



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 89 of 1985

An Act to amend the South Australian Heritage Act, 1978, and to repeal the South Australian Heritage Act Amendment Act, 1979.

[Assented to 3 October 1985]

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

Short title.

1. (1) This Act may be cited as the "South Australian Heritage Act Amendment Act, 1985".

(2) The South Australian Heritage Act, 1978, is in this Act referred to as "the principal Act".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of long title to principal Act.

3. The long title to the principal Act is amended by striking out the word "physical" and substituting the word "environmental".

Amendment of s. 3—
Arrangement of Act.

4. Section 3 of the principal Act is amended by inserting after the item:

PART IV—THE CORPORATION AND THE FUND

the item:

PART V—CONSERVATION ORDERS

DIVISION I—CONSERVATION ORDERS

DIVISION II—REGULATIONS AND PERMITS

DIVISION III—INSPECTORS.

Amendment of s. 4—
Interpretation.

5. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "heritage agreement" in subsection (1) the following definitions:

“inspector” means a person appointed as an inspector by the Minister pursuant to Part V:

“interim list” means a list of Items compiled pursuant to section 15;:

(b) by inserting at the end of the definition of “Item” in subsection (1) the passage “and includes part of a building or structure”;

and

(c) by inserting at the end of the definition of “State Heritage Area” in subsection (1) the passage “and includes part of such an area”.

6. The following section is inserted in Part I of the principal Act after section 4—

Insertion of new section 4a.

4a. This Act binds the Crown.

Crown to be bound.

7. Section 8 of the principal Act is amended—

Amendment of s. 8—
Functions of the Committee.

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

(ab) to advise the Minister on any matter relating to the designation of land as a State Heritage Area under this Act;

(ac) to advise the Minister on any matter relating to the making or revocation of an order under Part V;:

(b) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) to advise the Minister on the provision of financial assistance to persons or bodies for the preservation or enhancement of—

(i) Registered Items or State Heritage Areas;

(ii) the environmental, social or cultural heritage of the State;:

and

(c) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) to advise the Minister on any matter relating to the environmental, social or cultural heritage of the State;.

8. Section 12 of the principal Act is amended—

Amendment of s. 12—
Entry of Items in the Register.

(a) by striking out from paragraph (a) of subsection (1) the word “physical” and substituting the word “environmental”;

(b) by striking out from paragraph (b) of subsection (1) the passage “or cultural interest” and substituting the passage “, cultural, archaeological, technological or scientific interest”;

(c) by striking out subsection (2) and substituting the following subsection:

(2) The entry must include a description of the Item sufficient to identify it and the Minister may, by public

notice, correct an error in the description of an Item at any time;

and

- (d) by striking out from subparagraph (iv) of paragraph (b) of subsection (3) the passage "three months" and substituting the passage "one month".

Amendment of
s. 13—
Designation of
State Heritage
Areas.

9. Section 13 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) the word "physical" and substituting the word "environmental";
- (b) by striking out from paragraph (b) of subsection (1) the passage "aesthetic, historical or cultural interest" and substituting the passage "aesthetic, architectural, historical, cultural, archaeological, technological or scientific interest";
- (c) by inserting after subsection (1) the following subsection:

(1a) Subject to this section, the Minister may, by public notice, revoke the designation of an area as a State Heritage Area.;

- (d) by striking out from subsection (2) the passage "of this section" and substituting the passage "or revoke a designation under subsection (1a)";

and

- (e) by striking out from subsection (2) the passage "so to designate the area".

Amendment of
s. 15—
Interim list.

10. Section 15 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) The Minister shall enter a description of an Item on the interim list where—

- (a) the Minister has, by public notice under this Part, stated the intention to enter the Item in the Register;

or

- (b) in the Minister's opinion—

(i) the Item should be registered under this Part;

and

(ii) it is necessary or desirable to provide immediate protection in respect of the Item by making an order under Part V.

(1a) Where the Minister enters an Item on the interim list under subsection (1) (b), the Minister shall immediately take proceedings under this Part to enter the Item in the Register.

Repeal of s. 16
and substitution
of new section.

11. Section 16 of the principal Act is repealed and the following section is substituted:

Inspection of
Register or
interim list.

16. (1) Any person may inspect the Register or the interim list.

(2) A person is entitled, on payment of the prescribed fee, to a copy of the Register or the interim list or an extract from the Register or the interim list.

