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NEW
SYSTEM



KEY CHANGES TO THE DEVELOPMENT ASSESSMENT REGULATIONS BASED ON FEEDBACK RECEIVED DURING CONSULTATION

July 2019





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Introduction

The [Planning, Development and Infrastructure Act 2016](#) (the PDI Act) establishes a new assessment framework for development applications.

The [Planning, Development and Infrastructure \(General\) \(Development Assessment\) Variation Regulations 2019](#) (the Regulations) vary the existing [Planning, Development and Infrastructure \(General\) Regulations 2017](#). The Regulations support the PDI Act to prescribe further detail on the operation of the new development assessment framework, covering planning, building and land division assessment.

The Department of Planning, Transport and Infrastructure (the Department) has developed an engagement approach to support the drafting and implementation of the Regulations. Engagement has involved:

- Direct liaison with representatives from local government, state government agencies, and the development industry.
- Formation of a 'building reform working group' to seek feedback and advice on a range of issues to improve compliance and enforcement under the new Act and ensure the delivery of a safe and high performing built environment.
- Public consultation on a discussion paper titled [Assessment Pathways: How will they work?](#) (the Discussion Paper), which was consulted with accompanying workshops, presentations and information sessions from August to October 2018.
- A series of working groups with leading experts in planning and development to assist in identifying the key issues and opportunities for 'assessment pathways' under the PDI Act.
- Public consultation on [draft Regulations](#) from January to March 2019, involving feedback through the government's YourSay webpage, as well as information sessions and presentations with key community, government and industry bodies.

This Guide provides a summary of the key themes in the Regulations, identifying how they have been shaped by feedback received throughout the engagement process.

Planning authorities for Code assessed development

What we've heard

The PDI Act establishes that assessment panels will be the relevant authority for code assessed applications for planning consent, except where the Regulations prescribe an assessment manager or accredited professional as the relevant authority.

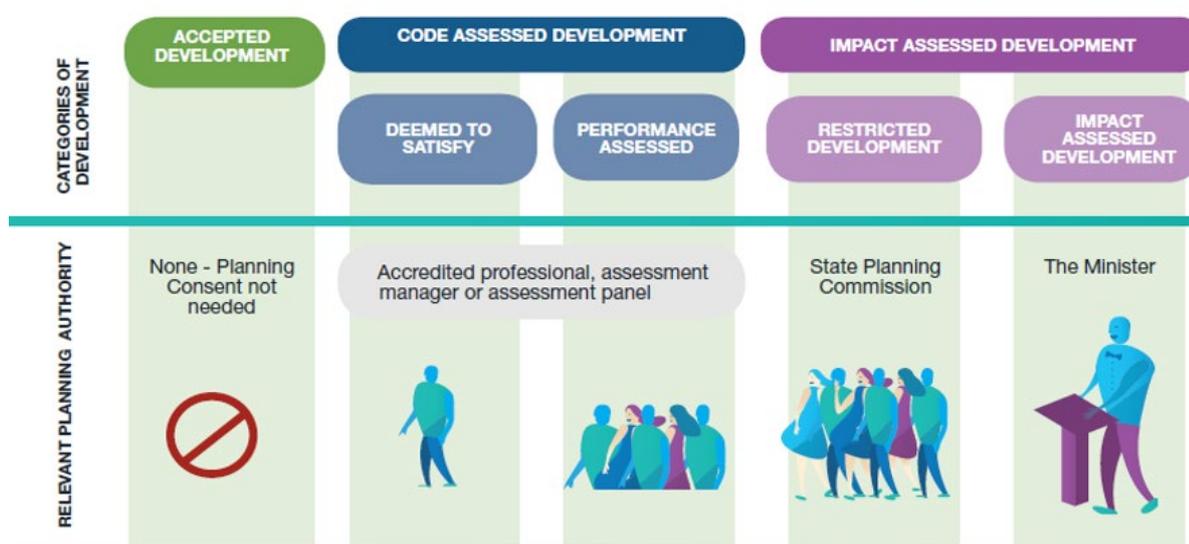


Figure 1. Pathways associated with categories development

Respondents to the Discussion Paper made the following comments in relation to how code assessed development should be distributed between these relevant authorities:

- Concern was raised by the majority of submissions regarding the level of discretion required to assess performance assessed applications (as well as minor variations to deemed-to-satisfy criteria) and the incompatibility of this discretionary approach with private accredited professionals.
- Most respondents were of the view that accredited professionals should be the relevant authority for deemed-to-satisfy developments where clear deemed-to-satisfy provisions can be drafted.
- Some respondents identified that assessment managers should be the relevant authority for performance assessed applications, including in circumstances where public notification has been undertaken and no representations raising concerns have been received.
- Respondents identified a number of circumstances where assessment panels should be the relevant authority for performance assessed development, such as:
 - Where representations raising concern with the proposed development have been received
 - Medium/high rise residential development
 - Large land divisions
 - Developments over a certain value
 - Developments of environmental significance
 - Development involving the demolition of heritage items.



These suggestions were largely incorporated into the draft Regulations consulted in January 2019. However, the following comments were made:

- A number of responses, from both local government and the development industry alike, raised concern that there would be a significant increase in the number of applications for which an assessment panel would be the relevant authority. It was observed that assessment by an assessment panel could result in significantly longer decision timeframes and increased costs for applicants.
- Respondents suggested that the range of applications for which an assessment manager was the relevant authority should be expanded. It was noted that an assessment manager was required to have significant experience and qualifications under the Accredited Professionals Scheme, and would therefore be sufficiently qualified to undertake the assessment of some classes of development currently drafted as being assessed by assessment panels.
- In particular, respondents queried the need for the following types of development to be considered by assessment panels:
 - development subject to notification where no third party representations were received
 - land divisions proposing over 20 additional allotments
 - demolition of heritage places, particularly partial/ minor demolition works.

What we've done

The intention of the planning reforms has been to ensure standard developments with minimal impacts follow a streamlined assessment process while more complex developments require a more involved assessment process focussed on design and impact.

Regulation 22 outlines cases where assessment managers and accredited professionals are the relevant authority while Regulations 24 and 25 set out additional cases specific to assessment managers and accredited professionals.

Accredited professionals

The Regulations limit the role of **Level 4 accredited professionals** to deemed-to-satisfy developments (without any variations from the deemed-to-satisfy criteria). This is considered to uphold the aspirations of the new planning system as standard development types that meet prescriptive criteria should be able to be assessed by a range of private accredited planners thereby speeding up the assessment process via a range of options. Deemed-to-satisfy development is expected to encompass development where external impacts are low and there is no need for advice on more complex issues such as stormwater, waste management and traffic.

Where development falls slightly outside the deemed-to-satisfy criteria, a **Level 3 accredited professional** (with a greater level of experience than Level 4) would be able to assess minor variations to the deemed-to-satisfy criteria (as well as deemed-to-satisfy development able to be assessed by Level 4 accredited professionals).

Accredited professionals who are qualified **land surveyors** would also be able to assess land division applications for planning consent, but only where such land division is deemed-to-satisfy (regulation 22(d)). It is noted that land division consent would still be required for these applications, requiring assessment by the relevant assessment manager.

Planning consent applications that don't fall within the deemed-to-satisfy pathway would be assessed by the relevant assessment manager or assessment panel.

Assessment panels

Regulation 22(a)(ii) establishes assessment panels as the relevant authority for performance assessed development which is subject to public notification. Such development would involve a level of public interest that benefits from decision-making by a panel of experts instead of an individual (and that panel may choose to hear verbal representations).

In response to overwhelming feedback received through consultation on the draft Regulations, no other types of development will be assessed by an assessment panel.

Assessment managers

Assessment managers can act as the relevant authority for all remaining forms of performance assessed development where public notification isn't required. They are also prescribed as the relevant authority for the assessment of land division consent (under section 102(1)(c)&(d) of the PDI Act) where the technical advice of council is needed to assess infrastructure impacts/demands. Assessment managers could also assess any proposed offset schemes or encroachments (under section 102(1)(e) or (f) of the PDI Act).

Feedback from local government representatives suggested that assessment managers could be a relevant authority for notified performance assessed applications where there are no representations or all representations are in favour; however this would be contrary to one of the principles identified in the Discussion Paper:

'The relevant authority will be determined at the time of application lodgement.'

The Regulations have been prepared to provide certainty in assessment approach, and for this reason, assessment panels have been proposed as authority for all notified performance assessed development. That being said, assessment panels could choose to establish delegations (similar to many panels' current delegations) which delegate applications without representations to assessment managers or council staff.



 ACCREDITED PROFESSIONAL SURVEYOR	 ACCREDITED PROFESSIONAL PLANNING LEVEL 4	 ACCREDITED PROFESSIONAL PLANNING LEVEL 3	 ASSESSMENT MANAGER PLANNING LEVEL 1	 ASSESSMENT PANELS PLANNING LEVEL 2
Deemed-to-satisfy land divisions (planning consent only)	Deemed-to-satisfy development	Deemed-to-satisfy development	Deemed-to-satisfy development	Notified performance assessed development
		Deemed-to-satisfy development with minor variations	Deemed-to-satisfy development with minor variations	
			Performance assessed development not assigned to assessment panels	
			Land division consent, etc.	

