

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

DEVELOPMENT (SIGNIFICANT TREES) AMENDMENT ACT 2000

No. 3 of 2000

[Assented to 20 April 2000]

An Act to amend the Development Act 1993.

SUMMARY OF PROVISIONS

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The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Development (Significant Trees) 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. 4—Definitions

3. Section 4 of the principal Act is amended—

- (a) by striking out from paragraph (f) of the definition of "development" in subsection (1) "(except painting)" and substituting "(not including painting but including, in the case of a tree, any tree-damaging activity)";
- (b) by inserting after paragraph (f) of the definition of "development" in subsection (1) the following paragraph and word:
 - (fa) in relation to a significant tree—any tree-damaging activity; or
- (c) by inserting after the definition of "repealed Act" in subsection (1) the following definition:

"significant tree" means—

- (a) a tree within a class of trees declared to be significant trees by the regulations; or
 - (b) a tree declared to be a significant tree, or a tree within a group of trees declared to be significant trees, by a Development Plan;;
- (d) by inserting after the definition of "structure" in subsection (1) the following definition:

"tree-damaging activity" means—

- (a) the killing or destruction of a tree; or
- (b) the removal of a tree; or
- (c) the severing of branches, limbs, stems or trunk of a tree; or
- (d) the ringbarking, topping or lopping of a tree; or
- (e) any other substantial damage to a tree,

and includes any other act or activity that causes any of the foregoing to occur but does not include maintenance pruning that is not likely to affect adversely the general health and appearance of a tree;.

Amendment of s. 23—Development plans**4. Section 23 of the principal Act is amended—**

(a) by inserting after paragraph (f) of subsection (4) the following word and paragraph:

or

(g) in the case of a tree (without limiting a preceding paragraph)—it is of special historical or social significance or importance within the local area.;

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

(4a) A Development Plan may—

(a) declare a tree to be a significant tree if—

(i) it makes an important contribution to the character or amenity of the local area; or

(ii) it is indigenous to the local area and its species is listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species; or

(iii) it represents an important habitat for native fauna; or

(iv) it is part of a wildlife corridor or a remnant area of native vegetation; or

(v) it is important to the maintenance of biodiversity in the local environment; or

(vi) it is a notable visual element to the landscape of a local area;

(b) declare a group of trees to be significant trees if—

(i) as a group they make an important contribution to the character or amenity of the local area; or

(ii) they are indigenous to the local area and, in respect of each tree, its species is listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species; or

(iii) as a group they represent an important habitat for native fauna; or

(iv) as a group they form part of a wildlife corridor or a remnant area of native vegetation; or

(v) as a group they are important to the maintenance of biodiversity in the local environment; or

(vi) as a group they are a notable visual element to the landscape of a local area,

(and the declaration may be made on the basis that certain trees located at the same place are excluded from the relevant group).

Amendment of s. 39—Application and provision of information

5. Section 39 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) No fee is payable under this section in relation to an application made by the owner or occupier of land (the "relevant land") in order to remove or cut back a part of a significant tree that is located on adjoining land but is encroaching on to the relevant land.

Insertion of ss. 54A and 54B

6. The following sections are inserted after section 54 of the principal Act:

Urgent work in relation to trees

54A. (1) If a tree-damaging activity must be undertaken in relation to a significant tree as a matter of urgency—

- (a) to protect any person or building; or
- (b) in any other circumstance of a prescribed kind,

a person may, despite any other provision of this Part (but subject to subsection (2)), undertake the activity.

(2) If an activity is undertaken under subsection (1)—

- (a) the person who undertakes the activity must notify the relevant authority in accordance with the regulations; and
- (b) the activity must, so far as is reasonably practicable, be undertaken to cause the minimum amount of damage to the tree; and
- (c) the owner of the land on which the tree is situated must, as soon as practicable after the occurrence of the activity and in any event within the prescribed period, apply for the appropriate development authorisation under this Act.

Penalty: Division 4 fine.

(3) If an activity is lawfully undertaken under subsection (1) by the Crown (or an agency or instrumentality of the Crown), the Crown (or agency or instrumentality) is not liable for any costs incurred by any person in complying with subsection (2).

Interaction of controls on trees with other legislation

54B. (1) The requirement to obtain approval under this Part for a tree-damaging activity in relation to a significant tree applies despite the fact that the activity may be permitted under the *Native Vegetation Act 1991*.

(2) The requirement to obtain approval under this Part for a tree-damaging activity in relation to a significant tree does not apply if the activity is being carried out—

- (a) under Part 5 of the *Electricity Act 1996*; or

- (b) under, or in connection with the operation of, an order under section 299 of the *Local Government Act 1999*; or
- (c) under another Act, or specified provisions of another Act, prescribed by the regulations for the purposes of this subsection.

Transitional provision

7. The inclusion of paragraph (fa) in the definition of "development" in section 4 of the principal Act does not affect, or apply in relation to, any activity that is within the scope of, or undertaken for the purposes of, a development that is the subject of an application, or that is within the ambit of an approval, under Part 4 of the principal Act before the commencement of this section.