



Planning Legislation

A user's guide to the *Planning, Development and Infrastructure Act 2016*

The *Planning, Development and Infrastructure Act 2016* (the Act) was assented to by the Governor on 21 April 2016 after passage through the Parliament of South Australia.

During a five year implementation program, the Act will be brought into operation in stages.

This guide is intended to provide a detailed outline of the key features of the new planning system created by the Act. It is arranged in a question-and-answer format that follows the order of sections of the Act.

This guide is made available as a public service for information purposes only and is designed to be read in concert with the Act. It should not be relied upon as a source of or substitute for legal advice.

Further information about the Planning, Development and Infrastructure Act is available by emailing DPTI.Planning@sa.gov.au.

Part 1 — Preliminary

1— How will the Bill be commenced?

To enable the *Planning, Development and Infrastructure Act 2016* to be implemented in stages, a further Bill, the *Statutes Amendment (Planning, Development and Infrastructure) Bill 2016* has been introduced into Parliament to provide for transitional arrangements, consequential amendments and related measures to bring the Act into operation over a five year implementation program.

Where to look—section 2

2— What changes have been made to definitions?

There are few changes to definitions in the Act, other than where strictly necessary to accommodate new processes or instruments. In particular, the definition of 'development' has stayed the same, preserving important case law. However, the concept of 'change of use' of land has been varied (see below).

A significant change in the Act is the new term 'Planning Rules', which includes the Planning and Design Code, which replaces the policies currently contained in development plans and Design Standards that may be prepared for the public realm or infrastructure. The use of this term is similar to the use of the phrase Building Rules in the *Development Act 1993* (the current Act), and reflects a desire for a rule-based system which is better suited to objective decision-making. The Planning and Design Code and Design Standards also form part of a new suite of statutory instruments of policies, plans, Practice Directions and guidelines.

In the Act, the definition of ‘adjacent land’ has been simplified to provide greater clarity about notification requirements. The Act also includes new definitions of ‘essential infrastructure’ and ‘public realm’. A new definition of ‘Department’ refers to the government administrative unit which assists the Minister in the administration of the legislation. A definition of ‘Chief Executive’ has also been included in the Act.

Where to look—section 3

3— How has the ‘change of use’ test changed?

The concept of change of land use has a long history in the planning system. However, current practice tends to capture many minor issues that should not require assessment.

The Act includes a number of changes that will help to address this. Most significantly, a new concept of a ‘use class’, to be specified in the Planning and Design Code (see below), will mean that many minor matters will no longer trigger the need for assessment.

In addition, an increase in the intensity of an existing use must be ‘material’ to trigger the need for an approval. The question of whether such an increase is ‘material’ is to be guided by principles to be set out in the Planning and Design Code. Revival of existing uses will also be tightened and will only be permitted within a 12 month period after discontinuance (down from two years) or, in some cases a longer period not exceeding five years as allowed by the Planning and Design Code.

Trifling or insignificant changes will continue to be excluded from change of use principles in accordance with the current Act.

Where to look—section 4

4— What is a ‘planning region’?

The Act provides for the state to be divided into ‘planning regions’ by the Governor. One of the regions must be designated as ‘Greater Adelaide’ (replacing the definition of ‘Metropolitan Adelaide’ in the current Development Act).

The main purpose of a planning region is to define the area for Regional Plans over which collaborative arrangements may be established for planning and other relevant service delivery or program areas. The establishment of planning regions is also important for a number of other subsequent parts of the legislation.

In setting the limits of each planning region, consideration must be given to relevant environmental factors, the needs of communities, and other administrative boundaries. It is expected that the planning regions will be based upon the existing South Australian Government Regions, although adjustments to align with other service delivery boundaries will be considered.

The Governor, acting on the recommendation of the Minister, will be able to establish regions by proclamation where appropriate. The establishment of regions will be subject to Parliamentary scrutiny and a proclamation will not come into effect unless approved by a resolution of both Houses of Parliament.

The Premier, where appropriate, will have the power to direct agencies under the *Public Sector Act 2009* to align their activities with the planning regions. Provision also exists for the Minister to establish subregions.

Where to look—sections 5 and 6, and Schedule 6, Part 8

5— What is the ‘environment and food production area’ in Greater Adelaide?

Within the Greater Adelaide region, the Minister is to establish one or more Environment and Food Production Areas (EFPAs) in order to:

- protect rural, landscape and environmental areas which generate over \$19 billion in revenue from urban encroachment;

- encourage consolidation within the existing urban footprint and renewal of existing urban areas; and
- ensure that any expansion of the urban footprint is made transparently and based on agreed evidence.

Once established, the boundaries of an EFPA may not be changed without the approval of Parliament following consideration of a report of an independent inquiry by the State Planning Commission.

Within an EFPA, land division for residential purposes is not permitted. Division for other than residential purposes will only be possible with the concurrence of the Commission or Council, depending which is the relevant authority.

The establishment of an EFPA does not affect the operation of the Act or any other legislation other than to prevent division of land for the purpose of residential development in the area. Other uses compatible with zoning (such as small-scale quarries, agricultural production, mining operations or tourism-related activities) will continue to be permissible.

Land within an EFPA, defined as a Rural Living Zone by a Development Plan, may still be subdivided in accordance with the relevant policies or conditions relating to the minimum size of allotments or the division of land in force on 1 December 2015 for a period of two years from the date section 7 comes into operation.

Where to look— Environment and Food Production Areas: section 7; Rural Living areas: schedule 7

6— What is a ‘special legislative scheme’?

The Act provides for certain laws to be directly linked to the planning system. These are called ‘special legislative schemes’. Once declared as a special legislative scheme, a State Planning Policy must be developed in relation to the scheme, and certain processes must be followed when undertaking key planning processes (e.g. amending planning instruments). This will provide a clearer and more versatile way of linking with other laws that seek to influence planning outcomes.

Based on the existing Act, the following are declared to be special legislative schemes:

- *Adelaide Dolphin Sanctuary Act 2005*
- *Arkaroola Protection Act 2012*
- *Character Preservation (Barossa Valley) Act 2012*
- *Character Preservation (McLaren Vale) Act 2012*
- *Marine Parks Act 2007*
- *River Murray Act 2003*.

However, any other Act, or a part of another Act, may be declared by that Act or by regulation to be a special legislative scheme for the purposes of the planning system.

Where to look—section 11

7— How much change has been made under this part?

Many definitions have not changed, as outlined above. Provisions relating to the application of the Act (including to the Crown) have been migrated from the current *Development Act 1993*.

Part 2 – Objects, planning principles and general responsibilities

8— What are the objects and ‘principles of good planning’?

The Act sets out new statutory objects and ‘principles of good planning’ that support them.

The primary objects of the Act are to ‘support and enhance the State’s liveability and prosperity in ways that are ecologically sustainable, meet the needs and expectations and reflect the diversity of the State’s communities by creating an effective, efficient and enabling planning system’ that:

- facilitates development and the integrated delivery of infrastructure and the public realm; and
- encourages community participation in setting planning policies and strategies.

The planning system is also intended to:

- designed to be simple, easily understood and provide consistency in interpretation and application;
- enable people to digitally access planning information, and to undertake processes and transactions;
- promote certainty for those proposing to undertake development while simultaneously providing scope for innovation;
- promote high standards for the built environment by emphasising design quality in policies, processes and practices, and providing for policies and principles that support or promote universal design for the benefit of people with differing needs and capabilities;
- promote safe and efficient construction through cost effective technical requirements that form part of a national scheme of construction rules and product accreditation;
- provide financial mechanisms, incentives and value capture schemes that support development and that can be used to capitalise on investment opportunities; and
- promote cooperation, collaboration and policy integration between and among State Government agencies and local government bodies.

These primary objects are supported by a further set of sub-goals and, in more detail again, the ‘principles of good planning’. All persons undertaking functions or exercising powers under the legislation are required to seek to further the objects having regard to these principles.

The ‘principles of good planning’ serve as a mission statement for the planning system, describing how good planning should be applied across the state. Organised thematically, the principles direct planning authorities to seek to:

- have a long-term focus and be able to respond to emerging challenges;
- foster urban renewal;
- aspire to high quality design which is inclusive and accessible to people with differing needs and capabilities;
- promote activation and support liveability;
- attain sustainability;
- facilitate investment; and
- promote integrated delivery.

Combined, the objects and principles provide an important value-based framework for the operation of the planning system and interpretive aid for courts in applying provisions of the legislation.

Where to look—sections 12–14

9— Why does the Act contain a ‘general duty’?

The Act includes a ‘general duty’ that applies to all persons undertaking functions or exercising powers under the legislation, or interacting with the planning system. In addition, there is a specific obligation on Councils and government agencies to coordinate their activities in alignment with the goals of the planning system.

Combined with the objects and principles of good planning (see above), these are intended to set the ‘tone’ for the system and promote a culture that is facilitative, proactive and professional—and which recognises shared responsibilities for achieving good planning outcomes.

These duties are not intended to be enforced before a court of law, but may be given weight through, Codes of conduct, service benchmarks and or other applicable requirements such as professional standards.

Where to look—sections 15 and 16

10— How much change has been made under this part?

Most of this part is new. Some parts of the objects draw upon the objects in the current Act.

Part 3—Administration

11— How will the State Planning Commission work with Councils?

The Act creates a new State Planning Commission reporting to the Minister with responsibilities including provision of independent policy advice to government, guidance to Councils and professionals and coordination of planning with infrastructure delivery. The Commission will also serve as an assessment authority for prescribed classes of development applications.

The Commission will consist of between four and six members appointed by the Governor on the recommendation of the Minister. From time to time, the Commission may co-opt additional specialist members to assist its deliberations. In nominating persons for appointment to the Commission, the Minister must, as far as practicable, seek to include persons with expertise from a range of disciplines including:

- economics, commerce or finance;
- planning, urban design or architecture;
- development or building construction;
- the provision or management of infrastructure or transport systems;
- social or environmental policy or science; and
- local government, public administration or law.

Before making an appointment of a person with skills and experience relating to local government the Minister is required to consult the Local Government Association.

In addition to providing the Minister with an independent source of advice, the Commission is expected to appoint a sub-committee as an Assessment Panel for the purpose of assessing development applications. The Commission will also work with the Department to provide guidance and coordination across the system, including interaction with Councils and the professions.

Reflecting this, a public sector employee, other than the Chief Executive of the Department responsible for planning, will be an ex officio member of the Commission. This will provide an important link with transport and infrastructure systems and other matters cognate with planning. Secretariat support for the Commission will be provided by public sector employees.

Where to look—sections 17 to 32

12— What are ‘Planning Agreements’ and what will ‘Joint Planning Boards’ do?

The Act provides for groups of Councils to enter into ‘Planning Agreements’ with the Minister.