Figure 2. Role of relevant planning authorities for code assessed development

Building consent authorities

What we've heard

Several submissions on the draft Regulation, primarily from regional councils, raised concerns regarding the scope of the role of Building Level 3 as a relevant authority, which no longer allows assessment of class 2-9 buildings as is the case under the current *Development Regulations 2008*.

What we've done

Regulation 25 establishes the particular level of accreditation required for a building certifier to assess particular types of development.

While feedback raised concern with changes from the current *Development Regulations 2008*, the rationale behind the amendment is to align the levels with the national accreditation scheme of the Australian Institute of Building Surveyors.

Regulation 112 establishes that each council must appoint an accredited building professional to carry out inspections of building work under section 144 of the PDI Act.

Figure 3 illustrates a comparison of these building authorities with the current private certifiers under the *Development Regulations 2008*.

Under section 99 of the PDI Act, a council may act as a relevant authority for the granting of building rules consent. So while council officers need not necessarily be accredited to make decisions in respect to building consent, regulation 26 establishes that the council or the Commission must seek and consider the advice of an accredited professional in accordance with the above levels for each building consent application.



Legislation	Level and function			
<p>New Development Assessment (General) Regulations 2017</p>	NEW LEVELS			
	 <p>BUILDING LEVEL 4</p> <p>BUILDING INSPECTOR</p>	 <p>BUILDING LEVEL 3</p> <p>ASSISTANT BUILDING SURVEYOR</p>	 <p>BUILDING LEVEL 2</p> <p>BUILDING SURVEYOR LIMITED</p>	 <p>BUILDING LEVEL 1</p> <p>BUILDING SURVEYOR</p>
<p>Outgoing Development Regulations 2008</p>	OUTGOING LEVELS			
	<p>N/A</p>	<p>Building Surveying Technician</p>	<p>Assistant Building Surveyor</p>	<p>Building Surveyor</p>
	<p>Undertake inspections</p>	<p>Provide advice and provide building consent for Class 1 or 10 buildings not exceeding 2 storeys and a floor area not exceeding 500m²</p>	<p>Provide advice and provide building consent for buildings (all classes) not exceeding 3 storeys and a floor area not exceeding 2000 m²</p>	<p>Provide advice and provide building consent for any class of development</p> <p>Provide planning consent for certain deemed-to-satisfy development, as determined by the Minister (similar to the current scope of 'Residential Code' development)</p>
	<p>Not in outgoing Regulations</p>	<p>Provide advice for Class 1a or 10 buildings not exceeding 2 storeys</p> <p>Provide advice for Class 2 to 9 buildings not exceeding 1 storey and not having a floor area exceeding 500 m²</p>	<p>Provide advice for buildings (all classes) not exceeding 3 storeys and a floor area not exceeding 2000 m²</p>	<p>Provide advice for any development</p> <p>Provide building consent for any class of development if registered as a private certifier</p> <p>Provide planning consent for 'Residential Code' development</p>

Figure 3. Role of accredited building certifiers

Application timeframes

What we've heard

Submissions on the Discussion Paper observed the following in relation to decision timeframes:

- Decision timeframes under the *Development Act 1993* are generally appropriate and should be used as a guide for the new timeframes. However, increases to the timeframes could be considered to ensure a reasonable assessment time before a deemed planning consent notice could be served.
- Additional time should be added to the overall timeframe to account for periods of public notification, agency referrals and determination by an assessment panel.
- There needs to be a period of verification by the relevant authority before the 'clock' starts on an application to ensure the application has been categorised correctly, all base information has been provided, and the correct fees are charged.
- Timeframes should exclude public holidays and be prescribed in business days to avoid confusion.

Submissions on the draft Regulations from the development industry generally observed that the assessment timeframes were too generous and should be reduced, while the local government sector and community groups observed the timeframes were too short and should be lengthened.

Several submissions expressed general support for the timeframes prescribed, subject to certain refinements. Common observations and suggestions included:

- Support for incorporating an initial 'verification' period for applications, however several respondents (predominantly regional councils) observed that a longer period was required to ensure that all steps in the verification process could be undertaken. Conversely, some development industry submissions raised concern that the verification period would unduly extend the assessment period, raising particular concern around deemed-to-satisfy application timeframes.
- Several submissions observed that 30 business days for an agency referral was too long, particularly given that performance-assessed developments should be determined within 20 business days.
- The proposed 20-business-day assessment timeframe for a performance-assessed application (where neither public notification nor agency referral is required) was considered too limited, particularly for more complex applications where 'internal' referrals/advice may need to be undertaken by the relevant authority.

What we've done

Overall assessment timeframe

The time within which a decision must be made on an application (regulation 53) has been based on the timeframes prescribed in the *Development Act 1993* as well as baseline data on current assessment timeframes.

The Regulations have adopted the recommendations from submissions to base timeframes on business days, and provide additional time when notification, agency referral or a panel meeting is required.

The application timeframes once the 'clock' starts are prescribed in proposed regulation 53 and illustrated in Figure 4 below.



Verification

The Department also heard queries regarding when the 'clock' starts for assessment. Given that all applications will be lodged on the SA Planning Portal and sent to the relevant authority for checking, the clock should not start until the authority has:

- checked all mandatory information has been submitted
- confirmed the application has been categorised correctly and that they are the relevant authority and agree to act as such (e.g. a private accredited professional may be on leave or not have the capacity to assess)
- received the relevant assessment fees.

Regulation 31 assigns a maximum period of 5 business days for these checks to occur.

Deemed-to-satisfy timeframes

One of the fundamental aspirations of the planning reforms is to ensure that anticipated development that 'ticks all the boxes' can obtain a quicker approval, and by an applicant's choice of relevant authority. This will allow relevant authorities such as assessment manager and assessment panels more time to focus on complex applications requiring an assessment of merit.

The time within which an authority needs to determine a deemed-to-satisfy has been prescribed at 5 business days. While this may sound limited, it is important to note that the 5 business day verification period also applies before this 'clock' starts.

This total of 10 business days aligns with the current 'complying' development timeframes.

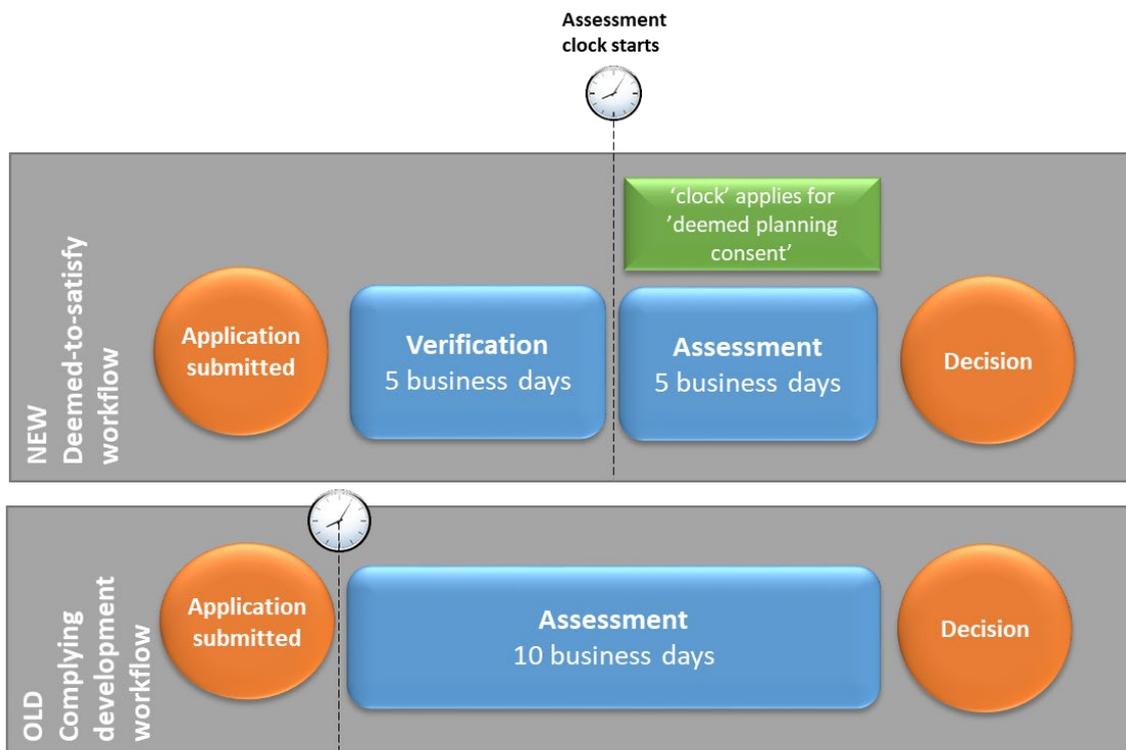


Figure 4. Comparison of complying and deemed-to-satisfy timeframes

Referrals

Referral timeframes have been reviewed to limit less-complex agency referral to 20 business days, while those that are more complex, requiring consideration by different levels within an agency, are retained at 30 business days. All referral timeframes are prescribed in Schedule 9.

Performance assessed

A 20-business-day baseline period has been maintained for performance assessed applications. Concerns from local government around this timeframe are acknowledged, however current system indicator data demonstrates that it currently takes a median of approximately 18 business days to determine a Category 1 merit application¹, which is similar to a performance assessed application where notification isn't required.

