

South Australia



**DEVELOPMENT (MAJOR DEVELOPMENT ASSESSMENT)  
AMENDMENT ACT 1996**

**No. 63 of 1996**

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A.D. 1996

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No. 63 of 1996

**An Act to amend the Development Act 1993 and to make related amendments to the Environment Protection Act 1993 and the Statutes Repeal and Amendment (Development) Act 1993.**

[Assented to 15 August 1996]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Development (Major Development Assessment) Amendment Act 1996*.

(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 inserting after the definition of "document" in subsection (1) the following definitions:

"DR"—see subsection (6);

"EIS"—see subsection (4);;

(b) by inserting after the definition of "local heritage place" in subsection (1) the following definition:

"Major Developments Panel" means the Major Developments Panel established under section 46A;;

(c) by inserting after the definition of "party wall" in subsection (1) the following definition:

"PER"—see subsection (5);;

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

(4) A reference in this Act to an EIS is a reference to an environmental impact statement, being a document that includes a detailed description and analysis of a wide range of issues relevant to a development or project and incorporates significant information to assist in an assessment of environmental, social or economic effects associated with the development or project and the means by which those effects can be managed.

(5) A reference in this Act to a PER is a reference to a public environmental report, being a report on a development or project that includes—

- (a) a detailed description and analysis of a limited number of issues and a description and analysis of other issues relevant to the development or project; or
- (b) a description and analysis of a wide range of issues relevant to the development or project where a considerable amount of relevant information is already generally available,

and incorporates information to assist in an assessment of environmental, social or economic effects associated with the development or project and the means by which those effects can be managed.

(6) A reference in this Act to a DR is a reference to a development report, being a report that includes a description and analysis of general issues relevant to a development and the means by which those issues can be addressed.

#### **Amendment of s. 30—Review of plans by council**

4. Section 30 of the principal Act is amended by striking out from subsection (6) "three years after the commencement of this section" and substituting "four years after the commencement of this section".

#### **Amendment of s. 34—Determination of relevant authority**

5. Section 34 of the principal Act is amended—

- (a) by inserting at the end of paragraph (a) of subsection (1) "(and, subject to paragraph (b)(ii), the council may act as the relevant authority even if it is to undertake some or all of the relevant development itself)";
- (b) by striking out from subparagraph (ii) of subsection (1)(b) "is to be undertaken" and substituting "is development of a prescribed kind to be undertaken";
- (c) by inserting after subparagraph (v) of subsection (1)(b) the following word and subparagraph:

or

- (vi) the Minister declares, by notice in writing served personally or by post on the proponent, and sent to the relevant council 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 because—

- (A) in the Minister's opinion the relevant council has demonstrated a potential conflict of interest in the assessment of the development because of a publicly stated position on that 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) a council has failed to deal with an application for development authorisation for the development within the time prescribed under section 41,;

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

(1a) Where the Minister has made a declaration under subsection (1)(b)(vi), the relevant council may provide the Development Assessment Commission with a report, relating to the application for development authorisation, within the time prescribed by the regulations.

#### Substitution of Division 2 of Part 4

6. Division 2 of Part 4 (and the heading to that Division) of the principal Act are repealed and the following Division (and heading) are substituted:

### DIVISION 2—MAJOR DEVELOPMENTS OR PROJECTS

#### *Subdivision 1—Preparation of statements and reports*

#### Declaration by Minister

46. (1) The Minister may, if of the opinion that a declaration under this section is appropriate or necessary for the proper assessment of development<sup>1</sup> or a project<sup>2</sup> of major environmental, social or economic importance, by notice in the *Gazette*, declare that this section applies, or applies to the extent specified in the notice, to—

- (a) a development or project specified in the notice; or
- (b) a kind of development or project specified in the notice (either in the State generally, or in a specified part of the State); or
- (c) development generally within a specified part of the State<sup>3</sup>.

<sup>1</sup>. Development has a defined meaning under this Act.

<sup>2</sup>. A project is an activity or circumstance that does not require approval under this Act (because it is not within the ambit of the definition of "development" under this Act), but that may require approval under another Act.

<sup>3</sup>. A development or project within the ambit of a declaration under subsection (1) will be known as a "major development or project" for the purposes of this section.

(2) A declaration under this section does not extend to—

- (a) a development lawfully commenced by substantial work on the site of the development before publication of the notice in the *Gazette*; or
- (b) a development in respect of which the Minister has, by notice in writing to the proponent, given an express undertaking that this Division would not apply to the development.

