



New South Wales

# Planning Administration Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.  
This Bill is cognate with the *Planning Bill 2013*.

## Overview of Bill

The object of this Bill is to make provision relating to the administration of the planning legislation.

## Outline of provisions

### Part 1 Preliminary

**Clause 1.1** sets out the name (also called the short title) of the proposed Act.

**Clause 1.2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 1.3** defines certain words and expressions used in the proposed Act. In particular:

***NSW Planning Director-General*** means the Director-General of the Department of Planning and Infrastructure.

***planning legislation*** is defined to mean any of the following:

- (a) the proposed *Planning Act 2013* and the instruments under that proposed Act,
- (b) this proposed Act and the instruments under this proposed Act.

## Part 2 Minister and NSW Planning Director-General

**Clause 2.1** declares that the Minister has portfolio responsibility for planning and the administration of the planning legislation.

**Clause 2.2** declares that the NSW Planning Director-General has departmental responsibility for planning and the administration of the planning legislation and is subject to Ministerial control (except in relation to the contents of any advice, recommendation or report made by the NSW Planning Director-General to the Minister).

**Clause 2.3** authorises the Minister or the NSW Planning Director-General to establish committees or panels for the purposes of the planning legislation. Under the proposed *Planning Act 2013*, the Minister is required to establish a committee to advise on community participation in planning matters to be known as the Community Participation Advisory Panel.

**Clause 2.4** authorises the Minister, the Planning Ministerial Corporation and the NSW Planning Director-General to delegate their respective functions under the planning legislation.

## Part 3 Planning Ministerial Corporation

**Clause 3.1** constitutes a NSW Government agency to be known as the Planning Ministerial Corporation. The corporation is a continuation of the corporation sole under the former Act known as “the Minister administering the *Environmental Planning and Assessment Act 1979*”.

**Clause 3.2** requires the affairs of the Corporation to be managed by the NSW Planning Director-General in accordance with Ministerial directions.

**Clause 3.3** refers to the land functions of the Corporation set out in Schedule 1 (which generally continue the existing land functions of the corporation sole under the former Act).

**Clause 3.4** refers to Schedule 7 to the proposed *Planning Act 2013* which contains provisions relating to Planning Growth Funds and other financial provisions relating to the Corporation (which generally continue the existing financial functions of the corporation sole under the former Act).

## Part 4 Planning Assessment Commission

**Clause 4.1** constitutes the Planning Assessment Commission (the *Commission* or *PAC*) as a NSW Government agency. The Minister does not have the power to direct and control the Commission, except in relation to certain procedural and other matters.

**Clause 4.2** provides that the Commission is to consist of between 4 and 9 members appointed by the Minister with expertise in relevant fields.

**Clause 4.3** sets out the functions of the Commission, including the provision on request of advice to the Minister or the NSW Planning Director-General, the holding of public hearings at the request of the Minister and, in certain circumstances, the performance of the functions of a regional planning panel or subregional planning board.

**Clause 4.4** sets out how the Commission is to be constituted for the purposes of carrying out any of its functions, including the number of members.

**Clause 4.5** provides for the work of the Commission to be allocated by its chairperson.

**Clause 4.6** allows for the functions of the Commission to be delegated with the approval of the Minister.

## Part 5 Regional planning panels

**Clause 5.1** constitutes the regional planning panels listed in Schedule 3 (being the joint regional panels under the existing Act).

**Clause 5.2** requires regional planning panels to comprise 3 State members and 2 nominees of the applicable council with expertise in relevant fields.

**Clause 5.3** outlines the functions of regional planning panels, including the specified functions of a consent authority for regionally significant development.

**Clause 5.4** deals with the members and procedure of regional planning panels.

**Clause 5.5** allows, with the approval of the Minister, the functions of regional planning panels to be delegated to a council or its staff.

## **Part 6 Subregional planning boards**

**Clause 6.1** constitutes the subregional planning boards to be listed in Schedule 4 by Ministerial planning order.

**Clause 6.2** requires subregional planning boards to comprise not more than 4 State members, nominees from councils in its area and a chairperson with expertise in relevant fields.

**Clause 6.3** declares that subregional planning boards have the functions conferred or imposed on them under the planning legislation or any other legislation.

**Clause 6.4** deals with the functions, members and procedure of subregional planning boards.

## **Part 7 Provisions relating to councils**

**Clause 7.1** makes provisions for a council to constitute panels of experts (independent hearing and assessment panels) to exercise the council's function of determining development applications, or to assess those applications, as may be required by the planning control provisions of the local plan or determined by the council.

**Clause 7.2** requires the Planning Assessment Commission or a regional planning panel to consult with a council on matters having a significantly adverse financial impact on the council.

**Clause 7.3** requires councils to provide requested assistance, including facilities and staff, to the Planning Assessment Commission or a regional planning panel.

**Clause 7.4** limits the operation of the *Local Government Act 1993* with respect to delegations to the general manager or other staff of a council under the proposed Act.

## **Part 8 Investigative powers**

### **Division 1 Preliminary**

**Clause 8.1** defines certain words and expressions used in the Part. In particular:

- (a) **investigation authority** means:
  - (i) a council, in relation to an investigation officer appointed by the council, or
  - (ii) the NSW Planning Director-General, in relation to any other investigation officer.
- (b) **investigation officer** means a person appointed as an investigation officer under the proposed Part by the NSW Planning Director-General (a **departmental investigation officer**) or by a council (a **council investigation officer**).

