Development of the Community Engagement Charter

What the PDI Act requires

This document outlines the relevant sections of the Planning, Development and Infrastructure Act 2016 (the Act) that relate to the Community Engagement Charter (the Charter) and its development.

All Acts are supported by Regulations, which provide greater detail around specific matters.

Below is a summary of key sections of the Act that have an important role in shaping what the Charter should address.

The explanatory notes indicate the current status of these sections of the Act, including where the drafting of the Regulations may be influenced and importantly, what the Charter does not deal with.

44—Community Engagement Charter

1. There must be a charter to be called the Community Engagement Charter.

2. The Commission is responsible for establishing and maintaining the charter.

3. The following principles must be taken into account in relation to the preparation (or amendment) of the charter:
   a. members of the community should have reasonable, timely, meaningful and ongoing opportunities to gain access to information about proposals to introduce or change planning policies and to participate in relevant planning processes;
   b. community engagement should be weighted towards engagement at an early stage and scaled back when dealing with settled or advanced policy;
   c. information about planning issues should be in plain language, readily accessible and in a form that facilitates community participation;
   d. participation methods should seek to foster and encourage constructive dialogue, discussion and debate in relation to the development of relevant policies and strategies;
   e. participation methods should be appropriate having regard to the significance and likely impact of relevant policies and strategies;
   f. insofar as is reasonable, communities should be provided with reasons for decisions associated with the development of planning policy (including how community views have been taken into account).

4. The charter—
   a. will relate to—
      i. public participation with respect to the preparation or amendment of any statutory instrument where compliance with the charter is contemplated by this Act; and
      ii. without limiting subparagraph (i), any other circumstance where compliance with the charter is contemplated by this Act; and
   b. may relate to any other circumstances determined by the Minister, acting on the advice of the Commission.

5. The charter may—
   a. establish categories of statutory processes to which various parts of the charter will apply; and
b. in relation to each category established under paragraph (a)—
   i. specify mandatory requirements; and
   ii. set out principles and performance outcomes that are to apply to the extent that mandatory requirements are not imposed; and

c. in relation to performance outcomes under paragraph (b)(ii)—
   i. provide guidance on specific measures or techniques by which the outcomes may be achieved; and
   ii. set out measures to help evaluate whether, and to what degree, the outcomes have been achieved.

6. The charter must, in relation to any proposal to prepare or amend a designated instrument under Part 5 Division 2 Subdivision 5 that is relevant to 1 or more councils, provide for consultation with—
   a. if the proposal is specifically relevant to a particular council or councils—that council or those councils (unless the proposal has been initiated by the council, or those councils); or
   b. if the proposal is generally relevant to councils—the LGA.

7. The charter must comply with any requirements prescribed by the regulations.

Note: The regulations for this section have not yet been drafted as some requirements may fall out of the discussions with community and interest groups. There may also be some very specific consultation requirements for some things that may not be fully catered for by the Charter itself. For example, the precise manner in which a person is notified that their area is proposed for some form of heritage listing.

8. Despite a preceding subsection, the charter must not relate to the assessment of applications for development authorisations under this Act in addition to the other provisions of this Act that apply in relation to such assessments.

Note: This provision is particularly important as it sets out what the charter may not deal with.

9. An entity to which the charter applies must—
   a. comply with any mandatory requirement that applies in a relevant case; and
   b. to the extent that paragraph (a) does not apply, have regard to, and seek to achieve, any principles or performance outcomes that apply in a relevant case.

10. The Commission, or an entity acting with the approval of the Commission, may adopt an alternative way to achieving compliance with a requirement of the charter (including a mandatory requirement or a requirement prescribed by the regulations) if the Commission is satisfied that the alternative way is at least effective in achieving public consultation as the requirement under the charter.

11. Despite a preceding subsection, the charter does not give rise to substantive rights or liabilities (and a failure to comply with the charter does not give rise to a right of action or invalidate any decision or process under this Act unless the failure is under a provision that requires compliance with the charter for the purposes of consultation in relation to a particular matter).

12. If, in the opinion of the Commission, an entity fails to comply with the charter—
   a. the Commission may direct the entity to comply with the charter; and
   b. if the direction is not complied with within a period prescribed by the regulations—the Commission may take any action required by its direction and recover the reasonable costs and expenses of so doing as a debt from the entity that failed to comply with the direction.