12. Section 16a of the principal Act is amended by striking out from subparagraph (i) of paragraph (c) of subsection (1) the passage "aesthetic, scientific, architectural, historical or cultural" and substituting the passage "aesthetic, architectural, historical, cultural, archaeological, technological or scientific".

Amendment of s. 16a—
Heritage agreements.

13. Section 16e of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

Amendment of s. 16e—
Register of heritage agreements.

(2) The register shall be open for public inspection and a person is entitled, on payment of the prescribed fee, to a copy of the register or an extract from the register.

14. Section 18 of the principal Act is amended by striking out from paragraphs (c) and (d) of subsection (1) and from paragraph (b) of subsection (2) the word "physical" and substituting, in each case, the word "environmental".

Amendment of s. 18—
Functions of the Corporation.

15. The following section is inserted after section 18 of the principal Act:

Insertion of new section 18a.

18a. (1) The Corporation may delegate any of its functions or powers to any person.

Delegation.

(2) A delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the power of the Corporation to act in any matter;

and

(c) is revocable at will.

(3) A person who has a personal interest, or a direct or indirect pecuniary interest, in any matter may not act as a delegate under this section in relation to that matter.

16. The following Part is inserted after section 19b of the principal Act.

Insertion of new Part V.

PART V

CONSERVATION ORDERS

DIVISION I—CONSERVATION ORDERS

20. Unless the contrary intention appears, this Part applies to an Item or State Heritage Area that is the subject of an order under this Division.

Application of Part.

21. (1) Where, in the opinion of the Minister, it is necessary or desirable to do so, the Minister may, by public notice, order that this Part apply to—

Making of conservation orders.

(a) a Registered Item or an Item on the interim list or to part of such an Item;

or

(b) a State Heritage Area.

(2) The Minister must, before making an order under subsection (1)—

(a) by public notice—

(i) describe the Item or State Heritage Area that will be the subject of the order;

(ii) invite interested persons to make written submissions in relation to the proposed order within a period specified in the notice (being not less than one month from the date of publication of the notice);

(b) immediately after publication of the notice referred to in paragraph (a), serve a copy of the notice on the owner of the Item or State Heritage Area—

(i) personally;

(ii) by posting it to the owner's last known address;

or

(iii) by fixing it in a prominent position on the Item or State Heritage Area;

(c) consult the Committee in relation to the proposed order.

(3) When making an order under subsection (1), the Minister must have regard to—

(a) the submissions (if any) made by the owner of the Item or State Heritage Area or any other interested person;

and

(b) any representations made by the Committee.

(4) The Minister shall, immediately after making an order under subsection (1), fix notice of the order in a prominent position on the Item or State Heritage Area concerned.

Making of order
in urgent cases.

22. (1) Where, in the opinion of the Minister, it is necessary or desirable to provide immediate protection in respect of—

(a) a Registered Item or an Item on the interim list or part of such an Item:

or

(b) a State Heritage Area,

the Minister may, by fixing a copy of the order in a prominent position on the Item or State Heritage Area concerned, order that this Part apply to that Item (or to part of that Item) or to that State Heritage Area.

(2) The Minister shall—

(a) immediately after making an order under subsection (1), comply with the requirements of section 21 (2);

(b) within 60 days (or such longer period (not exceeding 6 months) as is fixed by the Planning Appeal Tribunal under subsection (3)) after making the order, by public notice, confirm or revoke the order;

and

(c) when confirming or revoking the order, have regard to the submissions (if any) made by the owner of the Item or State Heritage Area or any other interested person and any representations made by the Committee.

(3) The Planning Appeal Tribunal may, on the application of the Minister, extend the period referred to in subsection (2) (b).

23. An order made under this Division shall cease to operate if— Cessation of order.

(a) the Item in respect of which it was made is removed from the Register or is struck out of the interim list for any reason other than its entry in the Register;

(b) the notice designating the State Heritage Area in respect of which it was made is revoked;

or

(c) (i) in the case of an order that must be confirmed or revoked after it has been made—the order is not confirmed within the required period;

or

(ii) in any other case—the Minister has, by public notice and after consultation with the Committee, revoked the order.

24. A person who damages or destroys an Item or a State Heritage Area is guilty of an offence. Offence.

Penalty: \$10 000.

