of a regional development assessment panel must be given in accordance with the regulations.

(7) A member of a regional development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the regional development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—

- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
- (b) must not take part in any deliberations or decision of the panel on the matter and must be absent from the room when any deliberations are taking place or decision is being made.

(8) Without limiting the effect of subsection (7), a member of a regional development assessment panel will be taken to have an interest in a matter for the purposes of that subsection if an associate of the member has an interest in the matter.

(9) A member of a regional development assessment panel incurs no liability for an honest act done in the performance or purported performance of functions or duties under this Act.

(10) Any liability that would, but for subsection (9), attach to a member of a regional development assessment panel attaches instead to the councils for the areas in relation to which the regional development assessment panel is constituted.

(11) Subject to subsection (12), a meeting of a regional development assessment panel must be conducted in a place open to the public.

(12) A regional development assessment panel may exclude the public from attendance—

- (a) during so much of a meeting as is necessary to receive, discuss or consider on a confidential basis any of the following information or matters:
 - (i) information that would, if disclosed, confer a commercial advantage on a person with whom a council is conducting (or proposes to conduct) business, or prejudice the commercial position of a council;

- (ii) commercial information of a confidential nature that would, if disclosed—
 - (A) prejudice the commercial position of the person who supplied it; or
 - (B) confer a commercial advantage on a third party; or
 - (C) reveal a trade secret;
- (iii) matters affecting the security of any person or property;
- (iv) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- (v) legal advice, or advice from a person who is providing specialist professional advice;
- (vi) information provided by a public official or authority (not being an employee of a council, or a person engaged by a council) with a request or direction by that public official or authority that it be treated as confidential; or

(b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.

(13) A regional development assessment panel must ensure that accurate minutes are kept of its proceedings.

(14) A disclosure under subsection (7)(a) must be recorded in the minutes of the regional development assessment panel.

(15) Members of the public are entitled to reasonable access—

- (a) to agendas for meetings of a regional development assessment panel; and
- (b) to the minutes of meetings of a regional development assessment panel.

(16) However, a regional development assessment panel may, before it releases a copy of any minutes under subsection (15), exclude from the minutes information about any matter dealt with on a confidential basis by the panel.

(17) Minutes must be available under subsection (15)(b) within five days after their adoption by the members of the panel.

(18) An act of a regional development assessment panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(19) The Governor may, by regulation—

- (a) vary a regulation previously made under subsection (3) or (4);

- (b) dissolve a regional development assessment panel (and make any provision necessary or expedient on account of the dissolution (including for the transfer to another authority of matters under the consideration of the panel immediately before its dissolution)).

(20) The Minister must ensure that the councils for the areas in relation to which a regional development assessment panel is, or is to be, constituted concur before a regulation is made under subsection (1)(ab)(ii), (3), (4) or (19).

(21) A council may, by giving the Minister at least two months notice in writing, withdraw from a regional development assessment panel.

(22) If a council withdraws from a regional development assessment panel under subsection (21)—

- (a) the council remains liable for its share of the costs and liabilities of the regional development assessment panel incurred or accrued before the date of withdrawal; and
- (b) the Governor may, after the Minister has consulted with the remaining councils, by regulation, vary or revoke to a regulation previously made under subsection (3) or (4) on account of the withdrawal (and in this case subsection (20) does not apply).

Amendment of s. 35—Special provisions relating to assessment against a Development Plan

16. Section 35 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) However, a proposed development of a class prescribed for the purposes of section 37 will be taken not to be *complying* development (and will not be subject to the operation of subsection (1)).;

(b) by inserting after subsection (3) the following subsection:

(3a) However, the concurrence of a council is not required under subsection (3)(a) if the Development Assessment Commission is the relevant authority by virtue of the operation of section 34(1)(b)(ii), (iii) or (vi)(A).

Amendment of s. 41—Time within which decision must be made

17. Section 41 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) If the Court makes an order under subsection (2), the Court should also order the relevant authority to pay the applicant's costs of the proceedings unless the Court is satisfied that the delay is not attributable to an act or omission of the relevant authority or that an order for costs should not be made for some other reason.

Insertion of s. 45A

18. The following section is inserted in Division 1 of Part 4 of the principal Act after section 45:

Investigation of development assessment performance

45A. (1) If the Minister has reason to believe that a relevant authority has—

- (a) contravened or failed to comply with a provision of this Division in a significant respect or to a significant degree; or
- (b) failed to efficiently or effectively discharge a responsibility under this Division in a significant respect or to a significant degree,

then the Minister may appoint an investigator or investigators to carry out an investigation and to report on the matter.

(2) The Minister must, before making an appointment under subsection (1), give the relevant authority a reasonable opportunity to explain its actions, and to make submissions (including, if relevant, an indication of undertakings that the relevant authority is willing to give in order to take remedial action), to the Minister.

(3) An investigator may, for the purposes of an investigation—

- (a) require a member or employee of the relevant authority, or a public sector employee or council employee assigned or engaged to assist the relevant authority, to answer, orally or in writing, questions put by the investigator to the best of his or her knowledge, information and belief;
- (b) require a person to whom questions are put under paragraph (a) to verify the answers to those questions by declaration;
- (c) require a person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation;
- (d) retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

(4) Subject to subsection (7), a person who refuses or fails to comply with a requirement under subsection (3) is guilty of an offence.

