



ANNO VICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1978

No. 42 of 1978

An Act to preserve, protect and enhance the physical, social and cultural heritage of the State; to amend the Planning and Development Act, 1966-1977; to amend the City of Adelaide Development Control Act, 1976; and for other purposes.

[Assented to 6th April, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "South Australian Heritage Act, 1978". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. This Act is arranged as follows:— Arrangement of Act.

PART I—PRELIMINARY

PART II—THE COMMITTEE

PART III—THE REGISTER

PART IV—THE CORPORATION AND THE FUND

PART V—AMENDMENT OF THE PLANNING AND
DEVELOPMENT ACT

PART VI—AMENDMENT OF THE CITY OF ADELAIDE
DEVELOPMENT CONTROL ACT

PART VII—MISCELLANEOUS.

PART I**Definitions.**

4. (1) In this Act, unless the contrary intention appears—

“the Committee” means the South Australian Heritage Committee established under section 5 of this Act:

“the Corporation” means the corporation known as the “Trustee of the State Heritage” established under section 17 of this Act:

“the Fund” means the State Heritage Fund established under section 19 of this Act:

“Item” means any land, building or structure:

“member” in relation to the Committee, includes the member for the time being Chairman of the Committee and the deputy of a member while acting as such:

“Register” means the Register of State Heritage Items kept under section 11 of this Act:

“Registered Item” means an Item which is for the time being registered in the appropriate Register under section 12 of this Act:

“State Heritage Area” means an area designated as a State Heritage Area under section 13 of this Act.

(2) In this Act, the reference to public notice is a reference to a notice published—

(a) in the *Gazette*;

and

(b) in a newspaper circulating throughout the State or a substantial part of the State.

PART II**PART II****THE COMMITTEE****The Committee.**

5. (1) There is hereby established a committee entitled the “South Australian Heritage Committee”.

(2) The Committee shall consist of twelve members appointed by the Governor.

(3) The Governor shall appoint one of the members of the Committee to be Chairman of the Committee.

(4) A member of the Committee shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specify in the instrument of appointment and shall be eligible for re-appointment.

(5) The Governor may appoint a suitable person to be a deputy of a member of the Committee and such person while so acting in the absence of that member shall be deemed to be a member of the Committee and shall have and may exercise all of the powers and functions of the member of whom he is appointed deputy.

(6) The Governor may remove a member of the Committee from office for—

- (a) mental or physical incapacity;
- (b) neglect of duties;
- or
- (c) dishonourable conduct.

(7) The office of a member of the Committee shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Governor;
- or
- (d) he is removed by the Governor pursuant to subsection (6) of this section.

(8) Upon the office of a member of the Committee becoming vacant a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Committee becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

6. An act or proceeding of the Committee shall not be invalid by reason only of vacancy or vacancies in its membership. Validity of acts of the Committee.

7. (1) Seven members of the Committee shall constitute a quorum of the Committee. Business of Committee.

(2) A decision carried by the majority of the votes of the members present at a meeting of the Committee shall be a decision of the Committee.

(3) In the event of an equality of votes on a matter the person presiding at the meeting shall have a second or casting vote.

(4) The Chairman or, if he is not present, a person elected by the members present at a meeting of the Committee shall preside at that meeting.

8. (1) The functions of the Committee are as follows—

Functions of the Committee.

- (a) to advise the Minister on any matter relating to the entry of an Item in the Register and to the removal of any Item from that Register;
- (b) to advise the Minister on the provision of financial assistance to persons or bodies for the preservation or enhancement of Registered Items or State Heritage Areas;
- (c) to advise the Minister on any matter or thing relating to the physical, social or cultural heritage of the State, that may be referred to it by the Minister;
- (d) such other functions as may be assigned by the Minister.

(2) The Committee shall have power to do all things necessary or incidental to the performance of its functions.

PART II**Delegation.**

9. (1) The Committee may by instrument in writing delegate to any member thereof or to any members thereof acting jointly any power or function of the Committee (except this power of delegation) and may by like instrument revoke or amend any such delegation.

(2) The exercise or performance by a delegate of any power or function delegated under subsection (1) of this section shall not limit or restrict the exercise or performance by the Committee of that power or function.

