

LGA POSITION- CLAUSE BY CLAUSE SUMMARY

Planning, Development and Infrastructure Bill 2015 (introduced to the House of Assembly on 8 September 2015)

Clause	Title	Content	LGA Comment	Amendment Sought
Part 1—Preliminary				
1.	Short title	<i>Planning, Development and Infrastructure Act 2015</i> is the bill's short title.	Nil	Nil
2.	Commencement	The commencement date is to be proclaimed.	Seeking confirmation that commencement cannot occur until the implementation Bill has also been passed	Nil
3.	Interpretation	Clause contains definitions of key terms. The definition of 'development' largely remains the same. Regulations may still declare other acts or activities as being development, as well as other acts or activities as not being development (schedules 2 and 3 of the Development regulations 1993).	Missed opportunity to clarify the definition of a 'building' in terms of temporary structures and also the broader definition of 'development' (the subject of many court proceedings). This should be contemplated in the second Bill. The definition of adjacent land should be increased to 60m A definition of 'Community Engagement Charter' should be included in clause 3 with reference to clause 44. The definition of essential infrastructure should include open space Clarification- Does the definition of essential infrastructure include public transports and public lighting?	Refer to comments
4.	Change of use of land	Clause 4 sets out the concept of a change of use of land. This concept has been amended to permit the Planning and Design Code to specify a class of use under the Code. Under the amended definition of 'change of use of land', a change of use will not have occurred if it is a change of use within a class specified in the Planning Design Code. Also a change of use as specified in the Planning Design Code as a minor change of use will not be regarded as a change of use of land under the Bill. The revival of the use of land after a period of discontinuance is considered to be a continuance of an existing use if the use is allowed under the Planning and Design Code.	Further consideration as how you prove prior existing use rights is required. The Bill should establish a mechanism for the declaration of a land use from a particular point in time (with a process to be determined by a practice direction) There are no time limitations on a use that is allowed to be revived under the Planning and Design Code. This means that a use could be revived without requiring development approval, 40 years after it had ceased, provided it is a use permitted by the Planning Design Code. An appropriate time limit should be included (no more than 5-10 years) There should not be an 'as of right' revival of impacting land uses (such as those currently listed in Schedule 21 & 22) Clarifying and rationalising the concept of a change of use is generally supported. However, this clause could have significant impacts if the 'classes' use to be specified in the Planning & Design Code (PDC) are too broad. Different uses attract different planning impacts, for example different hours of operation, different parking demands, etc. Local Government must have a role in determining the classes in the PDC.	Include an additional clause that provides for the declaration of a land use from a point in time. Include an additional part to 4(3) to set a 5-10 year time limit and exclude environmental impacting land uses.

5.	Planning regions and Greater Adelaide	The Governor may by proclamation made on the recommendation of the Minister divide the State into planning regions for the purposes of the Bill and define one of the planning regions constituting Greater Adelaide for the purposes of the Bill.	Councils should receive a copy of any advice provided to the Minister by the Commission at the outset of the consultation period.	Insert a new clause after 5(4) to require the Minister to provide a copy of any advice received by the Commission to any council directly affected at the commencement of the consultation period.
6.	Subregions	The Minister may by notice published in the Gazette and on the SA Planning Portal establish a sub-region within a planning region.	The Bill does not provide for consultation with affected Councils with respect to the establishment of a sub-region.	Replace 6(3) with the same or similar text contained within 5(4)
7.	Environment and food production areas—Greater Adelaide	The Minister may divide Greater Adelaide, other than any part of Greater Adelaide within a character preservation area, into 1 or more environment and food production areas. Clause further outlines procedural and appeal requirements. For the avoidance of doubt, the establishment of environment and food production areas does not affect the operation of this Act, a Mining Act or any other Act, except as provided for ie to prevent division of land for the purpose of residential development.	Clause still under review. Relevant Councils must be consulted prior to the establishment of an area Sensible growth within peri-urban townships needs to be provided for to ensure the sustainability of physical and community assets into the future. Without opportunities for growth, these towns may lose services and populations.	Amend Clause 7(6) to include ‘and any relevant Council’.
8.	Application of Act—general provision	Operation of the Act extends throughout the State. Regulations may further provide that specified provisions do not apply or apply with variations to parts of the State or particular classes of development.	Nil	Nil
9.	Application of Act—Crown	The Act binds the Crown in right of the State so far as the legislative power of the State extends but not so as to impose any criminal liability on the Crown.	Nil	Nil
10.	Interaction with other Acts	The Act does not limit or derogate from the provisions of any other Act.	Nil	Nil
11.	Recognition of special legislative schemes	Clause recognises special legislative schemes that are inextricably linked with the planning system. These schemes are named in the Act, declared by another Act or prescribed by regulations.	Include Adelaide Park Lands Act 2005	Refer to comment

Part 2—Objects, planning principles and general responsibilities

Division 1—Objects and planning principles

12.	Objects of Act	The Bill’s objects are to support and enhance the State's prosperity by creating an effective, efficient and enabling planning system, linked with other laws. Person or body involved in the Act’s administration must have regard to, and seek to further its objects.	The objects of the act have become too strongly focused on the economic aspects of development. There is strong concern that the social and environmental objectives are given little regard, providing the impression that future development policy will be weighted towards economic outcomes rather than seek with social and environmental goals.	Add 12(1)(c) to incorporate words such as ‘creates attractive, resilient and sustainable communities’
13.	Promotion of objects	A person or body involved in the administration of the Act must have regard to, and seek to further, the objects established by this clause.	Nil	Nil

14.	Principles of good planning	When furthering the objects of this Act, regard should be given to: (a) <i>long-term focus principles</i> (b) <i>urban renewal principles</i> (c) <i>high-quality design principles</i> (d) <i>activation and liveability principles</i> (e) <i>sustainability principles</i> (f) <i>investment facilitation principles</i> (g) <i>integrated delivery principles</i> .	The principles listed are broad and comprehensive, but have not reflected the importance of community participation as a principle of good planning. However, they could be contradictory and Care needs to be taken to ensure that the principle based approach to legislation does not lead to grounds for administrative law challenge. Clarification- what is the status of the Principles and could they give rise to a legal challenge?	Insert a new clause 14(h) community participation to reflect the appropriate role of the community in strategy, policy and assessment. Insert a new clause to provide clarity around the role of the objects and principles in the Act will be used (what is their purpose?)
Division 2—General duties and coordination of activities				
15.	General duties	Persons or bodies seeking to benefit from or exercise functions under the Act must be cooperative, honest and professional (does not give rise to rights or liabilities).	The LGA must be consulted prior to the adoption of principles and benchmarks by the Minister relating to the role of Council planning staff and Elected Members.	Insert a new clause after 15(3) requiring the Minister to consult with the LGA prior to the establishment of service benchmarks
16.	Responsibility to coordinate activities	Any State or local government body or agency will seek to implement policies consistent with the Act and cooperate with anybody or agency in the administration of the Act.	Better integration and coordination of activities across and between governments is one of the core LGA Planning Reform objectives. However, it is not clear how this clause will operate in practice. Local Government is required to development and implement a range of policies under the Local Government Act and other Acts. How will a Council be required to demonstrate compliance with this clause and would this be cause for an administrative law challenge?	Refer to Comment
Part 3—Administration				
Division 1—State Planning Commission				
Subdivision 1—Establishment and constitution of Commission				
17.	Establishment of Commission	Clause establishes the commission as a body corporate and instrumentality of the Crown, subject to general control and direction of the Minister.	A key issue for the LGA is that the Commission should be independent. The Minister's general power of direction is not consistent with the Commission's independence from the State. The checks and balances proposed by Clause 17(5) do not provide adequate comfort that the Commission will remain independent given that only those closest to the Commission's processes would ever be in be in a position to observe a breach of this section.	Insert a new clause that requires all advice, subject to accepted confidentiality provisions, from the Commission to the Minister to be made publicly available prior to or at the time that a decision is taken.

18.	Constitution of Commission	Specifies at least 4 and not more than 6 persons may be appointed plus the Chief Executive of DPTI, and provides that the Minister must when making appointments consider providing a specified range of qualifications, knowledge, expertise and experience.	The role of the LGA in nominating a member to the Commission has been removed. A contemporary understanding of Local Government is essential and the LGA must have a role in ensuring that this expertise is present on the Commission. The LGA queries why appointments to the Commission are made by the Minister and not the Governor. Appointments to the Commission must be subject to parliamentary oversight.	Amend 18(1)(a) to replace ‘appointed by the Minister’ with ‘appointed by the Governor’ and make any consequential amendments to enable that change. Insert a new clause following clause 18(2) to require contemporary local government knowledge and experience as being essential to the functions of the Commission. Provide a role for the LGA in nominating a person with a knowledge of an experience in local government (as per Clause 10(3)(c) in the Development Act). Amend 18(3)(f) to remove ‘public administration or law’ and move these to a new 18(3)(g)
19.	Special provision relating to constitution of Commission	Commission may appoint 1 or 2 persons to act as additional members of the Commission to deal with any matter arising under this Act under the conditions laid down in this clause.	Nil	Nil
20.	Conditions of membership	Conditions, removal, vacancies and terms (not exceeding 3 years).	Nil	Nil
21.	Allowances and expenses	To be determined by the Minister.	Nil	Nil
Subdivision 2—Functions and powers				
22.	Functions	Lists functions of Commission as State’s pre-eminent planning advisory and development assessment body.	The LGA contemplated that the Commission (subject to being satisfied that the Commission would be independent) would undertake a broader range of functions and that decision making powers would be conferred by statute rather than delegation. For instance, the LGA sees a role for the Commission in the approval of regional plans and policy amendments without the need for a further approval from the Minister. Concerns have also been raised about the role of the Commission in both policy setting and development assessment. It’s recommended that assessment functions be delegated to a committee of the Commission, which includes a hybrid of Commission members (to provide a feedback loop about policy interpretation), Local Government representation and other specialist experts.	Expand the functions of the Commission listed in Clause 22(1) to include: - Approval of regional plans (unless a joint planning board has been appointed) - Development of and approval of amendments to the P&D Code - Working with Local Government to develop the Engagement Charter Include reference to the LGA in Clause 22(f)(iii). Insert new clauses to establish a committee of the Commission to undertake assessment.
23.	Powers	The Commission has the powers of a natural person and can do anything necessary or convenient to exercise of its functions.	Nil	Nil

24.	Minister to be kept informed	The Commission must keep the Minister reasonably informed about its activities.	Nil	Nil
25.	Minister to have access to information	Minister may collect, retain, request or have information in the possession of the Commission.	Nil	Nil
Subdivision 3—Related matters				
26.	Validity of Acts	Defect in appointment/vacancy does not render Commission’s acts invalid.	Nil	Nil
27.	Proceedings	Constituting a quorum, voting, conferences, resolutions, disclosure of interests, minute keeping etc.	Nil	Nil
28.	Disclosure of financial interests	Disclosure of financial interests in accordance with Schedule 1.	Nil	Nil
29.	Committees	Commission must establish such committees as may be required by the regulations, or the Minister, and may with the approval of the Minister establish other committees.	Nil	Nil
30.	Delegations	Commission may delegate functions or powers subject to conditions/limitations specified, which functions or powers may be further delegated and are revocable at will.	The ability of the Minister to dictate that delegations be put in place may undermine the independence of the Commission. It is highly unusual for legislation to provide for the dictation of delegations.	Delete Clause 30(2)(b)
31.	Staff and facilities	The Minister may approve provision of assistance by public sector staff.	Nil	Nil
32.	Annual report	The annual report is due by 30 Sept each year to the Minister and to the parliament within 6 sitting days of receipt.	Nil	Nil
Division 2—Chief Executive				
33.	Functions	The CE of the Department responsible for the administration of the Act is responsible to the Commission for implementing its policies and decisions, managing its business efficiently and supervising any staff.	Nil	Nil
34.	Delegation	The CE may delegate any of the CE’s functions/powers under this Act.	Nil	Nil
Division 3—Joint planning arrangements				
Subdivision 1—Planning agreements				
35.	Planning agreements	Minister may enter into a planning agreement with councils, Ministers who request to be made a party to the agreement or other entity that so requests or agrees. Clause details constitution of planning board, terms of expiry, criteria for membership and regulations.	There is strong concern that, as drafted, the Bill would allow the Minister and any other entity to enter a planning agreement that does not include a Council. It is understood that this was not the Government’s intention and this point needs to be clarified. Elected Members must not be precluded from the membership of a joint planning board. Many Elected Members make a strong contribution to RDA and NRM Boards etc. The criteria for board membership should be by agreement of the parties, rather than dictated by the Minister.	Amend 35(1) to clarify that a planning agreement <u>must</u> be between the Minister and at least one Council. Other parties may be added, but only upon the agreement of the Minister and the Council(s) Delete Clause 35(3) and incorporate criteria for board membership as a matter for a planning agreement under 35(2)
Subdivision 2—Joint planning boards				