Maximum penalty: \$10 000.

(5) Subject to subsection (7), a person is not excused from answering a question or from producing books, papers or other records under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(6) However, if compliance by a natural person with a requirement to answer a question or to produce a book, paper or other record might tend to incriminate the person or make the person liable to a penalty—

- (a) in the case of a person who is required to produce a book, paper or record, the book paper or record (as distinct from the contents of the book, paper or record); or
- (b) in any other case, the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

(7) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

(8) At the conclusion of an investigation, the investigator or investigators must present a written report to the Minister on the results of the investigation.

(9) The report may, if the investigator or investigators think fit, include recommendations to the Minister on what action (if any) should be taken in the circumstances.

(10) The Minister must supply the relevant authority with a copy of a report presented under subsection (8).

(11) The Minister may, on the basis of a report presented under subsection (8)—

(a) make recommendations to the relevant authority; or

(b) if the Minister considers that the relevant authority has—

(i) contravened or failed to comply with a provision of this Division in a significant respect or to a significant degree; or

(ii) failed to efficiently or effectively discharge a responsibility under this Division in a significant respect or to a significant degree,

give directions to the relevant authority to rectify the matter, or to take specified action with a view to preventing a recurrence of any act, failure or irregularity.

(12) The Minister must, before taking action under subsection (11), give the relevant authority a reasonable opportunity to make submissions to the Minister on the report on which the action is based.

(13) If—

(a) the Minister makes a recommendation to a relevant authority under subsection (11)(a); and

(b) the Minister subsequently considers that the relevant authority has not, within a reasonable period, taken appropriate action in view of the recommendation,

the Minister may, after consultation with the relevant authority, give directions to it.

(14) A relevant authority must comply with a direction under subsection (11) or (13).

(15) No action in defamation lies in respect of the contents of a report under this section.

(16) Nothing in this section limits or affects the operation of Chapter 13 Part 3 of the *Local Government Act 1999*.

Amendment of s. 48—Governor to give decision on development

19. Section 48 of the principal Act is amended by striking out from subsection (1)(b) "49A(19)" and substituting "49A(20)".

Amendment of s. 49—Crown development

20. Section 49 of the principal Act is amended—

(a) by striking out subsection (7) and substituting the following subsections:

(7) The Development Assessment Commission must assess an application lodged with it under this section.

(7a) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Development Assessment Commission must refer the application, together with a copy of any relevant information provided by the State agency, to a body prescribed by the regulations for comment and report within the time prescribed by the regulations.

(7b) A prescribed body may, before it provides a report under subsection (7a), request the State agency—

(a) to provide additional documents or information (including calculations and technical details) in relation to the application; and

(b) to comply with any other requirements or procedures of a prescribed kind.

(7c) If an application is referred to a prescribed body under subsection (7a) and a report from the prescribed body is not received by the Development Assessment Commission within a period determined under the regulations, it will be conclusively presumed that the prescribed body does not intend to report on the matter.

(7d) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are completed, exceed \$4 000 000, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development Assessment Commission must—

(a) by public advertisement, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and

(b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before the Development Assessment Commission to be heard in support of his or her submission; and

(c) give due consideration in its assessment of the application to any submissions made by interested persons as referred to in paragraph (a) or (b).

(7e) The Development Assessment Commission will then prepare a report to the Minister on the matter.;

(b) by inserting after subsection (9) the following subsection:

(9a) If a prescribed body has provided a report under subsection (7a), a copy of the report must also be attached to the Development Assessment Commission's report.;

(c) by striking out from subsection (10) "three months of its receipt of the relevant application" and substituting "the time prescribed by the regulations";

(d) by striking out from subsection (11) "three-month".

Amendment of s. 49A—Development involving electricity infrastructure

21. Section 49A of the principal Act is amended—

(a) by striking out subsection (7) and substituting the following subsections:

(7) The Development Assessment Commission must assess an application lodged with it under this section.

(7a) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Development Assessment Commission must refer the application, together with a copy of any relevant information provided by the proponent, to a body prescribed by the regulations for comment and report within the time prescribed by the regulations.

(7b) A prescribed body may, before it provides a report under subsection (7a), request the proponent—

(a) to provide additional documents or information (including calculations and technical details) in relation to the application; and

(b) to comply with any other requirements or procedures of a prescribed kind.

(7c) If an application is referred to a prescribed body under subsection (7a) and a report from the prescribed body is not received by the Development Assessment Commission within a period determined under the regulations, it will be conclusively presumed that the prescribed body does not intend to report on the matter.

(7d) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are complete, exceed \$4 000 000, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development Assessment Commission must—

(a) by public advertisement, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and

**Development (System Improvement Program)
Amendment Act 2000**

No. 88 of 2000

- (b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before the Development Assessment Commission to be heard in support of his or her submission; and
- (c) give due consideration in its assessment of the application to any submissions made by interested persons as referred to in paragraph (a) or (b).

(7e) The Development Assessment Commission will then prepare a report to the Minister on the matter.;

(b) by inserting after subsection (9) the following subsection:

(9a) If a prescribed body has provided a report under subsection (7a), a copy of the report must also be attached to the Development Assessment Commission's report.;

(c) by striking out from subsection (10) "three months of its receipt of the relevant application" and substituting "the time prescribed by the regulations";

(d) by striking out from subsection (11) "three-month".