Remuneration.

10. A member of the Committee shall be entitled to receive such remuneration, fees or allowances as the Governor may from time to time in any particular case approve.

PART III**PART III****THE REGISTERS****The Register.**

11. (1) The Minister shall cause to be kept a Register which shall be known as the Register of State Heritage Items.

(2) An Item shall not be entered on the Register otherwise than under and in accordance with this Part and an Item shall not be removed from the Register otherwise than under or in accordance with this Part.

**Entry of Items
in the Register.**

12. (1) Subject to this section, where the Minister considers—

(a) that an Item that is not on the Register is part of the physical, social or cultural heritage of the State;

and

(b) that the Item is of significant aesthetic, architectural, historical or cultural interest,

he may enter that Item in the Register.

(2) An Item shall be entered in the Register by the entry in that Register of a description of the Item sufficient to identify it and the date on which that entry is made.

(3) The Minister shall not enter an Item in the Register unless—

(a) he informs the Committee of his intention so to enter that Item and has considered any representations of the Committee thereon;

(b) he has, by public notice—

(i) stated that he intends to enter the Item in the Register;

(ii) given a description of the Item sufficient to identify it;

(iii) notified persons of their right to make written objections to the entry of that Item in the Register;

(iv) specified the day, being a day not earlier than three months after the publication of the notice in the *Gazette*, by which such objections are to be made;

and

(v) specified an address to which such objections may be forwarded;

(c) the day specified in the notice has passed;

and

(d) if a person has, not later than the day specified in that notice, made written objections to the Minister to the entry of that Item in the Register, the Minister has given due consideration to those objections.

(4) Where after the giving of the public notice referred to in paragraph (b) of subsection (3) of this section in relation to an Item, the Minister becomes of the opinion, whether by reason of his consideration of objections or otherwise, that the Item should not be entered in the Register, the Minister shall by public notice state that the Item is not to be entered in the Register.

(5) Forthwith after the giving of the public notice referred to in subsection (3) of the section the Minister shall cause to be served by post on the owner of each Item referred to in that notice a notice setting out the substance of the public notice so far as it relates to that Item.

(6) Where the Item is entered in the Register in accordance with this section the Minister shall, by public notice, state that the Item has been so entered.

13. (1) Subject to this section, where the Minister considers—

(a) that an area of land is part of the physical, social or cultural heritage of the State;

and

(b) that the area is of significant aesthetic, historical or cultural interest,

he may by public notice designate that area as a State Heritage Area.

(2) The Minister shall not designate an area under subsection (1) of this section unless he has informed—

(a) the Municipal or District Council (if any) within whose municipality or district the area is situated;

and

(b) the Committee,

of his intention so to designate the area and has considered any representations of the Council or Committee thereon.

14. (1) Where the Minister considers that an Item that is entered in the Register should not be so entered, he shall remove that Item from that Register.

(2) The Minister shall not remove an Item from the Register in accordance with subsection (1) of this section unless—

(a) he has informed the Committee of his intention so to remove that Item and has considered any representations of the Committee thereon;

Designation of
State Heritage
Areas.

Removal of an
Item from
Register.

(b) he has, by public notice—

- (i) stated that he intends to remove the Item from the Register;
- (ii) notified persons of their right to object in writing to the removal of the Item from the Register;
- (iii) specified the day, being a day not earlier than one month after the publication of the notice in the *Gazette*, by which such objections are to be made;

and

- (iv) specified an address to which such objections may be forwarded;

(c) the day specified in that notice has passed;

and

- (d) if a person has, not later than the day specified in that notice, made written objections to the Minister to the removal of the Item from the Register, the Minister has given due consideration to those objections.

(3) Where an Item has been removed from the Register in accordance with this section, the Minister shall, by public notice, state that that Item has been so removed.

Interim list.

15. (1) Where a notice has been given under subsection (3) of section 12 of this Act in respect of an Item, the Minister shall cause to be entered on a list a description of the Item sufficient to identify it.

(2) The Minister shall cause to be struck out of the list an Item when—

- (a) that Item is entered on the Register;
- (b) a public notice under subsection (4) of section 12 of this Act has been given;

or

- (c) the period of twelve months, next following the day on which the Item was entered on the list, has expired and that Item has not otherwise been struck out of the list.