All timeframes will be monitored as the new planning system is implemented to ensure that the prescribed timeframes achieve greater efficiency, but are not jeopardising the ability of an authority to undertake a proper assessment.

¹ *Annual report on the administration of the Development Act 1993 – 2017-18* - https://www.sa.gov.au/_data/assets/pdf_file/0008/471194/Annual-report-on-the-administration-of-the-Development-Act-1993-2017-18.pdf



Development Assessment timeframes under the Planning, Development and Infrastructure Regulations

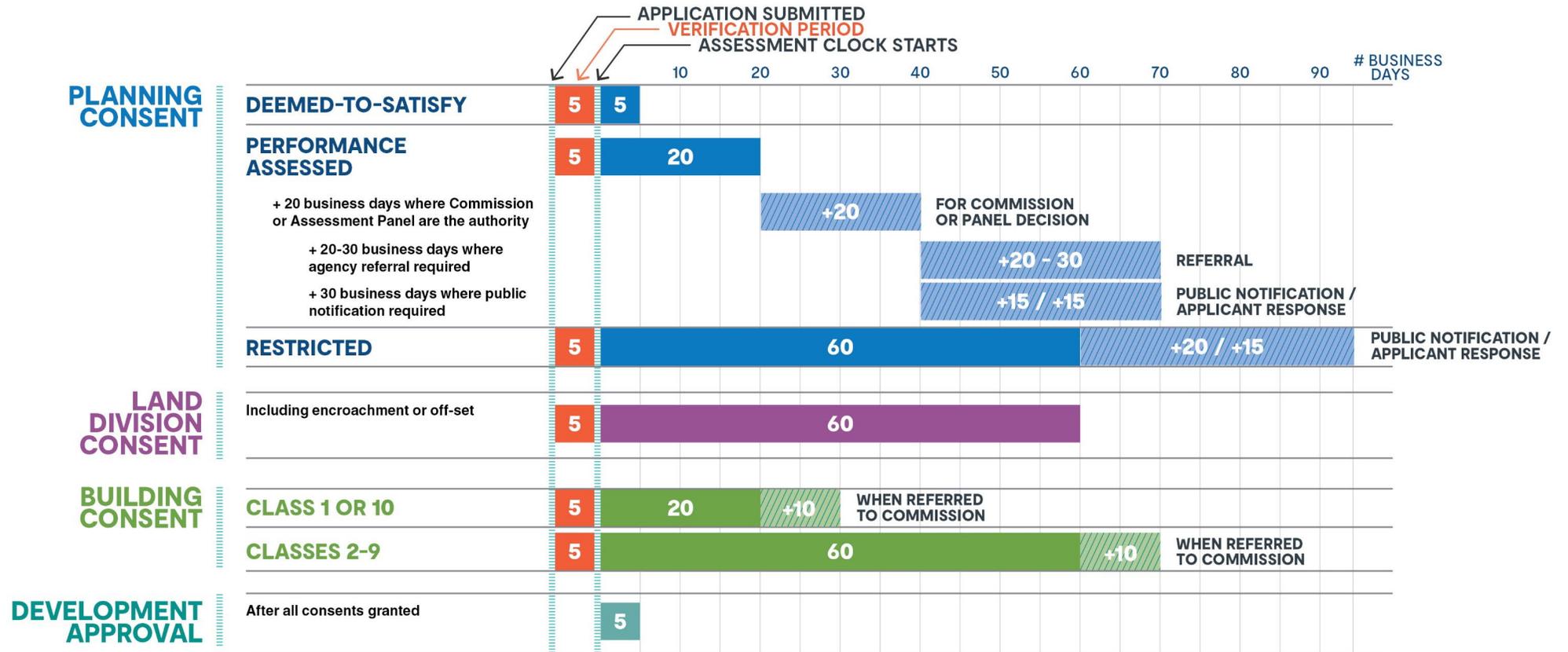


Figure 5. Development assessment timeframes under the Planning, Development and Infrastructure Regulations

Application information requirements

What we've heard

Some respondents to the Discussion Paper believed the current information requirements for development applications (prescribed by Schedule 5 of the *Development Regulations 2008*) were sufficient. Others thought they should be expanded to apply to a variety of development types, including standardised information for commercial/industrial businesses, multi-level dwellings and changes of land use.

When the draft Regulations were consulted, the development industry noted concerns around adopting a 'one-size-fits-all approach' to the information required for residential development applications.

Specific concern was raised regarding:

- the requirement for a declaration or site audit regarding site contamination for residential development (respondents instead suggested the use of conditions on an approval to deal with any necessary investigations)
- the need to provide details of colours/materials and landscaping, as these works often do not constitute development in their own right, and so could be subject to future change.

Local government submissions expressed a different view, suggesting that prescribed information include:

- plan scaling of a larger size
- a site plan that also illustrates rainwater tanks, air conditioning units, storage sheds, clothes lines and external bin storage
- details of civil siteworks and stormwater disposal
- a certificate of title to confirm land ownership, allotment boundaries and the presence of any easements, common land, rights of way, land management agreements or other relevant information.

Submissions also highlighted mixed opinions about the need for applicants to provide all information in Schedule 8 – some felt that the Regulations shouldn't require all application documents at the time of lodgement (noting that it would only be suitable for deemed-to-satisfy applications). Others noted that there should not be an option for applicants to submit applications without the minimum baseline information.

Respondents also queried the need to document the circumstances in which applications were lodged without meeting all of the Schedule 8 requirements.

What we've done

Baseline information for planning consent

The baseline information required for lodgement has been expanded in the new 'Schedule 8 – Plans'.

In the current *Development Regulations 2008*, the base information for planning consent is prescribed for complying developments only, which means that merit applications technically have no minimum requirements for plans and rely instead on the authority's request for information or the relevant council's guidelines.



By outlining the baseline information for planning consent based on different forms of development, the Regulations will provide a more streamlined and consistent application process. This information will be automatically requested from the applicant when they lodge their application on the SA Planning Portal.

Waiving information

The Department understands that no two applications are the same and it would be inappropriate to require the exact details for every application. This is why relevant authorities can choose to waive information prescribed by Schedule 8 of the Regulations and must do so if the information is not directly relevant to the application.

The Regulations do not specifically require the reason for waiving information to be documented because this, like all other decisions of a relevant authority made under the PDI legislation, should be documented in accordance with the requirements of the Accredited Professionals Scheme for auditing purposes.

Scope of baseline information in Schedule 8

In response to feedback on the draft Regulations regarding the information requirements being too prescriptive, Schedule 8 has been reduced to remove baseline information for non-residential development, retaining walls, advertising signs and 'historic conservation areas'.

Fundamentally, the information prescribed in Schedule 8 of the Regulations needs to be sufficient to allow for the assessment of 'deemed-to-satisfy' applications, because in those cases, the relevant authority cannot request further information over and above the minimum prescribed. However, for 'performance assessed' and 'restricted' applications, the relevant authority will be able to request any further information as reasonably required to assess the application, pursuant to section 119 of the PDI Act.

It is therefore considered that the information to be submitted with these other applications will be more suitably set out in a guide rather than regulations.

Site contamination audits

The requirement for site audit report is only required for deemed-to-satisfy applications where the previous use of the land was not for residential purposes, and either:

- (a) the applicant cannot provide a declaration indicating that the site has not been subject to site contamination as a result of a previous use or activity; or
- (b) the authority has reason to believe that the site may have been subject to site contamination.

This requirement has been limited to deemed-to-satisfy applications in response to feedback on the draft Regulations, as it is acknowledged that the relevant authority will have the opportunity to request any information as necessary for any other category of application, enabling a more flexible approach to address potential site contamination issues.

Certificates of title

The need for a certificate of title to be provided with applications for planning consent has been contemplated by the Department for some time. While it is noted that practitioners find the information on the certificate of title to be useful, it is acknowledged that the content on a title has limited relevance to assessment under the Planning Rules, and primarily relates to private ownership matters. Accordingly, this information is not required for deemed-to-satisfy applications, but could be requested by the relevant authority for applications of other categories/types.

Plan scaling

The requirement for plan at a specific bar and ratio scale has been removed for plans for planning consent. Given that applications lodged under the PDI Act will be required to be lodged electronically on the SA Planning Portal, provided that plans are drawn to scale, standard PDF editing software does not require specific scaling to undertake measurements.

For the time being, plans for building work are still required to be drawn to a minimum scale, as the Department understands these plans may be printed in hard copy to undertake building inspections in certain cases. However, in the future, it is appreciated that inspections will rely more on devices for scaling rather than hard copy. This will be monitored ongoing.

Extraneous information

In response to feedback from the development industry, and working from the principle that only information related to deemed-to-satisfy criteria should be required to be submitted upon lodgement, the Regulations have been amended to no longer require details of landscaping for dwelling applications.

Furthermore, the requirement for private open space areas to be nominated has been removed because this information would be most suitably calculated by the relevant authority from the scaled plans.

Requisite information

Clause 2 of Schedule 8 has been amended to require information of privacy treatments on upper storey windows and balconies, as information is required in order to demonstrate compliance with deemed-to-satisfy criteria.