(3) Subsection (2)(b) operates subject to the following qualifications:

- (a) the Minister may limit the operation of an undertaking to a specified period;
- (b) the Minister may, by notice in writing to the proponent, bring the operation of an undertaking to an end if the Minister considers that the undertaking should no longer apply because there has been a significant change in circumstances.

(4) The Minister may, by subsequent notice in the *Gazette*, vary or revoke a declaration under subsection (1).

(5) If the Minister makes a declaration under subsection (1) then, subject to the regulations and the declaration—

- (a) Division 1 does not apply to a development within the ambit of the declaration; and
- (b) any application under Division 1 that relates to a development within the ambit of the declaration automatically lapses and any relevant documentation that has been lodged with a relevant authority under that Division must be transmitted to the Minister in accordance with the regulations; and
- (c) any development authorisation previously given under Division 1 in relation to a development within the ambit of the declaration ceases to have effect; and
- (d) a person must not undertake a development within the ambit of the declaration without the approval of the Governor under subdivision 2; and
- (e) unless section 48(2)(a) applies, a development or project within the ambit of the declaration becomes, according to a determination of the Major Developments Panel under this section, subject to the processes and procedures prescribed by this subdivision with respect to the preparation and consideration of an EIS, a PER or a DR<sup>4</sup>.

<sup>4</sup> In the case of a development, the principal purpose for the preparation of an EIS, PER or DR is to assist the Governor in his or her assessment of the development under subdivision 2. In the case of a project, the principal purpose for the preparation of an EIS or PER is to identify issues of significance relevant to whether the project should proceed and, if it does proceed, to identify the conditions that should apply.

(6) Subject to the regulations, a determination of the Minister under this section, or a determination of the Governor under section 48(2)(a) (in the case of a development), the proponent of a major development or project must lodge with the Minister—

- (a) in the case of a development—an application;
- (b) in the case of a project—a project proposal,

that complies with the following requirements:

- (c) the application or project proposal must be in a form determined by the Minister; and
- (d) the application or project proposal must include, or be accompanied by—
  - (i) a description of the development or project;
  - (ii) a description of the locality where the development or project is to be situated;
  - (iii) a description of the expected environmental, social or economic effects of the development or project;
  - (iv) a statement on how those effects could be managed;
  - (v) a statement assessing consistency with any relevant Development Plan and the Planning Strategy;
  - (vi) information concerning the application and operation of the *Environment Protection Act 1993* with respect to the development or project (if relevant);
  - (vii) other information reasonably required by the Minister; and
- (e) the application or project proposal must be accompanied by such plans, drawings, specifications or other documents as may be prescribed, or required by the Minister.

(7) Subject to a determination of the Governor under section 48(2)(a) (in the case of a development), the Minister must refer a major development or project under this section to the Major Developments Panel—

- (a) to determine whether the major development or project will be subject to the processes and procedures prescribed by this subdivision with respect to the preparation of an EIS, a PER or a DR; and
- (b) to formulate guidelines to apply with respect to the preparation of the EIS, PER or DR (as determined by the Major Developments Panel).

(8) The Major Developments Panel must, on receipt of a referral under subsection (7)—

- (a) prepare a document describing the major development or proposal and identifying the significant issues relevant to the proper assessment of the major development or project; and
- (b) by public advertisement, give notice of the availability of the document and invite interested persons to make written submissions to the Major Developments Panel within the time prescribed by the regulations on the issues identified in the document, and on any other issues of significance relevant to the proper assessment of the major development or project, to assist the Major Developments Panel in the preparation of the guidelines referred to in subsection (7).

(9) The Major Developments Panel must, in considering the level of assessment that should apply to a major development or project (i.e. whether a major development or project should be subject to the processes and procedures associated with the preparation of an EIS, a PER or a DR), take into account criteria prescribed by the regulations.

(10) If a major development or project involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the Major Developments Panel must, in formulating guidelines under this section, consult with the Environment Protection Authority within the time prescribed by the regulations.

(11) The Major Developments Panel must, in formulating guidelines under this section, classify the issues identified by the Major Developments Panel as being relevant to the proper assessment of the major development or project according to categories of importance so as to indicate the levels of attention that should be given to those issues in the preparation of the relevant EIS, PER or DR, and the Assessment Report.

(12) The Major Developments Panel must, after completing the processes referred to above, report to the Minister on—

- (a) its determination with respect to the level of assessment that should apply to the major development or project; and
- (b) the guidelines to apply under this subdivision with respect to the preparation of the relevant EIS, PER or DR.