36.	Joint planning boards	Minister to gazette notice of establishment (or abolition) of a joint planning board.	Clarification- could a joint planning board use the rating powers under the Local Government Act? What is the process by which a joint planning board would have additional statutory powers conferred?	TBA
37.	Disclosure of financial interests	Members of joint planning board who are not council members must disclose financial interests.	Nil	Nil
38.	Committees	A board may establish committees etc as it sees fit to advise or assist in performing its functions and/or exercising its powers.	Nil	Nil
39.	Subsidiaries	Board may establish a subsidiary to perform functions or exercise powers etc, or to hold or administer land etc, on approval of the Minister without derogating from the power of the board.	Nil	Nil
40.	Delegations	A board may delegate its functions or powers to a person, office or position, subject to any conditions specified. Such a delegation may be further delegated, and is revocable at will.	Nil	Nil
Subdivision 3—Appointment of administrator				
41.	Appointment of administrator	The Minister may appoint or revoke an administrator of a joint planning board under specified circumstances.	The remunerations of an administrator should include consultation with the funding partners.	Amend Clause 41(4) to include, ‘by the Minister following consultation with the other parties’
Division 4—Practice directions and practice guidelines				
42.	Practice directions	The Commission may issue practice directions for the purposes of the Bill, including specifying procedural requirements and steps in connection with any matter arising under the Bill. The Commission must by practice direction to be applied under the Bill, establish a scheme with a view to ensuring that planning assessment or controls undertaken or established under the Bill (including through the imposition of conditions under the Bill) do not conflict with or duplicate matters that may be dealt with or addressed under licensing or other regulatory regime under another Act.	The Bill does not protect Councils from any liability or other claim that may arise from relying on a practice direction.	Amend 42(5)(a) to include ‘or another relevant authority’
43.	Practice guidelines	The Commission may with the approval of the Minister make practice guidelines with respect to the interpretation, use or application of the Planning Rules or the Building Rules.	Nil	Nil
Part 4—Community engagement and information sharing				
Division 1—Community engagement				
44.	Community Engagement Charter	Minister is responsible for establishing and maintaining the Community Engagement Charter according to the terms of this clause. Also provides for adoption of alternative ways to achieve compliance with a requirement of the charter.	The Commission should be responsible for establishing the Charter, with parliamentary oversight. Many LGA members do not agree with the principle of scaling back engagement at later stages of the planning process.	Amend 44(2)- the Commission is responsible... Amend 44(3)(b) to remove the words ‘and scaled back when dealing with settled and advanced policy’

45.	Preparation and amendment of charter	Provides that proposals may be initiated by the Minister or Commission (acting on the Minister's behalf) and details consultation and procedural requirements.	The role of Local Government in preparing and amending the Charter must be specifically reflected in the Bill. The preparation of the Charter must be subject to parliamentary oversight.	Amend 45 (2) to include Councils and the Local Government Association. Amend 45(7) to require consultation with the LGA
Division 2—Online planning services and information				
46.	SA planning website	CE is to establish a website—the <i>SA planning portal</i> for the purposes of the Act.	Nil	Nil
47.	Planning database	CE is to establish the <i>SA planning database</i> , which is to be accessible on the SA planning portal. The database must produce textual and spatial information that identifies planning policies, rules and information that apply to specific places within the State.	Nil	Nil
48.	Online atlas and search facilities	CE must establish and maintain an online atlas or search facility that allows a person to search across the website and the database. This must include council-based zoning maps/sets of maps.	Nil	Nil
49.	Standards and Specifications	Commission may prepare and publish standards and specifications that are to apply to the portal, database, atlas or search facility.	It is not clear whether Councils will be directly uploading documents to the portal, database and atlas. If so, Councils should be consulted on any standards and specifications to ensure compatibility with existing systems.	TBA
50.	Certification and verification of information	Any instruments published on the planning portal and certified in accordance with the regulations may be relied on for the purposes of this Act.	Nil	Nil
51.	Online delivery of planning services	The regulations may make provision for the online delivery of planning services and information (eg lodging of applications or publication of information).	Confirmation is required about the extent to which an online system will be automated to make determinations about the category of development etc based on the information submitted by the applicant. If this is the intention, consideration needs to be given to who would be responsible for any legal challenge about an incorrect determination.	TBA
52.	Protected information	The Minister may by notice in the Gazette, issue a direction prohibiting, restricting or limiting access to any document, instrument or material on the SA planning portal under prescribed circumstances.	Nil	Nil
53.	Freedom of information	<i>Freedom of Information Act 1991</i> does not apply to a document that is received, created or held under this Division.	Clarification is required about why this Clause is necessary	TBA

54.	Fees and Charges	With the approval of the Minister, the CE may impose fees and charges re obtaining information, or require a council to make a contribution to the SA planning portal, database or any online atlas/search facility under the Act.	Councils should be excluded from any payment to access information under Clause 54(1) This Clause exposes Councils to an unlimited liability to fund an e-planning system. As the CE would be able to Bill a Council at any time for any amount, this would be impossible to budget for. The LGA is seeking a commitment that the State Government will partner with Local Government to develop a fair and reasonable costing model for the SA planning portal etc.	Amend Clause 54(1) to exclude this Clause from applying to Councils. Include a new subclause to stipulate that any payments required by Councils must relate to a prescribed scheme that will be included in the Regulations following consultation with the LGA
Part 5—Statutory instruments				
Division 1—Principles				
55.	Principles	Outlines the principles that must be taken into account for instruments created under this Part	The Principles should outlines that statutory instruments should aim to achieve consistency, while providing scope for local variations that reflect special and unique local character	Include a new Principle as per comment.
Division 2—Planning instruments				
Subdivision 1—State planning policies				
56.	Preparation of state planning policies	Minister may prepare state planning policies that will set out the State's overarching goals for the planning system.	Notwithstanding Clause 68, there is a need to include a role for Local Government in the development of state policies.	Include a new clause requiring consultation with the LGA in the preparation and amendment of a state planning policy
57.	Design quality policy	Minister must ensure a state planning policy to be called the <i>design quality policy</i> that specifies design policies and principles is to be applied in the other instruments under this Division.	Refer to Clause 56	Refer to Clause 56
58.	Integrated planning policy	Minister must ensure there is a specific state planning policy called the <i>integrated planning policy</i> that specifies policies and principles to be applied with respect to integrated land use, transport and infrastructure planning.	Refer to Clause 56	Refer to Clause 56
59.	Special legislative schemes	A special legislative scheme is another Act (or part of another Act) declared as such addressing character, or other legislative schemes that are inextricably linked with the planning system. Minister must	Refer to Clause 56	Refer to Clause 56
Subdivision 2—Regional plans				
60.	Regional plans	Minister must prepare a regional plan consistent with any state planning policy for each planning region. If a joint planning board has been constituted, the regional plan for that area must be prepared by the joint planning board subject to this clause.	Whether being prepared by the Minister or a joint planning board, the Bill must require all Councils within a designated region to be consulted during the preparation of a region plan. There could be coordination issues where a joint planning board has been constituted but does not have jurisdiction over whole planning regions. Clarification is required about how this would work in practice.	Insert a new subclause to require consultation with Councils during the preparation or amendment of a region plan.
Subdivision 3—The Planning and Design Code				

61.	Establishment of code	Minister must prepare and maintain the <i>Planning and Design Code</i> .	A key point consistently expressed by LGA members is that there is very little detail provided about the proposed form and content of a Planning and Design Code. The Bill only provides the head powers necessary for the Code to be created and used as an assessment tool, and as such it is difficult to express support or otherwise for the Code.	Nil LGA member will need to have significant input into the development of the Planning and Design Code.
62.	Key provisions about content of code	Planning and Design Code must set out a comprehensive set of policies, rules and classifications applied in the various parts of the State including the requirements of the code including use of zones, policies and rules, land use etc.	Councils no longer have a prescribed role in the development of statutory instruments including the Planning and Design Code (except if a member of a joint planning board). Further work is required to clarify the concept of ‘unique character attributes’. It is suggested that the operation of Clause 62(4) is subject of Regulations that are developed in consultation with the LGA. LGA members are concerned about having limited opportunity to adapt or modify the rules in the Planning and Design Code. In time there may be more circumstances in which a local variation is appropriate, the Bill should provide for these circumstances to be prescribed by Regulations.	Insert a new Clause requiring consultation with Local Government in the development of the Planning and Development Code. Amend Clause 62(4)(b) to refer to Regulations that will be developed in consultation with the LGA. Insert Clause 62(4)(d) any other matter prescribed by regulations.
63.	Local Heritage	Planning and Design Code may designate a place as a place of local heritage value within the meaning of the <i>Heritage Places Act 1993</i> in accordance with this clause. The only new provision in 63(3)(b) requires notification of the owner of a property proposed for inclusion in the Code as a place of local heritage value, or subject to any heritage character/preservation policy which is similar in effect to local heritage listing.	Clarification- Councils are seeking certainty that existing Local Heritage places will be carried over into the Planning and Design Code and that a right of appeal will not apply retrospectively to properties that are already listed.	Nil
64.	Significant trees	The Planning and Design Code may declare trees or stands of trees to be significant in accordance with this clause.	The LGA will be seeking changes to the definitions of regulated and significant trees provided in the current Regulations and the detail of how they are regulated to provide greater protection for urban trees.	Nil
Subdivision 4—Design standards				
65.	Design standards	Minister may prepare design standards that relate to the public realm or infrastructure.	Design standards must be prepared in consultation with Councils. The standards prepared by the Minister must be principle based rather than prescriptive. There should be an exemption provided for Councils that have adopted local design standards.	Insert a clause requiring consultation with the LGA in the preparation of design standards. Insert a Clause to provide an exemption from the design standards in circumstances to be prescribed in Regulations.
Subdivision 5—Related and common provisions				
66.	Interpretation	Definition of designated instrument for the purpose of this subdivision	Nil	Nil
67.	Incorporation of material and application of instrument	Provides for circumstances in which a designated instrument may be linked or applied to other instruments, provisions, standards or other matters under the Act.	Clarification is required regarding the application of Clause 67(e)- does this mean that the Minister, Commission, CE or another specified body could unilaterally decide that the Planning and Design Code will not be applied to a particular development? That would undermine the integrity of the system.	TBA