Stormwater management

At present, the Planning and Design Code does not prescribe specific criteria for stormwater disposal under deemed-to-satisfy pathways. While the Department appreciates the importance of stormwater management, it is currently not a mandatory information requirement for deemed-to-satisfy dwelling applications, but may be reviewed as the Code is developed for metropolitan and regional areas.

Waste

Local government emphasised the importance of information on waste/septic systems being provided with new dwelling applications. Accordingly, the requirement to nominate areas for waste treatment/disposal has been retained, and also applied to applications for new swimming pools.

Summary of planning information requirements

Schedule 8 lists the basic information required for applicants seeking planning consent, summarised in Figure 6 below:



TYPE OF APPLICATION FOR PLANNING CONSENT	BASELINE INFORMATION FOR LODGEMENT
<p>Outbuildings, carports, garages, verandahs or pergolas</p> 	<p>Site plan showing:</p> <ul style="list-style-type: none"> • boundaries/dimensions of site, existing buildings, regulated trees • proposed front, side and rear setbacks • driveway levels in relation to an existing or proposed crossover* • car parking spaces • on-site sewerage or waste disposal system <p>Floor plan showing the location of doors or windows** or relationship to the associated dwelling</p> <p>Elevation drawings showing front, side and rear views of the structure, including details of existing ground level, proposed floor level and roof height.</p> <p>Schedule of colours for any cladding</p> <p>*information only required for carports/garages **information only required for garages/outbuildings</p>
<p>Swimming pools</p> 	<p>Site plan showing:</p> <ul style="list-style-type: none"> • proposed boundary setbacks • location of any pump/equipment and detail of enclosure • location of any on-site sewerage or waste disposal system

TYPE OF APPLICATION FOR PLANNING CONSENT	BASELINE INFORMATION FOR LODGEMENT
<p data-bbox="165 501 580 568">Residential alterations/additions and new dwellings</p> 	<p data-bbox="660 501 890 533">Site plan showing:</p> <ul data-bbox="711 555 1417 931" style="list-style-type: none"> • boundaries/dimensions of site, existing buildings, regulated trees • proposed front, side and rear setbacks • existing ground/floor levels and proposed finished floor levels and site/bench levels relative to top of kerb • height and location of any earthworks or retaining walls • location and dimension of unenclosed car parking spaces • driveway levels in relation to an existing or proposed crossover* • on-site sewerage or waste disposal system <p data-bbox="660 958 1107 990">*information only required for carports/garages</p> <p data-bbox="660 1016 1388 1048">Floor plan showing the location and purpose of rooms/areas</p> <p data-bbox="660 1075 1366 1142">Elevation drawings showing each side of the buildings(s), including:</p> <ul data-bbox="711 1164 1340 1438" style="list-style-type: none"> • existing and proposed ground levels • proposed internal floor levels • heights: including ceiling, eaves, ridge and pitch • description of all external materials and finishes, including roof, walls, doors and windows • dimension of eaves, external doors and windows • description of privacy treatments for upper level windows/balconies <p data-bbox="660 1456 1356 1523">Declaration regarding potential site contamination for any deemed-to-satisfy dwelling</p>

Figure 6. Baseline information to be lodged with applications for planning consent



Requests for additional information

Regulation 33 prescribes that a relevant authority cannot request further information (exceeding the baseline information prescribed in Schedule 8) for deemed-to-satisfy applications where the development proposes:

- 1 or more new dwellings
- alteration or addition to an existing dwelling
- the construction of an outbuilding, garage, verandah, pergola or swimming pool associated with residential development.

The relevant authority can however request information on one occasion for all other classes of deemed-to-satisfy development, as well as in relation to any performance assessed development.

Time to provide additional information

Once a performance assessed application has been lodged (i.e. verified and fees paid), Regulation 33(5) prescribes the authority will have **10 business days** in which to request information. This regulation ensures that any extra information needed is requested upfront thereby providing the applicant a complete understanding of what's required at the initial stages of the assessment process.

Regulation 34 allows a period of **60 business days** for an applicant to respond to a request for further information from a relevant authority. While an authority has the right to refuse an application if the requested information is not provided after this time, applicants can request an extension of time. If the extension of time is granted, any time in excess of **one year** taken by the applicant will be included in the time in which the relevant authority decides on the application (Regulation 34(2)). In other words, an application can remain on hold for a maximum of one year before the clock starts again and a decision needs to be made.

An application can be lapsed by the relevant authority **one year** from the date of lodgement (Regulation 38), however the relevant authority must take reasonable steps to notify the applicant of the intent to lapse an application before doing so.

Further requests

Once the information is submitted to the authority, the clock will recommence.

In rare cases where the authority is of the view they cannot make a decision on the application due to some outstanding matter, Regulation 33(6) allows them to make a further request for information, but only with the agreement of the applicant. This will allow for a collaborative relationship to be maintained with the applicant, to resolve any outstanding issues by agreement instead of resorting to refusal or appeal.

However, if the applicant believes the additional request for information is unwarranted, they can opt not to provide the requested information and wait until the assessment timeframe has expired. At this point they could serve a deemed consent notice, which provides automatic planning consent. In such cases, the relevant authority can appeal a deemed planning consent to the Environment, Resources and Development Court if they are of the view that consent should not have been granted.

Public notification

What we've heard

Responses to the Discussion Paper included the following views regarding public notification of development applications:

- Opposing views were raised about who should be responsible for placing a notice on the subject land (57% nominated the applicant; 43% nominated the relevant authority). All agreed that the cost of the sign should be borne by the applicant.
- Most respondents agreed that evidence of the sign should be recorded via a photograph. If the applicant is responsible for erecting the sign, a statutory declaration could also be an appropriate method of verification.
- To minimise the risk of interference with the sign, it was suggested that a penalty could be prescribed in the legislation.
- Local government representatives were generally of the view that the current 10 business day timeframe was reasonable for the public to respond to a publicly notified application. However, members of the community observed that a longer period was needed.
- Most respondents agreed that, for more complex applications, a longer timeframe should apply.
- Respondents observed that the period for notification should take into account any delays in postage and should not include public holidays.
- It was observed that assessment panels should have the discretion to hear persons notified of a development who wish to make verbal submissions.
- Concern was raised around the concept of comments on performance assessed development being limited to the performance assessed elements of the development only, and how the different elements eligible for comment should be clearly communicated to the public.
- Local government respondents advised there may be cases where an application is of a minor nature and shouldn't require notification. In those cases, an assessment manager should be able to determine that public notification isn't required.

Responses to the draft Regulations observed the following:

- Local government submissions raised concern around the procedure of placing a notice on development sites, and in particular, posed the following questions:
 - How will the resourcing and material costs of printing, erecting, maintaining and dismantling an A2 weatherproof sign be supported during and after the notification period?
 - How will dates of the public notification period be known when preparing the site notice/letters to adjacent land, given that the notification period wouldn't commence until either the site notice is erected, or the letters are received, whichever occurs later?
 - Will site notices be an effective form of notification in rural areas or on high-speed roads?
 - What is the impact to the public notification period and assessment timeframes if the sign is damaged, obscured or removed?
- Responses were mixed regarding the proposed 15 business day notification period for performance assessed development, and 20 business days for restricted development. Some individuals believed the period should be longer, while the development industry requested that the current 10 business day timeframe should be retained. A number of responses expressed support for the extended periods as drafted, observing that it provided a genuine opportunity for affected parties to comment on a development proposal.



- It was observed that applicants should have at least 15 business days, not 10, to respond to any representations received, matching the notification period.
- Many submissions expressed support for the ability for the relevant authority to hear verbal representations, however it was also asserted that this should be a right rather than at the discretion of the relevant authority.
- Respondents also suggested that:
 - Letters to adjacent land should be able to be sent via email
 - The 'ordinary course of postage' should be increased from three to five business days
 - Public inspection should take place only through the SA Planning Portal, with hard copy plans no longer required
 - The site notice should be mounted a higher distance above ground level to enhance visibility.

What we've done

The PDI Act establishes when a development application requires public notification, and the methods by which notice must be given. The Regulations prescribe further detail around the procedure, including the public notification period and logistics of the notification methods. Figure 7 below provides an overview of the notification requirements.

The details surrounding notification of performance assessed and restricted applications are outlined in Regulations 47-52 of the Regulations, as well as the *State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications)*.

Responsibility for placing a notice on the site

Regulation 47 establishes that the applicant will be responsible for preparing and placing a notice on the land unless they (a) request the relevant authority to do so and (b) pay the relevant fee (to be prescribed in future Fees, Charges and Contribution Regulations).

If the applicant accepts responsibility to place the notice on the land, the practice direction establishes that the relevant authority will still confirm the location, the number of notices required and the notice content and must provide this information to the applicant at least 4 business days prior to the commencement of the notification.

Concerns around the resourcing required to print, place and remove the sign on the land are noted. These resourcing costs have sought to be minimised by allowing site notices to be A3 size, providing greater flexibility to create signs on conventional office equipment.

Notice to adjacent land

When advising the applicant of the site notice requirements, the authority should also post/email a notice to adjacent land owners or occupiers, as Regulation 50(2) allows 4 business days for the ordinary course of postage. This timeframe accords with the current delivery speeds for priority post to country areas, as specified by [Australia Post](#).

In accordance with feedback received, clause 10 of the practice direction specifies that this notice can be provided by post, or via email if the owner or occupier has given specific consent to receive correspondence from the relevant council via email.