A Planning Agreement is a long-term arrangement that allows for planning functions to be delegated to regional groupings of Councils, subject to agreed performance measures and targets. Where relevant, other entities may be party to an agreement. A Council with any part of its area that is to be included in a Planning Agreement must be invited to be a party to the agreement.

Each Planning Agreement is to be delivered by establishing a ‘Joint Planning Board’ (with between three and seven members) to perform agreed functions (for example, Regional Planning or assessment). The process of establishing a board has been flexibly designed to allow for parties to determine the arrangements that suit them best.

In addition to allowing for planning powers to be delegated to Joint Planning Boards, Planning Agreements may also include others matters that may be agreed by other Ministers (for example, regional development or natural resource management).

Where to look—sections 35 and 36

13— What are ‘Practice Directions’ and ‘Practice Guidelines’?

The planning system is complex and often involves balanced judgments being made by professionals. To support professionals, the Act includes the ability for the Planning Commission to issue Practice Directions and guidelines.

A ‘Practice Direction’ may specify procedural requirements generally or in connection with any matter under the legislation. Often these will relate to issues that are currently dealt with by regulation under the current Development Act. Throughout the Planning, Development and Infrastructure Act there are many specific instances where the Commission is given the ability to issue a Practice Direction in relation to a particular topic or issue.

‘Practice Guidelines’ can provide guidance on the interpretation of the Planning Rules or the Building Rules. This will be particularly helpful where there may be ambiguity or differing interpretations. Assessment authorities will be taken to be acting consistently with the Planning Rules or the Building Rules if they act in accordance with a Practice Guideline.

Where to look—sections 42 and 43

14— How much change has been made under this part?

Most of the features of this part are new. The State Planning Commission and its sub-committee formed as an assessment body will replace the Development Policy Advisory Committee and the Development Assessment Commission and some of the provisions that relate to it are modelled on existing provisions applying to those bodies in the current Development Act.

Part 4—Community engagement and information sharing

15— What is the ‘Community Engagement Charter’?

The Act provides for a new approach to engaging communities by providing reasonable, timely, meaningful and ongoing opportunities to gain access to information about proposals to introduce or change planning policies, participate in relevant planning processes and developing key planning documents.

A new ‘Community Engagement Charter’ will set out performance-based requirements for engaging community members on proposed changes to planning policies and rules. This will replace the prescriptive statutory requirements in the current Act with a more flexible approach that allows engagement to be tailored to suit the needs of each proposal and community.

The Charter will be based on principles designed to foster and encourage constructive debate, weight engagement towards early stages of policy-setting, and promote use of plain language and easy-to-access formats.

Relevant entities proposing changes to planning documents will be required to comply with the Charter, including where appropriate consulting with an affected Council or the Local Government Association. The State Planning Commission will have the authority to give directions to entities, or step in, if it considers the entity has failed to meet the standards set in the Charter.

The Commission will be responsible for establishing and maintaining the Charter. The Charter, and subsequent amendments will be subject to the scrutiny of Parliament and potential disallowance.

Where to look—sections 44 to 47

16— How will online planning services work?

A major element of the new planning system will be the delivery of planning and assessment information and services through a new online platform. To achieve this, the Act requires the Chief Executive of the planning Department to:

- establish a central planning website—known as the ‘SA Planning Portal’;
- maintain a ‘planning database’ which contains zoning and other planning information; and
- provide for the website to include search facilities in the form of an online atlas that can be used to access information held on the planning database.

Information entered in the website and database must comply with technical standards set by the State Planning Commission. These will cover a range of issues, including ensuring the website meets accessibility requirements. Only parties authorised by the Chief Executive of the Department will be able to amend the database.

Members of the public will be able to lawfully rely on information published on the portal, including any version of an instrument and any report generated by the search facility. This will enable users to produce site specific or area wide maps, including Council zoning maps.

Existing protections for confidential information have been migrated from the current legislation and enhanced to include matters which are commercially valuable or sensitive. The new system will also enable copyright issues to be better addressed (see below). The system will be based upon a fair cost recovery model enabled by head powers in the Act. The Chief Executive is required to take reasonable steps to liaise with the Local Government Association before setting or varying of any contribution to be paid by a Council.

Where to look—sections 48 to 56

17— How much change has been made under this part?

This part is new, with some features relating to record keeping and freedom of information migrated from the current system.

Part 5—Statutory instruments

18— What are ‘statutory instruments’ and how do they relate to each other?

All of the key planning documents are grouped in Part 5 of the Act under the heading ‘statutory instruments’. Instruments are divided into planning instruments and building-related instruments.

Planning instruments include:

- State Planning Policies;
- Regional Plans;
- the Planning and Design Code; and
- Design Standards.

Building instruments include:

- the Building Code; and
- Ministerial building standards.

Principles applying to the content of instruments include avoidance of duplication, use of proportionate regulatory approaches and adopts a performance-based approach that applies excellence in design practice.

The legislation also expressly provides that in general, any conflict between the Planning Rules and the Building Rules should be resolved in favour of the Building Rules. Exceptions exist for State and local heritage places and matters excluded by regulation. This means that matters best addressed through building controls will not be allowed to be replicated in the Planning Rules.

Where to look—Part 5 generally and section 57

19— What are ‘State Planning Policies’?

The Act provides for the Commission to prepare ‘State Planning Policies’ which set out the government’s overarching goals or requirements for the planning system.

State Planning Policies are to be taken into account when preparing other statutory instruments such as Regional Plans and Design Standards. They are not to be taken into account for the purposes of any assessment decision or application.

In the case of proposals which require impact assessment, an environmental impact statement is required to evaluate the extent to which expected effects of a proposed development would be consistent with relevant State Planning Policies, and to provide any necessary commitments regarding avoidance, mitigation or management of any potentially adverse effects on any matter that may be directly relevant to a special legislative scheme. In effect, the State Planning Policies have a similar role to the non-spatial aspects of the Planning Strategy under the current Act.

The Act mandates there must specific State Planning Policies that provides for design quality (including universal design and best practice in access and inclusion), the integration of land use, transport and infrastructure, adaptive re-use of buildings and places, climate change and any special legislative scheme recognised by the legislation. The Commission also has the power to make State Planning Policies on any matters it thinks fit.

Where to look—sections 58 to 63

20— What is a ‘Regional Plan’?

The Commission of its own volition, or in partnership with a Joint Planning Board, must prepare a Regional Plan for each planning region (see above). A Regional Plan must be consistent with relevant State Planning Policies and include:

- a long-term vision (over a 15 to 30 year period) for the region or area, including provisions about the integration of land use, transport infrastructure and the public realm;
- maps and plans that relate to the long-term vision;
- contextual information about the region or area, including forward projections and statistical data and analysis as determined by the Commission or required by a Practice Direction; and
- recommendations about zoning and a framework for development or management of infrastructure and the public realm.

Regional Plans may be divided into parts relating to subregions, and may include structure plans, master plans, concept plans or other similar documents. Regional Plans prepared by a Joint Planning Board must comply with any Practice Direction issued by the Commission.

In effect, Regional Plans will have a similar role to the spatial volumes of the Planning Strategy that apply for each region under the current Act, with the new option of linking directly through to zoning changes. As with State Planning Policies, they are not to be taken into account for the purpose of any assessment decision or application, but an environmental impact statement will also be required to evaluate consistency with the relevant Regional Plan.

Where to look—section 64.

21— What is the ‘Planning and Design Code’?

The creation of a new ‘Planning and Design Code’ will require a new approach to the drafting, presentation and interpretation of zoning rules. The new Code will be based on a more design-oriented style of zoning that focuses on built form and mixed use development.

The Commission will be responsible for preparing and maintaining the Code and, in consultation with Councils, industry and communities, in accordance with the Community Engagement Charter. It is envisaged Councils will be able to initiate amendments to the Code with the agreement of the Minister acting on the advice of the Commission.

The Code will set out a comprehensive set of planning rules for development assessment purposes classified into zones, subzones and overlays. These will be applied in each region in a manner consistent with the relevant Regional Plan. This will make the Code the single point of reference for development assessment.

The following principles will apply to the content of the Code:

- zones will govern the basic use and form of an area;
- subzones will be able to include additional rules relating to local character;
- overlays will allow common issues that may apply across different zones and subzones to be addressed (e.g. flood or bushfire risk);

- specified provisions within the Code will be able to be adapted or modified within pre-determined parameters if agreed by the Minister;
- the Code will be able to include performance requirements and design techniques; and
- use classes and land use definitions will be incorporated in the Code.

The Code will contain a register of local heritage and significant trees based on the same provisions as the current Act. There are new requirements to identify the significant heritage components of the place to be listed, and for land owners to be consulted, in accordance with the Community Engagement Charter, regarding: the inclusion of a place under the Planning and Design Code as a place of local heritage value; or any proposed amendment would apply a heritage character or preservation policy having a similar intention or effect as a local heritage listing.

There is also a new right for landowners to appeal a local heritage listing applied to their property (on the same basis as a state heritage listing).

In addition, an area cannot be designated a heritage character or preservation zone or subzone unless, following consultation under the Community Engagement Charter, 51 per cent of landowners within the relevant area agree.

Where to look—sections 65 to 68 and section 202(1) re local heritage appeal

22— What is a ‘Design Standard’?

To increase the emphasis on design in the planning system, the Act enables the Commission to prepare Design Standards relating to the public realm and infrastructure. This is an important innovation and represents the first time a system-wide approach to public realm design has been provided for in planning legislation.

Design Standards may:

- specify design principles and standards; and
- provide design guidance in relation to infrastructure and public realm

in any location, for the purposes of any infrastructure delivery or off-set contribution scheme under the Act (see below), for the purposes of a zone, subzone or overlay in the Planning and Design Code, or for the purposes of enabling ‘as of right’ development of essential infrastructure.

This will ensure that developers and the community share consistent expectations regarding the design of infrastructure and the public realm in a given area, while also providing protection from gold-plating and price-gouging. It will also assist with the integration of development between private land and the public realm.

Where to look—section 69

23— Who can change a designated instrument ?

Under the new Act, for the purposes of sections 70 to 77, State Planning Policies, Regional Plans, the Planning and Design Code and Design Standards are all referred to as ‘designated instruments’

A proposal to prepare or amend a designated instrument may be initiated by the Commission acting on its own initiative or the request of the Minister and, in the case of a Regional Plan, a Joint Planning Board.

The following entities may also initiate a proposal to amend a designated instrument with the approval of the Minister acting on the advice of the Commission:

- the Chief Executive;
- a government agency;
- a Council;

- Joint Planning Board;
- a provider of essential infrastructure;
- an Infrastructure Scheme coordinator (appointed under Part 13); or
- a land owner (Planning and Design Code or a Design Standard matters only).

This process covers amendments to the Planning and Design Code, and is streamlined in comparison to the current development plan amendment (DPA) process.