68.	Status	A designated instrument is a public document and an expression of policy of which a court or tribunal will take judicial notice, without formal proof of its contents.	Nil	Nil
69.	Preparation and amendment	Sets out the criteria to initiate the preparation, amendment and adoption of a designated instrument.	No prescribed role for councils in the process of preparing an instrument has been provided, unless they are participating in a joint planning board. Further, the Minister is not obliged to consult specifically with councils and/or the LGA. The relevant Council must be consulted prior to an approval being given to the commencement of a policy change initiated by a private land owner or infrastructure provider under Clause 69(2)(c)(vi) and (vii). It is positive that a Council can seek an amendment to other instruments such as a state-wide policy and region plan (with the approval of the Minister). It is noted that a Council still has the ability to enter into an agreement for a third party funded DPA under Clause 69(8) Many LGA members have requested that the Bill introduce statutory <u>timeframes for the policy amendment process.</u>	Insert a Clause which specially requires Local Government involvement in the preparation of statutory instruments. Insert a new Clause 69(4)(c) to require any relevant Council to be consulted prior to an approval being given under Clause 69(2)(c)(vi) and (vii). Insert a new Clause requiring the processing of policy amendments to be undertaken within statutory timeframes.
70.	Parliamentary scrutiny	Sets out the process by which the preparation or amendment of a designated instrument undergoes parliamentary scrutiny via the Environment, Resources and Development Committee of the Parliament, enabling this process to be curtailed if the ERD Committee is consulted in preparing and agrees to the instrument or amendment.	The relevant Councils must have the opportunity to consider and provide advice on any amendments that are suggested by the ERD Committee. This is important in order for local infrastructure and service needs to be contemplated.	Amend Clause 70(9) to include the Commission and any relevant Council
71.	Complying changes—Planning and Design Code	Sets out the process by which the Minister may initiate or agree to an amendment of the Planning and Design Code.	A graduated or tiered DPA process is generally supported, with many Councils providing feedback in recent years that a ‘fast-track’ process for straightforward DPAs to which there is a clear link to the regional plan. However, Councils have also expressed concern that land could be rezoned without the knowledge of land owners and residents. This section needs to include a consultation clause linked to the engagement charter.	Insert a new Clause to outline that consultation will occur according to any requirements of the Charter.
72.	Minor or operational amendments	The Minister may amend a designated instrument to address or remove irrelevant material, duplications or inconsistencies.		Nil
Subdivision 6—Other matters				
73.	Early commencement	Minister may commence an amendment to the Planning and Design Code immediately on an interim basis if it is in the interests of the orderly and proper development of an area under the criteria in this clause.	Early commencement of a policy amendment (other than for heritage or environmental reasons etc) is at odds with the concept of genuine community engagement at the policy setting stage. The approach of ‘fast tracking’ investment through early commencement is a risk from an investment perspective due to the lack of certainty about whether the amended policies will cease or be further amended within the 12 month period. A land purchaser any be misled about the policies that apply within an area. The nature of an early commencement policy amendment in place at the time of a land purchase will need to be clearly articulated on the Section 7 statement.	Amend Clause 73 to limit the scope of early commencement to matters where a policy or zoning amendments would decrease development potential (heritage & environmental policy etc).

Division 3—Building related instruments				
74.	Building Code	The Building Code, as in force from time to time, applies to this Act subject to any modifications.	Nil	Nil
75.	Ministerial building standards	Minister may publish, vary or revoke Ministerial building standards.	Nil	Nil
Part 6—Relevant authorities				
Division 1—Entities constituting relevant authorities				
76.	Entities constituting relevant authorities	Lists the entities that will be relevant authorities.	This Bill provides for a greater number of relevant authorities than the Development Act. It is likely that this will add further complexity to system and make it even harder to the community to engage in and understand the decision making process. However, the LGA recognises that to achieve flexibility and avoid the ‘one size fits all’ approach, a number of varying options must be provided. It is noted that a number of the relevant authorities are ‘state-based’, indicating a greater role for the State Government in assessment and a lesser role for Councils. This is not supported. Local Government will not deal with complaints, disputes, enforcement issues etc that arise from a decision that has not been made by a Council. These matters will be referred to the Minister, Commission and/or the Department. The Minster should not require the power to appoint a local assessment panel. This is a role for the Council. If the local assessment is dismissed on the basis of performance, the Council must have the authority to appoint a new panel. The LGA does not support the role of private certifiers in the planning system.	Refer to comments Delete Clause 76(e)(iii)
Division 2—Assessment panels				

77.	Panels established by joint planning boards or councils	Outlines criteria the joint planning board or a council must determine such as panel memberships, conditions of appointment, procedures etc.	The LGA maintains its strong view that the current DAP model comprising a hybrid of elected and independent members is an effective model. This position has been supported by an independent community survey and independent academic research. There should be no mandatory exclusion of elected members that have appropriate skills, knowledge, experience and/or qualifications relevant to the role of a DAP, with a requirement for ongoing training and professional development. All DAP members, elected or professional, must be subject to a high level of individual accountability for their performance and removed from the role if, following review from an independent body, they are deemed to have failed to perform the role in accordance with the code of conduct. Clarification- Will the transitional provisions allow for existing regional development assessment panel to operate. They operate extremely well and should not be changed in terms of agreed arrangements and membership.	Delete 77(1)(d)
78.	Panels established by Minister	Outlines the procedures the Minister must follow to constitute the various assessment panels including procedures, membership and other matters such as costs, revocation and penalties regarding pecuniary interests.	The Minister should not have the power to establish a regional assessment panel unless this has been requested by the Councils involved. The Minister should not have the power to dismiss or appoint a local assessment panel. The dismissal of a local panel should only occur following an investigation and recommendation by an independent body. The reappointment of a new panel should be the role of the Council. The inconsistency between Clause 77(1)(b)(i) and Clause 78(1)(e)(i)(A) regarding the number of members that can be appointed to a panel needs to be explained. A panel appointment by a Council is limited to 5 members, but no limit applies to a panel appointed by the Minister.	Delete Clause 78(1)(c)(ii)(B) Delete 78(1)(d) Delete 78(1)(f) Delete 78(1)(1)
79.	Appointment of additional members	Assessment panels may appoint 1 or 2 members to act as additional members but will not be able to vote on any matter arising for determination.	Nil	Nil
Division 3—Assessment managers				
80.	Assessment managers	Each assessment panel must have an assessment manager. Also outlines with functions and appointment process and that costs will be on the designated authority re liabilities associated with the activities of the assessment manager.	The accreditation requirements for an assessment manager must recognise experience and not only a qualification due to the difficulty and cost in attracting qualified planners to some regional areas. Clarification is required about whether a panel can have more than one assessment manager?	TBA
Division 4—Accredited professionals				

81.	Accreditation scheme	The Governor may by regulations made on the recommendation of the Minister establish an accreditation scheme. In making such a recommendation, the Minister is to act in association with the Commissioner for Consumer Affairs, who will administer such schemes.	Accreditation scheme must recognise experience and not only a qualification due to the difficulty and cost in attracting qualified planners to some regional areas as either staff or panel members. Consultation with the LGA is required on the scheme to ensure that resourcing and cost implications can be considered. The LGA does not support private certification of planning applications. Councils have provided the LGA with evidence that the current scheme is resulting in numerous errors being made and there is no clear process for reporting and resolving these errors. If private certification is to be continued (and expanded) the checks and balances must be improved.	Insert a new Clause requiring consultation with the LGA on Regulations prior to the establishment of an accreditation scheme.
82.	Notification of acting	Accredited professionals may act as relevant authority and must notify a prescribed body of their decisions providing info or documentation as required.	The Regulations will need to provide further details about timeframes and the detail of the documentation to be provided etc	Nil
83.	Removal from acting	An accredited professional who has not completed the functions of a relevant authority for a particular development may not be removed from acting unless the Minister consents, or in cases of incapacity the matter may be referred to another relevant authority.	Nil	Nil
84.	Duties	Sets out offences and penalties for accredited professionals. Offences include failure to act in the public interest, failure to comply with the Act or code of conduct, and accepting benefits or inducements.	If private certification is to be continued (and expanded) the checks and balances must be improved.	Nil
85.	Use of term "building certifier"	The term building certifier under the building rules has the same meaning as accredited professional for the purposes of this Act.	Nil	Nil
Division 5—Determination of relevant authority				
86.	Relevant authority—panels	Determines which type of assessment panel is to be a relevant authority for the purpose of decision making in relation to proposed developments. See <i>Technical guide—Questions and answers for practitioners</i> .	The Regulations must set a sensible and appropriate role for assessment panels.	No changes are required to the Bill, however the Regulations will require careful consideration-involving the LGA

Clause	Title	Content	LGA Comment	Amendment Sought
87.	Relevant authority—Commission	Sets out the criteria for when the Commission will be a relevant authority in relation to a proposed development, including power to ‘call in’ developments of state significance etc, and those that have not been dealt with within a reasonable period by an assessment panel for consideration of the Commission under subclause 87(2).	The appointment of the Commission as the sole authority for restricted development is considered to be unnecessary. Council appointed bodies have the capacity to deal with complex and contentious proposals, evidenced by their long standing role in the assessment of non-complying applications. LGA members have expressed concern that the ‘call-in’ provisions are too broad and subjective and may be used excessively. Historically, call-in powers have been used for a range of developments that have not warranted the removal of the Council from process. Indeed the Expert Panel recommended that a call-in power should only be used by the Minister upon advice from the Commission and an assessment against statutory criteria. By default, Council appointed bodies should be the relevant authority for assessments, subject to performance monitoring. There are significant concerns about the resourcing capacity of the Commission to manage a high volume of assessments.	Delete Clauses 87(1)(a)(i) and (1)(b) Delete Clause 87(2)(g) Insert a Clause requiring that a call-in power only be exercised by the Minister if a public report has been prepared outlining the reason that it has been called in, included an assessment carried out against the criteria contained in Clause 87(2).
88.	Relevant authority—Minister	Where a proposed development is classified as impact assessed development (other than restricted development) then the Minister is the relevant authority.	Further detail is required on the assignment of the ‘Impact Assessed’ category of development. This stream should only be used for development that is genuinely significant. Residential and commercial development should only be treated as impact assessment in very rare and unique circumstances. A commitment is required that the State Government will partner with Local Government to develop this detail.	Nil
89.	Relevant authority—assessment managers	An assessment manager may act as a relevant authority under this Act or where prescribed by regulations.	The Bill does not provide details of the specific types of assessments that will be dealt with by assessment managers as this will be a matter for the Regulations. The technical documents produced by DPTI suggest that assessment managers will deal with deemed to satisfy (complying) and generally minor matters only. The capabilities of planners employed within Local Government far exceed the proposed role that has been outlined. An assessment manager should, by default, be the relevant authority for all applications unless they are major projects or particularly contentious.	No changes are required to the Bill, however the Regulations will require careful consideration- involving the LGA A commitment is required that the State Government will partner with Local Government to develop this detail.
90.	Relevant authority—accredited professionals	An accredited professional may act as a relevant authority under this Act or where prescribed by regulations.	The LGA does not support the private certification of planning applications and there is limited information provided in the Bill. If private certification of planning matters is to continue, it must be limited to minor, non-contentious matters and be subject to rigorous scrutiny. A better process for reporting and resolving errors must be introduced as Councils are currently required to spend time and resources to address the mistakes that are being made.	Substantial amendments required- Refer to comment

