

# RECENT DEVELOPMENTS

## South Australia

### **Ministerial Reshuffle**

In mid-February 2000, the South Australian Government announced a Ministerial reshuffle with changes being made in the local government, environmental and natural resources areas.

The Hon Dorothy Kotz, MP is no longer the Minister for Environment, Heritage and Aboriginal Affairs. Ms Kotz has been made a Minister responsible for Local Government and Aboriginal Affairs. However, responsibility for the administration of the various pieces of legislation relating to Local Government and Aboriginal Affairs is committed to the Minister for Transport and Urban Planning, the Hon Diana Laidlaw, MLC.

The new Minister for Environment and Heritage is the Hon Iain Evans, MP, who was formerly the Minister for Industry and Trade.

The Hon Mark Brindal, MP is the Minister for Water Resources, a newly created ministry. He is responsible for the administration of 11 Acts relating to water management, including the *Water Resources Act 1997*. Previously, responsibility for water management rested with the Minister for Environment and Heritage.

The Hon Robert Kerin, MP, previously the Minister for Primary Industries and Minerals and Energy, has been made the Minister for Primary Industries and Resources with the Hon Wayne Matthew, MP being made the Minister for Minerals and Energy. The responsibility for the administration of the *Gas Act 1997*, *Mining Act 1971*, *Petroleum Act 1940* and *Petroleum (Submerged Lands) Act 1982* (amongst others) is, however, committed to the Minister for Primary Resources and Natural Resources.

As part of the reshuffle, responsibility for the administration of the *Pastoral Land Management and Conservation Act 1989* has been committed to the Minister for Primary Industries and Resources. This Act was formerly the responsibility of the Minister for Environment and Heritage.

### **Development (System Improvement Program) Amendment Bill 2000 (SA)**

The Development (System Improvement Program) Amendment Bill 2000 (SA) was introduced into Parliament in the last week of March this year.

The Bill forms part of the South Australian Government's ongoing System Improvement

Program that is seeking to address the recommendations of the ‘Customer Survey of the *Development Act 1993*’, completed on behalf of the Minister for Transport and Urban Planning (“the Minister”) in February 1999.

The Bill generally comprises a consolidation of:

the consultation draft Development (System Improvement Program) Bill 1999; and

the consultation draft of the Development (System Improvement Program) Amendment Bill 2000 that related to the integration of three separate processes (native vegetation clearance consents, advice on the general availability of water, and road closures in relation to major developments) into the development assessment process,

following the amendment of the two draft Bills as a result of public consultation.

Further integration with the processes relating to native vegetation clearance consents and advice on the general availability of water is proposed to be effected through amendments to the *Development Regulations 1993*.

Aside from providing for integration in respect of the abovementioned matters, noteworthy features of the Bill include the following:

***Changes to the processes for the amendment of a Development Plan***

In an endeavour to reduce the time taken to process Plan Amendment Reports (PARs), the Bill proposes various changes to the processing of proposed amendments to a Development Plan.

Currently, the approval of the Minister is generally required before a PAR prepared by a Council can be released for public consultation. Under section 6 of the Bill, where a Council has prepared a PAR, before the PAR can be released for public consultation, the Chief Executive Officer of the Council will be required to issue a certificate relating to the extent to which the proposed amendment to the Development Plan:

accords with the Statement of Intent, the Planning Strategy and other parts of the Development Plan;

complements the policies in the Development Plans for adjoining areas; and

satisfies the matters prescribed in the regulations.

This certificate must be provided to the Minister and be kept available for public inspection in conjunction with the PAR to which it relates. Ministerial approval of the release of a PAR for public consultation will no longer be required.

The Bill provides that in the usual course of events consultation with any Government department or agency that has a direct interest in the matter on a PAR is to occur concurrently with public consultation. However, the Minister may require that consultation with any Government department or agency occur prior to the release of the PAR for public consultation. Currently,

the usual process if for Government department and agency consultation to occur prior to public consultation being undertaken.

Under the Bill, if a council fails to progress a PAR to certain stages within time frames specified within its Statement of Intent, the Minister may determine that the PAR has lapsed. There is no comparable power in the current *Development Act 1993* (SA).

### ***Regional Development Assessment Panels***

Currently, under the *Development Act 1993*, either a Council or the Development Assessment Commission will be the relevant authority for determining whether or not a development proposal warrants approval under the Act. The Bill proposes a third type of relevant authority.

Section 15 of the Bill provides that the Governor may, with the concurrence of the relevant Councils, constitute a Regional Development Assessment Panel in relation to the areas of two or more Councils (being Council areas that are contiguous) and, if proposed, a contiguous area of the State not within the area of a Council.

The Governor may, with the concurrence of the relevant Councils, make provision with respect to the membership of a Regional Development Assessment Panel and the procedures of the Panel amongst other matters relating to the operation of the Panel.

The Bill provides that where there is an appeal against a decision of a Regional Development Assessment Panel, each Council in relation to which the Panel is constituted will be a respondent, except where the Environment, Resources and Development Court excludes a Council from being a respondent.

### ***Development where a referral to a prescribed body is required***

The *Development Act 1993* currently provides that where a development is classified as a 'complying' development it must be granted development approval subject to such conditions as may be prescribed by the relevant Development Plan or by regulation. This situation has led to uncertainty about the ability of a relevant authority to attach conditions to an approval for a 'complying' development at the recommendation/direction of a prescribed body to which the application was required to be referred (or, indeed, whether there is any ability for the referral agency to require the refusal of the proposal by the referral agency).

Under the Bill, it is specified that where a proposed development is of a type that must be referred to another agency for comment or direction it will not be taken to be a complying development.

### ***Investigation of development assessment performance***

The Bill provides the Minister with a power to require an investigation of a relevant authority to be carried out and reported on where the Minister has reason to believe that the relevant authority has:

- contravened or failed to comply with a provision of Part 4 Division 1 of the *Development Act 1993* in a significant respect or to a significant degree; or
- failed to efficiently or effectively discharge a responsibility under of Part 4 Division 1 of the

*Development Act 1993* in a significant respect or to a significant degree.

The Bill requires that the Minister gives a relevant authority a reasonable opportunity to explain its actions and to make submissions before appointing an investigator in relation to the above.

### **Amendments to the *Environment, Resources and Development Court Act 1993***

The Bill expands the circumstances in which the Environment, Resources and Development Court is able to dismiss or determine any proceedings or give summary judgment against a party. The Bill also provides that the Court should make an order for costs against the party against whom the action is directed unless the Court is of the opinion that there is some good reason for not making an order in the circumstances of the particular case. The Court can make orders for either party party costs or as between solicitor and client in such circumstances under the Bill.

Tiana Nairn  
Secretary