Period of notification

Regulation 50(1) prescribes that a representation in relation to a performance assessed development must be made within **15 business days** of the day when all forms of notice have been given. For a restricted development, a longer period of **20 business days** applies.

The period of notification commences from the day when letters to adjacent land owners/occupiers are expected to be received (allowing 4 business days for postage).

The draft Regulations originally stipulated that the notification period would commence when either the sign or the letters were received, whichever occurred later. However, concern was raised regarding this process, as it would prevent the authority from confirming that due date for representations when providing the notice, which may result in confusion and compromise neighbours' rights.

Accordingly, the commencement of the notification period is no longer tied to the placement of a notice on the subject land; it is simply the responsibility of the applicant of authority, as the case may be, to ensure the sign is present during the notification period. Any periods of delay, vandalism or tampering with the sign will be a matter for the authority/courts to monitor in each case.

Notice on land not required

Regulation 47(6) specifies that a notice on land is not required in the following circumstances:

1. Land not within a council area
2. Land wholly covered with water
3. Any place where the Code provides that such a notice need not be given.

The third circumstance has been added in response to feedback from local government representatives on the draft Regulations. This provision is intended to capture circumstances where a site notice may not be effective or practical, such as in remote or rural zones with minimum foot traffic.

Notice on land details

In response to consultation on the draft Regulations, the height requirements for the site notice are more specific, and the minimum size of the notice has been reduced to allow for printing/lamination on conventional office equipment.

The practice direction now outlines that the notice on the development site must be:

- placed on, or within a reasonable distance of, the public road frontage of the relevant land, ensuring that it is visible and legible to members of the public from the public road (position and number of signs determined by the relevant authority);
- mounted at least 600mm above ground level, and no more than 1.5 metres above ground level
- made of weatherproof material (e.g. laminated print attached to fence/building, corflute print on star droppers, or other); and
- at least A3 size.

Following the conclusion of the public notification period, two time-stamped photographs of the sign – one at the beginning and one at the end of the notification period – are required to be uploaded to the application record to confirm the notice was present for the duration of the notification period, as well as a written statement confirming that the notice was undertaken in accordance with the requirements of the legislation.

A maximum penalty of up to \$2500 and an expiation fee of \$500 are prescribed in Regulation 47 for anyone found guilty of interfering with the sign during the notification period.



PROPOSED DEVELOPMENT

[insert street address of subject land]

Make a representation until [date]

Proposal
[List the performance assessed elements of development]

Applicant
[applicant name]

Application Number
[DA number]

View the application

- Visit www.saplanningportal.sa.gov.au/1234
- Scan this code with your phone camera
- Visit the office of [relevant authority] at [insert street address of authority's principal office]

Have your say

online - [insert url]

email - [authority's email address]

post - [authority's postal address]

Please note representations must:

- be in writing
- include the name and address of the person/s who are making the representation
- set out the particular reasons why planning consent should be granted or refused
- comment only on the listed elements of the proposal, which does not include the [state any deemed-to-satisfy or accepted elements of development– delete this dot point if all elements are performance assessed]

It is an offence to damage, destroy, obscure or remove this notice. Penalties apply.

Figure 7. Example site notice - Attachment 3 of State Planning Commission Practice Direction (Notification of Performance Assessed Development Applications)

Deemed-to-satisfy elements

Both the letter and sign templates (which are attached to the practice direction) include an area for the relevant authority to highlight any deemed-to-satisfy elements of the proposal that are not subject to public notification, as well as standard text reminding representors that, under the PDI Act, comments must be limited to the performance assessed elements of the application only.

[Page 28](#) of this document discusses what comprises an 'element' of development under section 107(2) of the PDI Act. For example, an element may be a garage or pool proposed as part of a dwelling application.

Availability of plans

Regulation 49 requires plans to be available to view on the SA Planning Portal during the notification period.

In addition, the relevant authority needs to make copies of the application's plans available to the public for inspection without charge at their principal office during the notification period. This viewing could be achieved either through hard copy plans, or electronic access to the SA Planning Portal on a public computer.

Minor nature – notification not required

Clause 5 of the practice direction allows the relevant authority to dispense with the need to undertake public notification for a performance assessed development if they are of the view that the application is of a minor nature and will not unreasonably impact on nearby land. This is a similar mechanism to Schedule 9 (Part 1 – 2 (g)) of the current *Development Regulations 2008*, which allows a relevant authority to determine an application to be Category 1 if it is of a minor nature.

Applicant's response

Regulation 51 prescribes that the applicant must provide a response to representations within 15 business days after the relevant authority forwards copies of the representations to them. However the relevant authority may permit an extension of time to provide a response if deemed appropriate - Regulation 53(1)(g) stipulates that this additional period will not be included in the time within which the authority needs to determine the application.

Verbal representations

In response to significant feedback on the Discussion Paper, the Regulations allow representors an opportunity to be heard before the relevant authority (but only if it will assist the relevant authority in making a decision on the application).

Regulation 50(5) prescribes that the relevant authority may grant a person who has made a representation (and indicated an interest in appearing before the relevant authority) an opportunity to appear in person or by a representative.

In such cases, the applicant will also be provided an opportunity to respond in person to any verbal representation(s).

This provides a similar avenue for the relevant authority to hear verbal submissions as the Category 2 notification process under the *Development Act 1993*.

While the Department acknowledges a desire from the community for this opportunity to be prescribed as 'right' rather than at the discretion of the relevant authority, conferring such rights may undermine the intent of the PDI Act.



Category	Sub-category	Notification required	Notification timeframe	Method of notification	Applicant response time
Accepted	-	✘	-	-	-
Code assessed	Deemed-to-satisfy	✘	-	-	-
	Performance assessed: excluded by Code or minor	✘	-	-	-
	Performance assessed (not minor)	✔	15 business days	✉ Letter/email to adjacent land 📄 Site notice*	15 business days
Impact assessed	Restricted	✔	20 business days	✉ Letter/email to adjacent land ✉ Letter/email to others significantly affected 📄 Site notice* 💻 Published on Portal	15 business days
	Impact assessed by Minister (EIS)	✔	30 business days minimum	💻 Published on Portal 📰 Published in local newspaper 📰 Published in state-wide newspaper ? Methods determined by Minister (regard to CEC)	Not specified
Crown development	Development <\$10 million or minor	✘	-	-	-
	Where development cost >\$10 million (not minor)	✔	15 business days minimum	💻 Published on Portal 📰 Published in local newspaper 📄 Site notice*	Not specified

*Site notice not required in out-of-council areas, land covered by water, or specific zones/overlays designated in the Code

Figure 8. Public notification requirements

Elements, consents and consistency

What we've heard

Section 102 of the PDI Act allows elements of a development to be lodged separately with different authorities and in any order.

Feedback on the Discussion Paper observed confusion around what comprises an 'element' of development as well as who will be checking for consistency between the consents for each element.

Some respondents also raised concerns about consents being able to be granted in any order and the potential for confusion after obtaining a building consent.

What we've done

Elements of development

It is the Department's understanding that the term 'element' relates to a component part of a development. For example, a dwelling, detached garage and swimming pool would each be separate 'elements'. In contrast, front setback, building height or building materials are not considered 'elements', and therefore cannot be separated for assessment purposes. Further, something that is related to the development cannot be assessed as a separate element (e.g. a car park associated with a shop is not a separate 'element' where the shop requires car parking and could not be properly assessed without the car park).

Consistency between elements/consents

Previously under the *Development Regulations 2008*, the responsibility to check for consistency lay with the building certifier. Now however, Regulation 60 prescribes that all relevant assessing authorities must take into account any prior development authorisation that relates to the same proposed development when deciding whether to grant authorisation.

The existence of any other related applications will be made clear through the SA Planning Portal application record.

For example, if an applicant chooses to apply for building consent at the same time as planning consent and the building consent is issued first, the building certifier would no longer need to undertake a consistency check. Rather, the relevant planning authority would need to take into account the building consent before issuing planning consent.

That being said, it is noted that it often makes good sense to apply for planning consent first to confirm that the overall concept and form of the proposal fits within the planning rules, prior to drafting the technical details required for building consent. Advisory material will be included in the SA Planning Portal to communicate these issues and ensure the sequencing of consents provides the most efficient assessment pathway.



Development approval

While the various relevant authorities issuing consents need to take into account any prior related consent under Regulation 60, the council will ultimately be responsible for ensuring that all elements of the development have been approved before issuing development approval under Section 99(3) of the PDI Act.

Regulation 53(5) and (6) prescribe that where a council receives notice that all relevant consents have been granted, it must either:

- (a) grant the final development approval if the consents are consistent with one another; or
- (b) if there is an inconsistency, inform the applicant of the inconsistency.

Either (a) or (b) must be undertaken within 5 business days of receiving notice that all consents have been granted.

Exempt development

What we've heard

Most of the respondents to the Discussion Paper were of the view that there is scope to increase the types of development that do not require any form of development approval ('exempt' development). This was based on the understanding that these developments will have negligible impacts and are standard, expected development commonly undertaken in its setting. Suggestions included children's cubby houses and tree houses, small verandas, aviaries, cat runs and wood fired pizza ovens.