The Minister's approval of the initiation of an amendment may be subject to conditions. The Department's Chief Executive will provide oversight to amendments undertaken by infrastructure providers and land owners.

Consultation for any amendment process must be carried out in accordance with the Community Engagement Charter and with other persons or bodies as the Commission or proponent sees fit. The Minister will determine whether or not the amendment is to proceed, subject to appropriate levels of parliamentary scrutiny.

The above process will not be required for a change to a zoning boundary or application of an overlay under the Planning and Design Code, providing it is consistent with a detailed and specific recommendation in the relevant Regional Plan.

Existing provisions allowing for minor technical or operational changes and early commencement of amendments will be carried forward from the current Act.

The Planning, Development and Infrastructure Act preserves the central role of Councils in maintaining the planning rules and zone boundaries in their area, as well as working with other Councils and the State Government on a regional basis. Councils will have an enhanced ability to amend a range of documents that are currently maintained by the Minister alone.

Reflecting existing law and practice, Councils will be able to seek funding for amendment processes from private parties with an interest in the change being sought. Where such arrangements are in place, the State Planning Commission must be consulted on the proposed changes.

Where to look—sections 70 to 73

24— How will parliament scrutinise amendments to planning instruments?

The Environment, Resources and Development Committee (ERDC) of the South Australian Parliament will have an expanded role in scrutinising planning instruments. Presently, the committee only considers DPAs, but under the new planning system it will also have a role in considering:

- State Planning Policies;
- Regional Plans;
- the Planning and Design Code; and
- Design Standards.

Moreover, new provisions will encourage the Minister to engage with the committee before promulgating instruments on the basis that early engagement and agreement should negate the need for later scrutiny and disallowance. This encourages early engagement, addressing any concern that the current process makes the parliamentary scrutiny process an 'afterthought'.

In addition, changes to the boundaries of an 'environment and food production area' in Greater Adelaide will require parliamentary consent (see above).

Where to look—clause 74

25— How are the building rules recognised in the Act?

The Act continues to apply the national Building Code, as updated from time to time, on the basis of long-standing intergovernmental arrangements that provide for a common approach to building regulation across the nation.

Consistent with the current Act, application of the Building Code will be subject to variations, additions, exclusions or modifications which may be given effect via a 'Ministerial building standard' (which will replace existing Minister's specifications).

Similar to the existing Act, regulations may be made on a variety of building-related topics including the performance, standard or form of building work, and fire safety and other designated safety features. Ministerial building standards may also specify deemed-to-satisfy building practices or techniques that will be taken to constitute compliance with the Building Code.

Where to look—Part 5, Division 3

26— How much change has been made under this part?

Most of the changes in this part relate to the new planning documents. Taken together, the State Planning Policies, Regional Plans, Planning and Design Code and Design Standards replace and augment the Planning Strategy and development plans that are provided for in the current Act.

The national Building Code and Ministerial building standards migrate provisions from the current Act relating to building controls. Parliamentary scrutiny and related procedural matters applying to planning instruments have been carried forward from the current Act with minor adjustments, other than the amendment process which has been adapted to allow for a wider range of parties able to initiate amendments.

Part 6—Relevant authorities

27— Who will make assessment decisions?

On the same basis as the current Act, provision is made for the constitution of 'relevant authorities' for the purpose of determining development applications.

A wider range of relevant authorities is envisaged and will be constituted in a number of different ways. This will help to better match decision-making responsibility to the scale, impact and risk of a proposed development, and expectations of development in a particular area.

There are five basic types of relevant authority envisaged:

- the Minister;
- the Planning Commission;
- an Assessment Panel;
- an Assessment Manager; and
- an Accredited Professional.

Councils continue as relevant authorities for certain building-related matters, but otherwise a Council-appointed Assessment Panel and Assessment Manager will be the relevant authority in their own right, rather than as a delegate, and may not be directed by the Council in undertaking their statutory functions.

The following table summarises the assessment that each type of relevant authority may undertake.

Type of relevant authority	What type of assessment	How appointed
Accredited Professional	<ul style="list-style-type: none"> prescribed in regulations currently applies to building rules consent and certain types of 'complying' planning consents intended to apply to deemed-to-satisfy assessment 	<ul style="list-style-type: none"> Accreditation Scheme provided in regulations
Assessment Manager	<ul style="list-style-type: none"> prescribed in regulations currently akin to delegated decisions intended to apply to deemed-to-satisfy assessment and a range of other, generally minor, development 	<ul style="list-style-type: none"> appointed by the Chief Executive or a Joint Planning Board must be an Accredited Professional or meet other prescribed criteria every Assessment Panel must have a manager an Assessment Panel may review an Assessment Manager's decision, if an applicant so requests
Assessment Panel	<ul style="list-style-type: none"> prescribed in regulations intended to apply to more complex developments (performance-based and other assessment) 	<ul style="list-style-type: none"> various appointment methods—see below generally appointed by Councils
State Planning Commission	<ul style="list-style-type: none"> restricted development (not assessable unless Commission determines) call-ins by the Minister due to state significance or delays developments outside of Council areas Crown development and essential infrastructure 	<ul style="list-style-type: none"> appointed by Minister
Minister	<ul style="list-style-type: none"> impact assessable (other than restricted) Commission prepares and releases assessment report 	

Where to look—section 82 and Part 6 generally

28— What are the different types of Assessment Panel under the Act?

The Act envisages a range of Assessment Panels based upon a variety of factors.

Generally, Council Assessment Panels will continue as the norm. However, there is provision made for:

- regional panels appointed by a Joint Planning Board or by the Minister
- a combined Assessment Panel established by the Minister to assess applications across different legislation (e.g. liquor licensing)
- the Minister to step in and replace the members of a Council Assessment Panel where the Council panel fails to comply with statutory obligations.

Panels are to be composed of Accredited Professionals and panels established by Joint Planning Boards or Councils may include at least 1 elected Councillor but may not include members of State Parliament. Panels may co-opt additional members from time to time to deal with matters requiring specialist advice or input.

The following table summarises how each is constituted.

Type of Assessment Panel	How and when appointed	Membership
Council Assessment Panel	<ul style="list-style-type: none"> appointed by Council 	<ul style="list-style-type: none"> no more than five (5) members must be Accredited Professionals but may include a maximum of 1 elected Councillor
Regional Assessment Panel	<ul style="list-style-type: none"> appointed by two (2) or more Councils appointed by Joint Planning Board or by Minister existing regional panels will continue in effect 	<ul style="list-style-type: none"> no more than five (5) members (but may vary if appointed by the Minister) must be Accredited Professionals
Combined Assessment Panel	<ul style="list-style-type: none"> appointed by the Minister may assess matters under other laws at the same time (e.g. mining or liquor licensing) 	<ul style="list-style-type: none"> membership determined by the Minister

Where to look—Part 6, Division 2

29— Who is an ‘Assessment Manager’?

The Act recognises the important role undertaken by professional staff supporting Assessment Panels and the Commission in their work. A new role of ‘Assessment Manager’ is created in the Act, regularising the current practice of delegations made to Council and Departmental planning staff.

Generally, an Assessment Manager will be an Accredited Professional appointed by the Chief Executive of a Council or the Department, but they may also belong to a class of persons prescribed by the regulations.

Flexibility is provided for smaller Councils by enabling Assessment Managers to be appointed for more than one Assessment Panel and to be contractors rather than employed.

An Assessment Manager:

- is to provide advice to, and coordinate the business of, an Assessment Panel;
- may act as a relevant authority for specified matters (subject to review by the panel at the applicant’s request); and
- is responsible for their performance to the person who appointed them (but is not subject to direction as a relevant authority).

The costs of the Assessment Manager are to be met by the appointing body, generally being the Council. This reflects current practice of staff who act as delegates for Councils or the Department.

Where to look—Part 6, Division 3

30— Who are ‘Accredited Professionals’?

A key element of the Act is the creation of a new head of power for the Minister to establish a professional Accreditation Scheme that will lift the performance of, and improve confidence in, professionals undertaking functions across the planning system.

A person holding accreditation will be known as an 'Accredited Professional' and will be able to undertake assessment functions prescribed by regulation. It is envisaged this will see a substantial increase in the use of privately contracted professionals to certify deemed-to-satisfy applications, reducing costs for Councils and time delays for applicants. At the same time, Assessment Panels will consist of Accredited Professionals able to objectively apply their relevant skills and knowledge to the decision making process.

The Accreditation Scheme itself will be administered by the Commissioner for Consumer Affairs, as the state's primary occupational licensing regulator. The scheme, to be created by regulations, will have the capacity to enable peak professional bodies to undertake accreditation of their members directly, under the supervision of the Commissioner. Consequential amendments will be considered to better link the scheme to the provisions of the *Fair Trading Act 1987*.

Because of this, the Act requires the Minister to develop the details of the Accreditation Scheme in association with the Commissioner. By providing an independent registration authority, this approach will help address the recommendations of the House of Assembly select committee into private certification.

The new Accreditation Scheme will:

- allow for different classes of accreditation for differing roles based on professional qualifications and standing;
- specify ongoing training requirements linked to periodic renewal of accreditation;
- require the holding of professional indemnity insurance;
- include arrangements for regular auditing of Accredited Professionals;
- provide grounds for suspension or cancellation of accreditation; and
- enable provision of accreditation by peak professional groups, subject to appropriate cost recovery arrangements.

Related to their accreditation, professionals will be subject to statutory duties that regulate their behaviour and ensure they are obliged to act ethically and in the public interest. Codes of conduct will govern issues in more detail, such as when a conflict of interest should preclude a professional from acting as a relevant authority. To assist in ensuring an adequate pool of panel members is available to serve in regional areas, the scheme will include simplified provisions for 'basic' panel membership.

Where to look—Part 6, Division 4 and Schedule 3

31— What call-in powers does the new Act feature?

Planning legislation has long allowed for the State Government to call in specified development applications for assessment by a state-constituted assessment body. These features are continued and refined in this Act.

Classes of development may be specified as requiring assessment by the Minister, the Commission or an Assessment Panel constituted by the Minister. For example, development that is impact assessable under the Act will always be assessed by the Minister, while development that is outside of a Council area will always be assessed by the Commission. This is similar to how the current Act works by assigning certain assessment matters directly to the Minister or the Development Assessment Commission.

In addition to procedural grounds (such as where a panel has failed to deal with an application in a reasonable period), the Minister may call a development in for assessment by the Commission if, in the Minister's opinion, it:

- is of a major social, economic or environmental importance to the state;
- involves benefits, impacts or risks that are of significance to the state;
- has a cumulative effect that gives rise to issues of significance to the state;
- would have a significant impact on a matter arising under another law; or
- has impacts beyond one planning region or one Council.