Insertion of s. 50A

22. The following section is inserted after section 50 of the principal Act:

Carparking fund

50A. (1) A council may, with the approval of the Minister, establish a carparking fund for an area designated by the council (a "designated area")¹.

¹ Money standing to the credit of a carparking fund may only be used for specific purposes—see subsection (8).

(2) The establishment of a fund will be effected by notice in the *Gazette*.

(3) A designated area must be defined by reference to an area established by the relevant Development Plan.

(4) A fund will consist of—

- (a) all amounts paid to the credit of the fund under subsection (5); and
- (b) any income paid into the fund under subsection (7).

(5) If—

- (a) a person is proposing to undertake development within a designated area; and
- (b) application for provisional development plan consent is made under this Part; and
- (c) the relevant authority determines, after taking into account the provisions of the relevant Development Plan, that the proposal does not provide for sufficient spaces for the parking of cars at the site of the development; and

- (d) the relevant authority and the applicant agree that the applicant will make a contribution to the relevant carparking fund in lieu of providing a certain number of spaces for the parking of cars at the site of the development,

then the applicant must make a contribution to the carparking fund of an amount calculated in accordance with a determination of the relevant council (and the development may proceed despite the situation with respect to carparking at the site of the development).

(6) A determination of a council for the purposes of calculating amounts to be paid into a carparking fund—

- (a) has effect when published in the *Gazette*; and
- (b) may be varied by the council from time to time by further notice in the *Gazette*.

(7) Any money in a carparking fund that is not for the time being required for the purpose of the fund may be invested by the council and any resultant income must be paid into the fund.

(8) The money standing to the credit of a carparking fund may be applied by the council for any of the following purposes (and for no other purpose):

- (a) to provide carparking facilities within the designated area; or
- (b) to provide funds for (or towards) the maintenance, operation or improvement of carparking facilities within the designated area; or
- (c) to provide funds for (or towards) the establishment, maintenance or improvement of transport facilities within the area of the council with a view to reducing the need or demand for carparking facilities within the designated area.

Insertion of s. 56A

23. The following section is inserted in Division 4 of Part 4 of the principal Act after section 56:

Councils to establish panels

56A. (1) A council must establish a panel (a **development assessment panel**) to exercise or perform, or to assist the council to exercise or perform, its powers and functions under this Part.

(2) A council must, in establishing a development assessment panel under this section, determine—

- (a) the extent to which it will delegate its powers and functions under this Part in order to facilitate the expeditious assessment of applications made to the council as a relevant authority under this Part; and
- (b) the reporting and other requirements that are to apply in relation to the panel; and

- (c) the conditions of appointment of members of the panel (including as to term of office and the grounds on which a member may be removed),

(and the council may subsequently vary any such determination as it thinks fit).

(3) A council must review a determination under subsection (2)(a) at least once in every 12 months.

(4) A development assessment panel under this section may consist of, or include, persons who are not members of the council.

(5) A council must, within 14 days after appointing a person as a member of a development assessment panel, give notice of the appointment by publishing the prescribed particulars in a newspaper circulating in the area of the council.

(6) The council or the development assessment panel (as determined by the council) will appoint a member of a development assessment panel as the presiding member of the panel.

(7) A member of a development assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—

- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
- (b) must not take part in any deliberations or decision of the panel on the matter and must be absent from the room when any deliberations are taking place or decision is being made.

(8) Without limiting the effect of subsection (7), a member of a development assessment panel will be taken to have an interest in a matter for the purposes of that subsection if an associate of the member has an interest in the matter.

(9) Non-compliance with subsection (7) will constitute a ground for the council removing a member from the relevant development assessment panel.

(10) A member of a development assessment panel incurs no liability for an honest act done in the exercise or performance, or purported exercise or performance, of powers or functions under this Part.

(11) Subject to subsection (12), a meeting of a development assessment panel must be conducted in a place open to the public.

(12) A development assessment panel may exclude the public from attendance—

- (a) during so much of a meeting as is necessary to receive, discuss or consider on a confidential basis any of the following information or matters:
- (i) information that would, if disclosed, confer a commercial advantage on a person with whom a council is conducting (or proposes to conduct) business, or prejudice the commercial position of a council;

- (ii) commercial information of a confidential nature that would, if disclosed—
 - (A) prejudice the commercial position of the person who supplied it; or
 - (B) confer a commercial advantage on a third party; or
 - (C) reveal a trade secret;
 - (iii) matters affecting the security of any person or property;
 - (iv) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
 - (v) legal advice, or advice from a person who is providing specialist professional advice;
 - (vi) information provided by a public official or authority (not being an employee of a council, or a person engaged by a council) with a request or direction by that public official or authority that it be treated as confidential; or
- (b) unless otherwise determined by the council—during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.
- (13) A development assessment panel must ensure that accurate minutes are kept of its proceedings.
- (14) A disclosure under subsection (7)(a) must be recorded in the minutes of the development assessment panel.
- (15) Members of the public are entitled to reasonable access—
- (a) to the agendas for meetings of a development assessment panel; and
 - (b) to the minutes of meetings of a development assessment panel.
- (16) However, a development assessment panel may, before it releases a copy of any minutes under subsection (15), exclude from the minutes information about any matter dealt with on a confidential basis by the panel.
- (17) Minutes must be available under subsection (15)(b) within five days after their adoption by the members of the panel.
- (18) An act of a development assessment panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(19) The procedures to be observed in relation to the conduct of the business of a development assessment panel will be—

- (a) as determined by the council; or
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the panel.

