**HERITAGE BILL 1993**

**Legislative Council, 30 April 1993, pages 2214-8**

Second reading

**The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage):** I move:

That this Bill be now read a second time. I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

The new Heritage Bill is part of a broad initiative to incorporate development and other environmental management into a more flexible and responsive legislative package. The bill should be seen in a subordinate relationship to the much broader draft Development Bill and Environmental Protection Bill. However it is necessary to retain a separate Act to deal with some specific aspects of managing the historic environment.

The Planning Review has been seeking public comment and considering improvements to the planning and development system for the past two years. Within this process, a specialised Review Committee has identified shortcomings in the law and administration relating to built heritage conservation. Their findings and recommendations have led directly to the new bill.

The new legislation is designed to respond to specific criticisms of the existing legislation which have been voiced during the review process. Some of these are:

The existing heritage measures do not adequately reflect community interest in conserving local heritage;

The processes of heritage administration are too centralised and closed; and

Some provisions of the existing Act are unnecessarily controversial and heavy-handed.

In response to these criticisms, the resulting legislative package offers something for everyone. The community at large is given a greater say in conserving the historic environment. This new initiative will operate through the local Council's planning powers and is to be found in the Development Bill. In the Heritage Bill the owners of heritage properties have their interests protected by a reduction in some of the government's powers, better opportunities to make submissions and appeal against decisions, and in greater flexibility for keeping their development options open in specific situations.

Where the existing legislation is working satisfactorily, similar measures will be retained in the new Act. The essential structural relationship of the existing Acts is intended to be retained; a heritage register will be created by the Heritage Act, and development control will be exercised under the Development Act. The principal features of the new legislation are as follows.

**State Heritage Authority**

A new authority consisting of eight members appointed by the Governor is created to administer State heritage matters. (It will replace the advisory body known as the South Australian Heritage Committee in the existing Act.) The State Heritage Authority will enter places on the State Heritage Register, and will have powers to regulate some activities affecting heritage places, and issue permits and certificates. The Authority will have powers to protect heritage places urgently by action through the courts. It will provide advice on funding, heritage agreements and other heritage powers which the Minister exercises. The Authority will be the Government's chief source of advice on heritage matters generally.

**State Heritage Fund**

The State Heritage Fund will continue in existence. It will consist of moneys appropriated by Parliament, granted by the Commonwealth, raised by fees for services, given or bequeathed, and interest on loans. The Fund will be expended by the Minister in the form of grants or loans for heritage purposes, on the advice of the Authority.

**State Heritage Register**

A register of places which are of heritage value to South Australia will be maintained by the Authority. (This will replace the Register of State Heritage Items in the existing Act.) The heritage value of a place will be determined by criteria set out in the Bill. The State Heritage Register will be available for public inspection.

**Registration Process**

The procedure for entering a place on the Register is generally similar to that set out in the present Act, but gives owners and other interested parties more opportunity to have their views taken into account. When the Authority intends to enter a place on the Register, it must give notice to the owner, setting out the reasons why it considers the place is of heritage value. The Authority must also inform the Minister and the Council if the place is within a Council area, and give public notice in a newspaper. From the time of the notice, the place is provisionally entered on the Register, and must be treated as a heritage place for planning purposes.

Anyone who wishes to make a submission either for or against entering the place on the Register has three months in which to do so. The submission must be in writing, but a person making a submission may also request to be heard in person by the Authority. The Authority must consider all submissions before deciding whether to confirm the entry of the place on the Register. If the Minister considers that the entry of the place on the Register would not be in the public interest, the Minister may direct the Authority not to confirm the entry. A provisional entry that has not been confirmed within twelve months must be removed from the Register.

A new provision in the Bill is that an owner who has made a submission and is not satisfied with the Authority's decision has thirty days after notice of that decision to appeal to the Environment, Resources and Development Court. The Court may either determine the matter itself or return it to the Authority for reconsideration.