91.	Relevant authority—councils	A council will act as a relevant authority as provided by clause 92 ie where Building Rules approval is required.	Nil	Nil
92.	Related provisions	Provisions relating to referrals of building rules assessments and development approvals, to councils.	Councils have expressed frustration that they are required to issues the ‘development approval’ for an application they have had no role in assessing. Significant resources are required to undertake consistency checks, issue documents, register all documents in the records management system and other administrative tasks. Councils are also responsible for the compliance, enforcement and complaint management of these applications. Councils only receive a small portion of the total fees to undertake this work, which must be heavily subsidised by rate payers. If this role for Councils is to continue, the fee schedule must adequately recognize the extent of the non-assessment tasks undertaken. The notice of final development approval should be required to contain the name and contact details of the person responsible for making the decision on all consents so that community enquiries and complaints can be directed to the appropriate authority. Clause 92(3) refers to all elements of a development being ‘assessed’ before a final development approval is granted. For accuracy, the Clause should refer to all elements of the development being ‘approved’.	Amend Clause 92(3) as per comment.
Subdivision 6—Delegations				
93.	Delegations	Relevant authority may delegate any functions or powers under the Act.	Clarification- Does this section apply to accredited professionals? An accredited professional must not have the authority to delegate their functions.	TBC
Part 7—Development assessment—general scheme				
Division 1—Approvals				
94.	Development must be approved under this Act	No development may be undertaken unless approved under this Act.	Nil	Nil
95.	Matters against which development must be assessed	Provides for matters against which development must be assessed and makes further provision for authorities to reserve decisions on specified matters (in particular if this is requested by the applicant). Clarifies that consents are not required to be granted in any particular order, and that each element may be assessed and granted consent separately. An entity with care, control and management of a public place subject to encroachment under subclause (1)(d)(iii) or (e) may impose a reasonable charge on account of the encroachment at the time of the development.	The practical implications of Clause 95(7) need to be considered. This will result in a more complex process, with considerable double or triple handling of an application. This will also remove the flexibility for a relevant authority to negotiate amendments to address shortfalls in the design of a proposal, if many aspects may have already been approved as deemed to satisfy. If stage planning consent is to be introduced, a separate administrative and assessment fee must apply for each individual stage.	Refer to comment
Division 2—Planning consent				
Subdivision 1—Categories of development				
96.	Categories of development	3 categories of assessment in relation to planning consent: 1) accepted development 2) code assessed development 3) impact assessed development.	As noted above, it is difficult to form a view about the proposed categories of development in the absence of detail about the assignment of certain types of development to each category. A commitment is required the State Government will partner with Local Government to develop this detail.	Nil

Subdivision 2—Accepted development				
97.	Accepted development	Development classified by the Planning and Design Code or the regulations as <i>accepted development</i> does not require planning consent.	Interestingly, it will be necessary for a relevant authority to undertake an assessment against the Planning Rules and make a determination that the development is accepted development that does not require planning consent. Clarification- what is envisaged in terms of an ‘assessment’ of an accepted development and how would this work in practice?	TBA
Subdivision 3—Code assessed development				
98.	Categorisation	Development falls within the category of code assessed development if - it is classified by the Planning and Design Code as <i>deemed-to-satisfy</i> development, or it - does not fall within either of the categories of accepted or <i>impact assessed</i> development.	A development that cannot be categorized as either accepted or impact assessment should default to a code assessed development. This would then allow the relevant authority to determine if the proposal is deemed to satisfy or performance assessed.	Amend Clause 98(a) to replace the words ‘deemed-to-satisfy development’ with ‘code assessed development.
99.	Deemed-to-satisfy assessment	If classified as deemed-to-satisfy development, the development must be granted planning consent subject to such conditions or exceptions as may be prescribed without any requirement for public notification or submissions.	This provision creates some uncertainty as to what is a minor variation from the deemed to satisfy requirement. Councils have advised the LGA that this is point of tension in the current system and that some private certifiers are applying liberal interpretations of a ‘minor’ variation for the Res Code criteria. The LGA notes that there is no limit on the number of variations, as it is one or more minor variations and there in fact could be multiple variations from the deemed to satisfy development criteria, provided that they are minor. Minor variations cumulatively could amount to more than just a minor variation or whether in fact the minor variations are considered in isolation of each other. This point requires further clarification and it is suggested that it be the subject of a practice direction. Clause 99(5) is contrary to existing planning principles that have been determined by the courts. In particular, it is an established principle that a relevant authority cannot vary an application that has been submitted, though this clause seems to suggest that a proposed development application can be varied by condition, by the relevant authority after assessment has been undertaken to make the proposed development more consistent with the deemed to satisfy requirements. There is concern that this practice will result in an increase in compliance issues and a surge in applications to vary planning conditions. Clarification- would the applicant have a right of appeal against a condition imposed under Clause 99(5)?	Insert a new clause to require that the determination of ‘minor’ variation would be in accordance with a practice direction.

Clause	Title	Content	LGA Comment	Amendment Sought
100.	Performance assessed development	Where a proposal is categorised as code assesse development and not as deemed-to-satisfy development, the development will be assessed on its merits against the Planning and Design Code. Further outlines notification rights, conditions, and potential for exclusions under the Planning or Design Code.	This assessment category carves out any part of the development which is considered to be a deemed-to-satisfy type of development. It will be interesting in practice how the elements of a proposed development can be broken down and approved in isolation of the whole of the development. Clarification- can an applicant proceed to construct those elements that are approved in advance of the development as a whole? Has consideration been given to whether this will cause an issue of partially developed land down the track. While it is generally supported, councils have raised a number of questions about how on-site notification will work in practice. In particular, whether the council will have any responsibility to ensure that the notice is placed and maintained on the land. Also, many towns have a large proportion of non-resident ratepayers who will not benefit from an on-site notice. Clarification- is it intended that the SA planning portal would contain information about publicly notified applications? There is an opportunity for individuals and groups to subscribe to automated updates about publicly notified developments in their area. Clarification- will a representation be invalidated on the basis that it departs from (either wholly or in part) the requirements of Clause 100(4)? While planning assessments are not the forum for addressing neighborhood disputes, representors should be allowed to provide background or contextual information about their concerns. Clarification- It is unclear what Clause 100(7) means by "exceptions" and how they will apply in the Planning and Design Code. Clarification- would a representor on a performance assessed development have the right to appeal before an assessment panel? This detail has not been included in the Bill.	TBA
Subdivision 4—Impact assessed development				
101.	Categorisation	A development is classified as an impact assessed development if it is: - classified by the Planning and Design Code as restricted development; - classified by the regulations as impact assessed development; - declared by the Minister as an impact assessed development under the processes set out in this clause. Fees are to be set out in regulation.	Nil	Nil

102.	Practice direction to provide guidance	The Commission must publish a practice direction regarding restricted development, to describe the circumstances in which the development may be assessed, and if it is to be assessed, how the Commission will proceed with any such assessment. The Commission must also publish a practice direction in regard to impact assessed development, including environmental impact assessment requirements, and practice directions for anything else prescribed by regulations.	Nil	Nil
103.	Restricted development	The Commission will determine initially whether or not development categorised as restricted is to be assessed. <i>If</i> restricted development is to be assessed, the Commission will also determine whether or not to grant planning consent. Notice of application for planning consent is to be given to the owner or occupier of each piece of adjacent land and to those 'directly affected to a significant degree', prescribed persons and the public generally, including by notice placed on the land. Representations may be made by any persons in accordance with this clause, but must be limited to the subject matter of the Commission's decision as to planning consent.	Refer to previous comments about the role of Councils in restricted development. Councils should be the default assessment body development, subject to performance measures. It will be difficult for the Commission make an assessment about the extent of notification required under Clause 103(2)(ii) without having first undertaken an onsite assessment of the subject land and the locality, particularly in rural/remote areas? Councils are better placed to determine consultation requirements. LGA Members are concerned about Clause 103(3) and the ability for the Commission to dispense with public notification requirements. This creates uncertainty for communities and will not satisfy community expectations. The LGA notes that the Commission would not be bound by the relevant provisions of the Planning and Design Code in making an assessment. Regional Councils have noted that proposed changes to the operations of Australia Post will impact on the frequency of mail delivery. These Councils have asked that this be taken into account when any timeframes are being set.	Substantial amendments required- refer to comments If the Commission is to remain as the relevant authority, a concurrence role for Councils must be prescribed. Delete Clause 103(3) Amend Clause 103(7) to substitute 'development agreements' with 'business days'.
104.	Impact assessment by Minister—procedural matters	Sets out the procedures in relation to impact assessed development (not being restricted development). Any previous application or authorisation ceases to have effect if the matter is 'called in' for impact assessment, unless otherwise provided by regulations, and the proponent must lodge an application with the Minister.	Nil	Nil
105.	Level of detail	The Commission will determine the level of detail required in relation to an environmental impact statement or EIS, after taking into account practice directions, and any views of eligible persons or the proponent.	Nil	Nil
106.	EIS process	An EIS must be prepared in accordance with a practice direction published by the Commission. The clause outlines the required contents of an EIS and process for statements of impact, referrals, commitments to mitigate or manage effects, consultation, reporting, publication, and other ancillary matters.	Nil	Nil
107.	Amendment of EIS	An EIS and the relevant Assessment Report may be amended to correct errors, update information or for other prescribed reasons.	Nil	Nil

108.	Decision by Minister	The Minister may (having regard to matters in this clause) decide whether to grant a development authorisation for a proposed development that is classified as impact assessed development (other than restricted development) subject to being satisfied that an appropriate EIS and assessment report have been prepared. This clause also provides for an 'early no' at any time. The Minister may also grant a provisional development authorisation subject to conditions.	Nil	Nil
109.	Costs	The Minister may recover reasonable costs in relation to the preparation or publication of an EIS and an Assessment Report and the making of a decision under s 108.	Nil	Nil
110.	Testing and monitoring	For impact assessed developments, the Minister may require a person undertaking an impact assessed development to undertake testing, monitoring or comply with the requirements of an audit program.	Nil	Nil

Division 3—Building consent

111.	Building consent	Where building work complies with the Building Rules, it must be granted a building consent (subject to prescribed conditions or exceptions). Where it does not comply, it must not be granted consent subject to exceptions defined in this clause. The provision also outlines procedures regarding appeal rights, referrals to the Commission and resolves inconsistencies between the Building and Planning Rules for local heritage places in favour of the Planning Rules (subject to achieving suitable standards of soundness, safety and amenity).	Nil	Nil
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Division 4—Procedural matters and assessment facilitation

112.	Application and provision of information	Sets out procedural matters regarding applications to relevant authorities and what the authority may do regarding the applications (eg grant permissions conditionally or unconditionally).	It is understood that the intent of Clause 112(13) is to clarify the existing situation and not to introduce a change. To avoid misinterpretation of the intent of this clause, it is suggested that words be added to provide certainty that the consent of the owner of the land is required to undertake any work.	Amend Clause 112(13)- refer to comment.
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113.	Outline consent	A relevant authority may grant an outline consent in circumstances specified by a practice direction, for example in order to approve aspects of a complex project in principle and defer consideration of more detailed matters until later in the process. If granted, and a subsequent application is made for the same development, the relevant authority must grant the consent as contemplated by the outline consent and must not impose a requirement that is inconsistent with it.	The detail of how an outline consent would work in practice is not clear, which makes this reform difficult to comment on. Given this is likely to apply only to larger, more significant developments, it is likely that a development that has received an outline consent is likely to require public notification. There is a query around the genuineness of undertaking public notification on a development that has substantially approved. The scale of a development also needs to consider what a ‘significant development’ looks like in both a metropolitan and rural context. There is also likely to be practical issues around how to deal with ‘minor variations’ from an outline consent and confusion about which aspects of the development will be assessed at the time of the full application. To prevent ‘forum shopping’, the authority that has granted the outline consent must also be the authority that deals with the full application. An accredited professional must not have the authority to issue an outline consent.	Delete Clause 113.
114.	Design review	A person considering undertaking a development may apply to a design panel established by the Minister for advice on matters subject to this clause. A relevant authority must take into account the design panel’s advice in making its decision.	This Clause does not make a provision for a relevant authority to refer an application of a certain class to the design panel. The LGA’s position is that a Council, if required, should be able to refer a matter to the design review panel and recover the cost from the applicant.	Insert a new Clause to allow a relevant authority to initiate a design review.
115.	Referrals to other authorities or agencies	The regulations may provide for referrals to other agencies for proposed developments of a prescribed class. Procedures outlining response times, scopes of referrals and decision making are further detailed.	Clarification- what is the oversight mechanism for Clause 115(9)? Would a relevant authority or a proponent need to appeal to the ERD Court if they believed that a prescribed body had provided direction on a matter that was outside the extent of the referral?	TBC
116.	Preliminary advice and agreement	Persons may seek the opinion of a prescribed body in relation to a proposed development before lodging an application for planning consent. Where the body agrees that the development meets its requirements, and an application for planning consent is lodged within 3 months, the application will not be referred under s115.	Nil	Nil
117.	Proposed development involving creation of fortifications	Where a relevant authority believes a proposed development may create fortifications, they must refer the application for consent to the Commissioner of Police who must abide by the procedures outlined in this clause. The Relevant authority must refuse or may put conditions on the application subject to s117(5).	Nil	Nil