DIVISION II—REGULATIONS AND PERMITS

25. (1) The Governor may make regulations— Regulations.

(a) prohibiting or regulating—

(i) the entry of persons onto an Item or a State Heritage Area;

(ii) the bringing of vehicles, machinery or equipment or materials or substances of any kind onto an Item or State Heritage Area;

(iii) any activity on an Item or State Heritage Area;

(b) prescribing penalties, not exceeding \$2 000, for contravention of a regulation.

(2) A regulation made under subsection (1)—

(a) may be made in respect of—

- (i) Items and State Heritage Areas generally;
- (ii) a particular Item or State Heritage Area;
- or
- (iii) an Item or a State Heritage Area of a particular class;

(b) shall have effect notwithstanding any other Act or law.

(3) Signs that are, in the opinion of the Minister, desirable for the purpose of providing public notice of restrictions applying under this Act may be erected by the Minister on, or near, an Item or State Heritage Area.

Permits.

25a. (1) The Minister may, either absolutely or conditionally, issue a permit to any person authorizing a specified act or activity in relation to an Item or State Heritage Area.

(2) The Minister may vary or revoke a permit at any time.

(3) It is a defence to a charge for an offence under a regulation made under this Division to prove that the defendant acted under the authority of a permit granted under subsection (1).

DIVISION III—INSPECTORS

Appointment of inspectors.

25b. (1) The Minister may appoint a suitable person as an inspector for the purposes of this Part.

(2) An appointment under this section may be subject to such limitations and conditions as the Minister thinks fit.

(3) The Minister may vary or revoke such an appointment at any time.

(4) An inspector shall be provided with a certificate evidencing the inspector's appointment under this section.

(5) An inspector shall, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, any power under this Part, produce, for the inspection of that person, the certificate of appointment furnished under this section.

Powers of inspectors.

25c. An inspector may, subject to the conditions of the inspector's appointment, at any time—

- (a) inspect an Item or State Heritage Area;
- (b) require a person who the inspector believes has committed, or is about to commit, an offence under this Part—
 - (i) to state that person's full name and usual place of residence;
 - (ii) to leave the Item or State Heritage Area immediately;
- (c) require a person who is on an Item or State Heritage Area without lawful authority to leave immediately;

- (d) take possession of any vehicle, machinery or equipment or any material or substance that the inspector suspects has been used in, or in connection with, the commission of an offence under this Part;
- (e) require a person who has custody of records of, or relating to, the Item or State Heritage Area or to the administration of this Part to produce those records;
- (f) take extracts from, or make copies of, those records;
- (g) require a person who the inspector reasonably believes has knowledge concerning any matter relating to an Item or State Heritage Area, or the administration of this Part, to answer questions in relation to those matters.

25d. (1) A person who, without reasonable excuse—

- (a) hinders an inspector in the exercise of powers conferred by this Division;
- (b) fails to comply with a requirement of an inspector under this Division;
- (c) fails to answer a question put by an inspector under this Division to the best of that person's knowledge, information and belief,

Penalty for hindering, etc., inspector.

is guilty of an offence.

Penalty: \$1 000 or imprisonment for 3 months.

(2) A person is excused from answering a question put under this Division or producing records in compliance with a requirement under this Division if the answer to the question or the records concerned would tend towards self-incrimination.

(3) An inspector may, without a warrant, arrest a person who the inspector reasonably believes has committed an offence under subsection (1) (a) or (b).

(4) When making an arrest under subsection (3), the inspector shall produce to the person arrested the certificate evidencing the inspector's appointment under this Division.

(5) The inspector shall forthwith bring the person arrested before a justice of the peace or other proper authority to be dealt with in accordance with law.

(6) Nothing in this section prevents the arrest of a person in accordance with any other law.

25e. (1) For the purpose of exercising powers under this Division, an inspector may, subject to subsection (2)—

Powers of access, etc.

- (a) enter an Item or State Heritage Area;
- (b) traverse any land in order to gain access to an Item or State Heritage Area;

(c) authorize such persons as the inspector thinks necessary to provide assistance.

(2) An inspector must give reasonable notice to the occupier of a dwelling before entering the dwelling pursuant to subsection (1).

Repeal of South
Australian
Heritage Act
Amendment Act,
1979.

17. The South Australian Heritage Act Amendment Act, 1979, is repealed.

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

D. B. DUNSTAN, Governor