**Certificate of Exclusion**

The new Bill gives a landowner the right to seek a certificate from the Authority guaranteeing that an area of land will not be entered on the Register for a period of five years from the date of issue. The Authority may charge a fee for the certificate, based on the value of the land.

**Places of Geological or Archaeological Significance**

There are new provisions in the Bill which will enable places of special geological or archaeological significance to be identified by the authority. Excavating or collecting specimens from these places will be controlled by permit. These provisions are intended to be used only for a small number of scientifically valuable and fragile sites, such as the Precambrian fauna deposits at Ediacara.

**Emergency Protection**

The urgent conservation orders and other emergency measures in the existing Act have rarely been used, and are not in the new Bill. However, some powers are needed, as there may be occasions when a person intends to damage a heritage place, either in ignorance of its significance, or deliberately. In such cases the State Heritage Authority may make an order to protect the place, and apply to the Environment, Resources and Development Court to confirm the order. The order may require a person to stop an activity, or refrain from starting an activity, that would reduce the heritage value of the place. The purpose of the order may be to give the Authority time to investigate the significance of the place.

**Heritage Agreements**

Heritage agreements for the conservation of places of heritage value will continue essentially as under the present Act. Agreements will be entered into voluntarily between the Minister and the owner of land which is on the Register or within a State Heritage Area. The Minister must consult the Authority before entering into an agreement.

The subject matter of an agreement is unlimited as long as it seeks to conserve and promote heritage places, but it may for example contain: provision for the future conservation of a place by means of a management plan; terms for financial or technical assistance from the State; exemption of a place from specific provisions of the Development Plan; remission of taxes or (with Council agreement) rates on land.

An agreement will be entered on the title and is binding on future owners of the land. If either party fails to comply with the terms of an agreement, the other may apply to the Environment, Resources and Development Court for an order to enforce it.

**Miscellaneous Provisions**

The Bill has a new provision making it an offence to intentionally damage a place on the Register so as to reduce its heritage value. The Environment, Resources and Development Court may order any person convicted of this or other offences under the Act to make good the damage.

A person acting for the Authority may enter property with the consent of the occupier in order to carry out the purposes of the Act. If consent is not given, the person must obtain a warrant from a magistrate to enter the place.

**Transitional Provisions**

Places which are on the existing Register or interim list, or within State Heritage Areas, or subject to heritage agreements, will continue under essentially similar provisions in the new legislation. Heritage agreements for the conservation of Aboriginal heritage places or native vegetation will not in future derive their authority from the new Heritage Act. There will be minor amendments to the Aboriginal Heritage Act and the Native Vegetation Act so that agreements for these purposes will in future be entered into under the appropriate legislation.

**Relationship with the Development Bill**

To achieve better co-ordination of all issues affecting development, some matters which might be thought appropriate to the Heritage Bill will be found in the Development Bill instead. Some of these will differ very little from the present provisions of the Planning Act.

In the case of a heritage place, all demolition, conversion, alteration (including painting) and addition to the place constitute development. When application is made for a development affecting a heritage place, the Council (or other planning authority) must refer the application to the Minister for advice. If Council does not wish to adopt the Minister's advice, then it must refer its proposed approval to the State Planning Authority for concurrence.

The Development Bill also permits the Development Plan to provide for the conservation of places of local heritage value, and provides criteria for recognising these places. Councils wishing to draw up their own local heritage register may do so by amending the Development Plan for their Council area to create a schedule of local heritage places, with development control principles spelled out in the Development Plan. This measure will satisfy much of the public support for local heritage protection.

Explanation of Clauses

PART 1

PRELIMINARY

*Clause 1: Short title*

*Clause 2. Commencement*

The Bill will commence on proclamation.

*Clause 3: Interpretation*

An interpretation provision is included.

PART 2

ADMINISTRATION

DIVISION 1—STATE HERITAGE AUTHORITY

*Clause 4: Authority*

The State Heritage Authority consists of 8 members, being persons with knowledge of or experience in history, archaeology, architecture, the natural sciences, heritage conservation, public administration, property management or some other relevant field.