Additionally, the Minister may replace a Council Assessment Panel with a panel appointed by the Minister if the Minister considers that the panel has consistently failed to comply with its statutory obligations, subject to the advice of the Commission in consultation with the relevant Council (see above). Alternatively the Commission may advise that the Council replace its own panel.

Where to look—sections 86 and 94(2)

32— How much change has been made under this part?

This part builds upon the concept of a ‘relevant authority’ in the current Act, with many provisions migrated or adapted from the current Act. Provisions relating to accreditation of professionals are a significant new feature of this part and replace provisions relating to private certification in the current Act.

Part 7—Development assessment—general scheme

33— How will the new assessment system work?

The Act introduces streamlined assessment pathways that will better tailor effort to match the scale, impact and risk of a proposed development. The new assessment system is structured around:

- a general scheme with planning, building and land division consents;
- new assessment categories for planning consent and better tools for assessment facilitation;
- improvements to the building-related aspects of assessment; and
- special schemes for the assessment of essential infrastructure and Crown development.

Where to look—Part 7 generally and Parts 8 and 9

34— What consents will be required for a development approval?

On the same basis as the current Act, development must be approved and is to consist of a planning consent, building consent and land division consent as required. Provision for land division consent has been simplified as have requirements related to encroachments and contribution schemes.

Where to look—section 102

35— Do consents have to be approved in sequence?

The Act responds to recent case law which tends to suggest that consents must be obtained in sequence. A new provision expressly reverses this interpretation, while imposing an onus on applicants to obtain all relevant consents prior to undertaking development.

The Act also newly provides that planning consents may be granted for different elements of a development at different times and by different assessment bodies. This establishes a new capacity for ‘hybrid’ pathway options, should the applicant desire.

Council permits will no longer be required for the commercial use of Council land, or alteration to infrastructure on Council land, provided that the development has already been the subject of development approval, and is consistent with the relevant Design Standard. In some cases consultation with or the concurrence of the Council may be required before development approval can be given. However, the relevant Council will retain the ability to impose a reasonable charge on account of the encroachment created when the relevant development is undertaken.

Where to look—section 102(6), (7) and (10) and Schedule 6, Part 6

36— How will the ability to ‘reserve’ assessment matters be improved?

The ability to reserve certain matters for later decision is strengthened in the Act, addressing case law which has tended to constrain these to very minor matters only. Matters may be reserved at the initiative of the assessment body or on application.

An assessment body must reserve a matter for later decision on application if the matter is specified in the Planning and Design Code for this purpose. The Code may also set limits for matters which should not be reserved, although generally any matter that is not fundamental to the nature of a development may be reserved for later decision.

This will provide greater certainty to applicants and Councils in determining those matters that can or should be reserved for later decisions, helping to address the ‘detail first’ approach that has become entrenched in practice across the system as a result of court judgments over the years.

Where to look—section 102(3), (4) and (5)

37— What are the new assessment categories for planning consent?

For a planning consent, development may be categorised as:

- accepted;
- Code assessed;
- impact assessed; or
- restricted.

Code-assessed development may be further classified as being subject to ‘deemed-to-satisfy’ or ‘performance-assessed’ development.

Development category	Where designated
Accepted development	<ul style="list-style-type: none">• regulations or Planning and Design Code
Code assessed development i.e. ‘deemed-to-satisfy’ or ‘performance assessed’ development	<ul style="list-style-type: none">• designated by Planning and Design Code as ‘deemed-to-satisfy’ development• any development not designated as ‘accepted’, ‘restricted’ or ‘impact assessed’ development
Impact assessed development	<ul style="list-style-type: none">• regulations or Ministerial declaration
Restricted development	<ul style="list-style-type: none">• Planning and Design Code• can become ‘impact assessed’ development if Commission so determines

Where to look—section 103

38— What is the effect of being classified as ‘accepted development’?

Development that is classified by the Planning and Design Code as ‘accepted development’ will not require a planning consent. However, on the same basis as the current ‘building rules consent only’ provisions, it may still require a building consent.

The Act will also continue to allow exclusions to be made from the definition of development by regulation, as in the current Act.

Where to look—section 104

39— How will ‘deemed-to-satisfy’ and ‘performance-based’ Code assessment work?

Code assessed development may be either be categorised as:

- deemed-to-satisfy—which must be granted planning consent, on a similar basis to complying development under the current Act; or
- performance assessed—which must be assessed on its merits against the Planning and Design Code on a similar basis to merit assessment under the current Act.

Code assessed development that is not categorised as deemed-to-satisfy is automatically treated as performance assessed development.

In relation to performance assessed development, only those elements of a development that do not meet deemed-to-satisfy criteria and are not accepted (and therefore do not require planning consent) are to be assessed. In essence, this is akin to a limited assessment process for complying development and building consent in the current Act.

This is a significant change to current merit assessment practices and will deliver quicker, simpler, more predictable assessment outcomes. Applicants will be able to seek separate consents for ‘hybrid’ pathways, i.e. for elements that are ‘accepted’, ‘deemed-to-satisfy’ and ‘performance assessed’. It will be closely linked to the way in which the new Planning and Design Code is drafted and the design elements it specifies must be met by different types of development.

In order to streamline assessment procedures, relevant authorities for deemed-to-satisfy development and any other class of development prescribed by the regulations will only be able to make one request for the applicant to provide additional documents or information in relation to their application.

In the assessment process for a proposed development which is assessed on its merits against the Planning and Design Code (performance assessed development) the Act retains the requirement that a development must not be granted planning consent if, in the opinion of the relevant authority, it is seriously at variance with the Planning and Design Code.

Where to look—Part 7, Division 2, Subdivision 3, and section 118

40— How will ‘impact assessment’ work?

Development will be ‘impact assessed’ if:

- it is specified in the regulations as requiring impact assessment;
- it is specified in the Planning and Design Code as ‘restricted’, and the Planning Commission has determined that it should be impact assessed; or
- the Minister otherwise determines that it should be impact assessed.

Rather than being assessed against the Planning and Design Code, impact assessed development (other than restricted development) is subject to a scaleable environmental impact assessment process. To provide guidance, the Planning Commission is required to prepare a Practice Direction setting out assessment guidelines for impact assessment, including the preparation of an environmental impact statement (EIS).

The final decision on an impact assessed development is to be made by the Minister, based upon an EIS undertaken in accordance with directions of the Commission. An EIS will be scaleable based upon the level of detail required by the Commission. As part of the EIS process, the following will apply:

- there must be consultation with the Environment Protection Authority and other government agencies;
- consultation will be undertaken with Councils and members of the public;
- the Commission will prepare an assessment report to inform the Minister’s decision; and

- the Minister’s decision will be subject to judicial but not merit review.

These steps mirror provisions in the current Act, with the exception of the existing privative clause intended to preclude judicial review—which is to be repealed. This exclusion will respond to case law and enable the state to align with federal environmental laws.

Where to look—Part 7, Division 2, Subdivision 4

41— When can ‘restricted development’ be assessed?

Development may be classified as ‘restricted’ by the Planning and Development Code. Restricted development may not be assessed unless the Commission determines otherwise. This will enable the Commission to provide an applicant with an ‘early no’ on a similar basis to non-complying provisions in the current Act.

The Commission will be required to publish a Practice Direction setting out the circumstances under which it will be prepared to assess restricted development, and if it determines that an assessment is to be undertaken, how it is to proceed. Notification requirements will be specified in the regulations, with a right for those who make representations to appeal against the Commission’s decision.

Where to look—section 110

42— How will notification and appeal rights be changed?

Under the new system, notification and appeal rights will be directly linked to each category of assessment rather than being separately classified. This will replace the confusing categorisation processes contained in the current Act, and ensure a consistent approach to gateway assessment.

An important innovation is the capacity to require an on-site notice (on affected land) in appropriate circumstances as a way of giving notice to members of the public of proposed development that is subject to public consultation. Modelled on other legislative regimes such as liquor licensing, this will provide a simple and direct way to notify those most likely to have an interest in making representations.

On occasion, this requirement can be relaxed to cater for circumstances where it would be onerous or inappropriate (e.g. on remote or rural properties). This is comparable to the current regulations which provide for a public notification exemption in relation to developments that are generally appropriate to a particular zone—for example, dwellings in residential zones, factories in industrial zones, and shops in shopping centre zones.

The following table summarises the notification, consultation, review and appeal rights for each category of development.

Development category	Notification and consultation	Review and appeals
Accepted development	<ul style="list-style-type: none"> • no notification required 	<ul style="list-style-type: none"> • no appeal rights
Deemed-to-satisfy development	<ul style="list-style-type: none"> • no notification required 	<ul style="list-style-type: none"> • applicant may appeal substantive decision
Performance assessed development	<ul style="list-style-type: none"> • notification to adjacent land owners (except where excluded by the Planning and Design Code) • property notice (except where excluded by the Planning and Design Code) • representations may be made by any person (but only relevant matters may be taken into account) 	<ul style="list-style-type: none"> • applicant may appeal substantive decision

Development category	Notification and consultation	Review and appeals
Impact assessed development (other than restricted development)	<ul style="list-style-type: none"> • publication of EIS online for public comment within timeframe specified by a Practice Direction • consultation with prescribed bodies including Councils • representations may be made by any person (but only relevant matters may be taken into account) 	<ul style="list-style-type: none"> • only judicial review is available for decisions (this is currently precluded by a privative clause in the current Act that has been removed) • no applicant or third party appeals (same as current Act)
Restricted development	<ul style="list-style-type: none"> • notification to adjacent land owners and other parties (as determined by the Commission) • property notice (as determined by the Commission) • representations may be made by any person (but only relevant matters may be taken into account) 	<ul style="list-style-type: none"> • applicant may request the Commission to review a delegates initial decision to refuse assessment but cannot appeal substantive decision • third parties may appeal substantive decision

Where to look—sections 104, 105,106, 107, 110 and 111

43— How are assessment conditions improved in the Act?

Similarly to the current Act, provision is made for conditions to be placed on assessment decisions. However, to address complex and unnecessary conditions that assessment bodies often apply, the State Planning Commission will be given the power to issue Practice Directions which:

- set out requirements and provide guidance for the application of conditions;
- prohibit certain conditions or classes of conditions; and/or
- require certain conditions to be imposed.

A new capacity is provided to enable conditions to be attached to ‘deemed-to-satisfy’ decisions where needed to ensure Code compliance.

Where to look—sections 107 and 127

44— What is an ‘outline consent’ and how does it help case management?

As an alternative to the normal consent process, the Act provides a new capacity for an ‘outline consent’ to be sought by applicants in circumstances permitted by a Practice Direction issued by the State Planning Commission.

The effect of an outline consent is to bind the assessment body which grants it to grant any subsequent consents in a consistent manner. British planning law has successfully used outline consent processes for many years.