**Clause 8.2** provides for the appointment of investigation officers by the NSW Planning Director-General or a council.

**Clause 8.3** specifies the purposes for which departmental investigation officers can exercise their powers, including to determine whether there has been compliance with or a contravention of the planning legislation. The clause also specifies the purposes for which council investigation officers can exercise their powers.

### **Division 2 Powers of entry and search**

**Clause 8.4** enables investigation officers to enter and search premises (excluding residential premises) without a search warrant or the consent of the occupier.

**Clause 8.5** requires an investigation officer to provide notice to the owner or occupier of premises before entering without consent. The clause also lists exceptions to this requirement.

**Clause 8.6** sets out a list of things an investigation officer can lawfully do upon entering premises (including the power to seize anything connected with an offence).

**Clause 8.7** relates to the issuing of search warrants to investigation officers.

**Clause 8.8** requires investigation officers to do as little damage as possible in the exercise of a power of entering or searching.

**Clause 8.9** requires an investigation officer who uses force to enter, or enters in an emergency, to notify the investigation authority.

### **Division 3 Powers to obtain information**

**Clause 8.10** enables an investigation officer to issue a notice requiring a person to provide that officer with information and records connected with an investigation purpose.

**Clause 8.11** enables an investigation officer to require a person to answer questions in relation to matters connected with an investigation purpose.

**Clause 8.12** allows an investigation officer to record any questions and answers given under the proposed Division if the officer has informed the person being questioned that such a recording will be made.

### **Division 4 Miscellaneous provisions applying to exercise of powers**

**Clause 8.13** specifies certain offences and penalties under proposed Part 8.

**Clause 8.14** requires an investigation officer to produce an identification card upon request when exercising functions under proposed Part 8.

**Clause 8.15** enables the investigating authority to require an owner or occupier to provide reasonable assistance and facilities where required under proposed Part 8.

**Clause 8.16** relates to compensation for any damage caused by the actions of investigation officers.

**Clause 8.17** enables an investigation authority to recover costs related to entry and inspection.

**Clause 8.18** contains general provisions relating to notices.

**Clause 8.19** deals with the admissibility of records, information and answers collected pursuant to the proposed Act for the purposes of criminal proceedings.

**Clause 8.20** enables an authorised fire officer to exercise the powers of an investigation officer in relation to fire safety issues.

**Clause 8.21** provides that the regulations may confer certain investigative powers on a building certifier or subdivision certifier.

## **Part 9 Monitoring and environmental auditing of approved development**

**Clause 9.1** states that the proposed Part applies to the carrying out of State significant development, or State infrastructure development, that has planning approval under the planning legislation.

**Clause 9.2** is an interpretive provision that includes the following definitions for the purposes of the proposed Part:

- (a) *monitoring* of development is the monitoring of the carrying out of the development to provide data on compliance with the approval of the development or on the development's environmental impact,
- (b) an *environmental audit* of development is a periodic or particular documented evaluation of approved development to provide information to the proponent of the development and

to the persons administering the planning legislation on compliance with the approval of the development or on the development's environmental management or impact.

**Clause 9.3** enables the Minister to require an environmental audit or monitoring of a development as a condition of approval for that development.

**Clause 9.4** contains provisions relating to the possible forms of monitoring and environmental audit that may be required as a condition of approval.

**Clause 9.5** specifies offences and penalties relating to proposed Part 9, including the provision of false or misleading information and the failure to provide relevant information with respect to monitoring data or an audit report.

**Clause 9.6** makes it clear that self-incriminatory information is not exempt from the disclosure requirements and that any such information is admissible as evidence in the prosecution of an offence.

## **Part 10 Miscellaneous**

**Clause 10.1** contains general provisions in relation to the disclosure and misuse of information obtained in connection with the administration of the planning legislation. In particular, the clause prohibits a person acting in the administration of the planning legislation to use his or her position to gain a personal advantage. This prohibition extends to associated persons.

**Clause 10.2** provides for an exclusion of personal liability for persons acting in the administration of the planning legislation when acting in good faith.

**Clause 10.3** relates to the delegation of functions under the planning legislation. In particular, the clause allows public authorities to delegate functions to staff members.

**Clause 10.4** relates to the publication of instruments of delegation on the NSW planning portal.

**Clause 10.5** enables the Governor to make regulations for the purposes of the proposed Act.

## **Schedule 1 Property provisions relating to Planning Ministerial Corporation**

The Schedule contains general provisions in relation to land functions of the Planning Ministerial Corporation, including the ability of the Corporation to sell, lease, exchange or otherwise dispose of or deal with land. The Schedule empowers the Corporation to acquire land by agreement and by compulsory processes.

## **Schedule 2 Provisions relating to Planning Assessment Commission**

The Schedule contains general provisions relating to the Planning Assessment Commission, including provisions relating to public hearings and the procedure of those hearings.

## **Schedule 3 Constitution of regional planning panels**

The Schedule constitutes the 6 existing regional planning panels and specifies the local government areas associated with each panel.

## **Schedule 4 Constitution of subregional planning boards**

The Schedule constitutes the subregional planning boards (which are to be inserted by Ministerial order).

