



ANNO VICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1980

No. 83 of 1980

An Act to amend the South Australian Heritage Act, 1978-1979.

[Assented to 27th November, 1980]

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

Short titles.

1. (1) This Act may be cited as the "South Australian Heritage Act Amendment Act, 1980".

(2) The South Australian Heritage Act, 1978-1979, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "South Australian Heritage Act, 1978-1980".

Commence-
ment.

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

Amendment of
s. 3—
Arrangement of
Act.

3. Section 3 of the principal Act is amended by striking out the item:
PART III—THE REGISTER
and substituting the following items:

PART III—REGISTRATION OF HERITAGE ITEMS

PART IIIA—HERITAGE AGREEMENTS.

Amendment of
s. 4—
Definitions.

4. Section 4 of the principal Act is amended—

(a) by inserting in subsection (1) before the definition of "the Committee" the following definition:

"the Authority" in relation to a heritage agreement means—

(a) where the Corporation is a party to a heritage agreement, the Corporation;

or

(b) where a body corporate, acting with the approval of the Minister, enters into a heritage agreement, that body corporate;;

(b) by inserting in subsection (1) after the definition of “the Fund” the following definition:

“heritage agreement” means a heritage agreement under Part IIIA of this Act;

and

(c) by inserting in subsection (1) after the definition of “member” the following definition:

“owner” in relation to land means—

(a) where the land is unalienated from the Crown, the Crown;

(b) where the land is alienated from the Crown by grant in fees simple, the owner of the estate in fee simple;

(c) where the land is held of the Crown by lease, the lessee;

or

(d) where the land is held of the Crown under an agreement to purchase, the person on whom the right of purchase is conferred by the agreement,

and includes a mortgagee or encumbrancee in possession of the land.

5. Section 8 of the principal Act is amended by inserting after paragraph (b) of subsection (1) the following paragraph:

Amendment of s. 8—
Functions of the Committee.

(ba) to advise the Minister on any matter relating to a heritage agreement or proposed heritage agreement;

6. The heading to Part III of the principal Act is repealed and the following heading is substituted:

Repeal of heading to Part III and substitution of new heading.

PART III

REGISTRATION OF HERITAGE ITEMS

7. The following Part and heading are inserted after section 16 of the principal Act:

Insertion of new Part IIIA.

PART IIIA

HERITAGE AGREEMENTS

16a. (1) The Minister, in his capacity as the Corporation, or, with the approval of the Minister, any other body corporate, may enter into a heritage agreement with the owner of—

Heritage agreements.

(a) a Registered Item;

(b) an Item that the Minister proposes to register under Part III;

or

(c) an Item that the Minister considers should be preserved or enhanced having regard—

(i) to its aesthetic, scientific, architectural, historical or cultural value or interest;

(ii) to its relationship to a Registered Item;

or

(iii) to the effect of the Item on the environment.

(2) The Minister shall not enter into a heritage agreement or give his approval to another body corporate entering into a heritage agreement unless he has informed the Committee of his intention to do so and has considered any representations of the Committee thereon.

Terms and
effect of
heritage
agreements.

16b. (1) A heritage agreement may contain terms—

(a) binding on the owner of the Item—

(i) restricting the use of the Item;

(ii) requiring the owner to refrain from activity, or activity of a specified kind, that would adversely affect the Item or imposing conditions upon which any such activity takes place;

(iii) requiring the owner to carry out, or to permit the Authority to carry out, works for the preservation or enhancement of the Item;

(iv) requiring the owner to permit the Authority to inspect the Item;

(v) requiring the owner to indemnify the Authority in respect of or contribute towards costs incurred by the Authority in carrying out works in respect of the Item;

(vi) specifying the manner in which moneys provided by the Authority shall be applied by the owner;

(vii) requiring the owner to repay any amount paid to the owner by the Authority if a specified breach of the agreement occurs;

or

(viii) providing for any other matter (whether like or unlike any of the foregoing) relating to the preservation or enhancement of the Item;

and

(b) binding on the Authority providing for the provision of financial assistance, for the provision of technical advice or assistance or for any other matter relating to the preservation or enhancement of the Item.

(2) A heritage agreement shall be deemed to have effect as a contract binding on and enforceable by the Authority and, subject to subsection (3), the owner who entered into the agreement.

(3) Where the Registrar-General has, pursuant to section 26a, registered the fact that a heritage agreement has come into force in respect of an Item, the rights and liabilities under or in respect of the agreement of the owner of the Item who entered into the agreement shall pass to and be binding on and enforceable by his successors in title, and all such persons shall be deemed to have notice of the agreement.

(4) Subsection (3) does not affect a right of action for damages or payment of money where the right of action arose before the passing of title.

(5) Damages shall not be awarded against the owner of an Item to which a heritage agreement relates for breach of the agreement unless the breach arose from an intentional or reckless act or omission on the part of the owner.

(6) In assessing damages for breach of a heritage agreement by the owner of the Item to which the agreement relates, a court shall have regard to—

- (a) any detriment to the public interest resulting from the breach;
- (b) any financial or other benefit that the owner sought to gain by committing the breach;

and

- (c) any other matter it considers relevant.

(7) A heritage agreement shall come into force on a day specified, or on the happening of an event specified, in the agreement.

(8) A heritage agreement may be varied or terminated—

- (a) by agreement between the Authority and the owner of the Item;

or

- (b) in the manner or in the circumstances provided for in the agreement.

16c. (1) A heritage agreement in respect of a Registered Item may provide that Part VAA of the Planning and Development Act, 1966-1980, shall not apply to or in relation to that Registered Item.

Heritage agreements and Part VAA of Planning and Development Act.

(2) Where a heritage agreement contains a provision of the kind referred to in subsection (1), Part VAA of the Planning and Development Act, 1966-1980, shall not apply to or in relation to the Registered Item while the heritage agreement is in force under this Act.

16d. (1) Where a heritage agreement is entered into, the Minister shall, if he is satisfied that the agreement conforms with this Act, certify that fact on each executed copy of the agreement.

Proof of heritage agreements facilitated.

(2) In any legal proceedings, an apparently genuine document purporting to be a copy of a heritage agreement certified in the manner referred to in subsection (1) shall, in the absence of proof to the contrary, be proof of the agreement and its terms.

16e. (1) The Minister shall cause a register to be kept containing copies of every heritage agreement that is in force under this Act.

Register of heritage agreements.

(2) Any person may, without charge, inspect the register kept pursuant to this section and copy any document contained therein.

Insertion
of new
s. 26a.
Duty of
Registrar-
General.

8. The following section is inserted after section 26 the principal Act:

26a. Where—

(a) an Item is registered under Part III;

or

(b) a heritage agreement in respect of the Item comes into force under Part IIIA,

the Registrar-General shall, on the application of the Minister, register that fact by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he thinks appropriate.

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

K. D. SEAMAN, Governor