(20) A council must, at the request of the Minister, provide information to the Minister—

- (a) about the constitution of a development assessment panel under this section; or
- (b) about the powers and functions delegated to a development assessment panel under this section.

(21) The *Local Government Act 1999* does not apply to, or in relation to, a development assessment panel established under this section (including with respect to its members when acting under this section or its processes or procedures).

Amendment of s. 57—Land management agreements

24. Section 57 of the principal Act is amended—

- (a) by inserting in subsection (1) "development," after "relating to the";
- (b) by inserting in subsection (2) "development," after "relating to the";
- (c) by inserting after subsection (2) the following subsections:

(2a) The Minister or a council must, in considering whether to enter into an agreement under this section which relates to the development of land and, if such an agreement is to be entered into, in considering the terms of the agreement, have regard to—

- (a) the provisions of the appropriate Development Plan and to any relevant development authorisation under this Act; and
- (b) the principle that the entering into of an agreement under this section by the Minister or a council should not be used as a substitute to proceeding with an amendment to a Development Plan under this Act.

(2b) Agreements entered into under this section after the commencement of this subsection must be registered in accordance with the regulations (and any such agreement will have no force or effect unless or until it is so registered).

(2c) A register must be kept available for public inspection (without charge) in accordance with the regulations.

(2d) A person is entitled, on payment of the prescribed fee, to a copy of an agreement registered under subsection (2b).

(2e) If an agreement is (or is to be) entered into under this section in connection with the granting of provisional development plan consent with respect to a Category 2 or Category 3 development, a note of the existence of the agreement (or of the proposal to enter into the agreement), and of the availability of copies of the agreement for public inspection under this Act, must be included on the notice of the relevant authority's decision under this Act.;

- (d) by inserting in subsection (7) "and notwithstanding the provisions of the *Real Property Act 1886*" after "person with whom the agreement was made";
- (e) by striking out from subsection (13) the definition of "owner" and substituting the following definition:

"owner" of land includes—

- (a) a person who has the care, control or management of a reserve; or
- (b) a mortgagee in possession of the land.

Amendment of s. 59—Notification during building

25. Section 59 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) If building work is being carried out within the area of a council, then—

- (a) a licensed building work contractor who is carrying out the work or who is in charge of carrying out the work; or
- (b) if there is no such licensed building work contractor, the building owner,

must, in accordance with a scheme prescribed by the regulations, notify the council within the prescribed period of the commencement or completion of a prescribed stage of work (a **mandatory notification stage**);

- (b) by inserting in subsection (2) "(a **statement of compliance**)" after "a statement".

Amendment of s. 66—Classification of buildings

26. Section 66 of the principal Act is amended—

- (a) by striking out subsections (1), (2) and (3) and substituting the following subsections:

(1) Subject to this section, a building must have a classification determined in accordance with the regulations.

(2) A council may assign to a building erected in its area a classification that conforms with the regulations.;

- (b) by striking out from subsection (4) "or the Minister assigns a classification under this section, the council or the Minister, as the case may be," and substituting "assigns a classification under this section, the council".

Amendment of s. 70—Preliminary

27. Section 70 of the principal Act is amended by striking out paragraph (b).

Amendment of s. 71—Fire safety

28. Section 71 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsections:

(1) An authorised officer who holds prescribed qualifications or a member of an appropriate authority may, at any reasonable time, enter and inspect any building for the purpose of determining whether the fire safety of a building is adequate.

(1a) An authorised officer who holds prescribed qualifications must conduct an inspection of a building under subsection (1) at the request of an appropriate authority or a fire authority.;

(b) by striking out from subsection (2) ", acting on the advice of an authorised officer who holds prescribed qualifications,";

(c) by striking out from subsection (3)(b)(iii) "of the building" and substituting "or use of the building or a part of the building";

(d) by striking out from subsection (6)(b) "of the building" and substituting "or use of the building or a part of the building";

(e) by striking out subsections (7), (8) and (9);

(f) by inserting after the penalty provision in subsection (14) the following item:

Default penalty: \$50.;

(g) by striking out subsection (18) and substituting the following subsections:

(18) For the purposes of this section, an **appropriate authority** is a body established by a council, or by two or more councils, under subsection (19) and designated by the council or councils as an appropriate authority under this section.

(19) The following provisions apply with respect to the establishment of an appropriate authority:

(a) the appropriate authority will be constituted of—

(i) a person who holds prescribed qualifications in building surveying appointed by the council or councils; and

(ii) a person nominated by the Chief Officer of the South Australian Metropolitan Fire Service or the Chief Officer of the Country Fire Service (determined by the council or councils after taking into account the nature of its area or their areas); and

(iii) a person with expertise in the area of fire safety appointed by the council or councils; and

- (iv) if so determined by the council or councils—a person selected by the council or councils;
- (b) the term of office of a member of the appropriate authority will be a period not exceeding three years determined by the council or councils;
- (c) the office of a member of the appropriate authority will become vacant if the member—
 - (i) dies; or
 - (ii) completes a term of office and is not reappointed; or
 - (iii) resigns by written notice addressed to the council or councils; or
 - (iv) is removed from office by the council or councils for any reasonable cause;
- (d) deputy members may be appointed;
- (e) subject to a determination of the council or councils—the appropriate authority may determine its own procedures (including as to quorum).