## **Schedule 5 Provisions relating to planning bodies**

Part 1 defines certain terms relevant to Schedule 5, including *planning body* which is to include either the Planning Assessment Commission, a regional planning panel, a subregional planning board or a committee or panel established by the Minister or the NSW Planning Director-General under section 2.3 of the proposed Act.

Part 2 contains general provisions relating to the members of planning bodies, including the duration of terms of office, remuneration and removal from office.

Part 3 contains general provisions relating to the procedure of planning bodies.

## **Schedule 6 Savings, transitional and other provisions**

The Schedule contains savings and transitional provisions that provide for continuity between the proposed Act and the *Environmental Planning and Assessment Act 1979 (former Act)*. These provisions enable regulations of a savings or transitional nature to be made. The Schedule also continues entities established under the former Act and preserves some appointments made under the former Act.



New South Wales

# Planning Administration Bill 2013

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New South Wales

# Planning Administration Bill 2013

No. , 2013

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## **A Bill for**

An Act relating to the administration of the planning legislation.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>Part 1 Preliminary</b>	2
<b>1.1 Name of Act</b>	3
This Act is the <i>Planning Administration Act 2013</i> .	4
<b>1.2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>1.3 Definitions</b>	7
(1) In this Act:	8
<b><i>function</i></b> includes a power, authority or duty, and <b><i>exercise</i></b> a function includes perform a duty.	9 10
<b><i>independent hearing and assessment panel</i></b> means an independent hearing and assessment panel of a council constituted under Part 7.	11 12
<b><i>NSW Planning Director-General</i></b> means the Director-General of the Department of Planning and Infrastructure.	13 14
<b><i>Planning Assessment Commission</i></b> means the Planning Assessment Commission constituted under Part 4.	15 16
<b><i>planning legislation</i></b> means any of the following:	17
(a) the <i>Planning Act 2013</i> and the instruments under that Act,	18
(b) this Act and the instruments under this Act.	19
<b><i>Planning Ministerial Corporation</i></b> means the corporation constituted under Part 3.	20
<b><i>regional planning panel</i></b> means a regional planning panel constituted under Part 5.	21
<b><i>subregional planning board</i></b> means a subregional planning board constituted under Part 6.	22 23
(2) Words and expressions used in this Act have (subject to subsection (1)) the same meanings they have in the <i>Planning Act 2013</i> .	24 25
(3) Notes included in this Act do not form part of this Act.	26

<b>Part 2</b>	<b>Minister and NSW Planning Director-General</b>	1
<b>2.1</b>	<b>The Minister</b>	2
(1)	The Minister has portfolio responsibility for planning and the administration of the planning legislation.	3 4
(2)	The Minister has the functions conferred or imposed on the Minister under the planning legislation.	5 6
<b>2.2</b>	<b>The NSW Planning Director-General</b>	7
(1)	The NSW Planning Director-General has departmental responsibility for planning and the administration of the planning legislation.	8 9
(2)	The NSW Planning Director-General has the functions conferred or imposed on the NSW Planning Director-General under the planning legislation.	10 11
(3)	The NSW Planning Director-General may provide advice, recommendations and reports to the Minister in connection with the administration of the planning legislation (whether on the NSW Planning Director-General's own initiative or as required by the Minister).	12 13 14 15
(4)	The NSW Planning Director-General is, in the exercise of any function under the planning legislation, subject to the control and direction of the Minister (except in relation to the contents of any advice, recommendation or report provided to the Minister by the NSW Planning Director-General).	16 17 18 19
<b>2.3</b>	<b>Committees or panels established by Minister or NSW Planning Director-General</b>	20
(1)	The Minister or the NSW Planning Director-General may, by order published on the NSW planning portal, establish committees or panels for the purposes of the planning legislation. <b>Note.</b> Part 2 of the <i>Planning Act 2013</i> requires the Minister to establish a panel under this section (to be called the Community Participation Advisory Panel) with the functions set out in that Part.	21 22 23 24 25 26
(2)	The chairperson and other members of any such committee or panel are to be appointed by the Minister or the NSW Planning Director-General (as the case requires).	27 28 29
(3)	The functions of any such committee or panel are to be as specified in the order by which it is established, and (without limitation) may include: (a) the investigation of any matter relevant to the administration of the planning legislation, or (b) the provision of advice, recommendations or reports with respect to any such matter for the Minister, the NSW Planning Director-General or other person or body engaged in the administration of the planning legislation. This subsection does not limit any functions conferred on any such committee or panel by the planning legislation.	30 31 32 33 34 35 36 37 38
(4)	Any such committee or panel is not subject to the direction or control of the Minister or the NSW Planning Director-General (except in relation to the procedure of the committee or panel and any directions under section 10.1 of the <i>Planning Act 2013</i> ).	39 40 41
(5)	Schedule 5 contains provisions with respect to the members and procedure of any such committee or panel.	42 43
(6)	The regulations may make provision for or with respect to the functions, members and procedure of any such committee or panel.	44 45