An outline consent will be best used for complex projects where ‘in principle’ approval is needed for financing purposes, but many complex matters of detail cannot be efficiently dealt with upfront. It is expected that one way of achieving an outline consent will be by submitting a master plan to the standard specified in a Practice Direction.

Outline consent processes will dovetail well with case management practices that make use of the preliminary advice and agreement provisions (section 116) which have been migrated from the current Act.

Where to look—section 120

45— What is ‘design review’ and when it is applied?

The Act provides for applicants for development approval of a class specified by the Planning and Design Code to seek the advice of a design panel. A design panel may be established, in accordance with a scheme determined by the Minister (and which will ensure panel members hold prescribed qualifications), to provide advice about the design of proposed developments and how they could be changed or improved.

Any advice provided by a design panel must be taken into account by a relevant authority determining the application. The Act also includes a power to charge a fee for the provision of advice if that is deemed appropriate in the circumstances.

It is expected that design review may be required for complex projects that take advantage of an outline consent as part of a case management process, on a similar basis to the successful design review process instituted in the inner city of Adelaide for large-scale development.

Where to look—section 121

46— What is a ‘deemed planning consent’?

Where an assessment body fails to make a decision on a development application within the time prescribed by regulations, applicants will now have the option of triggering a ‘deemed planning consent’, subject to Council veto.

This is based on equivalent provisions available in the planning laws of other parts of Australia such as Queensland and Tasmania and will reverse the ‘deemed refusal’ process that applies under the current Act, which does not provide the incentive needed to promote adherence to decision-making timeframes.

The process for a seeking a deemed planning consent is as follows:

- where a timeframe is not met, the applicant may serve notice on the relevant authority;
- on receipt the authority will be taken to have granted the consent;
- the authority has up to 10 business days to issue its own consent with or without conditions, which—if issued—supersedes the deemed consent; and
- if the authority fails to issue its own consent, the standard conditions specified by a Practice Direction will apply to the deemed consent.

The authority then has one month within which to apply to the court for an order quashing the consent.

It is envisaged these steps will be managed quickly and easily using the new e-planning system.

The ability for an authority to apply to the court for the consent to be quashed will guard against administrative mistakes that could lead to undesirable outcomes.

A deemed planning consent will not be available for impact assessable development, building consent or land division consent.

Where to look—section 125

47— What changes will be made to building consents?

The Act migrates most of the current requirements relating to the granting of a building consent. However, a number of small but important improvements have been made.

In particular, the provisions relating to accessing neighbouring land for building work purposes now include an additional subclause which grants building owners the right to install flashings between two buildings (including a building on an adjoining allotment) even where flashings would overlap a property boundary. This will help to address a common issue raised relating to walls on boundaries.

The Act also removes the exclusion of new Crown-owned buildings from certain requirements for building consent.

This provision is considered out-of-date and promotes the notion that government should be immune from important safety-related laws.

Provisions relating to building activity and use including swimming pool and other safety features are included below.

Where to look—Part 7, Division 3, as well as Part 11, Divisions 1–7

48— How will referrals be improved?

The process of referrals will be streamlined in the Act through a number of means.

Firstly, government agencies will be encouraged to work with the Commission and Department to make amendments to the Planning and Design Code that address policy issues in preference to seeking referrals.

This is reinforced by a provision which requires the Planning and Design Code to include policies that will be applied by a referral body in giving referral advice (unless the Minister is satisfied that this is not necessary).

These policies will provide greater up-front certainty to applicants as to the performance and other outcomes sought by those agencies, and the thresholds beyond which referrals will be required.

There will also no longer be referrals for advice. Referrals will, in future, be confined only to matters for direction.

Referral bodies will be statutorily required to confine their comments to matters relevant to the purpose of the referral and within their field of expertise.

To avoid lengthy time delays on matters of detail, applicants will have the option of deferring a referral to be addressed later as a clearance or reserved matter. This will allow applicants to tailor the order in which consent matters are addressed in a manner which suits their project needs. The applicant will be required to accept any risk that a subsequent referral may negate, or require amendment to, the head consent.

Where to look—section 122

49— How will the overlap between the planning system, and consents and permits under other laws be addressed?

The Commission is required to establish, by Practice Direction, a scheme to ensure that planning assessment or controls including conditions do not conflict with nor duplicate matters dealt with or addressed under another licensing or regulatory regime under another Act.

Consequential amendments are made to the *Local Government Act 1999* to similarly address duplication and inconsistency between development authorisation and Council permits, particularly where resulting delays would compromise the viability of a proposed development.

Council permits will no longer be required for encroachments onto Council land, or for the commercial use of Council land, or alteration to infrastructure on Council land, provided that the development has already been the subject of development approval, and is consistent with the relevant Design Standard. In such cases, however, the relevant Council will retain the ability to impose a reasonable charge on account of the encroachment created when the relevant development is undertaken.

The *Liquor Licensing Act 1997* is amended to prevent duplication and dual regulation, by:

- requiring the Commissioner of Liquor Licensing to ensure that licensing decisions and conditions do not conflict with nor replicate matters addressed under the planning system; and
- to preclude a Council from intervening in licensing decisions in its area that touch on planning matters covered under the Act.

These amendments are discussed in more detail below.

Consequential amendments to a range of legislation will be considered with the aim of establishing a similar linkage with other statutes to that which currently operates between the Development Act and the *Environment Protection Act 1993*. The effect of this linkage, enacted via section 47(2) of the Environment Protection Act at the same time as the original Development Act was enacted in 1993, ensures that where a development proponent has acted in accordance with referral advice or a direction from the Environment Protection Authority, any subsequent application for an environmental licence issued under that Act is dealt with consistently with that advice or direction. This mechanism could be applied to other similar related statutes.

Where to look—sections 42 and 102(10), and Schedule 6, Parts 5 and 6

50— How will variations to development consents be catered for?

A new provision makes it clear that a variation to a development consent may be granted without the need for all the usual processes that would normally be required for a new application. This will address a common concern that minor variations are being unnecessarily treated as wholly new matters, thereby over-burdening the assessment process.

Detail supporting this provision will be specified by regulation, and is likely to remove the need for consultation and notification on minor matters that are within the expectations of the original consent.

Where to look—section 128

51— How much change has been made under this part?

Many features of the development assessment scheme in this part will be familiar to practitioners and regular users of the planning system. Rather than wholesale change, reforms have been targeted and involve specific alterations that address known issues. The basic framework of consents and pathways has been maintained, albeit with new terminology and processes in some cases.

New pathways replicate some key features of existing pathways, while providing more flexibility for applicants.

Councils will retain responsibility for issuing building consent and development authorisation.

Part 8—Development assessment—essential infrastructure

52— What is ‘essential infrastructure’?

The Act provides two new assessment pathways for essential infrastructure.

Essential infrastructure is defined to include:

- equipment, structures, works and other facilities used in or in connection with the generation, distribution or supply of electricity, gas or other forms of energy;
- water infrastructure or sewerage infrastructure;
- transport networks or facilities (such as roads, railways, busways, tramways, ports, wharfs, jetties, airports and freight-handling facilities);
- causeways, bridges or culverts;
- embankments, walls, channels, drains and earthworks;
- civil buildings and facilities; and
- other matters prescribed by regulation.

Where to look—section 3

53— What is a ‘standard design’ and how does it streamline the assessment of essential infrastructure?

Where essential infrastructure:

- complies with a standard design made by the State Planning Commission (by way of a Design Standard); and
- is located in an infrastructure reserve (defined as land identified for infrastructure in the Planning and Design Code or as a statutory easement under another law, identified by regulation),

the infrastructure does not require a planning consent, and may instead be granted authorisation by an Accredited Professional. This will remove the need for cumbersome assessment processes to be undertaken for infrastructure that is necessary and cannot be reasonably re-designed or located elsewhere.

Priorities for preparing Design Standards will be discussed with infrastructure providers and Councils as part of the implementation program for the Act. Common trenching and infrastructure design that fits better with urban settings will be progressed in this context.

Where to look—section 129

54— What is the alternative assessment process for essential infrastructure?

Where the streamlined process based on a standard design is not available for essential infrastructure, an alternative assessment pathway is provided which is modelled on provisions in the current Act that provide for electricity infrastructure approvals. This pathway is in addition to the general scheme or Crown development assessment, if the government is a party, which may also be used to assess essential infrastructure.

In such cases:

- an infrastructure provider may apply to the State Planning Commission for approval of the infrastructure;
- the Commission is required to consult with relevant Councils and, if the infrastructure is more than \$10 million in value, must also undertake public consultation;
- the Commission then reports to the Minister who may conditionally or unconditionally approve the proposed development;
- prior to the commencement of any proposed work it must be certified by a building certifier; and
- once the Minister approves a development under this provision no other assessment procedure or requirement applies.

However, if the Minister directs that an environmental impact study be prepared, this process does not apply, and an impact development assessment will instead be required.

This process will not apply to any development in the Adelaide Park Lands.

Where to look—section 130

55— How much change has been made under this part?

The standard design approach to essential infrastructure is the major change in this part.

Part 9—Development assessment—Crown development

56— How does the Act alter provisions relating to development undertaken by government agencies?

Existing provisions relating to Crown development have been migrated into the Act from the current Act. One of few variations in the Act permits a government agency to determine to proceed with an assessment under the general assessment scheme rather than being locked into the Crown development pathway. This codifies existing practice and better reflects the intent underlying the pathway.

This process will not apply to any development in the Adelaide Park Lands, other than in specified parts of the Institutional District.

Where to look—section 131

57— How much change has been made under this part?

This part largely follows the existing provisions.

Part 10—Development assessment and approval—related provisions

58— How does the Act address access to adjoining land for building purposes?

The Act varies current access provisions to make them easier to use.

The current Act provides a scheme for negotiation of access rights for the purpose of undertaking building work affecting stability of land. This provision is continued.

In addition a new provision extends this provision to other building work and provides that, where negotiation for reasonable access fails, the Environment, Resources and Development Court may grant a permit authorising access.

Where to look—sections 139 and 140

59— How does the Act address Council inspection policies?

The Act provides for quality control of development within Council areas by allowing the Commission to issue Practice Directions requiring a Council or group of Councils to carry out inspections of development undertaken in their respective areas. This replaces existing building inspection policies in the current Act, newly requiring the Commission to issue Practice Directions regarding Council inspection policies. The Commission must do so having regard to the financial and other resources of the Council and community affected as well as the potential impact of a failure to inspect development in the area.

Where to look—section 144

60— How does the Act provide for activities affecting walls on boundaries?

The Act details the process, notification and consent requirements, entry powers and apportionment of costs where owners propose to build or convert an existing structure into a party wall, based upon the provisions in the current Act.

This provision is extended to deal with the issue of flashings installed on or above walls so that they may extend over the site boundary.

Where to look—Part 11, Division 3

61— How much change has been made under this part?