(20) A member of an appropriate authority who has a personal interest or a direct or indirect pecuniary interest in any matter before the appropriate authority (other than an indirect interest that exists in common with a substantial class of persons) must not take part in any deliberations or decision of the authority in relation to that matter.

Insertion of new Division

29. The following Division is inserted after section 71 of the principal Act:

DIVISION 6A—BUILDING INSPECTION POLICIES

Building inspection policies

- 71A. (1) A council must prepare and adopt a building inspection policy.
- (2) A council must, in its building inspection policy, specify—
- (a) a level or levels of audit inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and
 - (b) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.
- (3) A council may from time to time alter its building inspection policy.
- (4) A council must, when preparing its building inspection policy under subsection (2) or considering an alteration under subsection (3), take into account the following matters (and may take into account other matters):

**Development (System Improvement Program)
Amendment Act 2000**

No. 88 of 2000

- (a) the financial and other resources of the council, and of its local community; and
- (b) the impact that a failure to inspect a certain number of buildings of the relevant classes over a period of time may have on its local community; and
- (c) past practices of the council with regard to inspections and the assessment of building work in its area; and
- (d) whether the area, or a particular part of the area, of the council is known to be subject to poor building conditions; and
- (e) information in the possession of the council on poor building standards within its local community; and
- (f) the public interest in monitoring the standard of building work within the community and in taking steps to provide for the safety and health of people who use buildings.

(5) This section does not derogate from the operation of section 99.

Amendment of s. 74—Advertisements

30. Section 74 of the principal Act is amended—

- (a) by striking out from subsection (2)(a) "*Local Government Act 1934*" and substituting "*Local Government Act 1999, the Local Government (Elections) Act 1999*";
- (b) by striking out from subsection (5) "*Local Government Act 1934*" and substituting "*Local Government Act 1999* or the *Local Government (Elections) Act 1999*".

Amendment of s. 75—Applications for mining production tenements to be referred in certain cases to the Minister

31. Section 75 of the principal Act is amended by striking out from subsection (5) "public environment report" and substituting "public environmental report".

Amendment of s. 86—General right to apply to Court

32. Section 86 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsections:

(3a) Where an application relates to the decision, direction, act, consent, approval, order or determination of a regional development assessment panel (*see* section 34), then, subject to subsection (3b), each council in relation to which the regional development assessment panel is constituted will be a respondent.

(3b) The Court may exclude a council from being a respondent under subsection (3a).

(3c) The Minister may intervene in proceedings that relate to a decision, direction, act, consent, approval, order or determination of a regional development assessment panel.;

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

(5) If—

- (a) an appeal is commenced before the Court against an order under section 69(1)(a); or
- (b) an application that involves a dispute relating to a matter referred to in subsection (1)(c) or (e) (and no other dispute) is made to the Court,

the matter must, in accordance with the Rules of the Court, be referred to a commissioner or commissioners of the Court for resolution under section 87.

Amendment of s. 87—Building referees

33. Section 87 of the principal Act is amended—

- (a) by striking out from subsection (1) "dispute is referred under section 86(5) will, for the purpose of resolving the dispute," and substituting "matter is referred under section 86(5) will";
- (b) by striking out from subsection (2)(b) "to the dispute".

Insertion of new Division

34. The following Division is inserted in Part 11 of the principal Act after section 88:

**DIVISION 3—INITIATION OF PROCEEDINGS TO GAIN A COMMERCIAL
COMPETITIVE ADVANTAGE**

Preliminary

88A. (1) In this Division—

"commercial competitive interest"—see subsection (2);

"relevant proceedings" means any proceedings before a court arising under or in connection with the operation of this Act including proceedings for judicial review, but not including criminal proceedings.

(2) For the purposes of this Division, if the business of a person, or the business of an associate of a person (other than the proponent of the development), might be adversely affected by a particular development on account of competition in the same market, then the person will be taken to have a commercial competitive interest in any relevant proceedings that are related to that development.

(3) For the purposes of this Division, the circumstances in which proceedings are related to a development include a situation where proceedings constitute a challenge to a Development Plan, or to the amendment of a Development Plan, that affects a development.

(4) The regulations may provide that this Division does not apply in a circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations.

Declaration of interest

88B. (1) If—

- (a) a person—**
 - (i) commences any relevant proceedings; or**
 - (ii) becomes a party to any relevant proceedings; and**
- (b) the person has a commercial competitive interest in the proceedings,**

then the person must disclose the commercial competitive interest.

(2) If—

- (a) a person—**
 - (i) commences any relevant proceedings; or**
 - (ii) becomes a party to any relevant proceedings; and**
- (b) the person receives, in connection with those proceedings, direct or indirect financial assistance from a person who has a commercial competitive interest in the proceedings,**

then both the person referred to in paragraph (a) and the person who provided the financial assistance referred to in paragraph (b) must disclose the commercial competitive interest.

(3) A disclosure must be made to the Registrar of the relevant court and to the other parties to the relevant proceedings in accordance with any requirements prescribed by the regulations.

(4) A person who fails to make a disclosure in accordance with the requirements of this section is guilty of an offence.