Inspection of Register or list.

16. Any person may inspect the Register, or any list kept under section 15 of this Act, and may, without charge, copy any entry therein.

PART IV

PART IV

THE CORPORATION AND THE FUND

17. (1) There is hereby established a corporation under the name "Trustee of the State Heritage". Creation of Corporation.

(2) The Corporation—

- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be capable in its corporate name of acquiring, holding and disposing of real and personal property;
 - (c) shall be capable of acquiring or incurring any other legal rights or liabilities and of suing and being sued;
- and
- (d) shall have the powers, authorities, duties and obligations prescribed by or under this Act.

(3) The Corporation shall be constituted of the Minister.

(4) Where an apparently genuine document purports to bear the common seal of the Corporation, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Corporation was duly affixed to that document.

18. (1) The functions of the Corporation are as follows:—

Functions of the Corporation.

- (a) to authorize payments from the Fund;
 - (b) out of the moneys standing to the credit of the Fund to make grants or loans with or without interest to persons or bodies whether corporate or unincorporate for the preservation or enhancement of Registered Items or State Heritage Areas;
 - (c) in consultation with the Committee to make grants for purposes of preserving or enhancing the physical, cultural or social heritage of the State;
- and
- (d) such other functions as are in its opinion necessary for the preserving or enhancing of the physical, cultural or social heritage of the State.

(2) The Corporation shall have power to do all things necessary or incidental to the performance of its functions and in particular, without limiting the generality of the foregoing—

- (a) acquire either by agreement or compulsorily, any Registered Items;
- (b) enter into and enforce any agreement with any person relating to the preservation or enhancement of the physical, social or cultural heritage of the State.

19. (1) There shall be established at the Treasury a fund to be known as the "State Heritage Fund". The Fund.

(2) The following moneys shall be paid into the Fund—

- (a) any moneys received from the Government of the Commonwealth for the purpose;

PART IV

- (b) any moneys appropriated by Parliament for the purpose;
- (c) any moneys received by the Corporation by way of gift, bequest or otherwise;
- (d) any income derived from the investment of moneys standing to the credit of the Fund;
- and
- (e) any other moneys received by the Corporation.

(3) The Corporation may, with the approval of the Treasurer, invest any moneys standing to the credit of the Fund that are not immediately required for the purposes of this Act, in such manner as may be approved of by the Treasurer.

PART V

PART V

AMENDMENT OF THE PLANNING AND DEVELOPMENT ACT

Short titles.

20. (1) In this Part, the Planning and Development Act, 1966-1977, is referred to as "the principal Act".

(2) The principal Act, as amended by this Part, may be cited as the "Planning and Development Act, 1966-1978".

Amendment of
principal Act,
s. 2—
Arrangement
of Act.

21. Section 2 of the principal Act is amended by inserting after the passage—

PART V—INTERIM DEVELOPMENT CONTROL

the passage—

PART VAA—STATE HERITAGE ITEMS.

Amendment of
principal Act,
s. 18b—
Delegation.

22. Section 18b of the principal Act is amended by inserting in subsection (1) after paragraph (a) the following paragraph:—

(aa) Part VAA of this Act;

Enactment of
Part, heading
and sections of
principal Act—

23. The following Part, heading and sections are enacted and inserted in the principal Act after Part V thereof:—

PART VAA

STATE HERITAGE ITEMS

Other
provisions of
Act not
affected by
provisions of
this Part.

42a. Nothing in this Part affects the application of any other provision of this Act.

PART V

42b. The Crown is not bound by the provisions of this Part.

Crown not bound by provisions of Part.

42c. (1) In this Part—

Definition of Planning Authority and delegation.

“Planning Authority” means—

(a) the Authority;

(b) where the Authority has in relation to a relevant Item delegated its powers and functions under this Part pursuant to section 18b of this Act to the chairman or the secretary, the chairman or the secretary as the case may be;

and

(c) where the Authority has in relation to a relevant Item delegated the power referred to in subsection (2) of this section to a council, the council.