Aside from those variations addressed above, existing approaches have been migrated from the current Act— including:

- non-retrospectivity maintained in regards to requirement for building up-grades;
 - urgent building and tree-damaging activity permitted where needed to protect any person or building and in other prescribed circumstances;
 - approval otherwise required for tree-damaging activity in relation to regulated trees;
 - land division certificates required;
 - an authority's ability to take action if development not completed retained; and
 - an applicant's ability to cancel a development authorisation retained.
-

Part 11—Building activity and use—special provisions

62— How is swimming pool and building safety addressed?

Planning law has for some time required older swimming pools to be upgraded with contemporary safety standards upon sale of a property. The Act extends this provision to other safety features that may, from time to time, warrant similar attention.

Regulations may specify requirements in relation to 'designated safety features' for swimming pools or for buildings. Examples for buildings could include smoke alarms or the like. The regulations may include requirements for installation, maintenance, replacement or upgrades of designated safety features on occurrence of a 'prescribed event' such as sale or lease of the property.

The Commission may issue a Practice Direction requiring a Council or group of Councils to carry out inspections to ascertain compliance.

Where to look—section 156

63— How has fire safety been improved?

The Act provisions relating to fire safety mirror the current Act requirements with a minor amendment to the constitution of an appropriate authority, commonly known as a Building Fire Safety Committee, in relation to fire authority membership. This will make it administratively simpler for a fire authority to nominate its representation on committees.

Where to look—section 157

64— How much change has been made in this part?

Existing provisions relating to assessment matters have been migrated into the Act from the current Act with only minor variation, including that to provide for flashings on party walls, and for the Commission to provide Practice Directions in relation to Council development inspections, described above. The provisions relating to swimming pool safety features in the current Act have also been expanded to cover safety features for buildings as well, with detail to be prescribed by regulations. Other building related provisions are described elsewhere in this document.

Part 12—Mining—special provisions

Existing provisions relating to mining have been migrated into the Act from the current Act without change.

Part 13—Infrastructure frameworks

65— What is an ‘infrastructure delivery scheme’?

The Act provides for ‘basic and general infrastructure delivery schemes’, which are legally binding arrangements for the delivery of basic and essential infrastructure in a defined scheme area. Essential infrastructure is defined broadly (see above).

Basic Infrastructure Schemes apply to the provision of a subset of essential infrastructure and includes equipment, structures, works and other facilities used in or in connection with, the generation, supply and distribution of electricity, gas or other forms of energy, water and sewerage and communications, as well as roads or causeways, bridges or culverts associated with roads; stormwater management infrastructure; or associated works or earthworks.

General Infrastructure Schemes are concerned with the provision of essential infrastructure such as roads, transport networks or facilities causeways, bridges, embankments, walls, channels, drains, health, education or community facilities; and police, justice or emergency services facilities

Where to look— basic infrastructure: section 162; general (essential) infrastructure: subsection 3(1)

66— How is an infrastructure delivery scheme initiated?

The Minister, after seeking the advice of the Commission may, on his own initiative; or at the request of another person or body (which could include a Council, a developer, an urban renewal precinct authority or an infrastructure provider among others) initiate a scheme for the provision and delivery of basic or general infrastructure and put in place the appropriate funding arrangements.

It is important to note that in initiating an Infrastructure Scheme the Minister can only act on the advice of the Commission. In providing this advice to the Minister, must take into account, any relevant State Planning Policy, Regional Plan, and relevant provisions of the Planning and Design Code (including any amendments which might be made in connection with the potential or proposed development. The Commission’s involvement ensures the process to initiate a scheme is independent, accountable and transparent.

Basic Infrastructure Schemes

The scheme is initiated by the Minister preparing a draft outline of the scheme that provides detailed information about the nature and intended scope of the basic infrastructure, any related development that is proposed to be undertaken as part of the scheme, identifies the proposed designated growth area, proposed timing or staging of the various elements of the scheme, provides information about the person or body that will be carrying out the work, and any basic infrastructure or other assets that might be expected to be transferred to another entity when the scheme has been completed.

The draft outline also assesses the costs and benefits of the scheme and outlines a funding arrangement for the scheme, including whether it is proposed to impose a charge.

In preparing the draft outline, the Minister is obliged to facilitate the provision of infrastructure that is fit for purpose, capable of adaptation as standards or technology change, capable of augmentation or extension to accommodate growth or changing circumstances, designed and built to a standard appropriate to the development; and capable of being acquired and delivered in a timely manner.

In considering whether or not the scheme should impose a charge on landowners, the Minister must consider whether it is reasonable to use other sources of funding and any other any schemes or arrangements that are already in place or planned for the provision of basic infrastructure or the undertaking of works within the designated growth area.

The Part 13 provisions also require the Minister to take reasonable steps to consult with land owners, persons proposing to undertake development within the proposed designated growth area, affected Councils and any other person or body as the he or she thinks fit.

Once these steps have been the completed, the Minister must publish the draft outline of the scheme in the Gazette and on the SA Planning Portal, along with any advice furnished by the Commission in relation to the draft outline which may be redacted to protect commercially sensitive information.

The Minister will then refer the proposed scheme to the Chief Executive for the appointment of a scheme coordinator.

General Infrastructure Schemes

General Infrastructure Schemes apply to the provision of essential infrastructure such as roads, transport networks or facilities causeways, bridges, embankments, walls, channels, drains, health, education or community facilities; and police, justice or emergency services facilities.

The Minister may initiate a general scheme for 1 or more of the following purposes:

1. to facilitate development or significant urban renewal through supporting and advancing the provision of infrastructure;
2. to provide a mechanism for the equitable distribution and apportionment of the costs of essential infrastructure;
3. to assist in the augmentation of capital available to fund essential infrastructure; or
4. to provide an incentive for the provision of essential infrastructure (including through private sector investment) by providing certainty through the establishment of the scheme.

A general scheme is initiated by the Minister preparing a draft outline of the scheme that provides detailed information regarding:

1. the nature and intended scope of the infrastructure;
2. any related development that is proposed to be undertaken as part of the scheme;
3. identifies the location of the proposed scheme and if a funding arrangement includes a proposal for the collection of contributions specifies the area or areas (to be called a contribution area) in which contributions are intended to be imposed;
4. the proposed timing or staging of the various elements of the scheme;
5. provides information about the person or body that will be carrying out the work, and;
6. any basic infrastructure or other assets that might be expected to be transferred to another entity when the scheme has been completed.

The draft outline also assesses the costs and benefits of the scheme and outlines a funding arrangement for the scheme, including whether it is proposed to impose a charge.

In preparing the draft outline, the Minister is obliged to facilitate the provision of infrastructure that is fit for purpose, capable of adaptation as standards or technology change, capable of augmentation or extension to accommodate growth or changing circumstances, designed and built to a standard appropriate to the development; and capable of being acquired and delivered in a timely manner.

In considering whether or not the scheme should include a proposal for the collection of contributions from landowners, the Minister must consider whether:

1. it is reasonable to use other sources of funding instead;

2. the impact of the scheme on any Council after taking into account any submissions from the affected Councils;
3. the extent to which any infrastructure will directly benefit the development potential, capacity, use, value or amenity of the land;
4. the infrastructure will benefit the people required to make contributions; and
5. any other any schemes or arrangements that are already in place or planned for the provision of infrastructure or the undertaking of works within the designated growth area.

In addition the Minister must also take reasonable steps to consult with affected Councils, any land owners who would be directly impacted by any infrastructure or associated works, and any other person or body as he or she thinks fit.

Once these steps have been the completed, the Minister must publish the draft outline of the scheme in the Gazette, and on the SA Planning Portal along with any advice furnished by the Commission in relation to the draft outline which may be redacted to protect commercially sensitive information.

The Minister will then refer the proposed scheme to the Chief Executive for the appointment of a scheme coordinator.

Where to look— basic infrastructure: section 163; general infrastructure: section 164

67— What is a ‘scheme coordinator’ and what do they do?

The scheme coordinator’s role is to prepare, scope, and cost proposals for the scheme in accordance with any relevant Design Standards, develop a work program, undertake consultation in relation to the scheme in accordance with any requirement under the Community Engagement Charter, develop any funding arrangements and any other functions assigned by the Chief Executive.

If the scheme is adopted the scheme coordinator is responsible for overseeing delivery of any infrastructure or works, advising the Minister on:

1. the enforcement of any charges and the levels and amounts of any contributions;
2. what should happen on the completion of the works associated with the scheme;
3. any other matter at the request of the Minister or as the scheme coordinator thinks fit.

In addition, the scheme coordinator is also responsible for, insofar as is reasonable, seeking out and bringing to the attention of the Chief Executive any additional or alternative funding sources that could ensure that charges and contributions under any funding arrangement for infrastructure under the relevant scheme as kept as low as possible.

The scheme coordinator may be assigned other tasks by the Minister after consultation with the Chief Executive.

In carrying out their duties the scheme coordinator will be guided by: an enforceable Code of conduct pursuant to Schedule 3; guidelines and principles regarding the development of funding arrangements, and proposals for the imposition of charges and contributions (see subsections 166(2) and (5) and the procurement and delivery of infrastructure subsection 168(2)).

The scheme coordinator may be a suitably qualified person, a committee or a precinct authority and is appointed (or removed) by the Chief Executive acting with the concurrence of the Commission.

Where to look—sections 165, 166, 167 and 168

68— How is an Infrastructure Scheme adopted?

When the Minister receives a report on the proposed scheme from the scheme coordinator he or she may determine to do one of three things:

1. proceed with the scheme as set out in the report;
2. proceed with the scheme with scheme subject to any variations, exclusions or inclusions as the they think fit; or

3. not to proceed with the scheme.

If the Minister decides to proceed with the scheme as set out in the report without any changes, he or she must publish the final report in the Gazette and on the SA Planning Portal.

However, the Minister before making any significant variations to the scheme must refer it back to the scheme coordinator for their consideration, review the inclusion of any proposed charges, seek the advice of the Commission, and take reasonable steps to consult with affected Councils, landowners or any other person or body the Minister determines to be relevant.

Any variation made to the scheme must be published in the Gazette and on the SA Planning Portal.

Once a scheme has been adopted by the Minister, the Chief Executive must ensure that the Commission is kept informed about the operation of the scheme and any significant changes made to it.

Where to look—section 167

69— How is an Infrastructure Scheme funded?

Basic Infrastructure Schemes

A funding arrangement for a basic Infrastructure Scheme consists of a charge on land being placed over land within a designated growth area and:

- may provide for the adjustment of the charge under an index, or at a rate, determined or approved by ESCOSA, or some other prescribed person or body; and
- must also specify arrangements for the periodic review of the charge and may provide for any matter to be considered or determined by ESCOSA, or some other prescribed person or body.