Penalty: Division 3 fine.

Right of action in certain circumstances

88C. (1) If—

- (a) a person—**
 - (i) who is a party to the relevant proceedings related to a development;
or**
 - (ii) who provides direct or indirect financial assistance to a party to any relevant proceedings related to a development,**

has a commercial competitive interest in the proceedings, or has an associate who has a commercial competitive interest in the proceedings; and

- (b) the outcome of the proceedings (including after taking into account any appeal) is that the development, or a development in substantially the same form, may proceed,

then the proponent of the development is entitled to recover from the person (the "defendant") and, if relevant, from any associate of the defendant, as a debt in a court of competent jurisdiction, an amount equal to the amount of any loss (including economic loss) that can be reasonably assessed as having been suffered by the proponent as a result of delays to the development on account of the proceedings if the court is satisfied that the defendant's sole or predominant purpose in pursuing the proceedings, or for providing financial assistance (as the case may be) was to delay or prevent the development in order to obtain commercial benefit for the defendant or an associate of the defendant.

(2) A court before which proceedings are brought under subsection (1) may, if it considers that it is appropriate to do so, reduce any amount that would otherwise be recoverable under that subsection to take into account—

- (a) any delay in the relevant proceedings reasonably attributable to the actions of the proponent of the development or of some other party (other than the defendant, an associate of the defendant or a person who has received direct or indirect financial assistance from the defendant in connection with those proceedings); or
- (b) any other matter that it considers relevant in the circumstances of the particular case.

(3) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of subsection (1), a person may be taken to have pursued proceedings, or to have provided financial assistance to a party to proceedings (as the case may be) for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

Amendment of schedule

35. The schedule of the principal Act is amended by inserting after item 6 the following item:

- 6a. The keeping of records, statistics and other information by any person or body that performs a function under or pursuant to this Act and the provision of reports based on that information to the Minister or any other prescribed person or body.

SCHEDULE 1
Amendment of Other Acts

Amendment of Environment Protection Act 1993

1. The *Environment Protection Act 1993* is amended by striking out paragraph (c) of section 110 and substituting the following paragraph:

- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
 - (ii) in any other case—at least one commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has expertise in environmental protection and management.

Amendment of Environment, Resources and Development Court Act 1993

2. The *Environment, Resources and Development Court Act 1993* is amended—

(a) by striking out subsection (3) of section 10 and substituting the following subsection:

(3) The Governor may, when appointing a commissioner or by subsequent notice in writing to the commissioner, specifically designate the commissioner as being a person who has expertise in a particular field.;

(b) by inserting after subsection (2) of section 15 the following subsection:

(2a) The appointment of a person as a commissioner on the basis of expertise in a particular field or fields relevant to the exercise of jurisdiction under a particular Act does not prevent the commissioner being a member of a full bench hearing a matter or matters under another Act.;

(c) by striking out paragraph (a) of section 17(4) and substituting the following paragraph:

- (a) dismiss or determine any proceedings that appear—
 - (i) to be frivolous or vexatious; or
 - (ii) to have been instituted or prosecuted for the purpose of delay or obstruction, or for some other improper purpose.;

(d) by striking out paragraph (c) of section 17(4) and substituting the following paragraph:

- (c) give summary judgement against a party—
 - (i) who obstructs or unnecessarily delays the proceedings; or
 - (ii) who appears to be continuing to participate in the proceedings for the purpose of delay or obstruction, or for some other improper purpose; or
 - (iii) who fails to attend any proceedings or fails to comply with a regulation, or a rule or order of the Court.;

(e) by inserting after subsection (4) of section 17 the following subsections:

(4a) If the Court takes action under subsection (4), then the Court should also make an order for costs against the party against whom the action is directed unless the Court is of the opinion that there is some good reason for not making an order in the circumstances of the particular case.

(4b) The Court may, in making an order under subsection (4a), determine that the costs will be determined or settled—

- (a) as between party and party in accordance with the scale prescribed for the purpose; or
- (b) as between solicitor and client.;

(f) by striking out subsections (1) and (2) of section 29 and substituting the following subsection:

(2) If a party to proceedings before the Court—

- (a) applies for an adjournment of the hearing of the proceedings; or
- (b) by his or her conduct renders it appropriate or necessary for the Court to adjourn the hearing of the proceedings,

the Court may adjourn the proceedings on such terms as it considers just and may make an order for costs, in accordance with a scale prescribed for the purpose, against the party in favour of any other party to the proceedings.;

(g) by striking out from subsection (7) of section 29 "provisions of a relevant Act which provide" and substituting "other provision of this Act or a relevant Act which provides".

Amendment of Irrigation Act 1994

3. The *Irrigation Act 1994* is amended by striking out paragraph (c) of section 68 and substituting the following paragraph:

- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
 - (ii) in any other case—at least one commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has expertise in irrigated farming or management of water resources.