- (7) Any such committee or panel is a NSW Government agency, unless the order by which it is established provides that it is not a NSW Government agency. 1  
2  
**Note.** By virtue of section 13A of the *Interpretation Act 1987*, a NSW Government agency has the status, privileges and immunities of the Crown. 3  
4
- 2.4 Delegation by Minister, Planning Ministerial Corporation or NSW Planning Director-General** 5  
6
- (1) The Minister, the Planning Ministerial Corporation or the NSW Planning Director-General may delegate any of their functions under the planning legislation to: 7  
8  
9
- (a) a member of staff of the Department of Planning and Infrastructure, or 10
  - (b) a public authority or member of staff of a public authority, or 11
  - (c) a council or member of staff of a council, or 12
  - (d) the Planning Assessment Commission, or 13
  - (e) a regional planning panel or a subregional planning board, or 14
  - (f) a person, or person of a class, authorised for the purposes of this section by the regulations. 15  
16
- (2) A reference in this section to a function under the planning legislation includes a reference to: 17  
18
- (a) a function of the Minister under any other legislation that is conferred or imposed on the Minister in his or her capacity as the Minister administering the planning legislation or in connection with the administration of the planning legislation, or 19  
20  
21  
22
  - (b) a function of the Planning Ministerial Corporation under any other legislation, or 23  
24
  - (c) a function of the NSW Planning Director-General under any other legislation that is conferred or imposed on the NSW Planning Director-General in connection with the administration of the planning legislation. 25  
26  
27
- (3) This section does not authorise the delegation of: 28
- (a) the power of delegation conferred by this section, or 29
  - (b) the function of the Minister to declare public priority infrastructure, or 30
  - (c) the function of the Minister to give a direction under section 10.1 of, or Part 1 of Schedule 10 to, the *Planning Act 2013*, or 31  
32
  - (d) the function of giving any approval of the Minister that is required under the planning legislation for the application of money in a Planning Growth Fund. 33  
34

<b>Part 3</b>	<b>Planning Ministerial Corporation</b>	1
<b>3.1</b>	<b>Constitution and functions of Corporation</b>	2
(1)	There is constituted by this Act a corporation with the corporate name of the Planning Ministerial Corporation.	3 4
(2)	The Planning Ministerial Corporation has such functions as are conferred or imposed on it under the planning legislation or under any other Act.	5 6
(3)	The Planning Ministerial Corporation is a NSW Government agency.	7
<b>3.2</b>	<b>Management of Corporation</b>	8
(1)	The affairs of the Planning Ministerial Corporation are to be managed by the NSW Planning Director-General in accordance with any directions of the Minister.	9 10
(2)	Any act, matter or thing done in the name of, or on behalf of, the Planning Ministerial Corporation by the NSW Planning Director-General, or with the authority of the NSW Planning Director-General, is taken to have been done by the Corporation.	11 12 13
(3)	The regulations may make provision with respect to the seal of the Planning Ministerial Corporation.	14 15
(4)	The annual report of the Planning Ministerial Corporation is to be published as part of the annual report of the Department of Planning and Infrastructure.	16 17
<b>3.3</b>	<b>Property provisions relating to Corporation</b>	18
	Schedule 1 contains property provisions relating to the Planning Ministerial Corporation.	19 20
<b>3.4</b>	<b>Financial provisions relating to Corporation</b>	21
	Schedule 7 to the <i>Planning Act 2013</i> contains provisions relating to Planning Growth Funds and other financial provisions relating to the Planning Ministerial Corporation.	22 23 24

<b>Part 4</b>	<b>Planning Assessment Commission</b>	1
<b>4.1</b>	<b>Planning Assessment Commission</b>	2
(1)	There is constituted by this Act a corporation with the corporate name of the Planning Assessment Commission of New South Wales.	3 4
(2)	The Commission is not subject to the direction or control of the Minister (except in relation to the procedure of the Commission and any directions under section 10.1 of the <i>Planning Act 2013</i> ).	5 6 7
(3)	The Commission is a NSW Government agency.	8
<b>4.2</b>	<b>Members of Commission</b>	9
(1)	The Planning Assessment Commission is to consist of not less than 4 and not more than 9 members appointed by the Minister.	10 11
(2)	One member of the Commission is, in the instrument of appointment, to be appointed as chairperson of the Commission.	12 13
(3)	Each member is to have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.	14 15 16
(4)	In appointing a member of the Commission, the Minister is to have regard to the need to have a range of expertise represented among the Commission's members.	17 18
(5)	The Minister may appoint additional members of the Commission for the purposes of exercising specific functions of the Commission. An additional member is not required to have expertise in an area referred to in this section but is required to have expertise in an area relevant to the functions the member is to exercise.	19 20 21 22
<b>4.3</b>	<b>Functions of Commission</b>	23
(1)	The Planning Assessment Commission has the following functions:	24
(a)	any function delegated to the Commission under the planning legislation,	25
(b)	to advise the Minister or the NSW Planning Director-General on any matter on which the Minister or the NSW Planning Director-General requests advice from the Commission,	26 27 28
(c)	to hold a public hearing into any matter that the Minister requests the Commission to hold a public hearing,	29 30
(d)	any function of a regional planning panel or an independent hearing and assessment panel in respect of a particular matter that the Minister requests the Commission to exercise (to the exclusion of the panel),	31 32 33
(e)	if a regional planning panel has not been appointed for any part of the State, any function that is conferred on any such panel under the planning control provisions of a local plan applicable to that part or that is otherwise conferred on any such panel under the planning legislation,	34 35 36 37
(f)	if a subregional planning board has failed to comply with any direction of the Minister under the planning legislation in respect of a matter, any function of the board in respect of particular matters of that kind that the Minister requests the Commission to exercise (to the exclusion of the board),	38 39 40 41
(g)	any other function conferred or imposed on it under the planning legislation or under any other legislation.	42 43
(2)	The matters on which advice may be provided under subsection (1) (b), or into which a public hearing may be held under subsection (1) (c), include any general or	44 45