118.	Time within which decision must be made	A relevant authority should deal with an application as expeditiously as possible and within the time prescribed by the regulations. If this does not occur, the applicant may give the relevant authority a <i>deemed consent notice</i> requiring the authority to grant the planning consent itself or subject to conditions. Deemed planning consent will be taken to have been granted however the relevant authority may apply for an order quashing any deemed consent (subject to this clause). This does not apply where the Minister is the relevant authority in relation to impact assessed development.	There is strong concern about deemed consent provisions applying to performance assessed and restricted development. Prescribed timeframes should apply to all categories of development, but deemed consent should apply to accepted and deemed to satisfy categories only. (Clause 118(8) should be the default position for performance assessed and restricted development). Many delays in the assessment process occur due to the applicant not providing information that has been requested or responding to representations. A ‘stop the clock’ provision needs to be included. There are potential practical issues: Clarification- what would be the status of any works undertaken in the period between a deemed planning consent being granted and a successful appeal against the deemed consent by the relevant authority? If the application went on to be refused, would the applicant be subject to enforcement action to remove the unapproved works?	Amend Clause 118(2) to exclude all categories of development except accepted and deemed to satisfy. Include a ‘stop the clock’ clause to clarify that any time spend waiting for information from applicants, referral bodies etc is not included in the assessment timeframe.
119.	Determination of application	A relevant authority must give notice of the decision (and any applicable appeal rights in case of refusal) in accordance with the regulations. Development authorisations remain operative for a period prescribed by the regulations which may be extended on application or by the relevant authority of its own accord.	Nil	Nil

Division 5—Conditions

120.	Conditions	Conditions may be imposed on a decision as the relevant authority thinks fit or as specified in any practice directions or the Act. In case of the destruction or removal of any regulated or significant tree, the authority must follow the principle that trees must be planted and maintained to replace any trees that are removed, or in the alternative payment may be made to the urban trees fund or the planning and development fund.	The intent of the Bill is to place limitations on the conditions that a relevant authority can impose on a development authorisation. LGA members have expressed concern about this, while at the same time noting that conditions should have some consistency and must be reasonable and enforceable. The LGA is seeking a commitment that the State Government will partner with Local Government in preparing a practice direction, as referred to in Clause 120(2)(a). Consideration should be given to changing the word ‘must’ to ‘may’ in Clause 120(4) regarding conditions about tree replacement or payment into a fund. The current wording does not give Councils sufficient discretion when dealing with cases of financial hardship.	Refer to comment re Clause 120(4)
121.	Variation of authorisation	Subject to this provision, a person may seek variation of a development authorisation.	Nil	Nil

Part 8—Development assessment—essential infrastructure

Division 1—Development assessment—standard designs

122.	Development assessment—standard designs	The Minister on the recommendation of the Commission may adopt a design standard relating to any infrastructure or class of infrastructure. For essential infrastructure within an infrastructure reserve, an assessment against the Planning Rules, and consent, are not required; and if the development is consistent with a standard infrastructure design, an accredited professional may act as a relevant authority.	Reforms to streamline the provision of essential infrastructure are generally supported, however the LGA opposes the role that has been provided for accredited professionals in granting development authorisation.	Delete Clause 122(3)(b)
Division 2—Essential infrastructure—alternative assessment process				
123.	Essential infrastructure—alternative assessment process	Proponents may apply for approval of essential infrastructure of a prescribed class to the Commission under the procedures and conditions (e.g. reporting requirements, notice, financial thresholds etc) set out in this clause. The Commission may conditionally or unconditionally approve the development, which must be certified by a building certifier prior to commencement of work. However where the Minister directs that an EIS is to be prepared this process does not apply and an impact development assessment is required.	Increase the timeframe for a Council response to at least 6 weeks and provide an opportunity for the Council to request additional information from the proponent in relation to the application. Clarification- what is the justification for the \$10,000,000 threshold relating to public notification?	Amend Clause 123(7) to substitute ‘4 weeks’ with ‘6 weeks’ Duplicate the content of Clause 123(10)(a) and in Clause 123(6).
Part 9—Development assessment—Crown development				
124.	Development assessment—Crown development	If a state agency or a person undertaking development supported by a state agency, they must lodge the application for approval with the Commission. The Commission must notify a relevant Council of particulars. If an application is for a development that involves construction work where the total amount to be applied to the work will exceed \$10 million (subject to this clause), the Commission must invite submissions and report to the Minister who may then make a determination on the development . No appeal rights are provided in relation to this decision. A government agency may however newly determine to proceed with an assessment under the general assessment scheme rather than the Crown development pathway.	Increase the timeframe for a Council response to at least 6 weeks and provide an opportunity for the Council to request additional information from the proponent in relation to the application. Clarification- what is the justification for the \$10,000,000 threshold relating to public notification (increased from \$4,000,000?)	Amend Clause 123(7) to substitute ‘4 weeks’ with ‘6 weeks’ and allow a Council to make a request for additional information.
Part 10—Development assessment and approval—related provisions				
Division 1—General principles				
125.	Law governing proceedings under this Act	The laws (Act, codes, rules etc) applying when considering applications and in resolving subsequent matters are those in force at the time the application was made.	Nil	Nil
126.	Saving provisions	A development may be undertaken where authorisation has been granted notwithstanding any amendments to codes or rules that take effect after the application was made. Further, activity lawfully commenced within 3 years before the amendment took effect, may be continued and completed within 3 years (with potential for extension by the relevant authority).	Nil	Nil
Division 2—Buildings				

127.	Requirement to up-grade	Where buildings are unsafe, structurally unsound, or do not comply with requirements for access for those with disabilities, a relevant authority may require, before granting building consent, that works be undertaken to comply with the building code or rules to the extent necessary to ensure the building is safe and/or conforms to the appropriate standards for structures/health or performance requirements of the Building Code. The Minister may grant exemptions.	Complying with requirements regarding access, facilities and services for people with disabilities is an important aspect of access and inclusion policies. However, undertaking the necessary work to achieve these standards can be cost prohibitive for many new small business and has been identified as a barrier to the re-use of building and small business. The LGA proposes that an applicant should be able to enter into an agreement with a relevant authority that works to ensure compliance with disability standards will be completed within an agreed timeframe. This would enable a business to begin trading and establish a cash flow while the works are being completed. This proposal arose from the 2015 Mayors’ Summit for Jobs Growth.	Refer to comments
128.	Urgent building work	Persons may perform building work as a matter of urgency under prescribed circumstances and/or for safety reasons subject to requirements relating to notification, conservation of heritage values, subsequent application for development authorisations and rectification works where authorisation is not forthcoming.	Nil	Nil
Division 3—Trees				
129.	Urgent work in relation to trees	Persons may undertake tree damaging activity (minimising any damage) to protect any person, building or in prescribed circumstances and must notify a relevant authority and apply for the appropriate development authorisation.	Nil	Nil
130.	Interaction of controls on trees with other legislation	Approvals apply for a tree damaging activity notwithstanding that it is permitted under the <i>Native Vegetation Act 1991</i> , but approvals are not required in the case of activities under the relevant sections of the <i>Electricity Act 1996</i> , <i>Local Government Act 1999</i> , or any provisions prescribed by regulation.	Nil	Nil
Division 4—Land division certificate				
131.	Land division certificate	Land division certificates issued by the Commission are required for developments that involve the division of land (subject to the regulations). The Commission must inform the relevant council as soon as practicable after issuing a certificate.	Nil	Nil
Division 5—Access to land				
132.	Activities that affect stability of land or premises	Outlines notification requirements and permits access where a person who undertakes development requires access to other land or premises in order to address an effect on the stability of that land. Also allows for other work to be required by the owner of the affected site, and application to the Court for a determination of costs to be paid for such work.	It is considered that the notice referred to in Clause 132(2)(a) should be provided by the building owner rather than the relevant authority. The relevant authority does not currently have a responsibility to provide a notice to adjoining land owners. The ‘prescribed form’ may include a copy of the development authorisation issued by a relevant authority.	Amend Clause 132(2)(a) to substitute ‘relevant authority’ with ‘building owner’.
133.	Access to neighbouring land—general provision	Sets out the notification requirements where a person requires access to an adjoining allotment or building for inspections, building work or prescribed activity. Enables councils to issue an authorisation permitting access, on a specified basis and specified conditions (if any), on application.	Many LGA members have voiced strong concern about the proposed role for Councils in granted approval for entry onto private land, particularly in circumstances where the land owner has refused entry. This must remain as a civil matter	Delete clause 133
Division 6—Uncompleted development				

134.	Action if development not completed	Where approvals are granted but works are not substantially completed within a prescribed time, a designated authority may apply in accordance with this clause to the court for an order to remove any building or conduct work, extend the period for completion, reinstate the land or building to its prior state, or make any other order the Court things fit.	Nil	Nil
135.	Completion of work	Where a development has been substantially but not fully completed within the prescribed period, a designated authority may require the owner to complete it within a specified period or carry out the work itself and recover reasonable costs from the owner.	Nil	Nil
Division 7—Cancellation of development authorisation				
136.	Cancellation of development authorisation	A relevant authority may conditionally or unconditionally cancel a development authorisation on application by the proponent.	Nil	Nil
Division 8—Inspection policies				
137.	Inspection policies	The Commission must issue, and a council or councils must comply with, a practice direction requiring a council/councils to carry out inspections of development undertaken in their respective areas.	The flexibility that may apply in relation to different Councils based on a range of factors is generally supported. However, past experiences have demonstrated that forced changes to inspection policies can have significant financial implications on Councils. Therefore, it is necessary that any practice direction that dictates how Councils must undertake inspections must be developed in consultation with the LGA.	Insert a Clause requiring consultation with the LGA prior on any changes to inspection policies.
Part 11—Building activity and use—special provisions				
Division 1—Preliminary				
138.	Interpretation	The regulations are to prescribe ‘council’ for the purposes of this part, for development or buildings that are not within council areas.	Nil	Nil
Division 2—Notifications				
139.	Notification during building	A licensed building work contractor or the owner of a building must notify the relevant council of a prescribed stage of work according to the requirements of this clause within the prescribed period.	Nil	Nil
Division 3—Party walls and similar matters				
140.	Construction of party walls	Details the process, notification, easement issues, entry powers and consent requirements where an owner proposes to build a party wall, or to convert an existing structure into a party wall, on any boundaries between their land and the land of another.	Nil	Nil
141.	Rights of building owner	Details the rights of a building owner in addition to any rights at common law or under this Act with an emphasis on rights of and notification requirements in relation to adjoining owners of a party wall.	Nil	Nil
142.	Power of entry	Building owners, authorised agents or employees may at any reasonable time enter and remain on the land or premises of the adjoining owner for the purpose of performing any building work subject to the notification requirements of this clause (including in case of emergency).	Nil	Nil