A funding arrangement for a general Infrastructure Scheme may consist of one or more of the following:

- the provision of funds from public or private sources (including guarantees provided by the Treasurer);
- exemptions from 1 or more state taxes, levies or local government rates;
- in the case of a charge associated with a basic Infrastructure Scheme, the imposition of a charge, including by establishing a designated growth area; and
- in the case of a general Infrastructure Scheme, the collection of contributions including by designating the relevant contribution area or areas.

In addition the funding arrangement may also include:

- a scheme for rebates and other adjustments in relation to contributions, and provide for any charge or other amount to be imposed, collected, rebated or adjusted according to a determination of ESCOSA, or of some other specified person or body, and;
- a scheme for other works to be undertaken on an "in kind" basis and provide for other matters determined by the Minister.

General Infrastructure Schemes

A General Infrastructure Scheme, must specify arrangements for the periodic review of the levels and amounts of contributions and may provide for any matter to be considered or determined by ESCOSA, or by some other prescribed person or body, on application by the Minister or a Council.

A funding arrangement or variation to a funding arrangement has no force or effect unless or until it has been approved by the Governor by notice published in the Gazette.

The Governor can only approve a general Infrastructure Scheme if two preconditions have been satisfied:

1. First, the Minister must only recommend to the Governor the funding arrangement be approved after receiving a report in support from the State Planning Commission which also sets out the results of the consultation it has undertaken in relation to this matter with the person or bodies to be consulted: infrastructure providers, land developer (or their representatives), the LGA, relevant Councils or Councils and any other person or body specified by the Minister.

In making a recommendation in support to the Minister, the Commission must also be satisfied that the contributions, rebates and other adjustments which form the funding arrangement are fair and equitable, would not unreasonably disadvantage small landowners and the matters and principles referred to in clauses 156(5) and 158(2), which, respectively refer to the impacts and desired effects of the contribution charges have been considered.

2. Second, the funding arrangement must have been approved by 100 per cent of the owners of private land (non-government land) within the contribution area or areas.

Where the Governor approves or varies a funding arrangement, the Minister must prepare a report that sets out the funding arrangement and information about any contribution that is to be collected or, if relevant, the extent of a variation, furnish a copy of the report to the ERD Committee, and publish a copy of the report on the SA Planning Portal.

On receiving the report the ERD Committee has 28 days within which to resolve to either, not object to the contributions scheme; suggest amendments; or object.

If at the end of 28 days (excluding the period 15 December to 15 January inclusive and any election period), the ERD Committee has not made a resolution, it will be conclusively presumed it does not object to the contributions scheme and does not propose to suggest any amendments.

If the Committee resolves to suggest an amendment, the Minister may proceed to make the amendment; or report back that he or she are unwilling to make the amendment.

The ERD Committee may then either object or not object to the contributions scheme.

If it objects, then copies of the report furnished to the ERD Committee must be laid before both Houses of Parliament.

If, within 14 days of the report being laid before it, a House of Parliament passes a disallowance resolution, the contributions scheme will cease to have effect.

However, if the Minister consults the ERD Committee before the contributions scheme has been finalised the Committee may resolve that a report does not need to be provided to it and will come into effect when approved by the Governor and published in the Gazette.

Where to look—section 169

70— When do the charges or contributions become payable?

Basic Infrastructure Schemes

The Basic Infrastructure Scheme is a one off charge to land owners within the designated growth area (which is specified when the scheme is set up) at the time the land is subdivided or work starts on the development.

Therefore there is no need to contribute to infrastructure unless the landowner intends to develop their land at the time the scheme is put in place or at some time in the future.

If for example a scheme is put in place which encompasses a food producing area, individual farmers will be free to continue working their land and not contribute. The contribution charge will only become payable if the land is subdivided, or work starts on a development.

General Infrastructure Schemes

General Infrastructure Schemes involve a contribution that is applied to landowners within a specified area or areas (the 'contribution area') that is paid over a period of time. The requirement for persons within a General Infrastructure Scheme contribution area to make or begin to make contributions will be related to the point when a benefit will begin to, or is intended to accrue and will be triggered by events which, for example, could include:

- the division of land;
- a change to the Planning and Design Code; or
- an approval or the undertaking of the development (which can include the construction of infrastructure).

However, it must be emphasised, a General Infrastructure Scheme can only proceed if all the landowners within the contribution area agree to participate.

Where to look— Basic Infrastructure Schemes: section 166(2)(c) and 166(3); General Infrastructure Schemes: subsections 166(5)(1)(d)(i)(B) and 166(5)

71— What happens when a scheme is wound up?

Schemes may be wound up by the Minister on the recommendation of or after consultation with the scheme coordinator. Generally a scheme will be wound up when all the works within the scheme's scope have been completed or if there has been a change in circumstance that necessitates winding up.

On winding up a scheme, the Minister may:

- transfer the scheme's assets and liabilities to a relevant government agency; or
- vest assets in Councils or infrastructure providers (if agreed).

The scheme's associated statutory fund is wound up by the Treasurer who may transfer any balance to the Planning and Development Fund, another fund or account, or other purpose. Any contributions collected as part of a general Infrastructure Scheme must be applied to for a purpose that benefits the community in the contribution area. The Treasurer may only act after consulting with the Minister.

Where to look—section 184

72— What powers are conferred to undertake infrastructure works?

To discharge their functions, scheme coordinators and infrastructure providers authorised by an infrastructure delivery scheme need powers to carry out the works envisaged by a scheme. A range of these are set out in the Act, reflecting powers available under a number of other laws.

Works powers include:

- installing, altering, or demolishing infrastructure;
- operating or maintaining infrastructure;
- undertaking earthworks and other works on land;
- carrying out road works and installing traffic control devices;
- carrying out rail works;
- carrying out water management works; and
- various other ancillary powers.

There is also a power to enter, pass across or temporarily occupy land, and to acquire land in accordance with the *Land Acquisition Act 1969*.

The Chief Executive of the Planning Department may, with Ministerial approval, take over any work being carried out by the scheme coordinator or another party if considered necessary to do so. For this purpose the Chief Executive is incorporated, enabling her or him to enter into contracts and exercise other powers of a body corporate.

Where to look—section 185 to 191

73— How much change has been made under this part?

This part is new, but some provisions have been adapted from the *Natural Resources Management Act 2004* and various infrastructure laws.

Part 14—Land management agreements

Existing provisions relating to land management agreements have been migrated into the Act from the current Act with minor adjustments to provide that validity of an agreement is no longer dependant on its inclusion on a register in accordance with the regulations, but retain the provision that the agreement is of no force or effect until noted on the title of the property.

Where to look—sections 192 and 193

Part 15—Funds and off-set schemes

74— What has happened to the Planning and Development Fund?

The Act continues existing provisions establishing the Planning and Development Fund and provisions regarding the application and management of the fund remain substantially unchanged. For increased flexibility, the fund's uses have been expanded to include providing assistance or grants to a Joint Planning Board, another entity acting under this act, or an entity acting under the *Urban Renewal Act 1995*. Where to look—sections 194 to 196

75— What are 'off-set schemes' and how do they work?

The Act provides for a range of 'off-set schemes' including the existing open space contribution scheme and urban trees funds. Transitional provisions will migrate existing car-parking funds which will in future be included under the new off-set schemes.

A new feature is the capacity to establish other schemes, beyond existing car-parking funds, for 'off-setting contributions'. This allows the Minister, a Council or a Joint Planning Board to establish a scheme that facilitates delivery of 'provide or pay' contributions in the public interest by new developments in particular locations or of a specified class. Subject to the terms of the scheme, the designated entity responsible for establishing the scheme can accept 'in kind' work or contributions in lieu of works to provide for or address a particular matter identified by the scheme. On winding up of a scheme the Minister may determine how any amount in credit may be used or applied.

A scheme may include the ability for the person proposing to undertake a development or who will obtain benefit from it to:

- make a contribution to a fund established as part of the scheme;
- undertake work or achieve some other goal or outcome on an in kind basis;

or do both of the above.

Schemes will be governed by the terms of the Planning and Design Code and relevant Design Standards where they deal with the public realm or infrastructure.

This new feature will provide a more flexible arrangement that enables Councils to administer targeted streetscape or other improvements in an area, while also allowing the state to leverage broader outcomes such as affordable housing.

Where to look—sections 197 to 200

76— How has the open space contribution scheme been changed?

The existing open space contribution scheme will be maintained.

However, an important adjustment will be made to the scheme in this Act. Where a person applies to construct a multi-unit building the State Planning Commission may require the applicant to make a monetary contribution as specified in the regulations. The will address the inconsistency in the current law which allows serviced apartments and similar multi-unit dwellings to avoid making a fair contribution to the open space scheme by choosing not to subdivide the building into individual units.

Where to look—clauses 198 and 199

77— How much change has been made under this part?

Provisions relating to the open space scheme and urban trees funds have been migrated from the current Act. The new schemes for 'off-setting contributions' replaces the ability to establish a car-parking fund under the current Act with a wider scheme of off-sets enabling monetary or in kind contributions to be made to a variety of community benefits.

Part 16—Disputes, reviews and appeals

78— What types of decisions are subject to a right of review?

The Act establishes a right of review and appeal for matters related to development authorisations, local heritage listings, restricted developments, certificates of occupation of buildings on a temporary basis, the construction of party walls or the proportion of the expense to be borne by the respective owners, and associated matters and the application of the Building Rules. Most of these reflect existing appeal rights that have been migrated from the current Act.

Where to look—sections 200 and 202

79— Will all reviews have to go to court?

Under the current Act, reviews of development authorisation decisions are made by the Environment, Resources and Development (ERD) Court through formal pre-hearing conferences or hearings. The Act will provide alternative options additional to this.

Applicants will be able to apply for a review of an Assessment Manager's decision by the relevant Assessment Panel. A desktop review option will also be available from the court.

Where to look—section 203 and Schedule 6, clause 18

80— How much change has been made under this part?

Apart from new review rights in some circumstances, all other appeal rights available under the current Act will be migrated to the new system. For example, ERD Court review will be newly available for applicants in respect of decisions relating to proposals classified as 'restricted' development. In addition, the Act omits the privative clause in the current Act in relation to major projects that are called in to the Minister or Planning Commission, no longer purporting to preclude judicial review of decisions in relation to such matters.

Part 17—Authorised officers

Existing provisions relating to authorised officers have been migrated into the Act from the current Act.

Where to look—sections 210 and 211

Part 18—Enforcement

81— How have the penalties changed?

Penalty levels were reviewed and compared with those in the current system.

The penalties in the Act have been amended so that they are more consistent in their application across like offences and generally reflect levels appropriate given the nature of offending and the need to deter contraventions.

For example a Division 1 penalty at present has a maximum \$60 000 fine or 15 years imprisonment whereas under the Act the highest fine is \$250 000 and maximum imprisonment term is 2 years. Moreover, corporate multiplier penalties are also included in planning law for the first time (see below).