A number of respondents to the draft Regulations supported the new types of 'exempt' development proposed (including tree houses, wood fired pizza ovens and larger water tanks in regional areas), but suggested that:

- councils be allowed to not only construct playground equipment in reserves, but also other recreational facilities such as adult exercise equipment and skate ramps
- outbuildings be allowed to be constructed in heritage conservation areas with a floor area up to 15 square metres
- development approval for larger water tanks be exempt in bushfire risk areas
- terminology around tree houses be expanded to include cubby houses (which often exceed the maximum height of an exempt outbuilding)
- Schedule 5 'Colonel Light Gardens Heritage Area' be expanded to apply to all State Heritage Areas.

Concerns were raised regarding the proposed exemption related to fences on top of retaining walls to a height of 3.1 metres. Specifically, respondents expressed caution around structural adequacy, impacts to visual amenity, streetscape presentation and overshadowing.

Concerns were raised by a number of submissions regarding the proposed exemption for demolition of single-storey buildings. The concerns focused on the following matters:

- the protection of Heritage Conservation Areas and Contributory Items
- the risk of unlawful demolition if the application process is removed
- the inability of councils to monitor impacts on infrastructure during demolition
- the risk of vacant sites contributing to economic stagnation
- the decision to limit this exemption to single-storey buildings only, and not also apply it to buildings of two or more storeys.

What we've done

Schedule 4 of the Regulations lists various types of buildings, works and activities that do not require development approval.

In response to feedback from consultation on the draft Regulations, the following changes have been made:

- Remove exemption for fences on top of retaining walls to a height of 3.1 metres (maximum 2.1 metre height will continue to apply to these structures)
- Exempt demolition of buildings irrespective of the number of storeys (see Figure 9 below)
Also note that the demolition of the whole of a building is prescribed as complying building work in Schedule 7, so in cases where approval is required because the building is in a heritage area, only planning assessment is required, not building assessment



- Exclusion for Colonel Light Gardens State Heritage Area in Schedule 3A of the Development Regulations 2008 expanded to cover all State Heritage Areas. This amendment was requested by the Department for Environment and Water, and will mean that more minor expected works that are sensitive to an area’s heritage status will be able to be undertaken.
- Exempt additional works undertaken by a council for community benefit, such as exercise equipment in playgrounds, bollards and bicycle racks
- Larger water tanks exempted in bushfire risk areas
- Exempt cubby houses, as well as tree houses, provided the floor area is less than 5m²
- Exempt temporary buildings erected by or for a council for up to 60 days (formerly 30 days).

How is the new ‘demolition exemption’ different to the current demolition approval process?

OLD Demolition under the <i>Development Regulations 2008</i>		NEW Demolition under the PDI Regulations 2019	
PLANNING CONSENT	BUILDING CONSENT	PLANNING CONSENT	BUILDING CONSENT
Not required, unless it affects: <ul style="list-style-type: none"> • Heritage places • Adelaide City • Historic Conservation Areas • Minister-designated areas 	Always required	Not required, unless it affects: <ul style="list-style-type: none"> • A Heritage place/area* • Adelaide City* • Former Historic Conservation Areas* <p><i>*areas to be designated by the Code</i></p>	Building assessment only required where part of a building is to be demolished.

Figure 9. When does demolition need approval?

The following table illustrates the key changes from the current scope of exempt development under Schedule 3 of the *Development Regulations 2008*:

TYPE OF DEVELOPMENT	NEW EXEMPTION	REASON
<p>Water tanks</p> 	<p>All water tanks up to 15m² (or 60,000 litres maximum) in bushfire risk areas.</p>	<p>To enable appropriate bushfire protection measures to be undertaken without requiring approval.</p>
<p>Tree houses and cubby houses</p> 	<p>Tree houses and cubby houses of less than 5m².</p>	<p>Small structures built for child recreation should not require approval.</p>
<p>Wood fired pizza ovens</p> 	<p>Wood fired pizza ovens (and similar domestic masonry ovens) less than 2m in height.</p>	<p>Domestic kitchens are becoming increasingly common, and result in minimal planning and building impacts (noting that such ovens would still need to meet the Environment Protection Authority's requirements regarding chimney/flue location and smoke impacts).</p>



TYPE OF DEVELOPMENT	NEW EXEMPTION	REASON
<p>Demolition</p> 	<p>Demolition of certain buildings. However, this does not apply to partial demolition, heritage places, or specific areas designated in the Code (anticipated to include City of Adelaide, former historic conservation areas, etc.).</p>	<p>There are limited relevant assessment considerations in the Building Rules when assessing demolition of an entire structure/building. Relevant considerations are covered by Safework SA legislation <i>Work Health and Safety Regulations 2012 (SA)</i>.</p> <p>The need for planning consent will largely remain the same, as planning consent would still be required for demolition as outlined in the current Schedule 1A of the <i>Development Regulations 2008</i>.</p>
<p>Advertising in the City of Adelaide</p> 	<p>Remove separate provisions regarding advertising signs in the City of Adelaide. This means that, within the City of Adelaide, non-illuminated advertising signs could be displayed on the front facade of businesses (provided they are no higher than the verandah/fascia) without needing approval.</p>	<p>Consolidate the rules for advertising signs to achieve consistency across the state.</p>

Figure 10. Summary of key changes to Schedule 4 – Exclusions from the definition of development in the Regulations compared to Schedule 3 of the Development Regulations 2008

Development assessed by the Commission

What we've heard

Regulation 23(1), by reference to Schedule 6, prescribes cases where the Commission is the authority for certain developments, on top of the cases where the Commission is prescribed as authority in Section 94 of the PDI Act.

Regulation 26 also prescribes procedures around when and how the Commission must consult with the relevant council's Chief Executive when assessing an application within the area of a council.

Many local government submissions on the draft Regulations raised concern regarding the limited matters that council may provide comment on for applications where the Commission is the authority for planning consent. These submissions also noted that the proposed turnaround time for comment (15 business days) was too short.

A number of submissions from local government and the community raised concern with the value trigger for development assessed by the Commission.

What we've done

Procedures for council comment

It is noted that 'council' is no longer a relevant authority for planning consent, so the scope for comment is intended to capture only technical/local matters that the Commission should be aware of, rather than comments on planning merit.

Previous Regulation 38(4a) of the *Development Regulations 2008* excluded certain councils from providing comment to the Commission in the case of specific applications within the cities of Adelaide, Burnside, Holdfast Bay, Norwood Payneham & St Peters, Prospect, Unley, West Torrens, and Port Adelaide Enfield. In response to feedback emphasising the importance of council knowledge on local issues, the Regulations now provide the opportunity for comment in in these areas.

Concerns around the timeframe to respond is acknowledged, however it is also noted that Regulation 23(2)(b) allows the Commission to grant a longer period if deemed appropriate.

Cases where the Regulations prescribe the Commission as authority

Schedule 10 of the *Development Regulations 2008* prescribes cases where the Commission is the relevant authority. The Regulations now prescribe such cases in Schedule 6.

Some of the key principles that were considered when reviewing the classes of development assessed by the Commission included:

1. Development that is likely to result in impacts or outcomes that are of **significance to the state** should be assessed by the Commission.
2. If the Commission maintains **specific expertise** relevant to the class of development that would assist the assessment process (compared to if the development were assessed by an assessment panel), the Commission should be the relevant authority.



3. Classes of development that are no longer commonly developed in South Australia such as commercial forestry but have been maintained through **historical legislation**, should no longer be prescribed to the Commission.
4. If a **pathway under the PDI Act** provides for assessment by the Commission in any case (e.g. restricted development or 'call in' by the Minister), the Commission should not be prescribed as the relevant authority.
5. If the anticipated key assessment considerations for that class of development would be **dealt with through direction of an agency/body** under Section 122 of the PDI Act, the Commission should no longer be prescribed as the relevant authority.

The below table provides an overview of the changes between Schedule 6 of the Regulations and the current Schedule 10 of the *Development Regulations 2008*.

CHANGES IN CLASSES OF DEVELOPMENT FOR WHICH THE COMMISSION WILL BE THE RELEVANT AUTHORITY		
CHANGE	REASON	PRINCIPLES
In relation to development undertaken by the Urban Renewal Authority , exclude the Commission from acting as the relevant authority for applications proposing the construction of dwellings following the approval of a land division on the relevant land for residential purposes.	Large scale land division of government-owned land (or under contact to a third party) should continue to be assessed by the State Commission Assessment Panel (SCAP) to ensure a coordinated approach to development in renewing areas. However, if dwellings are not proposed at the same time as the land division, the assessment of the dwellings after the land division is approved should be assessed by the relevant council. Alternatively, such projects could be progressed through a precinct authority under the Urban Renewal Act, in which case the precinct authority would assess all applications within the precinct.	1 2
Landfill depots no longer assessed by the Commission.	Council assessment panels are equipped with assessing landfill depots, particularly as they have been operating for some time. These are also assessed by the Environment Protection Authority, providing another layer of assessment. In addition, major landfill depots may meet the criteria for declaration as 'impact assessed' by the Minister, which involves an Environmental Impact Statement (EIS) assessment in conjunction with the Commission.	3 4 5
Works in the Metropolitan Hills Face Zone no longer assessed by the Commission.	The Hills Face zones currently extend across multiple council areas. There is strong policy already in place and councils play a role in the assessment of a range of applications. The state's interest is limited to the creation of new allotments and this is likely to be assigned to the Commission as restricted development in the Code in any event.	1 4