(13) The Minister must, on the receipt of a report under subsection (12)—

- (a) give a copy of the report to the proponent; and
- (b) by public advertisement, give notice of—
  - (i) the Major Developments Panel's determination under this section; and
  - (ii) the place or places at which copies of the guidelines formulated by the Major Developments Panel are available for inspection and purchase.

(14) The Major Developments Panel should deal with a referral as quickly as possible and in any event, unless the Minister otherwise approves, within the time specified by the Minister (taking into account the time periods prescribed by the regulations for the purposes of this Division).

(15) The Minister or the Major Developments Panel may require a proponent to furnish specified information (additional to the information required under subsection (6)) for the purposes of the operation of this section.

(16) The prescribed fee is payable in accordance with the regulations when a development or project comes within the ambit of a declaration under this section.

#### **The Major Developments Panel**

**46A.** (1) For the purposes of section 46, the Major Developments Panel is a panel constituted by the following persons when a major development or project is referred to the Major Developments Panel under section 46(7):

- (a) the Presiding Member of the Development Assessment Commission (*ex officio*), who will be the presiding member of the panel;
- (b) a member of the Environment Protection Authority appointed by the Minister;
- (c) a person with practical knowledge of, and experience in, industry, commerce or economic development appointed by the Minister;
- (d) a person with wide experience in environmental conservation appointed by the Minister;
- (e) a person selected by the Minister from a panel of three persons submitted to the Minister by the Local Government Association of South Australia;
- (f) a person with qualifications or experience relevant to the assessment of the particular development or project selected by the Minister from a list of persons established (and revised from time to time) by the Minister for the purposes of the panel.

(2) The Minister may appoint a suitable person to be the deputy of a member of the panel and a person so appointed may act in the place of the member of whom he or she has been appointed deputy during an absence of the member (subject to the requirement that the deputy of the Presiding Member of the Development Assessment Commission will be the Deputy Presiding Member of the Development Assessment Commission, and that the deputy of the member of the Environment Protection Authority will be another member of that authority).

(3) A member of the panel (other than an *ex officio* member) will be appointed on terms and conditions determined by the Minister (and, if relevant, for a term determined by the Minister).

(4) The Minister may remove a member of the panel from office for—

- (a) breach of, or failure to comply with, the conditions of appointment;



- (b) misconduct;
- (c) neglect of duty;
- (d) incapacity to carry out satisfactorily the duties of office;
- (e) failure to carry out satisfactorily the duties of office.

(5) The office of a member of the panel becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is removed from office under subsection (4).

(6) The procedures to be observed by the panel will be—

- (a) as prescribed by regulation; or
- (b) insofar as the procedure is not prescribed by regulation—as determined by the panel.

(7) The panel may, with the approval of the Minister, delegate a power or function under this Division, other than the power to make a determination under section 46(7)(a) or to finalise guidelines under section 46(7)(b)—

- (a) to a particular person; or
- (b) to the person for the time being occupying a particular office or position.

(8) A delegation—

- (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (b) is revocable at will and does not derogate from the power of the panel to act in a matter.

**EIS process—Specific provisions**

**46B.** (1) This section applies if an EIS must be prepared for a proposed development or project.

(2) The Minister will, after consultation with the proponent—

- (a) require the proponent to prepare the EIS; or
- (b) determine that the Minister will arrange for the preparation of the EIS.

(3) The EIS must be prepared in accordance with guidelines determined by the Major Developments Panel under this subdivision.

- (4) The EIS must include a statement of—
- (a) the expected environmental, social and economic effects of the development or project;
  - (b) the extent to which the expected effects of the development or project are consistent with the provisions of—
    - (i) any relevant Development Plan; and
    - (ii) the Planning Strategy; and
    - (iii) any matters prescribed by the regulations;
  - (c) if the development or project involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the extent to which the expected effects of the development or project are consistent with—
    - (i) the objects of the *Environment Protection Act 1993*; and
    - (ii) the general environmental duty under that Act; and
    - (iii) relevant environment protection policies under that Act;
  - (d) the proponent's commitments to meet conditions (if any) that should be observed in order to avoid, mitigate or satisfactorily manage and control any potentially adverse effects of the development or project on the environment;
  - (e) other particulars in relation to the development or project required—
    - (i) by the regulations; or
    - (ii) by the Minister.
- (5) After the EIS has been prepared, the Minister—
- (a) —
    - (i) must, if the EIS relates to a development or project that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the EIS to the Environment Protection Authority; and
    - (ii) must refer the EIS to the relevant council (or councils), and to any prescribed authority or body; and
    - (iii) may refer the EIS to such other authorities or bodies as the Minister thinks fit,
- for comment and report within the time prescribed by the regulations; and

- (b) must ensure that copies of the EIS are available for public inspection and purchase (during normal office hours) for at least 30 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of copies of the EIS and invite interested persons to make written submissions to the Minister on the EIS within the time determined by the Minister for the purposes of this paragraph.