Penalties are no longer classified into divisions but now have a prescribed maximum. As in the current Act, default penalties apply for certain penalties (ie for each day offending continues after conviction).

The Act allows for imposition of penalties, not exceeding \$10 000, for breaches of the regulations. It also allows for fixing of expiation fees not exceeding \$750 for any offence against this Act or the regulations.

Where to look—Part 18, Divisions 1 and 2

82— What new sanctions are available?

The Act provides for a range of new sanctions designed to improve compliance and provide greater deterrence to potential offenders.

Existing rights of civil enforcement (including by third parties) are continued, with power to enable the court to make various orders including payment of compensation for losses or damages incurred.

In addition to existing penalties and order-making powers carried over from the current Act, new enforcement options and penalties include:

- enforceable voluntary undertakings;
- adverse publicity orders;
- orders for recovery of economic benefit; and
- corporate multiplier penalties and directorial liability.

The Commission will also have the ability to substitute civil penalties in lieu of criminal penalties.

Where to look—Part 18 generally

Enforceable voluntary undertakings

Modelled on consumer law, the Act includes the ability for the Chief Executive to enter into enforceable undertakings in lieu of criminal proceedings. An undertaking does not constitute an admission of guilt, but failure to comply with its terms is sufficient grounds for the Chief Executive to apply to a court for enforcement of the undertaking.

This provision is designed to be used in relation to repeated failures that come to light from time to time as an alternative to court proceedings.

Where to look—section 230

Adverse publicity orders

If a person is found guilty of an offence the court may make an adverse publicity order which requires the offender to publicise or to notify a person or class of persons of the offence, its consequences, the penalty imposed and any other related matter.

The offender is also required to report to the State Planning Commission as to the action they have taken in accordance with the order.

Non-compliance by the offender can result in the court providing an order to the Commission permitting action to be taken. The Commission is entitled to seek any costs associated with taking action from the offender.

Where to look—section 223

Recovery of economic benefits

In addition to any penalty, the court may order a person to pay to the Commission an amount not exceeding its estimation of the amount of economic benefit acquired, accrued or accruing, as a result of a contravention. This new penalty will allow commercial profits made from breaches to be confiscated if the court considers it appropriate to do so.

Where to look—section 229

Corporate multiplier penalties and liability

A number of provisions create additional enforcement options in relation to bodies corporate. Corporate multiplier penalties, directorial liability and the like are designed to target enforcement against companies which stand to profit from breaches of planning rules, to prevent penalties being treated as a 'cost of doing business'.

Where to look—sections 220, 221, 226 and 227

83— How much change has been made under this part?

In addition to existing civil enforcement rights continued from the current Act, the Act provides for higher penalties better aligned with the rest of the state's statute book and penalty regimes, and a range of new sanctions, detailed above.

Part 19—Regulation of advertisements

Existing provisions relating to regulation of advertisements have been migrated into the Act from the current Act with minor adjustments so that a class of advertisement may be exempted by the regulations.

Where to look—section 231

Part 20—Miscellaneous

84— How does the Act address copyright issues?

Copyright issues have been a problem for some time within the planning system, both for public consultation and for later building owners. Constitutionally, these are federal matters and the state can only legislate within the terms of its own copyright licence available under federal law, and therefore cannot be extended to Councils.

To address this issue, the Act incorporates new section 238 which provides that the Minister, State Planning Commission or Chief Executive:

- may, acting for the services of the state, publish any document or material in which copyright exists; and
- can refuse to accept any document or material (including for lodging on the Planning Portal) unless there is an agreement allowing for its use for planning system purposes.

Because Councils will be required to use the new e-planning system (which will be ‘owned’ and operated by the State) to manage documents they receive, this provision will allow for copyright issues that currently limit what Councils can publish to be resolved in a systemic fashion under the umbrella of the State Government’s copyright licence.

The government will work closely with the local government sector to establish appropriate procedures and rules to govern the application of this provision.

Where to look—section 238

85— How much change has been made under this part?

Much of this part has been migrated from the current Act with minimal change, other than the provision to ensure material published on the SA Planning Portal complies with copyright requirements, and the requirement for the Registrar-General and other authorities to note, record and register transactions, and exempting vesting of property by regulation from stamp duty.

Schedule 1—Disclosure of financial interests

Existing provisions relating to disclosure of financial interests have been migrated into the Act from the current Act with minor adjustments.

Schedule 2—Subsidiaries of Joint Planning Boards

Provisions relating to subsidiaries of Councils under the Local Government Act have been migrated into the Act with minor adjustments.

Schedule 3—Codes of conduct and professional standards

86— What types of professional investigations may be undertaken?

The Act provides for regulations to be made relating to compliance with Codes of conduct and investigation of alleged breaches. This expands upon existing investigative powers in the current Act.

In relation to Accredited Professionals, the scheme allows for disciplinary action to be undertaken under the aegis of the Commissioner for Consumer Affairs (as the primary administrator of the Accreditation Scheme—see above) or, as appropriate, by the South Australian Civil and Administrative Tribunal (which has disciplinary powers under other laws).

It is expected that the regulations will be developed in close consultation with the Commissioner for Consumer Affairs, as the state's principal occupational licensing regulator.

Where to look—clause 3

87— How much change has been made under this part?

Existing provisions relating to Codes of conduct have been migrated into the Act from the current Act with adjustments to provide for Codes of conduct for new entities under the Act, as well as the professionalisation and accreditation of assessors. In addition regulations may newly provide for matters relating to compliance with a Code of conduct including for Accredited Professionals, and for the Commissioner for Consumer Affairs to administer a scheme for Accredited Professionals.

Schedule 4—Performance targets and monitoring

88— How will performance be monitored?

Performance monitoring will be a key feature of the new planning system and is vital to ensure that the system is operating efficiently and is achieving the goals set for it by the State Government from time to time.

The Act enables the Minister, on the recommendation of the Planning Commission, to set targets in relation to State Planning Policies and the Planning Agreements that apply to a Joint Planning Board. Targets must set a clear and measurable goal and specify a performance measure to enable the monitoring of progress over time.

The Commission is then tasked with monitoring achievement against the targets, to publish periodic updates and to review the targets regularly. The Commission is also to administer a scheme for regular audits of the system itself, to ensure efficiency in system operations.

Both of these will be subject to regular reporting, including in the annual report provided by the Commission to the Minister each year.

Where to look—clauses 1 and 2

89— How is a review of performance to be undertaken?

If the Minister, after consultation with the Commission, considers a Council or other responsible body under the legislation has failed to comply with or effectively discharge its statutory obligations to a significant degree, the Minister may appoint an investigator to look into the reasons for this and report back on the matter. This reflects similar provisions in the existing Act.

Once an investigation has been carried out, the Minister may issue directions to rectify the matters identified which the Council or relevant body must comply with.

Where to look—clause 3

90— How much change has been made under this part?

This entire part is new. It requires the State Planning Commission to establish schemes to monitor and evaluate performance under the new planning system and to provide for any variations to ensure that it is operating optimally. It also enables investigation of the performance of a person or body.

Schedule 5—Regulations

The existing schedule has been migrated into the Act from the current Act with some adjustments.

Schedule 6—Repeal and certain amendments

While the bulk of consequential amendments will be dealt with in a subsequent Act, a number of key consequential amendments are included in this schedule.

91— How are existing character laws revised by the Act?

The *Character Preservation (Barossa Valley) Act 2012* and the *Character Preservation (McLaren Vale) Act 2012* have both been amended to replace references to the current Act with the title of the new legislation, and the names of entities and instruments under the current Act to those referenced in the Act.

Subsection 7(4) of the Act also provides that where land currently included within character preservation area ceases to be included, it instead becomes an environment and food production area.

Where to look—Schedule 6, Parts 3 and 4

92— How is the *Environment, Resources and Development Court Act 1993* amended by the Act?

The Environment, Resources and Development Court Act has been amended to streamline requirements and allow for imposition of time limits where fair and adequate presentation of cases would not be impeded, as well as to provide for electronic hearings and proceedings without hearings.

Where to look—Schedule 6, Part 5

93— How is the *Liquor Licensing Act 1997* amended by the Act?

The Liquor Licensing Act has been amended to require the Commissioner of Liquor Licensing to take steps to ensure that a Code of practice, assessment of a licence application or imposition of conditions does not conflict with nor replicate matters addressed under the planning system. This mirrors section 42 of the Act which in order to prevent duplication and dual regulation, provides that the Commission must establish, by Practice Direction, a scheme to ensure that planning assessment or controls including conditions do not conflict with nor duplicate matters dealt with or addressed under another licensing or regulatory regime under another Act.

The Liquor Licensing Act is also amended to preclude a Council in whose area licensed premises or premises proposed to be licensed are situated from intervening in licensing decisions on planning matters covered under the Act. The aim is that Councils consider planning matters only in relation to development authorisation and liquor licensing matters only in relation to the licensing decision.

Where to look—Schedule 6, Part 6

94— How is the *Local Government Act 1999* amended by the Act?

Apart from technical amendments to reflect the Act's title, the Local Government Act is amended to:

- provide that a person making an alteration to a public road is not required to obtain separate authorisation from the Council if the alteration is approved as part of a development authorisation under the Act (previously this applied only for alterations to permit vehicular access to and from land adjoining the road);

- provide that a person does not require a permit authorising them to use a public road for business purposes if the use of the road is approved as part of a development authorisation under the Act (examples in the LG Act include a pie-cart, roadside kiosk, or outdoor dining tables);
- require a person who alters a public road or uses it for business purposes to comply with any Design Standard or other requirement under the Act (e.g. the Planning and Design Code); and
- provide a right of appeal to the ERD Court against a Council unreasonably delaying development in accordance with a development authorisation.

These changes are made to address duplication between development authorisation and Council permits where delays would compromise the viability of a proposed development. Issues such as outdoor dining permits and driveway cross-overs have frequently been reported as problematic areas of duplication and inconsistency that have at times frustrated land owners who have already obtained relevant development approvals. The ability for Councils to impose reasonable charges when the development is undertaken will however be retained.

Where to look—Schedule 6, Part 7

95— How is the *Public Sector Act 2009* amended by the Act?

In order to better coordinate public sector agencies' activities across the state, the amendment enables the Premier to direct agencies to operate on the basis of planning regions established under this Act. Such a direction is not binding if it would impede a quasi-judicial or statutorily independent function of an agency.

Where to look—Schedule 6, Part 8

96— How is the *Urban Renewal Act 1995* amended by the Act?

References to the Development Act and existing entities and instruments under that Act in the Urban Renewal Act are amended to refer to the new title of the legislation and name of the entities and instruments. In addition, certain matters are to apply for the purposes of the new Act.

Where to look—Schedule 6, Part 9