143.	Appropriation of expense	The cost of building a party wall is to be borne in proportion by the adjoining owners, having regard to the use that each owner makes of the wall. An account showing the cost and proportion of the work payable by the parties shall be served on the adjoining owner within 28 days of the works completion, in accordance with regulations. After 28 days without payment, the Court may determine the amount recoverable as a debt on application from the building owner.	Nil	Nil
Division 4—Classification and occupation of buildings				
144.	Classification of buildings	Subject to this clause and relevant council powers, a building's must be determined in accordance with the regulations. The owner of a building must not permit the building to be occupied outside of its classification.	Nil	Nil
145.	Certificates of occupancy	Persons must not occupy a building on which building work is carried out unless an appropriate certificate of occupancy has been issued. Certificates of occupancy will be issued by councils in accordance with the procedures in this clause or the regulations.	Nil	Nil
146.	Temporary occupation	Persons may occupy a building on a temporary basis without a certificate of occupancy with the approval of a council subject to any conditions. Councils refusing an application for a certificate of occupancy must notify of the refusal and appeal rights (appeals must be commenced within 28 days).	Nil	Nil
147.	Building certifiers	Building certifiers may exercise the powers of councils under this Division regarding Crown buildings or a building in relation to which the building certifier has issued a building consent.	Nil	Nil
Division 5—Emergency orders				
148.	Emergency orders	Authorised officers may make emergency orders where they are of the opinion it is necessary (eg due to safety concerns or threats to heritage places). Where an owner fails to comply, the council may carry out the works and recover reasonable costs from the owner subject to the procedures in this clause.	Nil	Nil
Division 6—Swimming pool and building safety				
149.	Designated safety requirements	The regulations may specify requirements that apply to designated safety features for swimming pools or (newly) buildings. The Commission may issue a practice direction requiring councils to carry out inspections of swimming pools and buildings to ascertain compliance.	Nil	Nil
150.	Fire safety	Authorised officers or members of an appropriate authority may enter and inspect buildings to determine whether its fire safety is adequate. Where it is not, the authority may serve a notice requiring measures to be taken including reporting or a program of work to solve the fire hazard.	Nil	Nil
Division 7—Liability				

151.	Negation of joint and several liability in certain cases	The court may only give judgment in the circumstances outlined in this clause against a defendant for an amount that is just and equitable. An act or default for which a person is vicariously liable will be treated as an act or default of that person for the purposes of this clause.	Nil	Nil
152.	Limitation on time when action may be taken	No action for damages for economic loss or rectification costs for defective building work can be commenced more than 10 years after completion of the work, with no potential for extension. This clause does not affect an action to recover damages for death or personal injury from the defective building work.	Nil	Nil
Part 12—Mining—special provisions				
153.	Mining tenements to be referred in certain cases to Minister	The appropriate Authority may refer a designated mining matter to the Minister for advice or can be compelled to do so by the regulations. If the operations are of are of major social, economic or environmental importance, the Minister or the authority may determine the EIS or assessment report processes are to be complied with. Disagreements between the authority and the Minister over advice relevant to actions taken as a result of the EIS or assessment report will be referred to the Governor for the Governor to determine whether the Authority should adhere to the Minister’s advice.	Nil	Nil
154.	Related matters	Sets out related matters for the effective operation of the Act including relevant Ministerial declarations under this Act. The Act will not affect the operation of a mine or operations carried on in pursuance of any of the mining Acts except as provided in this part,	Nil	Nil
Part 13—Infrastructure frameworks				
Division 1—Infrastructure delivery schemes				
Subdivision 1—Establishment of scheme				
155.	Initiation of scheme	Provides powers for the Minister to initiate a scheme for the provision of essential infrastructure and details the required procedures for initiating the scheme including those surrounding the establishment of a contribution area.	Refer to separate Infrastructure Frameworks Paper	TBA
156.	Scheme coordinator	For a referred scheme under clause 151, the Chief Executive must appoint a person, a committee or a precinct authority as a scheme coordinator, and may appoint or remove persons and or constitute the committee as necessary. The Minister is required to seek advice from the Commission and consult with the relevant council/councils.	Refer to separate Infrastructure Frameworks Paper	TBA

Clause	Title	Content	LGA Comment	Amendment Sought
157.	Consideration of proposed scheme	Details the functions of a scheme coordinator in relation to a proposed scheme which must include preparation of scheme costings, work programs, consultation, proposal for collection of contributions, or any other function assigned by the Minister after consultation with the Chief Executive.	Refer to separate Infrastructure Frameworks Paper	TBA
158.	Adoption of scheme	The Minister may on receiving a report on a proposed scheme determine whether or not to approve (or vary) it. The scheme or variations must be published in the Gazette and the planning portal.	Refer to separate Infrastructure Frameworks Paper	TBA
159.	Role of scheme coordinator in relation to delivery of scheme	Details the scheme coordinator's functions in relation to a scheme including overseeing the delivery of any infrastructure or works, administering funding arrangements, providing advice to the Minister and any other functions assigned by the Minister.	Refer to separate Infrastructure Frameworks Paper	TBA
Subdivision 2—Funding arrangements				
160.	Funding arrangements	Funding arrangements may include but are not limited to funds from public or private sources, exemption from one or more taxes, levies of local government rates, in kind work and collection of contributions. ESCOSA may determine funding adjustments or rebates. Funding arrangements have no effect unless approved by the Governor by notice in the Gazette. Reporting to the ERD Committee and publication on the SA planning portal are also required for the Minister where a funding arrangement is approved or varied.	Refer to separate Infrastructure Frameworks Paper	TBA
161.	Government guarantees	A liability of the Crown arising by virtue of a guarantee under an approved funding arrangement is to be paid out of the Consolidated Account.	Refer to separate Infrastructure Frameworks Paper	TBA
162.	Exemptions from taxes and levies	An exemption from a tax, levy or local government rate under an approved funding arrangement will have effect by force of this clause (and despite any other Act).	Refer to separate Infrastructure Frameworks Paper	TBA
Subdivision 3—Scheme contributions				
163.	Application of Subdivision	This Subdivision applies to raise contributions for the purposes of a scheme for the provision of essential infrastructure. The contributions will apply to an area of the State designated as a contribution area by the relevant funding arrangement.	Refer to separate Infrastructure Frameworks Paper	TBA
164.	Contributions by constituent councils	Councils to contribute agreed amount for performance of functions by board during financial year, which costs will be shared between the councils. Provides methods for calculating levies by value of rateable land/number of rateable properties, fixed amount etc.	Refer to separate Infrastructure Frameworks Paper	TBA

165.	Payment of contributions	A contribution is payable by the council in approximately equal instalments on 30 September, 31 December, 31 March and 30 June in the year to which the contribution relates in accordance with a determination of the Minister. Interest accrues on any amount unpaid at the rate and in the manner prescribed by regulation.	Refer to separate Infrastructure Frameworks Paper	TBA
166.	Funds may be expended in subsequent years	Unspent funds accrued in a financial year may be spent in following year.	Refer to separate Infrastructure Frameworks Paper	TBA
167.	Imposition of charge by councils	Constituent councils must impose a planning region levy on rateable land in the relevant region.	Refer to separate Infrastructure Frameworks Paper	TBA
168.	Costs of councils	Councils are to be paid an amount determined in accordance with regulations for the costs of complying with the requirements of a scheme's funding arrangements.	Refer to separate Infrastructure Frameworks Paper	TBA
Subdivision 4—Statutory funds				
169.	Establishment of funds	The Chief Executive must establish a fund to be kept at Treasury for the purposes of each scheme. The Minister may invest money that is not immediately required for purposes of the fund as he/she thinks fit.	Refer to separate Infrastructure Frameworks Paper	TBA
170.	Audit of funds	A fund for a scheme will form part of the accounts of the Department for the purposes of the <i>Public Finance and Audit Act 1987</i> .	Refer to separate Infrastructure Frameworks Paper	TBA
Subdivision 5—Winding up				
171.	Winding up	The Minister may wind up a scheme, transfer the assets, rights and liabilities to prescribed bodies and transfer the assets of a fund in accordance with this clause.	Refer to separate Infrastructure Frameworks Paper	TBA
Division 2—Infrastructure powers				
172.	Interpretation	Defines terms for this Division.	Refer to separate Infrastructure Frameworks Paper	TBA
173.	Infrastructure works	Provides a comprehensive definition of infrastructure works in relation to essential infrastructure (or proposed essential infrastructure) for the purposes of this Division.	Refer to separate Infrastructure Frameworks Paper	TBA
174.	Authorised works	A designated entity may carry out any infrastructure works, must repair any damage to a road arising from works, and must inform the relevant road maintenance authority 28 days prior to commencing any works.	Refer to separate Infrastructure Frameworks Paper	TBA
175.	Entry onto land	Sets out what a person authorised by a designated entity may do in relation to entering on to and temporarily occupying land, and a responsibility to minimise disturbance to the land so far as is reasonably practicable.	Refer to separate Infrastructure Frameworks Paper	TBA
176.	Acquisition of land	A designated entity with the consent of the Minister may acquire land for a purpose associated with infrastructure works under and in accordance with the <i>Land Acquisition Act 1969</i> (consent is not required under that Act where a Minister is acting as a designated	Refer to separate Infrastructure Frameworks Paper	TBA
Division 3—Related provisions				

177.	Incorporation of Chief Executive	The Chief Executive has the powers of a natural person together with the powers conferred on him/her under the Act, and necessary or convenient for the exercise of its functions. ~~S/he is, for the purposes of this Part, constituted as a body corporate.~~	Refer to separate Infrastructure Frameworks Paper	TBA
178.	Step in powers	The Chief Executive with the approval of the Minister may take over any work of the scheme and the Minister may by notice in the Gazette transfer any assets, rights or liabilities to the Chief	Refer to separate Infrastructure Frameworks Paper	TBA
Part 14— Land management agreements				
179.	Land management agreements	A designated authority may enter into an agreement relating to the development, management, preservation or conservation of land with the owner of the land in accordance with the procedures in ~~this clause.~~	Nil	Nil
180.	Land management agreements— development applications	Subject to this clause, a designated authority may enter into an agreement with a person who is applying for a development authorisation that will if approved, bind the person as well as any parties to the authorisation.	Nil	Nil
Part 15—Funds and off-set schemes				
Division 1—Planning and Development Fund				
181.	Continuance of the Fund	The provision sets out the amounts to be paid into the Planning and Development Fund and that the Minister may borrow money for the purposes of this Act on terms and conditions approved by the Treasurer.	Consequential amendments may be required to this Clause as a result of the LGA's positon on Part 13 (Infrastructure Frameworks)	TBA
182.	Application and management of Fund	Sets out the purposes for which money standing to the credit of the Fund may be used by the Minister, newly including for assistance or grants to a joint planning board, another entity under the Act, or an entity acting under the <i>Urban Renewal Act 1995</i> .	Nil	Nil
183.	Accounts and audit	The Minister must cause proper accounts to be kept and the Auditor-General may at any time, and must at least once a year, audit the Fund accounts.	Nil	Nil
Division 2—Off-set schemes				
184.	Off-setting contributions	Subject to this clause, a designated entity may establish a scheme (including a fund for the scheme) that is designed to facilitate development in the public interest, for development initiatives that further the objects of the Act or the principles of the planning system. The clause sets out establishment and application of such funds, and requirement for the Minister to report to the ERD Committee of the South Australian Parliament and publication on the SA planning portal. The Minister may make a determination of the use of funds arising from the scheme when winding up.	Nil	Nil
185.	Open space contribution scheme	Sets out requirements, exclusions by regulations and formulae for calculating open space contribution schemes.	Recent studies undertaken or commissioned by the LGA have confirmed that the current open space contribution scheme does not achieve optimal outcomes. In particular, the current scheme disadvantages those Councils that experience high volumes of small-scale land divisions. The LGA is seeking a commitment from the State Government to work with Local Government to review this Clause and for changes to be incorporated in the second Bill.	Nil