*Clause 5: Functions of Authority*

The Authority has the following functions:

* (a) administering the State Heritage Register;
* (b) investigating areas of heritage value and promoting their establishment, in appropriate cases, as State Heritage Areas;
* (c) negotiating, and monitoring the operation of, heritage agreements;
* (d) providing advice to the Minister in relation to—
* (i) the application of money from the Fund in furtherance of the objects of this Act;
* (ii) development which may affect registered places or State Heritage Areas;
* (iii) heritage agreements;
* (iv) any matter relating to the conservation or public use of registered places or State Heritage Areas;
* (v) any other matter relating to heritage conservation;
* (e) providing advice and assistance to councils, planning authorities, owners of land and other persons on any matter relating to heritage conservation.

*Clause 6: Conditions of membership*

A member's term of office is a maximum of 3 years although the member may be reappointed for further terms.

*Clause 7: Proceedings of Authority*

Five members form a quorum. The person chairing a meeting has a casting vote.

*Clause 8: Delegation*

The Authority may delegate its powers or functions except those relating to the confirmation or removal of entries in the Register.

*Clause 9: Remuneration*

Members are entitled to fees and allowances determined by the Governor.

DIVISION 2—STATE HERITAGE FUND

*Clause 10: State Heritage Fund*

The State Heritage Fund consists of—

* (a) any money appropriated by Parliament for the purposes of the Fund; and
* (b) any money provided by the Government of the Commonwealth for the purposes of this Act; and
* (c) any money received by the Authority for the purposes of this Act by way of fees, gift, bequest or in any other way; and
* (d) any money received by the Minister for the purposes of this Act by way of gift, bequest or in any other way; and
* (e) any income derived from investment of the Fund.

*Clause 11: Accounts and audit*

Proper accounts of the Fund are to be kept and audited.

*Clause 12: Application of money from Fund*

The Minister is to seek and consider the advice of the Authority in applying the Fund in furtherance of the objects of the Bill.

PART 3

STATE HERITAGE REGISTER

*Clause 13: State Heritage Register*

The Authority is to maintain the State Heritage Register.

*Clause 14: Inventory*

Attached to the Register is to be an inventory of—

* (a) places designated in any Development Plan as places of local heritage value; and
* (b) places within the State entered in any register of places of historical interest kept under the law of the Commonwealth; and
* (c) State Heritage Areas; and
* (d) heritage agreements and any variations to those agreements.

*Clause 15: Register to be available for public inspection*

All of the information in the Register and the inventory is to be available for public inspection. Copies of relevant entries may be obtained for a fee.

PART 4

REGISTRATION OF PLACES DIVISION

1—CRITERIA FOR REGISTRATION

*Clause 16: Heritage value*

 A place will satisfy the criteria for registration if—

* (a) it demonstrates important aspects of the evolution or pattern of the State's history; or
* (b) it has rare, uncommon or endangered qualities that are of cultural significance; or
* (c) it may yield information that will contribute to an understanding of the State's history, including its natural history; or
* (d) it is an outstanding representative of a particular class of places of cultural significance; or
* (e) it demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics; or
* (f) it has strong cultural or spiritual associations for the community or a group within it; or
* (g) it has a special association with the life or work of a person or organisation or an event of historical importance.

DIVISION 2—REGISTRATION PROCESS

*Clause 17: Proposal to make entry in Register*

The first step in making an entry in the Register is provisional registration.

The Authority may provisionally register a place if the Authority is of the opinion that the place is of heritage value (as set out in clause 16) or should be protected while an assessment of its heritage value is carried out.

Notice must then be given to each owner of the land, to the public by way of newspaper advertisement, to the Minister and to the council of the area.

In provisionally registering a place the Authority may designate it a place of geological or palaeontological significance or of archaeological significance. If a place is so designated certain special protections apply.

*Clause 18: Submissions and confirmation or removal of entries*

Any person may make representations on the provisional entry of a place within a 3 month period.

The Authority may confirm or remove the provisional entry and must give the relevant persons notice of its decision.