Amendment of Native Vegetation Act 1991

4. The *Native Vegetation Act 1991* is amended—

- (a) by striking out from section 4(2)(a) "in the Development Plan" and substituting "within the meaning of the *Development Act 1993*;
- (b) by striking out paragraphs (b) and (c) of section 4(2) and substituting the following paragraphs:

- (b) are also within the area of a council (excluding an area, or part of an area, of a council prescribed by the regulations); but
- (c) are not within the zone designated as the *Hills Face Zone* by a Development Plan or Development Plans under the *Development Act 1993*.;

(c) by inserting after paragraph (d) of section 14 the following paragraph and word:

- (da) to assess and respond to applications referred to the Council under the *Development Act 1993*; and;

(d) by striking out from paragraph (h) of section 14 "by this Act" and substituting "under this or any other Act";

(e) by inserting after subsection (16) of section 29 the following subsection:

(17) The provisions of this section also apply to circumstances where the Council is considering an application referred to the Council under the *Development Act 1993* as if the Council were considering an application for consent under this Act, subject to such modifications, additions or exclusions as may be necessary for the purpose.

Amendment of Roads (Opening and Closing) Act 1991

5. The *Roads (Opening and Closing) Act 1991* is amended—

(a) by striking out from section 3(1) the definition of "relevant authority" and substituting the following definition:

"relevant authority", in relation to a road process or proposed road process, means—

- (a) where the road process is part of or directly associated with a development or proposed development under the *Development Act 1993* that requires development approval from the Development Assessment Commission or the Governor—the Development Assessment Commission; or
- (b) where the road process is part of or directly associated with a development or proposed development under the *Development Act 1993* that requires development approval from the Minister for the time being administering the *Development Act 1993*—that Minister; or
- (c) in any other case—the council;;

(b) by inserting after section 6 the following section:

Special powers to open or close roads in cases involving major developments

6A. (1) A road to which this section applies may be opened or closed by the Governor in accordance with Part 7A.

(2) This section applies to a road or a proposed road that is directly associated with development—

- (a) within the ambit of a declaration under section 46 of the *Development Act 1993*; or
 - (b) subject to a Ministerial direction under section 49(16a) or 49A(20) of the *Development Act 1993*;
- (c) by striking out from paragraph (b) of section 16 "the planning authorities in determining applications for approval or consent under the *City of Adelaide Development Control Act 1976* or the *Planning Act 1982*" and substituting "assessment authorities for determining applications for development authorisation under the *Development Act 1993*";
- (d) by striking out from section 33(2) "the Development Plan under the *Planning Act 1982*" and substituting "a Development Plan under the *Development Act 1993*";
- (e) by inserting after section 34 the following Part:

PART 7A SPECIAL POWERS ASSOCIATED WITH MAJOR DEVELOPMENTS

Interpretation

34A. In this Part—

"DR" means a development report under the *Development Act 1993*;

"EIS" means an environmental impact statement under the *Development Act 1993*;

"PER" means a public environmental report under the *Development Act 1993*;

"Planning Minister" means the Minister for the time being administering the *Development Act 1993*.

Road process proposal may be included in a major development proposal

34B. (1) An EIS, PER or DR may include details of a proposal to open or close a road pursuant to the exercise of powers under this Part.

(2) If an EIS, PER or DR includes details of a proposal to open or close a road pursuant to this Part—

- (a) written notice of the proposal must be specifically given to—
 - (i) if the land comprised in the road proposed to be opened or closed is within a council area—the council for that area; and
 - (ii) if the land comprised in the road proposed to be opened or closed is Crown land—the relevant State agency; and
 - (iii) the Surveyor-General; and
 - (iv) each person affected who can be identified by reasonable inquiry,

at the time that the EIS, PER or DR (as the case may be) is made available for public inspection under the *Development Act 1993*; and
- (b) in the case of a DR—the Minister must ensure that a public meeting in relation to the matter is conducted in accordance with the requirements of the regulations (despite the fact that such a meeting is not required under the *Development Act 1993*); and
- (c) written submissions may be made on the proposal within the time for submissions on the EIS, PER or DR under the *Development Act 1993*; and
- (d) the proponent must then include a response to any matters raised by written submissions made under paragraph (c) as part of any response to submissions provided to the Planning Minister under the *Development Act 1993*; and
- (e) the relevant Assessment Report under the *Development Act 1993* must include the Planning Minister's response to any matters raised in relation to the proposal and, if the Minister considers that the proposal to open or close the road should proceed (if the relevant development is approved), specific information about the order that would need to be made to give effect to the proposal.

Governor may give effect to road process proposal

34C. (1) The Governor may, on the basis of a recommendation of the Planning Minister made in an Assessment Report under the *Development Act 1993* that a road be opened or closed, in conjunction with giving a development authorisation under section 48 of the *Development Act 1993* in relation to the relevant development, by notice in the *Gazette*, make an order that a road be opened or closed.

(2) The Governor may, in making an order under subsection (1)—

- (a) —
 - (i) fix a day on which the order will take effect; or

(ii) provide that the order will take effect on a day to be fixed by subsequent order of the Governor or the Planning Minister published in the *Gazette*; and

(b) make any other provision that the Governor considers to be necessary or expedient for the purposes of this Act.

(3) The Governor may, by subsequent notice in the *Gazette*, vary or revoke an order under subsection (1).

(4) The Surveyor-General must, as soon as practicable after an order to open or close a road is made under this section, cause survey plans and other documents to be prepared as required by the Registrar-General in order to facilitate the operation of the order under this Act.

Dealings in land after commencement of process under this Part.