186.	Multi-unit buildings	Where an application for a planning consent provides for the construction of a prescribed building that is proposed to contain 2 or more apartments (other than where each apartment is to constitute a separate allotment), the Commission may require that the applicant make a contribution prescribed by the regulations to be paid into the Planning and Development Fund.	Nil	Nil
187.	Urban trees funds	A council with the approval of the Minister may establish an urban trees fund for an area defined by reference to the Planning and Design Code. Any money in an urban trees fund not immediately required may be invested by the council and any resultant income paid into the fund.	Nil	Nil
Part 16—Disputes, reviews and appeals				
Division 1—General rights of review and appeal				
188.	Interpretation	Defines ‘prescribed matter’ for the purposes of this Division, being those matters that are subject to review and/or appeal in specified circumstances.	Nil	Nil
189.	Rights of review and appeal	Outlines the rights of review and appeal for decisions under this Act such as development authorisations, proposed local heritage listings, restricted developments, certificates of occupation of buildings on a temporary basis and others.	Nil	Nil
190.	Application to assessment panel	Sets out the process (eg procedures, reports, presentation of documents, plans, specifications etc) and decision making powers for applications to an assessment panel for reviews of prescribed matters where an assessment manager has acted as a relevant authority.	Nil	Nil
191.	Applications to Court	Subject to this provision, an application to the Court must be made in a manner and form determined by the Court, within 2 months after the applicant receives notice of the decision. Other than cases where a matter is referred to a building referee/referees or as prescribed by regulation, an application must be referred in the first instance to an ERD Court conference.	Nil	Nil
192.	Powers of Court in determining any matter	In any proceedings under this Act the Court may exercise the powers under this clause to confirm, vary or reverse any decision etc and grant any relief or remedy or consequential or ancillary order or direction that the Court sees fit.	Nil	Nil
193.	Special provision relating to building referees	A commissioner to whom a matter is referred under clause 191 will determine the matter as a building referee who will have the powers of arbitrators under the <i>Commercial Arbitration Act 2011</i> subject to the rules of the Court. The provision also sets out powers in addition to the other powers that a commissioner may exercise as a member of the Court.	Nil	Nil
Division 2—Initiation of proceedings to gain a commercial competitive advantage				
194.	Preliminary	Contains definitions and explanations of matters for this Division.	Nil	Nil

Clause	Title	Content	LGA Comment	Amendment Sought
195.	Declaration of interest	A person must disclose, to the Registrar of the relevant Court, any commercial competitive interest once they become a party to proceedings.	Nil	Nil
196.	Right of action in certain circumstances	A proponent of a development is entitled to recover from the defendant and any relevant associate an amount reasonably assessed as having been suffered due to delays which the court is satisfied were incurred because the defendant's sole or predominant purpose in pursuing the proceedings, or for providing financial assistance was to delay or prevent the development in order to obtain commercial benefit for themselves or an associate.	Nil	Nil
Part 17—Authorised officers				
197.	Appointment of authorised officers	The Minister or a council may conditionally or unconditionally appoint (and revoke) a person to be an authorised officer under the Act. The person must be issued an identity card which contains a photo and conditions of appointment.	Nil	Nil
198.	Powers of authorised officers to inspect and obtain information	This clause sets out the range of an authorised officer's powers and creates offences for not assisting an authorised officer, hindering, obstructing, not cooperating, abusing, threatening etc; as well as failing to obey or answer and impersonating an officer.	Nil	Nil
Part 18—Enforcement				
Division 1—Civil enforcement				
199.	Interpretation	Defines breaches of this Act as well as designated authority.	Nil	Nil
200.	Enforcement notices	Provides powers to address a breach including though issuing of directions, make good orders, recovery of reasonable costs, sets out appeal procedures against a direction and the penalties for failing to comply with a direction.	Nil	Nil
201.	Applications to Court	Application to Court for order to remedy or restrain a breach of this or the repealed Act. The process for making an application is set out, requiring a conference first then proceedings before the Court. The Court's powers, guidance in assessing damages and orders that can be made are outlined.	Nil	Nil
Division 2—General offences and provisions relating to offences				
Subdivision 1—General offences				
202.	General offences	General offences are set out regarding undertaking development contrary to the Act, a development authorisation etc.	Nil	Nil
203.	Offences relating specifically to building work	Offences are set out relating to performing building work or causing it to be performed not in accordance with the requirements of the Act or Building Rules.	Nil	Nil

204.	False or misleading information	Requires that a person must not make false or misleading statements.	Nil	Nil
Subdivision 2—General provisions relating to offences				
205.	Criminal jurisdiction of Court	Offences committed under the Act lie within the criminal jurisdiction of the Court.	Nil	Nil
206.	Proceedings for offences	Prosecutions may be commenced by the persons or bodies set out and must commence with three years of an offence or, with permission of the Attorney-General, 10 years.	Nil	Nil
207.	Offences by bodies corporate—responsibility of officers	If a body corporate is guilty, each director and the chief executive officer of the body corporate are guilty and liable to the penalty prescribed for a natural person. A defence is available whereby the person could not by the exercise of due diligence have prevented the commission of the offence. Facts that prosecution must prove are further described.	Nil	Nil
208.	Penalties for bodies corporate	The maximum penalty for an offence committed by a body corporate is 5 times the maximum penalty for a natural person.	Nil	Nil
209.	Order to rectify breach	Outlines powers of Court to make orders to rectify breach including: actions to rectify; payment to relevant authority to cover costs or expense; cancelation of development authorisation; orders to pay to any person for loss, incurred costs, expenses for damage or compensation resulting from contravention or failure to comply.	Nil	Nil
210.	Adverse publicity orders	If a person is found guilty 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.	It is noted that the enforcement option of adverse publicity orders has not been made available to Councils. This oversight must be addressed.	Refer to comment
211.	Proceedings commenced by councils	Fines paid for offences where proceedings are commenced by a council must be paid to the council.	All fines for proceedings commenced by a Council under the Act must be paid to the Council (not just those circumstances prescribed by Regulations)	Remove the words ‘brought within the ambit of this section by the regulations from Clause 211(a)
Division 3—Civil penalties				
212.	Civil penalties	Where the Commission is satisfied an offence has been committed it may, as an alternative to criminal proceedings, recover by negotiation or application to the Court an amount as a civil penalty. Rules for the Commission are set out. Guidance is provided for the Court in setting civil penalties. Evidence cannot be used in criminal proceedings under certain circumstances. Proceedings must commence with three years of alleged contravention or, with permission of the Attorney-General, within 10 years.	The power to negotiate a civil penalty has been made available only to the Commission. This power should also be available to Councils, which are the principal enforcement body.	Refer to comment
Division 4—Other matters				
213.	Imputation of conduct or state of mind of officer, employee etc	Conduct or state of mind of officers of a body corporate or an employee or agent of a person will be imputed to the body corporate or person. However, in such circumstances the officer, employee or agent will not be liable for imprisonment.	Nil	Nil

214.	Statement of officer evidence against body corporate	A statement made by an officer of the body corporate is admissible as evidence against the body corporate.	Nil	Nil
215.	Make good orders	Where tree-damaging activity occurs, in addition to any penalty imposed, the Court may make various orders set out in this clause. It also enables a person to enter or cross land to give effect to an order (however this does not apply with respect to land sold to a genuine arms-length purchaser).	Nil	Nil
216.	Recovery of economic benefit	In addition to any penalty, a 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.	The power of economic recovery benefit has been made available only to the Commission. This power should also be available to Councils, which are the principal enforcement body. The penalty should be paid to the Council, not to the Commission.	Refer to comment
217.	Enforceable voluntary undertakings	The Chief Executive may accept a written undertaking given by a person in connection to a contravention or alleged contravention. The undertaking does not constitute an admission of guilt. The Chief Executive may apply to the Court for enforcement of the undertaking at which point the Court may make further orders.	Powers relating to enforceable voluntary undertakings should be made available to Councils	Refer to comment
Part 19—Regulation of advertisements				
218.	Advertisements	A Council or the Commission can order the owner or occupier of land to remove an advertisement or advertising hoarding which is not authorised by the <i>Local Government Act 1999</i> , electoral or other acts, or that is not advertising the sale of that land. The clause further sets out offences as well as appeal provisions.	Nil	Nil
Part 20—Miscellaneous				
219.	Constitution of Environment, Resources and Development Court	Describes the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act.	Nil	Nil
220.	Exemption from liability	No act or omission in good faith in relation to a particular development by the Minister, the Commission, a relevant authority, a council, other authority under this Act, authorised officer or a building certifier, after the development has been approved, subjects that person or body to any liability.	Nil	Nil
221.	Insurance requirements	Regulations may require a prescribed class or classes of persons to have professional indemnity or other insurance.	Nil	Nil
222.	Professional advice to be obtained in relation to certain matters	A relevant authority, authorised officer or building certifier must in prescribed matters seek and consider the advice of a person with prescribed qualifications or approved by the Minister. A person or body is not subject to any liability because of an act or omission made in good faith on reliance of a certificate.	Nil	Nil
223.	Confidential information	A person performing a function under this Act must not use confidential information obtained for personal benefit or for another or intentionally disclose information except in circumstances described.	Nil	Nil

224.	Accreditation of building products etc	Any building product, method of design, component equipment or system accredited by an entity prescribed for the purposes of this clause is accredited for the purposes of this Act. A development approval cannot be withheld on grounds it is unsatisfactory if an accredited method etc is used.	Nil	Nil
225.	Copyright issues	Ensures material published on the SA planning portal complies with copyright requirements.	As this provision does not apply to materials published by Councils, it does not assist with the	Amend Clause 225(1) to include Councils as a designated entity
226.	Charges on land	Sets out duties of Registrar-General in relation to recording and administering charges and related instruments.	Nil	Nil
227.	Registering authorities to note transfer	Sets out duties of Registrar-General and other authorities in relation to noting, recording and administering related instruments.	Nil	Nil
228.	Approvals by Minister or Treasurer	The Minister, Treasurer or those acting can approve matters under this Act.	Nil	Nil
229.	Compulsory acquisition of land	The Minister may acquire land through the processes set out in <i>Land Acquisition Act 1969</i> .	Nil	Nil
230.	Regulations	Sets out scope of Governor's powers to make such regulations as are necessary or expedient for the purposes of the Act.	A number of the comments within this document refer to the need for the LGA to be consulted prior to regulations impacting on Councils being made. A subclause to that effect could be included in Clause 230 to avoid consultation requirements being repeated throughout the Bill.	Insert a clause requiring consultation with the LGA on any Regulations made that have an impact on the role of a Council or a joint planning board
Schedule 1—Disclosure of financial interests				
Sch 1, 1	Interpretation	Defines terms in this Schedule.	Nil	Nil
Sch 1, 2	Disclosure of interests	Prescribed member of a designated entity must on appointment, annually and when there is a change, declare their pecuniary interests.	Nil	Nil
Sch 1, 3	Register	A relevant official must maintain a register of interest which a person is entitled to inspect and obtain a copy (for a fee).	Nil	Nil
Sch 1, 4	Compliance with Schedule	Sets a maximum penalty of \$10,000 for failing to comply with requirement of this schedule or knowingly submitting a false or misleading return.	Nil	Nil
Sch 1, 5	Restrictions on publication	A person must not publish information from the register which is not a fair and accurate summary, not in the public interest or which is malicious.	Nil	Nil
Schedule 2—Subsidiaries of joint planning boards				
Sch 2, 1	Application for Ministerial approval	Joint planning board must apply to Minister to establish a subsidiary board. Application must be in form prescribed by Minister, published according to this clause.	Nil	Nil
Sch 2, 2	Corporate status	A subsidiary is a body corporate. Its name, power duties and functions are assigned by the Charter and it holds its property on behalf of joint planning board.	Nil	Nil