If a provisional entry has not been confirmed within 12 months it must be removed, unless the Minister allows a longer period for consideration.

The Minister is given power to direct that an entry be removed from the Register if confirmation would be contrary to the public interest.

*Clause 19: Registration in Lands Titles Registration Office*

Entries on the register must be noted in the L.T.O.

*Clause 20: Appeals*

An owner of land who made representations about the provisional entry of the land in the Register may appeal to the Environment, Resources and Development Court against a decision to confirm or remove the provisional entry.

*Clause 21: Correction of errors*

The Authority has power to correct inaccuracies in the Register.

DIVISION 3—CERTIFICATE OF EXCLUSION

*Clause 22: Certificate of exclusion*

The Authority may issue a certificate to an owner of land certifying that the land will not be entered in the Register within 5 years. If the Authority is of the opinion that the matter is likely to be contentious, it may seek representations on the matter through advertisement.

DIVISION 4—REMOVAL FROM REGISTER

*Clause 23: Removal from Register if registration not justified*

The Authority is given power to remove or alter an entry in the Register if it is of the opinion that the entry is no longer justified. It must first give notice of its intention to the owners of the land, the council of the area and to the public by way of newspaper advertisement and consider any representation received within 3 months. Clause 24: Removal from Register if place designated is of local heritage value The Authority is given power to remove or alter any entry so as to exclude from the Register places given protection as places of local heritage value in a Development Plan.

PART 5

SPECIAL PROTECTION

DIVISION 1—PLACES OF GEOLOGICAL, PALAEONTOLOGICAL OR ARCHAEOLOGICAL SIGNIFICANCE

*Clause 25: Places of geological or palaeontological significance*

Excavation of a registered place of geological or palaeontological significance or removal of specimens from such a place is prohibited without a permit from the Authority.

*Clause 26: Places of archaeological significance*

Excavation of a registered place of archaeological significance or removal of cultural artefacts from such a place is prohibited without a permit from the Authority.

*Clause 27: Excavation of registered place in search of cultural artefacts*

Excavation of any registered place for the purpose of searching for or recovering cultural artefacts is prohibited without a permit from the Authority.

*Clause 28: Damage to or disposal of specimen or artefact*

It is an offence to damage, destroy or dispose of geological or palaeontological specimens from a registered place of geological LC 145 or palaeontological significance or to remove cultural artefacts from a registered place of archaeological significance without a permit from the Authority.

*Clause 29: Permits*

The Authority may impose conditions on any permit it issues.

DIVISION 2—EMERGENCY PROTECTION

*Clause 30: Stop orders*

The Authority may order a person to stop (or not to start) any work or activity that may destroy or reduce the heritage value of a place if the Authority is of the opinion that the place should be preserved or assessed and that an order is necessary to protect the place. Such an order has effect for 4 working days. The Authority is required to take the matter to the Environment, Resources and Development Court. The Court may confirm, revoke or substitute the order.

*Clause 31: Contravention of stop order*

The maximum penalty for contravention of a stop order is a Division 1 fine ($60 000).

PART 6

HERITAGE AGREEMENTS

*Clause 32: Heritage agreements*

The Minister may enter into a heritage agreement with the owner of a registered place or land within a State Heritage Area. An agreement binds future owners of the land and may bind occupiers. The Minister must seek the advice of the Authority with respect to heritage agreements.

*Clause 33: Effect of heritage agreement*

A heritage agreement is aimed at promoting the conservation of registered places and State Heritage Areas and public appreciation of their importance to the State's cultural heritage. Agreements may—

* restrict the use of land to which it applies;
* (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land;
* (c) restrict the nature of work that may be carried out on the land;
* (d) provide for the management of the land, or any place, specimens or artefacts on or in the land, in accordance with a particular management plan or in accordance with management plans to be agreed from time to time between the Minister and the owner;
* (e) provide for financial, technical or other professional advice or assistance to the owner with respect to the maintenance or conservation of the land or any place, specimens or artefacts on or in the land;
* (f) provide for remission of rates or taxes in respect of the land;
* (g) provide that specified regulations under section 37 of the Development Act 1993 do not apply to the land.