particular planning or development matter, the administration of the planning legislation or any related matter.	1 2
(3) The Planning Assessment Commission may, with the approval of the NSW Planning Director-General:	3 4
(a) arrange for the use of the services of any staff or facilities of a public authority, and	5 6
(b) engage such consultants as it requires to exercise its functions.	7
<b>4.4 Constitution of Commission for particular matters</b>	8
(1) For the purpose of carrying out any of its functions, the Planning Assessment Commission is to be constituted by 3 members.	9 10
(2) The Commission is to be constituted by more than 3 members or less than 3 members if directed to be so constituted by the Minister.	11 12
(3) The members for the purpose of exercising a function of the Commission are, subject to any directions of the Minister, to be determined by the chairperson.	13 14
(4) The Commission may, at any time, exercise by the same or different members, one or more of its functions.	15 16
(5) For the purpose of exercising any of its functions, the Commission is to be constituted by specified members, or members with specified qualifications or expertise, if directed to be so constituted by the Minister.	17 18 19
<b>4.5 Provisions relating to Commission</b>	20
(1) Schedules 2 and 5 contain provisions with respect to the Planning Assessment Commission (including with respect to public hearings by, and to the members and procedures of, the Commission).	21 22 23
(2) The work of the Planning Assessment Commission is, subject to the planning legislation, to be allocated by the chairperson of the Commission.	24 25
<b>4.6 Delegation by Planning Assessment Commission</b>	26
The Planning Assessment Commission may, with the approval of the Minister, delegate any function of the Commission under the planning legislation or under any other legislation (other than this power of delegation) to any person or body specified in the Minister's approval.	27 28 29 30



<b>Part 5</b>	<b>Regional planning panels</b>	1
<b>5.1</b>	<b>Regional planning panels</b>	2
(1)	The regional planning panels specified in Schedule 3 are constituted for the particular parts of the State so specified in relation to each such panel.	3 4
(2)	A regional planning panel is not subject to the direction or control of the Minister (except in relation to the procedure of the panel and any directions under section 10.1 of the <i>Planning Act 2013</i> ).	5 6 7
(3)	Legal proceedings by or against a regional planning panel are to be taken in the name of the panel and not by or against the members of the panel.	8 9
(4)	A regional planning panel is a NSW Government agency.	10
(5)	The Minister may, by order published on the NSW legislation website, amend Schedule 3 for any of the following purposes:	11 12
(a)	to constitute a regional planning panel and to specify the part of the State for which it is constituted,	13 14
(b)	to abolish a regional planning panel,	15
(c)	to change the name of a regional planning panel or to change the part of the State for which it is constituted,	16 17
(d)	to make savings and transitional provisions consequent on any of the above.	18
<b>5.2</b>	<b>Members of panels</b>	19
(1)	A regional planning panel is to consist of the following 5 members:	20
(a)	3 members appointed by the Minister (the <i>State members</i> ),	21
(b)	2 nominees of an applicable council (the <i>council nominees</i> ) who are councillors, members of council staff or other persons nominated by the council.	22 23 24
(2)	The State members of a regional planning panel are to be persons who have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. In appointing State members, the Minister is to have regard to the need to have a range of expertise represented among the panel's members.	25 26 27 28 29
(3)	At least one of the council nominees of a regional planning panel is to be a person who has expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.	30 31 32 33
(4)	One of the State members is to be appointed by the Minister as chairperson of the regional planning panel. The Minister is required to obtain the concurrence of the Local Government and Shires Association of New South Wales to the appointment unless:	34 35 36 37
(a)	the Association fails to notify its concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or	38 39
(b)	the Association has refused to concur in the appointment of 2 different persons proposed by the Minister.	40 41
(5)	Each applicable council is to nominate 2 persons as council nominees for the purposes of the regional planning panel. If an applicable council fails to nominate one or more council nominees, a regional planning panel is not required to include 2 council nominees for the purposes of exercising its functions in relation to the area of the council.	42 43 44 45 46