CHANGE	REASON	PRINCIPLES
Commercial forestry on over 20 hectares in prescribed areas no longer assessed by the Commission.	State interests in commercial forests are less relevant now than when this provision was first introduced. These developments should be assessed by a non-state authority as the primary considerations are environmental and will be addressed via a permit required under the <i>Natural Resources Management Act 2004</i> .	3 5
Only development exceeding \$3 million in the Port Adelaide Regional Centre Zone assessed by the Commission.	The current situation captures all forms of development in specific policy areas in the Port Adelaide Regional Centre Zone, no matter how minor. By limiting the cases where the Commission is the relevant authority to developments over \$3 million, assessment of developments which are not of significance to the state can be done by the local authority.	1 2
The division of land in the Mount Lofty Ranges Water Protection Area no longer assessed by the Commission.	While the area represents the state's water catchment area, there is currently strong policy in place to determine land division applications, as well as referrals to the Environment Protection Authority in certain circumstances. The state's interest is limited to the creation of new allotments, and these should still be assigned to the Commission as restricted development in any case.	1 4 5
Only development exceeding \$3 million in the Urban Core Zone of the Bowden Urban Village assessed by the Commission.	The current provision currently captures all forms of development. Alignment will be made with a trigger based on value similar to that in Port Adelaide. NB: land division will still be assessed by the Commission if lodged by the Urban Renewal Authority.	1 2 4
Only tourism development exceeding \$3 million in conservation zones on Kangaroo Island assessed by the Commission.	Currently all forms of tourism development in these areas are assigned to the Commission, including small scale developments. The introduction of a cost trigger should ensure that only development of significance to the state is assessed by the Commission.	1 2



ePlanning and the Portal

What we've heard

Consultation has demonstrated a desire for more development assessment processes to be undertaken electronically through the SA Planning Portal (the Portal). However, the following questions were raised:

- How sensitive material can be obscured from public view (e.g. floor plans)
- How relevant authorities' assessment reports, plans and decision notification forms can be made available to the public
- Alternative options for submitting applications should be available for applicants without reliable internet connection or the technology to prepare/copy electronic plans.

What we've done

Unlike the *Development Regulations 2008*, the Regulations allow for the transmission of documents via the Portal and in electronic format. There will no longer be a need to provide multiple hard copies of plans, as plans will be digitised.

Regulation 29 establishes that all applications need to be lodged on the Portal, and Regulation 57 specifies that notice of an authority's decision needs to be transmitted back through the Portal.

While all applications must be lodged on the Portal, an applicant can still elect to lodge an application at the office of the relevant authority. It is anticipated that future amendments to the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019* will establish a separate fee structure to cover the administrative costs for an authority to lodge an application on the Portal on the applicant's behalf (scanning plans, entering data into the Portal, etc.). This will account for cases where applicants may not have access to a computer or reliable internet connection.

Where an application is lodged electronically via the Portal, a series of questions will be prompted to assist in leading the application to the correct authority for lodgement. This is why a new 'verification' step is so important – with a high volume of applications lodged electronically, a verification step prior to lodgement provides a checking point to ensure applications get where they need to go in an efficient manner.

Regulation 31 allows an authority to re-allocate an application if they believe that the application has been sent to them erroneously or if they are unable to act as relevant authority for any reason.

Following consultation on the draft Regulations, the following amendments have been made to allow for more processes/notifications to be undertaken via the SA Planning Portal:

- Regulation 6A establishes that any requirement to provide a document/notice/etc. may be satisfied by providing it via the Portal, but that such a requirement only applies if the Portal has the necessary facilities. This will allow for flexibility in the Regulations as the functionality of the Portal is developed over the coming year.
- Regulations 110 and 111 amended to allow the register of land management agreements to be kept on the SA Planning Portal, not necessarily in hard copy.
- Regulation 120 prescribes that a record of applications must be established on the SA Planning Portal, no longer in hard copy at the office of a relevant authority.

For more information on ePlanning and Portal functionality in the new system, visit saplanningportal.sa.gov.au/planning_reforms/new_planning_tools/eplanning

Building regulations

What we've heard

A 'Building Reform Working Group' (the Working Group) - comprising council officers, engineers and certifiers - was formed to examine building related issues under the draft Regulations.

The Working Group provided advice to the Department on the formation of the draft Regulations under the PDI Act, particularly regarding the need to strengthen compliance with the Regulations.

This resulted in the introduction in a range of clearer Regulations and new expiations to support improved compliance. Specific changes were made to improve the process around Essential Safety Provisions, particularly to bring certainty to current process and improve compliance, which is considered a key life safety matter.

The Working Group also provided the Department with a range of further proposals which have the potential to be picked up in future reforms, for example, the potential to register engineers and more closely monitor owner builders.

Following consultation on the draft Regulations, respondents observed:

- Support for the requirement for a Certificate of Occupancy for all dwellings. However, it was emphasised that potential delays in occupation need to be minimised, as not all works need to be completed for the Certificate to be issued. Such works could include landscaping, paving and fencing, which are often left to the owner to complete after handover.
- Accredited professionals should only be able to inspect buildings that they are qualified to assess.

What we've done

Key examples of changes included in the Regulations compared to the *Development Regulations 2008* are set out in the below table. As a general rule, the focus has been on improving the Regulations to deliver a clear line of sight from the approval phase, through to construction and approval, with a view to improving compliance with the Building Rules.

NB: no commentary is provided where current Regulations have been largely carried over 'as is'.

A range of additional expiations have also been added throughout the Regulations to enable councils to more effectively ensure compliance without having to undertake cost-prohibitive legal action.

A range of other proposals suggested by the Working Group may be implemented via other means, such as new forms, practice guidelines and/or directions, or new Ministerial Building Standards.

REGULATION	KEY CHANGE AND REASON
25(2) – Accredited Professionals	Accredited Professionals – Building Level 1 - may continue to grant planning consents, but only within the scope of the existing complying development known as "Residential Code". The intention is to allow building certifiers with existing authority to determine 'Residential Code' applications to continue to hold those powers.



REGULATION	KEY CHANGE AND REASON
25(7) – Independent technical expert	The Regulations prescribe that independent technical experts must have engineering or other qualifications to the satisfaction of the relevant authority.
57(7) – Notice of decision	This sub-regulation allows a relevant authority to specify any additional stage of building work for which notice must be given to the council under Regulation 93. The purpose of this is to enable an Accredited Professional – Building to identify key stages in construction that should later be subject to a council inspection.
93 – Notifications during building work	<p>This Regulation has been rewritten to support the development of new inspection policies under the PDI Act. Notifications are still required for commencement, commencing a specified stage, installing a designated building product, and at the completion of building work.</p> <p>Current notifications in relation to swimming pools and roof framing will likely be incorporated into new inspection policies, along with any other new inspections required, subject to development of these policies. Once developed, this new notification system will be integrated with the ePlanning system.</p> <p>This Regulation has also made it more clear that the name and details (including licence number) of the licensed building work contractor who will carry out the relevant work, and the name and details of the persons proposed to sign the Statement of Compliance (generally building work contractor again, and the owner), are required on the notice.</p>
94 – Essential Safety Provisions (ESPs)	<p>There will continue to be three Essential Safety Provision forms that will perform the same approximate functions as now: specification, installation, and maintenance. However, these will now be published on the SA Planning Portal in a form specified by the Department and approved by the Chief Executive, rather than in a Schedule to the Regulations. This provides the flexibility to amend these forms as necessary.</p> <p>Current references to ‘within a reasonable time’ and ‘as soon as practicable’ have been replaced with ‘20 business days’ for notification of installation, and ‘within 60 business days after the end of each calendar year’, for notification of maintenance.</p> <p>An expiation fee of \$750 has also been added to penalise those who do not comply with Essential Safety Provision requirements, with a maximum penalty of \$10,000. The addition of this expiation is considered important to ensure councils have a mechanism to pursue owners who do not provide their annual Form 3s in a timely manner.</p>
103 – Certificates of Occupancy	<p>The most significant change in this Regulation (compared to Regulation 83 under the <i>Development Regulations 2008</i>) is the requirement for a certificate of occupancy for class 1a buildings, which are single dwellings.</p> <p>This change has been included following feedback that owners and occupiers, upon completion of the construction of house, should be able to receive confirmation that their dwelling is suitable for occupation. This change is proposed to bring South Australia into alignment with other jurisdictions.</p> <p>In recognition that current building work undertaken against approved plans often</p>