The council must be party to the agreement if rates are to be remitted.

*Clause 34: Registration of heritage agreements*

Heritage agreements are to be entered in the inventory attached to the Register. They are also to be noted on the LOTS land system.

*Clause 35: Enforcement of heritage agreements*

A party to a heritage agreement may apply to the Environment, Resources and Development Court for an order to secure compliance with the agreement, or to remedy the default, and to deal with any related or incidental matter.

PART 7

MISCELLANEOUS

*Clause 36: Intentional damage of registered place*

The maximum penalty for intentionally damaging a registered place so as to destroy or reduce its heritage value is a Division 1 fine ($60 000).

*Clause 37: Restoration orders*

The Court is given power to order an offender to make good any damage caused through commission of the offence.

*Clause 38: No development orders*

If the owner of a place is convicted of an offence against clause 31 or 36, the Court is given power to order that no development of the place may be undertaken for a period not exceeding 10 years.

*Clause 39: Right of entry*

The Authority may authorise a person to enter and inspect a place, or specimens or artefacts in a place, for the purpose of determining or recording the heritage value of the place or determining whether a heritage agreement is being breached. If the occupier of the place does not consent to the authorised person entering the place, a warrant may be obtained permitting entry.

*Clause 40: Erection of signs*

The Authority may erect signs to draw attention to the fact that a place is registered or that an order has been made under the Bill.

*Clause 41: Obstruction*

It is an offence to hinder or obstruct a person acting in the administration of the Bill.

*Clause 42: General provisions relating to criminal liability*

This clause relates to offences committed by bodies corporate and general offences.

*Clause 43: Service of notices*

The options for service of notices are as follows: (a) by personal service on the person or an agent of the person; (b) by leaving it for the person at his or her place of residence or business with someone apparently over the age of 16 years; (c) by serving it by post on the person or an agent of the person; (d) if the whereabouts of the person is unknown—by affixing it in a prominent position on the land to which it relates or publishing a copy of it in a newspaper circulating throughout the State.

*Clause 44: Evidence*

Evidentiary aids are included for the purposes of legal proceedings.

*Clause 45: Regulations*

The regulations may fix and regulate fees for the provision of information or other services by the Authority or the making of applications to the Authority and may impose a fine, not exceeding a division 7 fine ($2 000), for contravention of a regulation.

SCHEDULE 1

*Repeal and Transitional Provisions*

Clause 1: Repeal The South Australian Heritage Act 1978 is repealed.

Clause 2: Transitional provisions The transitional provisions cover the following matters:

* (a) places registered under the repealed Act remain registered;
* (b) places that were on the interim list will be taken to be provisionally registered;
* (c) State Heritage Areas remain as such;
* (d) heritage agreements remain in force;
* (e) heritage agreements entered into by the Minister responsible for the administration of the Aboriginal Heritage Act 1988 become aboriginal heritage agreements under that Act;
* (f) heritage agreements entered into by the Minister responsible for the administration of the Native Vegetation Act 1991 become heritage agreements under that Act.

SCHEDULE2

*Consequential Amendments*

The Aboriginal Heritage Act 1988 is amended to include provisions relating to aboriginal heritage agreements aimed at the protection or preservation of Aboriginal sites, objects or remains. Before entering into such agreements the Minister must consult the Aboriginal Heritage Committee, traditional owners and interested Aboriginal organisations and persons and traditional owners must be given an opportunity to become parties to the agreement. The Native Vegetation Act 1991 is amended to include provisions relating to heritage agreements aimed at the preservation or enhancement of native vegetation. Such an agreement may provide for the compulsory remission of rates and taxes. The Strata Titles Act 1988 and the Valuation of Land Act 1971 are amended to update references to registered places, State Heritage Areas and heritage agreements.

The Hon. R.I. LUCAS secured the adjournment of the debate.