(6)	For the purposes of exercising the functions of a regional planning panel in relation to a matter, the council nominees on the panel are to be nominated by the applicable council for the land to which the matter relates.	1 2 3
(7)	In this section: <i>applicable council</i> means the council of an area that is situated (wholly or partly) in a part of the State for which a regional planning panel is constituted.	4 5 6
<b>5.3</b>	<b>Functions of panels</b>	7
	A regional planning panel has the following functions:	8
(a)	the specified functions of a consent authority under Part 4 of the <i>Planning Act 2013</i> for regionally significant development,	9 10
(b)	any functions under the planning legislation of a council within its area that are conferred on it under Part 1 of Schedule 10 to the <i>Planning Act 2013</i> ,	11 12
(c)	to advise the Minister or the NSW Planning Director-General as to planning or development matters relating to the part of the State for which it is constituted (or any related matters) if requested to do so by the Minister or the NSW Planning Director-General,	13 14 15 16
(d)	any other function conferred or imposed on it under the planning legislation or any other legislation.	17 18
	<b>Note.</b> Under clause 10.2 of Schedule 10 to the <i>Planning Act 2013</i> , a panel (or the Planning Assessment Commission if acting in place of the panel) is, in the exercise of a function referred to in paragraph (b), taken to be the council and is to exercise the function to the exclusion of the council.	19 20 21 22
<b>5.4</b>	<b>Provisions relating to panels</b>	23
(1)	Schedule 5 contains provisions with respect to the members and procedure of regional planning panels.	24 25
(2)	The regulations may make provision for or with respect to the following:	26
(a)	the functions conferred by the planning legislation on a regional planning panel, including its procedures in exercising its functions,	27 28
(b)	the provision of information and reports by regional planning panels,	29
(c)	without limiting paragraph (a), providing that parties to matters being determined by a regional planning panel are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances.	30 31 32 33
(3)	The NSW Planning Director-General is, in the annual report of the Department of Planning and Infrastructure, to report on the activities of regional planning panels during the reporting year under Part 1 of Schedule 10 to the <i>Planning Act 2013</i> .	34 35 36
<b>5.5</b>	<b>Delegation by panels</b>	37
	A regional planning panel may, with the approval of the Minister, delegate any function of the panel under the planning legislation or under any other legislation (other than this power of delegation) to a council, or to the general manager or other staff of the council, for any area or part of any area for which the panel is constituted.	38 39 40 41

<b>Part 6</b>	<b>Subregional planning boards</b>	1
<b>6.1</b>	<b>Subregional planning boards</b>	2
(1)	There are constituted by this Act the subregional planning boards specified in Schedule 4.	3 4
(2)	A subregional planning board is a body corporate with the corporate name specified in Schedule 4.	5 6
(3)	A subregional planning board is a NSW Government agency.	7
(4)	A subregional planning board is not, in the exercise of its functions, subject to the direction or control of the Minister (except in relation to the procedure of the board and any directions under section 10.1 of the <i>Planning Act 2013</i> ).	8 9 10
(5)	The Minister may, by order published on the NSW legislation website, amend Schedule 4 for any of the following purposes:	11 12
(a)	to constitute a subregional planning board and to specify the part of the State for which it is constituted,	13 14
(b)	to abolish a subregional planning board,	15
(c)	to change the name of a subregional planning board or to change the part of the State for which it is constituted,	16 17
(d)	to make savings and transitional provisions consequent on any of the above.	18
<b>6.2</b>	<b>Members of boards</b>	19
(1)	A subregional planning board is to consist of the following members:	20
(a)	not more than 4 members appointed by the Minister (the <i>State members</i> ),	21
(b)	a separate member nominated by each council whose area is wholly or partly within the area for which the board is constituted (the <i>council nominees</i> ),	22 23
(c)	another member appointed by the Minister as chairperson.	24
(2)	The members of a subregional planning board (other than council nominees) are to be persons who have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.	25 26 27 28
(3)	The Minister is required to obtain the concurrence of the Local Government and Shires Association of New South Wales to the appointment of the chairperson unless:	29 30
(a)	the Association fails to notify its concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or	31 32
(b)	the Association has refused to concur in the appointment of 2 different persons proposed by the Minister.	33 34
(4)	In appointing a State member, the Minister is to have regard to the need to have a range of expertise represented among the board's members.	35 36
(5)	If an applicable council fails to nominate one or more council nominees, a subregional planning board is not required to include a council nominee for the purposes of exercising its functions in relation to the area of the council or in relation to any other area of the board.	37 38 39 40

<b>6.3</b>	<b>Functions of boards</b>	1
	A subregional planning board has the functions conferred or imposed on it under the planning legislation or any other legislation.	2 3
	<b>Note.</b> Part 3 of the <i>Planning Act 2013</i> provides that a function of a board is to prepare subregional delivery plans.	4 5
<b>6.4</b>	<b>Provisions relating to boards</b>	6
(1)	Schedule 5 contains provisions with respect to the members and procedure of subregional planning boards.	7 8
(2)	The regulations may make provision for or with respect to the functions, members and procedure of subregional planning boards.	9 10

<b>Part 7</b>	<b>Provisions relating to councils</b>	1
<b>7.1</b>	<b>Council independent hearing and assessment panels</b>	2
(1)	A panel of experts (an <i>independent hearing and assessment panel</i> ):	3
(a)	is required to be constituted by a council to exercise the consent authority functions of the council with respect to any development application that are required to be exercised by an independent hearing and assessment panel under the planning control provisions of the council's local plan, and	4 5 6 7
(b)	may be constituted by a council to exercise the consent authority functions of the council with respect to any other development application referred to the panel by the council (unless a regional panel is required to exercise those consent authority functions), and	8 9 10 11
(c)	is required to be constituted by a council to assess any aspect of a development application or any planning matter if an assessment by such a panel is required by the planning control provisions of the council's local plan, and	12 13 14
(d)	may be constituted by a council to assess any other aspect of a development application or planning matter referred to the panel by the council (unless a regional panel is required to determine or review the matter).	15 16 17
(2)	The members of an independent hearing and assessment panel are to consist of persons having expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.	18 19 20 21
(3)	For the purposes of an assessment, an independent hearing and assessment panel must submit a report to the council within the time required by the council.	22 23
(4)	An independent hearing and assessment panel is to exercise its functions in accordance with the planning legislation and any arrangements approved by the Minister. However, a panel is not subject to the direction or control of the Minister or the council on its decisions.	24 25 26 27
(5)	The council is to provide staff and facilities for the purpose of enabling an independent hearing and assessment panel to exercise its functions.	28 29
(6)	A member of an independent hearing and assessment panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	30 31 32
(7)	A council must provide an annual report to the NSW Planning Director-General as to the following:	33 34
(a)	the number of independent hearing and assessment panels constituted by the council in the preceding year,	35 36
(b)	the matters referred to the panels in the preceding year,	37
(c)	the persons appointed to the panels,	38
(d)	decisions made by the council relating to matters referred to the panels for assessment, including the reasons for any decision not in accordance with an assessment by a panel,	39 40 41
(e)	any other matters relating to the exercise of functions by panels as directed by the NSW Planning Director-General.	42 43
(8)	The regulations may make provision for or with respect to the following:	44
(a)	the procedures of independent hearing and assessment panels in exercising functions,	45 46