(2) The Authority may by instrument in writing delegate to a council subject to such exemptions, limitations and conditions as may be specified in the instrument its power to grant or refuse consent under this Part in relation to applications for such consent that relate to land within the area of that council and the Authority may by like instrument vary or revoke a delegation under this section.

42d. This Part applies to and in relation to any land or building or structure that is—

Application of Part.

(a) a Registered Item under the South Australian Heritage Act, 1978;

or

(b) an Item for the time being on the list kept pursuant to section 15 of that Act.

42e. (1) A person shall not—

Consent of Planning Authority required in certain cases.

(a) alter, add to, or demolish;

or

(b) do any act or thing that is likely to change the character or external appearance of,

any land, building or structure to which this Part applies without the consent in writing of the Planning Authority.

Penalty: Five thousand dollars.

(2) Where a person is convicted of an offence that is a contravention of subsection (1) of this section the court before which that person is convicted may by order direct that person, within the time specified in the order, to take such steps as are specified in the order to restore the land, building or structure to the same state in which it was before the contravention occurred.

(3) A person who fails to comply with an order under subsection (2) of this section within the time specified in that order shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars for every day that occurs after the expiration of that period

until the land, building or structure has been restored to the same state in which it was before the contravention of subsection (1) of this section occurred.

(4) A consent granted under this section may be expressed to be subject to such conditions as are set out in the consent and for the purposes of this section any act or thing done in contravention of or breach of a condition so expressed shall be deemed to have been done without that consent.

(5) It shall be a defence to proceedings for an offence that is a contravention of subsection (1) of this section for the defendant to prove—

(a) that the doing of the act or thing that constituted the contravention was required by an Act or law of the State;

or

(b) that the doing of that act or thing was necessary to avoid an imminent danger to life or property.

**Reference to
Minister.**

42f. (1) Forthwith after receiving an application for its consent under section 42e of this Act the Planning Authority shall inform the Minister for the time being administering the South Australian Heritage Act, 1978, of the substance of that application and shall not proceed further in the matter until it has received a recommendation on the matter from the Minister.

(2) On receipt of the recommendation referred to in subsection (1) of this section the Planning Authority may, having regard to that recommendation, and to the provisions of any authorized development plan—

(a) grant its consent either with or without conditions;

or

(b) refuse its consent.

Appeals.

42g. Notwithstanding anything in section 26 of this Act, in determining an appeal under that section in relation to decisions of a Planning Authority under this Part the board may, having regard to the recommendation of the Minister referred to in subsection (1) of section 42f of this Act and to the provisions of any authorized development plan, disallow the appeal and uphold the decision appealed against or substitute for the decision appealed against any decision which the board considers the Planning Authority should have made in the first instance.

PART VI

PART VIAMENDMENT OF THE CITY OF ADELAIDE DEVELOPMENT
CONTROL ACT

24. (1) In this Part, the City of Adelaide Development Control Act, 1976, is referred to as "the principal Act". Short title.

(2) The principal Act, as amended by this Part, may be cited as the "City of Adelaide Development Control Act, 1976-1978".

25. Section 6 of the principal Act is amended by inserting after subsection (1) the following subsection:— Amendment of principal Act, s. 6—
Non-application of the Planning and Development Act.

(1a) Nothing in Part VAA of the Planning and Development Act, 1966-1978, shall apply to or in relation to land within the municipality.

PART VII

PART VII

MISCELLANEOUS

Entry on
land or in
building.

26. (1) Any person authorized by the Minister may at any reasonable time enter or remain on any land or in any building for the purposes of this Act.

(2) A person shall not hinder or obstruct a person authorized by the Minister and exercising a power conferred on that person by subsection (1) of this section.

Penalty: One hundred dollars.

Summary
proceedings.

27. Proceedings in respect of an offence against this Act shall be disposed of summarily.

Regulations.

28. The Governor may make such regulations as are necessary or expedient for the purposes of this Act and without limiting the generality of the foregoing those regulations may—

(a) require the owner or occupier of a Registered Item or Registered Item of a prescribed class or kind to provide such information to the Minister in relation to that Item as is prescribed;

and

(b) prescribe penalties not exceeding five hundred dollars for any breach of, or non-compliance with, any regulation.

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

K. SEAMAN, Governor