Sch 2, 3	Charter of subsidiary	A charter must be prepared by the joint planning board. Matters to be addressed by charter are described in the clause. The charter must be published on the SA planning portal. It can be reviewed and amended by the joint planning board. An amended charter must be supplied to the Minister and published on the SA planning portal.	Nil	Nil
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Clause	Title	Content	LGA Comment	Amendment Sought
Sch 2, 4	Appointment of board of management	A subsidiary is appointed by joint planning board. Clause also outlines procedures and terms of appointments.	Nil	Nil
Sch 2, 5	Validity of acts	Vacancies or defects in appointment of member do not invalidate an act of proceeding of board of management.	Nil	Nil
Sch 2, 6	Proceedings of board of management	Sets out proceedings and governance requirements.	Nil	Nil
Sch 2, 7	Specific functions of board of management	The clause sets out that the board of management of a subsidiary is responsible for the administration of the affairs of the subsidiary and includes aspects of the roles the board must adhere to.	Nil	Nil
Sch 2, 8	Board members' duty of care etc	Board of management members must act with reasonable care and diligence etc. A board member does not commit a breach of duty by acting in accordance with a direction from the joint planning board.	Nil	Nil
Sch 2, 9	Business plans	Sets out governance arrangements, particularly content and timelines for adoption and review.	Nil	Nil
Sch 2, 10	Budget	Sets out governance arrangements for the yearly budget.	Nil	Nil
Sch 2, 11	Subsidiary subject to direction by joint planning board	A subsidiary is subject to direction and control by the joint planning board.	Nil	Nil
Sch 2, 12	Provision of information	A subsidiary must at request of joint planning board furnish reports or other information. The board of management has duty to ensure some information is treated as confidential.	Nil	Nil
Sch 2, 13	Reporting	A subsidiary must furnish the joint planning board with any reports that are requested and yearly financial reports.	Nil	Nil
Sch 2, 14	Internal audit	A subsidiary must establish and maintain effective auditing of operations, and establish an audit committee whose membership will be determined by the joint planning board (subject to regulations). The functions of the audit committee are described.	Nil	Nil
Sch 2, 15	Delegations	Delegations must be in writing, may be conditional or unconditional and are revocable.	Nil	Nil
Sch 2, 16	Common seal	Will have a common seal and there is a presumption, where absent proof to the contrary, that it was properly applied.	Nil	Nil
Sch 2, 17	Liabilities	Liabilities are guaranteed by joint planning board that must also approve borrowings.	Nil	Nil
Sch 2, 18	Winding up	The joint planning board may ask the Minister to wind up a subsidiary. This is achieved by the Minister publishing a notice in the Gazette. All assets and liabilities are to be assumed by joint planning board.	Nil	Nil

Sch 3, 1	Codes of conduct	The Minister may adopt individual codes of conduct to be observed by persons or bodies under this Act. Procedures for variation of or adoption of a new code of conduct and consultation requirements are described.	Nil	Nil
Sch 3, 2	Publication of code	The Minister must advise of adoption or variation of code of conduct through a notice in the gazette and by publishing a copy of the code of conduct on the SA planning portal.	Nil	Nil
Sch 3, 3	Professional standards and investigations	Regulations may provide for matters relating to compliance with a code of conduct, or conduct of accredited professionals, confer powers, functions and duties on the Commissioner for Consumer Affairs or other prescribed bodies or persons, and vest jurisdiction in the South Australian Civil and Administrative Tribunal.	Nil	Nil
Sch 3, 4	Non-derogation	Schedule 3 does not derogate from the operation of Schedule 4.	Nil	Nil
Schedule 4—Performance targets and monitoring				
Sch 4, 1	Targets	The Minister may on recommendation of the Commission set, vary or withdraw performance targets in relation to a state planning policy or planning agreement. The Commission must monitor targets and may publish a report.	Nil	Nil
Sch 4, 2	Monitoring and evaluation of performance and trends	The Commission with approval of the Minister may establish, vary or substitute a scheme to monitor and evaluate performance. Scheme requirements are described. The Commission must publish information about these assessments in its annual reports.	The establishment of a scheme for monitoring and evaluating performance must be developed in partnership with the LGA	Insert a Clause requiring consultation with the LGA after Schedule 4.2(1)
Sch 4, 3	Review of performance	The Minister after consulting with the Commission may appoint an investigator to report on the performance of a person or body. Triggers for and process of appointment are described. Powers of investigators are set out as are the rights and obligations of those whose performance is investigated. The process for reports and submissions is set out.	Nil	Nil
Sch 4, 4	Non-derogation	Schedule 4 does not derogate from the operation of Schedule 3.	Nil	Nil
Schedule 5—Regulations				
Sch 5, 1-46	Regulations	This schedule sets out the 47 matters necessary or convenient for the administration of, or carrying out the objects of this Act in relation to which regulations may be made.	Nil	Nil
Schedule 6—Repeal and certain amendments				
Part 1—Preliminary				
Sch 6, Pt 1, 1	Amendment provisions	Provision under heading amends the Act.	Nil	Nil
Part 2—Repeal				
Sch 6, Pt 2, 2	Repeal	The <i>Development Act 1993</i> is repealed.	Nil	Nil
Part 3—Amendment of the <i>Character Preservation (Barossa Valley) Act 2012</i>				

Sch 6, Pt 3, 3	Amendment of section 3—Interpretation	Changing references: <i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> ; and <i>state planning policy</i> for Planning Strategy.	Nil	Nil
Sch 6, Pt 3, 4	Amendment of section 4—Interaction with other Acts	<i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> .	Nil	Nil
Sch 6, Pt 3, 5	Amendment of section 5—Administration of Act	<i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> .	Nil	Nil
Sch 6, Pt 3, 6	Amendment of section 7—Character values of district	New paragraph 7(2)(b) inserted which updates terminology.	Nil	Nil
Sch 6, Pt 3, 7	Amendment of section 8—Limitations on land division in district	Changing references: <i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> ; and updating other terminology.	Nil	Nil
Sch 6, Pt 3, 8	Amendment of section 10—Review of Act	Deletion of reference to Planning Strategy.	Nil	Nil
Sch 6, Pt 3, 9	Amendment of section 11—Regulations	Substitution of State Planning Commission for Development Assessment Commission.	Nil	Nil
Part 4—Amendment of the <i>Character Preservation (McLaren Vale) Act 2012</i>				
Sch 6, Pt 4, 10	Amendment of section 3—Interpretation	Amendments of various definitions to reflect new terminology.	Nil	Nil
Sch 6, Pt 4, 11	Amendment of section 4—Interaction with other Acts	Changing reference: <i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> .	Nil	Nil
Sch 6, Pt 4, 12	Amendment of section 5—Administration of Act	Changing reference: <i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> .	Nil	Nil
Sch 6, Pt 4, 13	Amendment of section 7—Character values of district	New paragraph 7(2)(b) inserted which updates terminology.	Nil	Nil
Sch 6, Pt 4, 14	Amendment of section 8—Limitations on land division in district	Changing reference: <i>Development Act 1993</i> to <i>Planning, and Development and Infrastructure Act 2015</i> .	Nil	Nil
Sch 6, Pt 4, 15	Amendment of section 10—Review of Act	Deletion of any references to the Planning Strategy.	Nil	Nil
Sch 6, Pt 4, 16	Amendment of section 11—Regulations	Substitution of State Planning Commission for Development Assessment Commission.	Nil	Nil
Part 5—Amendment of <i>Environment, Resources and Development Court Act 1993</i>				
Sch 6, Pt 5, 17	Amendment of section 21—Principles governing hearings	The Court may require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence. The Court may also limit time to present evidence.	Nil	Nil
Sch 6, Pt 5, 18	Insertion of section 35A	Deals with the use of electronic devices such as telephones and video link to conduct hearings. It enables courts to conduct proceedings entirely on the basis of documents without parties, representatives or witnesses in attendance.	Nil	Nil
Part 6—Amendment of <i>Liquor Licensing Act 1997</i>				

Sch 6, Pt 6, 19	Insertion of section 11C — Steps to avoid conflict with planning system	Newly requires the Commissioner of Liquor Licensing to take steps to ensure the development of a code of practice, assessment of a licence application or imposition of conditions does not conflict with or duplicate matters addressed or dealt with under this Bill.	Nil	Nil
Sch 6, Pt 6, 20	Amendment of section 76—Other rights of intervention	New subsection (2a) precludes a representation under subsection 2 extending to matters addressed or dealt with under this Bill.	Clarification- does this amendment imply that all matters that are dealt with through a liquor license application would have also been (or would be in the future) the subject of a planning application? This may not always be the case and it may be appropriate to raise certain issues through the Liquor Licensing process.	TBA
Part 7—Amendment of <i>Local Government Act 1999</i>				
Sch 6, Pt 7, 21	Amendment of section 221—Alteration of road	New subparagraph 221(3)(b) references development authorisations under this Bill.	The LGA Does not support this amendment	Delete
Sch 6, Pt 7, 22	Amendment of section 222—Permits for business purposes	Insertion of a new subsection (6a) which indicates section 222 does not apply to the use of a public road approved as part of a development authorisation under this Bill.	The LGA Does not support this amendment	Delete
Sch 6, Pt 7, 23	Insertion of section 234A	This new clause deals with: - the duty of a person who alters a public road or uses it for business purposes to comply with any design requirement of other requirement. - provision of an appeal process to the ERD Court against a council unreasonably delaying a development in accordance with a development authorisation.	The LGA Does not support this amendment	Delete
Part 8—Amendment of <i>Public Sector Act 2009</i>				
Sch 6, Pt 8, 24	Insertion of section 10A —Agencies to organise activities according to planning regions.	The Premier may direct public sector agencies to operate on the basis of planning regions established under this Bill. Such a direction is not binding if impedes quasi-judicial or statutory independent function.	Nil	Nil
Part 9—Amendment of <i>Urban Renewal Act 1995</i>				
Sch 6, Pt 8, 25	Amendment of section 5—Functions	Clause 5(d)—delete "section 37 of the <i>Development Act 1993</i> " and substitute: clause 111 of the <i>Planning, Development and Infrastructure Act 2015</i>	Nil	Nil
Sch 6, Pt 8, 26	Amendment of section 7C—Functions of URA	Clause 7C(1)(f)—delete "section 37 of the <i>Development Act 1993</i> " and substitute: 25 section 111 of the <i>Planning, Development and Infrastructure Act 2015</i>	Nil	Nil
Sch 6, Pt 8, 27	Amendment of section 7G—Preliminary	Delete section 7G, definition of Development Assessment Commission and Planning Minister, after the definition of precinct plan insert: meaning of State Planning Commission	Nil	Nil
Sch 6, Pt 8, 28	Amendment of section 7H—Establishment of precincts	Various amendments to s7H.	Nil	Nil

Clause	Title	Content	LGA Comment	Amendment Sought
Sch 6, Pt 8, 29	Amendment of section 7I—Precinct plans	Various amendments to s7I.	Nil	Nil
Sch 6, Pt 8, 30	Amendment of section 7J—Certain matters to apply for the purposes of the <i>Planning, Development and Infrastructure Act 2015</i>	Various amendments to s7J.	Nil	Nil