34D. If an EIS, PER or DR includes details of a proposal to open a road pursuant to the exercise of powers under this Part—

(a) the Planning Minister may, at any time after the EIS, PER or DR is made available for public inspection under the *Development Act 1993*, in relation to any land comprised in the proposed road that has been brought under the *Real Property Act 1886*—lodge a caveat with the Registrar-General forbidding any dealing with the land without the consent of the Planning Minister; and

(b) if any land comprised in the proposed road has not been brought under the *Real Property Act 1886*—a person with an interest in the land who has received a notice of the proposal under section 34B(2)(a) must not (after the receipt of the notice) enter into any transaction in respect of the land without first disclosing the fact that the proposal exists in relation to the land (and if an agreement in respect of the land is entered into without the disclosure required by this paragraph then the agreement is voidable at the option of the person to whom the disclosure should have been made).

Modification or exclusion of certain Parts of Act

34E. (1) The following sections of Part 3 apply, subject to such modifications, additions or exclusions as may be specified below or as may be prescribed, or as may be necessary for the purpose, with respect to a proposal or order under this Part:

(a) section 13(2);

(b) sections 17 and 18—

(i) as if a reference to the relevant authority were a reference to the Governor; and

(ii) on the basis that the Governor, as the relevant authority, can make an order under either section at any time (and not necessarily as part of the original order).

(2) Parts 4 and 5 apply with respect to an order under this Part as if the order were an order confirmed by the Minister on the date on which the order takes effect under this Part, subject to such modifications as may be prescribed, or as may be necessary for the purpose.

(3) Part 6 applies with respect to an order under this Part—

(a) as if the relevant council is proposing to open the road;

(b) as if a reference to the Minister were a reference to the Planning Minister.

(4) Part 8 applies with respect to an order under this Part as if the order were an order confirmed by the Minister on the date on which the order takes effect.

Costs

34F. The Planning Minister may recover, as a debt from the proponent with respect to a development that includes a proposal to open or close a road pursuant to this Part, reasonable costs incurred by the Crown in dealing with the proposal under this Part. ;

(f) by striking out subsection (2) of section 42 and substituting the following subsection:

(2) Except as provided by Part 7A, the provisions of the *Development Act 1993* do not apply in relation to any road process or other action taken in relation to land pursuant to this Act. ;

(g) by repealing section 46 and substituting the following section:

Delegation by other authorities

46. (1) The powers of delegation conferred on councils by the Act under which they are constituted extend to delegation of their powers, duties and functions under this Act.

(2) The power of delegation conferred on the Development Assessment Commission under the *Development Act 1993* extends to delegation of its powers, duties and functions under this Act.

(3) The power of delegation conferred on the Governor under Division 2 of Part 4 of the *Development Act 1993* extends to delegation of the Governor's powers, duties and functions under this Act.

Amendment of Water Resources Act 1997

6. The *Water Resources Act 1997* is amended by striking out paragraph (c) of section 144 and substituting the following paragraph:

(c) the Court may not be constituted of or include a commissioner unless—

(i) in a case where only one commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or

(ii) in any other case—at least one commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has expertise in the use, conservation or management of water resources.

SCHEDULE 2
Transitional Provisions

1. (1) This clause sets out the transitional provisions that relate to the amendment of sections 25, 27 and 28 of the principal Act by this Act.

(2) If, immediately before the commencement of this clause, agreement has not been reached on a Statement of Intent under section 25(1) and (2) of the principal Act, sections 25, 27 and 28 of the principal Act, as amended by this Act, will apply to any proposed amendment to a Development Plan under section 25 of the principal Act.

(3) If, immediately before the commencement of this clause, agreement has been reached on a Statement of Intent but the council has not released a Plan Amendment Report for public consultation under subsections (11) and (12) of section 25 of the principal Act (as in existence immediately before the commencement of this clause), then the council may proceed to the public consultation stage set out in those subsections and thereafter section 25(13), (14), (15), (16), (17) and (18), and sections 27 and 28, of the principal Act, as enacted or amended by this Act, will apply.

(4) A council must, before releasing a report for public consultation under subclause (3), ensure that the chief executive officer of the council issues a certificate that complies with the requirements of section 25(6)(b) of the principal Act, as enacted by this Act, and thereafter section 25(10) and (11) of the principal Act, as enacted by this Act, will apply with respect to that certificate

(5) If, immediately before the commencement of this clause, a council has reached (or passed) the stage referred to in subclause (3) but not reached the end of the stages set out in subsections (13) and (14) of section 25 of the principal Act (as in existence immediately before the commencement of this clause), then the council may proceed to the end of the stages set out in those subsections and thereafter—

(a) the Minister will give notice of any approval in accordance with section 25(17) and (18) of the principal Act, as enacted by this Act; and

(b) sections 27 and 28 of the principal Act, as amended by this Act, will apply.

(6) If, immediately before the commencement of this clause, the Minister has approved an amendment under section 25(14) of the principal Act (as in existence immediately before the commencement of this clause) but the Governor has not declared the amendment to be an authorised amendment under the principal Act, then—

(a) the Minister will give notice of the approval in accordance with section 25(17) and (18) of the principal Act, as enacted by this Act; and

(b) sections 27 and 28 of the principal Act, as amended by this Act, will apply.

2. A register of agreements under Part 5 of the principal Act established under section 57 of the principal Act (as amended by this Act) need only relate to agreements entered into after the commencement of this clause (but may relate to agreements entered into before that commencement).

3. The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.