(6) The Minister must appoint a suitable person to conduct a public meeting during the period that applies under subsection (5)(b) in accordance with the requirements of the regulations.

(7) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.

(8) The proponent must then prepare a written response to—

- (a) matters raised by the Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, for consideration by the proponent; and
- (b) all submissions referred to the proponent under subsection (7),

and provide a copy of that response to the Minister.

(9) The Minister must then prepare a report (an "Assessment Report") that sets out or includes—

- (a) the Minister's assessment of the development or project; and
- (b) the Minister's comments (if any) on—
- (i) the EIS; and
  - (ii) any submissions made under subsection (5); and
  - (iii) the proponent's response under subsection (8); and
- (c) comments provided by the Environment Protection Authority, a council or other authority or body for inclusion in the report; and
- (d) other comments or matter as the Minister thinks fit.

(10) The Minister must—

- (a) notify a person who made a written submission under subsection (5) of the availability of the Assessment Report in the manner prescribed by the regulations; and
- (b) by public advertisement, give notice of the place or places at which copies of the Assessment Report are available for inspection and purchase.

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(11) Copies of the EIS, the proponent's response under subsection (8), and the Assessment Report must be kept available for inspection and purchase at a place determined by the Minister for a period determined by the Minister.

(12) If a proposed development or project to which an EIS relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the EIS, the proponent's response under subsection (8), and the Assessment Report to the council.

**PER process—Specific provisions**

**46C.** (1) This section applies if a PER must be prepared for a proposed development or project.

(2) The Minister will, after consultation with the proponent—

- (a) require the proponent to prepare the PER; or
- (b) determine that the Minister will arrange for the preparation of the PER.

(3) The PER must be prepared in accordance with guidelines determined by the Major Developments Panel under this subdivision.

(4) The PER must include a statement of—

- (a) the expected environmental, social and economic effects of the development or project;
- (b) the extent to which the expected effects of the development or project are consistent with the provisions of—
  - (i) any relevant Development Plan; and
  - (ii) the Planning Strategy; and
  - (iii) any matters prescribed by the regulations;
- (c) if the development or project involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the extent to which the expected effects of the development or project are consistent with—
  - (i) the objects of the *Environment Protection Act 1993*; and
  - (ii) the general environmental duty under that Act; and
  - (iii) relevant environment protection policies under that Act;
- (d) the proponent's commitments to meet conditions (if any) that should be observed in order to avoid, mitigate or satisfactorily manage and control any potentially adverse effects of the development or project on the environment;

- (e) other particulars in relation to the development or project required—
  - (i) by the regulations; or
  - (ii) by the Minister.

(5) After the PER has been prepared, the Minister—

- (a) —
  - (i) must, if the PER relates to a development or project that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the PER to the Environment Protection Authority; and
  - (ii) must refer the PER to the relevant council (or councils), and to any prescribed authority or body; and
  - (iii) may refer the PER to such other authorities or bodies as the Minister thinks fit,

for comment and report within the time prescribed by the regulations; and

- (b) must ensure that copies of the PER are available for public inspection and purchase (during normal office hours) for at least 30 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of copies of the PER and invite interested persons to make written submissions to the Minister on the PER within the time determined by the Minister for the purposes of this paragraph.

(6) The Minister must appoint a suitable person to conduct a public meeting during the period that applies under subsection (5)(b) in accordance with the requirements of the regulations.

(7) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.

(8) The proponent must then prepare a written response to—

- (a) matters raised by the Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, for consideration by the proponent; and
- (b) all submissions referred to the proponent under subsection (7),

and provide a copy of that response to the Minister within the time prescribed by the regulations.