REGULATION	KEY CHANGE AND REASON															
	<p>does not include every element that is on the approved plans (for example stormwater connections, rainwater tanks, landscaping), there is an identified need to ensure that, following the 'statement of compliance' stage, proper evidence is provided to the owner/occupier confirming their house is ready for occupancy.</p> <p>As per other buildings classes (except class 10), the certificate of occupancy for class 1a buildings will be signed by the prescribed authority under Part 11 Division 4 of the PDI Act, to again state that a building is suitable for occupancy. Once all work on the approved plans is complete, the owner will receive this certificate from the relevant authority. It is not anticipated that this change will incur any further impact on the builder.</p> <p>Also, rather than being in a schedule attached to the Regulations, the new certificate of occupancy will be published on the SA Planning Portal in a form prepared by the Department and approved by the Chief Executive.</p> <p>This provides the flexibility to amend the certificate to stay up to date with current demands (e.g. the current need for performance solutions to be documented). The Department is particularly interested in the views of the community, councils and industry in relation to this proposed change.</p>															
104 – Statement of Compliance	<p>The Statement of Compliance template will be published by the Chief Executive of the Department on the SA Planning Portal, no longer as a Schedule in the Regulations.</p> <p>An expiation fee of \$750 has also been added to allow councils ensure compliance with the Regulations relating to these statements, with a maximum penalty of \$10,000.</p>															
112 - Authorised officers and inspections	<p>This Regulation requires each council to have at least one building-accredited professional appointed as an authorised officer to undertake inspections under the PDI Act in accordance with any approved inspection policy for that council.</p>															
126 – Additional expiations	<p>Regulation 126 prescribes expiations for a number of offences under the PDI Act, including:</p> <table border="1" data-bbox="448 1570 1444 2011"> <thead> <tr> <th data-bbox="448 1570 646 1608">Section of Act</th> <th data-bbox="646 1570 1254 1608">Offence</th> <th data-bbox="1254 1570 1444 1608">Expiation fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="448 1608 646 1720">151(5)</td> <td data-bbox="646 1608 1254 1720">building permitted to be occupied without construction/maintenance/operation in accordance with its classification</td> <td data-bbox="1254 1608 1444 1720">\$750</td> </tr> <tr> <td data-bbox="448 1720 646 1794">152(1)</td> <td data-bbox="646 1720 1254 1794">building occupied without an appropriate certificate of occupancy</td> <td data-bbox="1254 1720 1444 1794">\$750</td> </tr> <tr> <td data-bbox="448 1794 646 1899">155(8)</td> <td data-bbox="646 1794 1254 1899">failure to notify the authorised officer of completion of any work required to be carried out by an emergency order</td> <td data-bbox="1254 1794 1444 1899">\$200</td> </tr> <tr> <td data-bbox="448 1899 646 2011">157(5)</td> <td data-bbox="646 1899 1254 2011">failure to a report within the prescribed period on the work/measures necessary to ensure the fire safety of a building is adequate</td> <td data-bbox="1254 1899 1444 2011">\$225</td> </tr> </tbody> </table>	Section of Act	Offence	Expiation fee	151(5)	building permitted to be occupied without construction/maintenance/operation in accordance with its classification	\$750	152(1)	building occupied without an appropriate certificate of occupancy	\$750	155(8)	failure to notify the authorised officer of completion of any work required to be carried out by an emergency order	\$200	157(5)	failure to a report within the prescribed period on the work/measures necessary to ensure the fire safety of a building is adequate	\$225
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What is not in these Regulations?

Impact Assessed development

The Regulations do not currently prescribe any classes of development as ‘impact assessed’ development under Section 108(1) of the PDI Act. It is noted however that the Minister can declare specific development as being impact assessed development via Gazette notice, separate from the Regulations.

Accepted development

While Section 104 of the PDI Act allows the Regulations to classify forms of ‘accepted’ development (i.e. where planning consent is not required), at this stage the Department anticipates that all accepted development will be prescribed in the Code. By providing development criteria in a single source (the Code), this will allow development queries to be run electronically and spatially through the ePlanning solution.

Fees, Charges and Contributions

Fees, charges and contributions are now prescribed in the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*, instead of forming part of the General Regulations. This approach to separating fees from general regulations reflects the wider methodology to legislation drafting throughout the state government.

It is noted that the current *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019* effectively rolls-over the existing fee amounts from Schedule 6 of the *Development Regulations 2008*. However, the Department is currently undertaking an investigation into the new fees, charges and contributions applicable under the PDI Act. The outcome of these investigations is likely to form a future variation to the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.

Swimming pools

Swimming pool safety requirements are located in the *Planning, Development and Infrastructure (Swimming Pool Safety) Regulations 2019*. While these regulations effectively roll-over the existing swimming pool standards under the *Development Regulations 2008*, the Department is currently undertaking an investigation into swimming pool safety and upgrade requirements, which may form a variation to the *Planning, Development and Infrastructure (Swimming Pool Safety) Regulations 2019* in the future.

Transitional provisions

The requirements of the *Planning, Development and Infrastructure Act 2016* and associated Regulations will not apply to the entire state at the same time. Its implementation is effectively linked to when a particular Development Plan is revoked. For further details on transitional matters, please see the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017*.

An illustration of the current regulation structure under the PDI Act is provided in Figure 11 below.

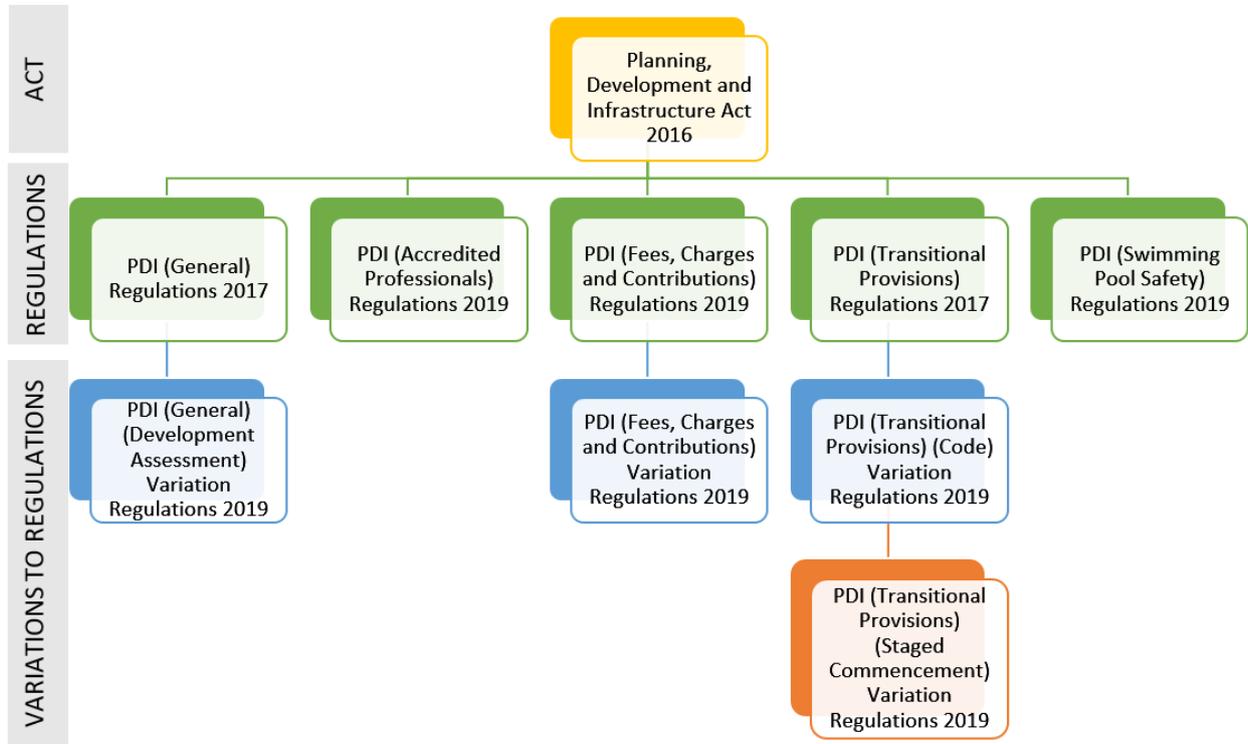


Figure 11. PDI Act and regulation structure as at July 2019



Glossary of terms

Act means the *Planning, Development and Infrastructure Act 2016*

Adjacent land in relation to other land, means land that is no more than 60 metres from the other land

Building Rules means:

- (a) the *Building Code*, as it applies under the *PDI Act* (meaning an edition of the *Building Code of Australia* published by the *Australian Building Codes Board* in the *National Construction Code series*); and
- (b) any regulations under the *PDI Act* that regulate the performance, standard or form of building work; and
- (c) without limiting paragraph (b), any regulations that relate to designated safety features; and
- (d) the Ministerial building standards published by the Minister under the *PDI Act*;

Code means the *Planning and Design Code*

Commission means the *State Planning Commission*

Department means the *Department of Planning, Transport and Infrastructure*

Minister means the *Minister for Planning*

Planning Rules means:

- (a) the *Planning and Design Code*; and
- (b) the design standards that apply under *Part 5 Division 2 Subdivision 4* of the *PDI Act*; and
- (c) any other instrument prescribed by the *Regulations* for the purposes of this definition;

Regulations means the *Planning, Development and Infrastructure (General) Regulations 2017* as of 1 July 2019

Residential Code means development that is complying development under clause 1(2) or (3), 2A, 2B or 2C of *Schedule 4* of the *Development Regulations 2008*

This document has been prepared to provide advisory information which may assist in understanding the relevant legislation. The content of this document is advisory only, may be subject to change, does not necessarily represent the views of the State Government, and does not purport to accurately or entirely replicate the content of the relevant legislation. The Department of Planning, Transport and Infrastructure recommends that this document be read in conjunction with the Planning, Development and Infrastructure Act 2016, accompanying regulations and relevant practice directions.