Note: The time period has not yet been determined, and will be an important discussion point with the State Planning Commission, Councils and development industry. The time would need to be reasonable considering administrative procedures that would be required to be completed. For example, in the case of a Council, they may need to hold a formal Council meeting.

45—Preparation and amendment of charter

1. A proposal to prepare or amend the charter may be initiated by the Commission acting on its own initiative or at the request of the Minister.

2. The Commission must, after a proposal is initiated under subsection (1)—
a. prepare a draft of the proposal; and
b. consult with—
   i. any entity specified by the Minister; and
   ii. the LGA; and
   iii. any other entity prescribed by or under the regulations; and
   iv. any other entity the Commission thinks fit; and
c. ensure that a copy of the proposal is published on the SA planning portal with an invitation for interested persons to make representations (in writing or via the SA planning portal) on the proposal within a period specified by the Commission.

3. The Commission must, after complying with subsection (2), prepare a report on the matters raised during consultation (including information about any change to the original proposal that the Commission considers should be made) and furnish a copy of the report to the Minister.

4. The Minister may then—
   a. adopt the charter, or the amendment to the charter (as the case may be), as recommended in the report under subsection (3); or
   b. make alterations to what is recommended in the report and then proceed to adopt the charter or the amendment, as altered (as the case may be); or
   c. determine that the matter should not proceed.

5. The charter, or an amendment to the charter, adopted under subsection (4)—
   a. does not have effect until it is published on the SA planning portal; and
   b. may take effect from the date of publication under paragraph (a), or from a later date specified by the Minister.

6. Despite a preceding subsection, the Commission may, by instrument published on the SA planning portal, amend the charter—
   a. in order to make a change of form (without altering the effect of an underlying policy reflected in the charter); or
   b. in order to take action which, in the opinion of the Commission, is correcting an error.

7. In addition, the Commission must ensure that the various parts of the charter are reviewed at least once in every 5 years according to a scheme approved by the Minister.

8. The outcome of a review undertaken to comply with subsection (7) must be embodied in a written report furnished to the Minister.

9. The Minister must, within 6 sitting days after receiving a report under subsection (8), cause copies of the report to be laid before both Houses of Parliament.

Section 46 – Parliamentary Scrutiny

Section 46(1) The Minister must, within 28 days after adopting the charter or an amendment to the charter, refer the charter or the amendment (as the case may be) to the ERD Committee. This may not be required (as per ss(11)) if the ERDC was consulted on the draft and they have indicated this process is not necessary.

Section 67- Heritage

(3) The Community Engagement Charter must include provisions that require consultation with the owner of any land constituting a place — (a) that is being proposed for inclusion in the Planning and Design Code as a place of local heritage value; or (b) that, under an amendment to the Planning and Design Code, is being proposed as being subject to any heritage character or preservation policy that is similar in intent or effect to a local heritage listing.

(4) In addition, an area cannot be designated under an amendment to the Planning and Design Code as constituting a heritage character or preservation zone or subzone unless the amendment has been approved by persons who, at the time that consultation in relation to the proposed amendment is initiated under the Community Engagement Charter, constitute at least the prescribed percentage of owners of allotments within the relevant area (on the basis of 1 owner per allotment being counted under a scheme prescribed by the regulations).

(5) In this section— prescribed percentage means 51% of relevant owners of allotments within a relevant area.

Note: The regulations (as per s(4) ) will need to prescribe a scheme as to how the consultation occurs (eg registered post) and how 51% is met.

Section 73 - Preparation and Amendment

S73(6)(b) must comply with the Community Engagement Charter for the purposes of consultation in relation to the proposal.
75—Complying changes—Planning and Design Code

S75(2) An amendment to a designated instrument under subsection (1) must be the subject of consultation under the Community Engagement Charter.

*Note: This may need to be different to the requirements for an amendment to the P&D Code – given the change is based on a regional plan (that would have undergone consultation as a statutory instrument under 73).*

Infrastructure Schemes – Scheme Coordinator

S166(1) - Consideration of proposed scheme

(1) A scheme coordinator has the following functions in relation to a proposed scheme:

(c) to undertake consultation in relation to the scheme in accordance with any requirement under the Community Engagement Charter.

*Note: The charter should have specific requirements regarding infrastructure schemes.*

Schedule 8 – item 5—Establishment of Commission

(4) In connection with subclause (3)—(b) the Commission has a period of 6 months within which to establish the first Community Engagement Charter under section 44:

*Note: Section 44 commenced 1 April 2017 – charter is required by 1 October 2017.*