(9) The Minister must then prepare a report (an "Assessment Report") that sets out or includes—

- (a) the Minister's assessment of the development or project; and

- (b) the Minister's comments (if any) on—
  - (i) the PER; and
  - (ii) any submissions made under subsection (5); and
  - (iii) the proponent's response under subsection (8); and
- (c) comments provided by the Environment Protection Authority, a council or other authority or body for inclusion in the report; and
- (d) other comments or matter as the Minister thinks fit.

(10) The Minister must, by public advertisement, give notice of the place or places at which copies of the Assessment Report are available for inspection and purchase.

(11) Copies of the PER, the proponent's response under subsection (8), and the Assessment Report must be kept available for inspection and purchase at a place determined by the Minister for a period determined by the Minister.

(12) If a proposed development or project to which a PER relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the PER, the proponent's response under subsection (8), and the Assessment Report to the council.

**DR process—Specific provisions**

**46D.** (1) This section applies if a DR must be prepared for a proposed development.

(2) The Minister will, after consultation with the proponent—

- (a) require the proponent to prepare the DR; or
- (b) determine that the Minister will arrange for the preparation of the DR.

(3) The DR must be prepared in accordance with guidelines determined by the Major Developments Panel under this subdivision.

(4) The DR must include a statement of—

- (a) the expected environmental, social and economic effects of the development;
- (b) the extent to which the expected effects of the development are consistent with the provisions of—
  - (i) any relevant Development Plan; and
  - (ii) the Planning Strategy; and
  - (iii) any matters prescribed by the regulations;
- (c) if the development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, the extent to which the expected effects of the development are consistent with—

- (i) the objects of the *Environment Protection Act 1993*; and
  - (ii) the general environmental duty under that Act; and
  - (iii) relevant environment protection policies under that Act;
- (d) the proponent's commitments to meet conditions (if any) that should be observed in order to avoid, mitigate or satisfactorily manage and control any potentially adverse effects of the development on the environment;
- (e) other particulars in relation to the development required—
- (i) by the regulations; or
  - (ii) by the Minister.

(5) After the DR has been prepared, the Minister—

- (a) —
- (i) must, if the DR relates to a development that involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*, refer the DR to the Environment Protection Authority;
  - (ii) must refer the DR to the relevant council (or councils), and to any prescribed authority or body; and
  - (iii) may refer the DR to such other authorities or bodies as the Minister thinks fit,

for comment and report within the time prescribed by the regulations; and

- (b) must ensure that copies of the DR are available for public inspection and purchase (during normal office hours) for at least 15 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of copies of the DR and invite interested persons to make submissions to the Minister on the DR within the time determined by the Minister for the purposes of this paragraph.

(6) The Minister must, after the expiration of the time period that applies under subsection (5)(b), give to the proponent copies of all submissions made within time under that subsection.

(7) The proponent may then prepare a written response to—

- (a) matters raised by the Minister, the Environment Protection Authority, any council or any prescribed or specified authority or body, for consideration by the proponent; and
- (b) all submissions referred to the proponent under subsection (6),

and provide a copy of that response to the Minister within the time prescribed by the regulations.

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(8) The Minister must then prepare a report (an "Assessment Report") on the matter taking into account—

- (a) any submissions made under subsection (5); and
- (b) the proponent's response (if any) under subsection (7); and
- (c) comments provided by the Environment Protection Authority, a council or other authority or body; and
- (d) other comments or matter as the Minister thinks fit.

(9) Copies of the DR, any response under subsection (7) and the Assessment Report must be kept available for inspection and purchase at a place determined by the Minister for a period determined by the Minister.

(10) If a proposed development to which a DR relates will, if the development proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the DR, any response under subsection (7) and the Assessment Report to the council.

**Amendment of EIS, PER or DR**

47. (1) An EIS, a PER or a DR, and the relevant Assessment Report, may be amended at any time in order to—

- (a) correct an error; or
- (b) take account of more accurate or complete data or technological or other developments not contemplated when the document was prepared; or
- (c) take account of an alteration to the original proposal; or
- (d) update the document on account of the length of time that has passed since the document was prepared (or last updated); or
- (e) make such other provision as may be necessary or appropriate given the content or purpose of an EIS, PER, DR or Assessment Report.

(2) However—

- (a) the Minister cannot amend an EIS, PER or DR prepared by a proponent but the proponent must, at the direction of the Minister, undertake a review of an EIS, PER or DR prepared by the proponent (and then make any appropriate amendments); and
- (b) if a proposed amendment would in the opinion of the Minister significantly affect the substance of the EIS, PER or DR, the amendment must not be made before interested persons have been invited, by public advertisement, to make written submissions on the amendment and the Minister has considered the submissions (if any) received in response to the advertisement.