(b)	without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,	1 2 3
(c)	the provision of information or reports by councils with respect to the exercise of functions by independent hearing and assessment panels and any actions taken or not taken by councils in response to panel assessments.	4 5 6
(9)	This section does not limit the functions that may be exercised by an independent hearing and assessment panel under the planning legislation.	7 8
<b>7.2</b>	<b>Obligation to consult with council about certain decisions</b>	9
	The Planning Assessment Commission or a regional planning panel must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.	10 11 12 13
<b>7.3</b>	<b>Obligations of councils to assist Commission and regional panels</b>	14
(1)	The Planning Assessment Commission or a regional planning panel is entitled, on request made to the general manager of a council:	15 16
(a)	to have access to, and to make copies of and take extracts from, records of the council relevant to the exercise of the Commission's or panel's functions, and	17 18
(b)	to the use of the staff and facilities of the council in order to exercise the Commission's or panel's functions, and	19 20
(c)	to any other assistance or action by the council for the purposes of exercising the Commission's or panel's functions.	21 22
(2)	The regulations may make provision with respect to assistance and action under this section.	23 24
<b>7.4</b>	<b>Section 381 of Local Government Act 1993 excluded</b>	25
	Section 381 of the <i>Local Government Act 1993</i> does not apply to a delegation under this Act to the general manager or other employee of a council.	26 27

<b>Part 8</b>	<b>Investigative powers</b>	1
<b>Division 1</b>	<b>Preliminary</b>	2
<b>8.1</b>	<b>Definitions</b>	3
	In this Part:	4
	<i>authorised fire officer</i> means a fire officer who may issue a fire safety order under Division 10.2 of Part 10 of the <i>Planning Act 2013</i> .	5 6
	<i>investigation authority</i> means:	7
	(a) a council, in relation to an investigation officer appointed by the council, or	8
	(b) the NSW Planning Director-General, in relation to any other investigation officer.	9 10
	<i>investigation officer</i> means a person appointed as an investigation officer under this Part by the NSW Planning Director-General (a <i>departmental investigation officer</i> ) or by a council (a <i>council investigation officer</i> ).	11 12 13
	<i>investigation purpose</i> means a purpose for which a power may be exercised under this Part.	14 15
	<i>occupier</i> of premises means the person who has the management or control of the premises.	16 17
	<i>records</i> includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).	18 19
<b>8.2</b>	<b>Appointment of investigation officers</b>	20
(1)	The NSW Planning Director-General or a council may appoint persons (including any class of persons) as investigation officers for the purposes of this Part.	21 22
	<b>Note.</b> Because of the definition of “investigation officer”, a person appointed by the NSW Planning Director-General becomes a “departmental investigation officer” and a person appointed by the council becomes a “council investigation officer”.	23 24 25
(2)	A person’s appointment as an investigation officer may be made generally, or made subject to conditions or restrictions or only for limited purposes.	26 27
(3)	A person’s appointment as an investigation officer is to be made by written instrument (in the case of an individual appointment) or by notice published on the NSW planning portal or in the Gazette (in the case of the appointment of a class of persons).	28 29 30 31
(4)	Every investigation officer is to be provided by the investigation authority with an identification card as an investigation officer.	32 33
(5)	If persons of a class are appointed as investigation officers, they need not be provided with an identification card if the investigation authority is satisfied that they possess adequate identification as persons of that class.	34 35 36
<b>8.3</b>	<b>Purposes for which powers under Part may be exercised</b>	37
(1)	A departmental investigation officer may exercise powers under this Part for any of the following purposes:	38 39
	(a) enabling the Minister or the NSW Planning Director-General to exercise their functions under the planning legislation,	40 41
	(b) determining whether there has been compliance with or a contravention of the planning legislation, including any plan, planning approval or any other document or requirement issued or made under the planning legislation,	42 43 44

- (c) obtaining information or records for purposes connected with the administration of the planning legislation, 1  
2
  - (d) generally for administering the planning legislation. 3
- (2) A council investigation officer may exercise powers under this Part for any of the following purposes: 4  
5
  - (a) enabling a council to exercise its functions under the planning legislation, 6
  - (b) at the request of the Commissioner of Fire and Rescue NSW, determining whether or not adequate provision for fire safety has been made in or in connection with a building. 7  
8  
9
- (3) Nothing in this Part affects any function under any other provision of the planning legislation or under any other Act. 10  
11