(3) If an EIS, PER, DR or Assessment Report is amended under this section, the Minister must, by public advertisement, give notice of the place or places at which copies of the relevant document or documents (with the amendments) are available for inspection and purchase.

(4) An amendment under this section may include the addition, variation, substitution or deletion of material.

*Subdivision 2—Governor to give decision on development*

**Governor to give decision on development**

**48. (1) This section applies to a proposed development—**

- (a) that is within the ambit of a declaration of the Minister under section 46; or
- (b) that is the subject of a direction of the Minister under section 49(16a).

**(2) The Governor may, in relation to a development to which this section applies—**

- (a) indicate (at any time) that he or she will not grant a development authorisation for the development; or
- (b) on due application—
  - (i) grant a development authorisation required under this Act, subject to conditions (if any) determined by the Governor; or
  - (ii) refuse approval to the development.

**(3) However, the Governor must not grant a development authorisation under this section unless—**

- (a) an EIS, PER or DR, and an Assessment Report, have been prepared in relation to the development in accordance with the requirements of this Division (as appropriate); or
- (b) the Governor is satisfied that an appropriate EIS, PER or DR, and an Assessment Report, that encompass the development have previously been prepared.

**(4) If more than five years have elapsed since an EIS, PER or DR that relates to a development to which this section applies was completed and placed on public exhibition (or in the case of an EIS prepared under the repealed Act, since the EIS was officially recognised), the document cannot be used for the purposes of subsection (3) unless or until it has been reviewed in order to see whether it should be amended under section 47 (and, if amendment is found to be necessary, unless or until it is amended).**

**(5) The Governor must, before the Governor approves a development to which this section applies, have regard to—**

- (a) the provisions of the appropriate Development Plan and the regulations (so far as they are relevant); and
- (b) if relevant, the Building Rules; and

- (c) the Planning Strategy; and
- (d) if the development involves, or is for the purposes of, a prescribed activity of environmental significance as defined by the *Environment Protection Act 1993*—
  - (i) the objects of the *Environment Protection Act 1993*; and
  - (ii) the general environmental duty under the *Environment Protection Act 1993*; and
  - (iii) any relevant environment protection policies under the *Environment Protection Act 1993*; and
- (e) any relevant EIS, PER or DR, and the relevant Assessment Report,

and may, in making a decision, take into account other matters considered relevant by the Governor.

(6) The Governor may grant a provisional development authorisation under this section, reserving a decision on a specified matter until further assessment of the development for the purposes of this Act.

(7) The Governor may—

- (a) when determining what conditions should be attached to a development authorisation under this section, attach conditions that must be complied with in the future;
- (b) —
  - (i) in relation to matters specified by him or her when granting a development authorisation under this section; or
  - (ii) on application of a person who has the benefit of a development authorisation under this section,

vary or revoke conditions to which the development authorisation is subject or attach new conditions to the development authorisation.

(8) The Governor may, by notice in the *Gazette*, delegate a power or function under this section to the Development Assessment Commission.

(9) A delegation—

- (a) may be made subject to conditions and limitations specified in the notice of delegation; and
- (b) unless the instrument of delegation otherwise provides, allows for subdelegation of the delegated power or function; and
- (c) is revocable by further notice in the *Gazette* and does not derogate from the power of the Governor to act in the matter.

(10) A decision of the Governor under this section must be published in the *Gazette*.

(11) If—

- (a) the Governor gives a development authorisation under this section; but
- (b) the development to which the development authorisation relates is not commenced by substantial work on the site of the development within the time specified by the regulations or, if a time is specified by the Governor as part of the development authorisation, within that time,

the Governor may, by notice in writing to any owner or occupier of the relevant land, cancel the development authorisation.

(12) No appeal lies against a decision under this section.

(13) A person—

- (a) who undertakes development to which this section applies without the consent of the Governor; or
- (b) who undertakes development contrary to a development authorisation under this section; or
- (c) who contravenes, or fails to comply with, a condition on which a development authorisation was granted,

is guilty of an offence.

Penalty: Division 2 fine.

Additional penalty.

Default penalty: \$1 000.

(14) A person who has the benefit of a development must ensure that the development is used, maintained and operated in accordance with—

- (a) any development authorisation under this section; and
- (b) documents submitted for the purposes of this Division that are relevant to such development authorisation.

Penalty: Division 4 fine.

#### *Subdivision 3—Related matters*

#### **Exclusion of particular development or project**

48A. (1) The Governor may, by notice in the *Gazette*, declare that a development or project (or a part or stage of a development or project) otherwise within the ambit of a declaration under section 46 is excluded from the operation of this Division.

(2) If a declaration is made under subsection (1) then, subject to the regulations and the terms of the declaration (which may include provisions of a saving or transitional nature)—

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- (a) this Division will cease to apply to the development or project (or the relevant part or stage); and
- (b) in the case of a development, Division 1 will apply to the development (or part or stage) to the extent to which the development (or part or stage) has not been approved under this Division.

**Variation of application**

**48B.** The Governor or the Minister may permit a proponent to vary an application (and any associated documents) lodged under this Division (provided that the relevant development or project remains within the ambit of an EIS, PER or DR, and an Assessment Report (either as originally prepared or as amended under this Division)).

**Testing and monitoring**

**48C.** (1) The Minister may—

- (a) by notice in writing to a person—
  - (i) who is undertaking a development or project to which this Division applies; or
  - (ii) who has the benefit of a development or project to which this Division applies,

require the person to do either or both of the following:

- (iii) to carry out specified tests and monitoring relevant to the development or project and to make specified reports to the Minister on the results of the tests and monitoring;
  - (iv) to comply with the requirements of an audit programme specified by the Minister to the satisfaction of the Minister;
- (b) after giving notice in writing to a person—
    - (i) who is undertaking a development or project to which this Division applies; or
    - (ii) who has the benefit of a development or project to which this Division applies,

cause to be carried out specified tests and monitoring relevant to the development or project.

(2) A person to whom a notice is directed under subsection (1) must—

- (a) in the case of a notice under subsection (1)(a)—comply with the terms of the notice;
- (b) in the case of a notice under subsection (1)(b)—provide reasonable assistance to facilitate the testing or monitoring specified in the notice.

**Penalty:** Division 4 fine.

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**Costs**

**48D.** (1) The Minister may recover, as a debt due from the proponent, reasonable costs incurred in relation to—

- (a) the preparation and publication of material under Subdivision 1; and
- (b) the making of a decision on a development under Subdivision 2.

(2) The Minister may recover, as a debt due from a person who receives a notice under section 48C(1)(b), reasonable costs incurred in carrying out tests and monitoring specified by that notice.

**Protection from proceedings**

**48E.** No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—

- (a) a decision or determination of the Governor, the Minister or the Major Developments Panel under this Division; or
- (b) proceedings or procedures under this Division; or
- (c) an act, omission, matter or thing incidental or relating to the operation of this Division.

**Amendment of s. 49—Crown development**

7. Section 49 of the principal Act is amended—

(a) by inserting after the definition of "the Crown" in subsection (1) the following definition:

"public infrastructure" means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, or the drainage or treatment of waste water or sewage;
- (b) roads and their supporting structures and works;
- (c) ports, wharfs, jetties, railways, tramways and busways;
- (d) schools, hospitals and prisons;
- (e) all other facilities that have traditionally been provided by the State (but not necessarily only by the State) as community or public facilities;;

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

(2) Subject to this section, if—

- (a) a State agency proposes to undertake development (other than in partnership or joint venture with a person or body that is not a State agency); or

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- (b) a State agency proposes to undertake development for the purposes of the provision of public infrastructure (whether or not in partnership or joint venture with a person or body that is not a State agency); or
- (c) a person proposes to undertake development initiated or supported by a State agency for the purposes of the provision of public infrastructure and specifically endorsed by the State agency for the purposes of this section,

the State agency must—

- (d) lodge an application for approval containing prescribed particulars with the Development Assessment Commission for assessment by the Development Assessment Commission; and
- (e) if the land in relation to which the development is proposed is within the area of a council—give notice containing prescribed particulars of the proposal to that council in accordance with the regulations.;

(c) by inserting after subsection (16) the following subsection:

(16a) Despite a preceding subsection, if the Minister directs that an EIS, PER or DR be prepared with respect to a development otherwise within the ambit of this section then—

- (a) this section ceases to apply to the development; and
- (b) the State agency must not undertake the development without the approval of the Governor under section 48; and
- (c) unless section 48(2)(a) applies, the development becomes, according to a determination of the Major Developments Panel, subject to the processes and procedures prescribed by Division 2 with respect to the preparation and consideration of an EIS, a PER or a DR.

**Amendment of s. 55—Removal of work if development not substantially completed**

8. Section 55 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) In this section—

"relevant authority" includes, if the development has been approved under Division 2, the Minister.

**Amendment of s. 56—Completion of work**

9. Section 56 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) In this section—

"relevant authority" includes, if the development has been approved under Division 2, the Minister.

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

10. Section 75 of the principal Act is amended—

- (a) by striking out from subsection (4)(a) "on the Minister" and substituting "on the Major Developments Panel";
- (b) by inserting at the end of paragraph (a) of subsection (4) "or public environmental reports";
- (c) by inserting "or report" after "statement" in paragraph (b) of subsection (4);
- (d) by inserting after subsection (4) the following subsection:

(4A) However—

- (a) the Minister may only exercise the powers conferred on the Major Developments Panel under this Act in relation to public environmental reports if the Minister considers that the outcome of the environment impact assessment processes under the relevant *Mining Act* will not be equivalent (or superior) to the outcome that can be achieved if a public environmental report is prepared; and
  - (b) if the appropriate Authority and the Minister cannot agree in a specific case on an exercise of powers under this Act in relation to public environmental reports then the matter must be referred to the Governor.;
- (e) by inserting "or public environment report" after "statement" in subsection (5).

**Amendment of s. 84—Enforcement notices**

11. Section 84 of the principal Act is amended by striking out from subsection (9) "with" and substituting "within".

**Amendment of the Environment Protection Act 1993**

12. The *Environment Protection Act 1993* is amended—

- (a) by inserting in section 42 after its present contents (now to be designated as subsection (1)) the following subsection:
  - (2) If an application for an authorisation involves an activity that requires a related approval under the *Development Act 1993* and that approval has not been obtained at the time that the application is made under this Act, the time period under subsection (1) will not commence until approval is obtained under the *Development Act 1993*.;
- (b) by striking out paragraph (f) of section 47(1) and substituting the following paragraph:
  - (f) have regard to any relevant reports, assessments, environmental impact statement, public environmental report, development report, Assessment Report, development authorisation or other document or requirement under the *Development Act 1993*.;
- (c) by inserting after subsection (2) of section 47 the following subsection:

(2a) If an application for an environmental authorisation involves an activity that requires a related approval under the *Development Act 1993*, the Authority must defer its determination of the application under this Act until a relevant development authorisation is obtained under the *Development Act 1993* and the Authority receives notification of that development authorisation (and any conditions) from the applicant (and if an application for a development authorisation is refused under that Act then, subject to the regulations, the Authority must refuse the application for environmental authorisation under this Act).

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

13. The *Statutes Repeal and Amendment (Development) Act 1993* is amended by inserting after subsection (2) of section 18 the following subsections:

(3) A development that is the subject to an environmental impact statement officially recognised under the *Planning Act 1982* (including by virtue of this section) will be assessed under Division 2 of Part 4 of the *Development Act 1993*.

(4) An environmental impact statement officially recognised under the *Planning Act 1982* will be taken to have been prepared in accordance with the requirements of Division 2 of Part 4 of the *Development Act 1993* (and, unless amended under that Division, to be sufficient for the purposes of that Division, including as to the preparation of an Assessment Report).

(5) An assessment report prepared for the purposes of an environmental impact statement under the *Planning Act 1982* will be taken to be an Assessment Report under the *Development Act 1993*.

**Transitional provisions**

14. (1) A declaration made under section 48 of the principal Act before the commencement of this Act (including a declaration under section 50 of the *Planning Act 1982* continued in force by virtue of the *Statutes Repeal and Amendment (Development) Act 1993*) will continue in force and effect as if it were a declaration of the Minister under section 46 of the principal Act (as amended by this Act) (and, subject to the regulations, on the basis that the provisions of the principal Act (as amended by this Act) will then apply to any process commenced by virtue of that declaration from the stage reached immediately before the commencement of this Act).

(2) Section 48E of the principal Act, as enacted by this Act, does not apply so as to affect the rights of any person in respect of a proposed development or project that has been the subject of Supreme Court proceedings relating to an application under Division 1 of Part 4 of the principal Act commenced before 30 July 1996 (even if those proceedings have been settled or determined).

(3) For the purposes of subsection (2), a proposed development or project that is a variation on a proposed development or project that has been the subject of Supreme Court proceedings will be taken to have also been the subject of Supreme Court proceedings before the relevant date (provided that the essential nature of the development or project has not changed).

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

E. J. NEAL Governor