## **Division 2 Powers of entry and search** 12

### **8.4 Powers of investigation officers to enter premises** 13

- (1) An investigation officer may enter: 14
  - (a) any premises at which the officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and 15  
16  
17
  - (b) any other premises—at any reasonable time. 18
- (2) An investigation officer may enter a part of premises used for residential purposes only: 19  
20
  - (a) with the consent of the occupier, or 21
  - (b) under the authority of a search warrant issued under this Part, or 22
  - (c) if it is necessary to do so to inspect work being carried out under a planning approval or premises for which a building information certificate is being sought. 23  
24  
25
- (3) An investigation officer may enter any premises under the authority of a search warrant issued under this Part. 26  
27
- (4) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner. 28  
29
- (5) Reasonable force may be used to enter premises under this Part. 30
- (6) An investigation officer may enter premises under this Part with the aid of such investigation officers, police officers or other persons as the investigation officer considers necessary. 31  
32  
33

### **8.5 Notice of entry** 34

- (1) An investigation officer or the investigation authority must give the owner or occupier of premises written notice of the intention to enter the premises before a person authorised to enter premises under this Part does so. 35  
36  
37
- (2) The notice must specify the day on which the person intends to enter the premises and must be given before that day. 38  
39
- (3) Notice is not required to be given: 40
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or 41  
42
  - (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or 43  
44



(c)	if entry is required urgently and the case is one in which the investigation authority has authorised in writing (either generally or in the particular case) entry without notice.	1 2 3
<b>8.6</b>	<b>Powers of investigation officers to do things at premises</b>	4
(1)	An investigation officer who lawfully enters premises may do anything that the officer thinks is necessary to be done for an investigation purpose, including (but not limited to) the following things:	5 6 7
(a)	examine and inspect any works, plant or other article,	8
(b)	take and remove samples,	9
(c)	make such examinations, inquiries and tests as the officer thinks necessary,	10
(d)	take such photographs, films, audio, video and other recordings as the officer thinks necessary,	11 12
(e)	for the purpose of an inspection:	13
(i)	open any ground and remove any flooring and take any measures that may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and	14 15 16
(ii)	require the opening, cutting into or pulling down of any work if the officer has reason to believe or suspect that anything on the premises has been done in contravention of the planning legislation,	17 18 19
(f)	take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks,	20 21
(g)	require records to be produced for inspection,	22
(h)	examine and inspect any records,	23
(i)	copy any records,	24
(j)	seize anything that the officer has reasonable grounds for believing is connected with an offence against the planning legislation,	25 26
(k)	do any other thing the officer is empowered to do under this Part.	27
(2)	The power to seize anything connected with an offence includes a power to seize:	28
(a)	a thing with respect to which the offence has been committed, and	29
(b)	a thing that will afford evidence of the commission of the offence, and	30
(c)	a thing that was used for the purpose of committing the offence.	31
	A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.	32 33
<b>8.7</b>	<b>Search warrants</b>	34
(1)	An investigation officer may apply to an issuing officer for the issue of a search warrant if the investigation officer believes on reasonable grounds that the planning legislation is being or has been contravened at any premises.	35 36 37
(2)	An issuing officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigation officer named in the warrant:	38 39 40
(a)	to enter the premises, and	41
(b)	to exercise any function of an investigation officer under this Part.	42
(3)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	43 44

(4)	In this section:	1
	<i>issuing officer</i> means an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	2 3
<b>8.8</b>	<b>Care to be taken</b>	4
(1)	An investigation officer must do as little damage as possible in the exercise of a power to enter or search premises under this Part. The investigation authority must provide, if necessary, other means of access in place of any taken away or interrupted by an investigation officer.	5 6 7 8
(2)	As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.	9 10 11 12
<b>8.9</b>	<b>Notification of use of force or urgent entry</b>	13
(1)	An investigation officer who:	14
	(a) uses force for the purpose of gaining entry to premises, or	15
	(b) enters premises in an emergency without giving written notice to the owner or occupier,	16 17
	must promptly advise the investigation authority.	18
(2)	The investigation authority must give notice of the entry to such persons or authorities as appear to the investigation authority to be appropriate in the circumstances.	19 20 21
<b>Division 3</b>	<b>Powers to obtain information</b>	22
<b>8.10</b>	<b>Requirement to provide information and records</b>	23
(1)	An investigation officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the notice requires in connection with an investigation purpose.	24 25 26
(2)	The notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.	27 28 29
(3)	The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.	30 31
(4)	The person to whom any record is furnished under this section may take copies of it.	32
(5)	If any record required to be furnished is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.	33 34 35
(6)	An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.	36 37
<b>8.11</b>	<b>Power of investigation officers to require answers and record evidence</b>	38
(1)	An investigation officer may require a person to answer questions in relation to a matter connected with an investigation purpose if the officer suspects on reasonable grounds:	39 40 41
	(a) that it is necessary to require information about the matter for that purpose, and	42
	(b) that the person has knowledge of the matter.	43

(2)	The investigation authority may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.	1 2 3
(3)	An investigation officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.	4 5 6 7
(4)	The place and time at which a person may be required to attend is to be:	8
(a)	a place or time nominated by the person, or	9
(b)	if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the investigation officer that is reasonable in the circumstances.	10 11 12
(5)	An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.	13 14
<b>8.12</b>	<b>Recording of evidence</b>	15
(1)	An investigation officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.	16 17 18
(2)	A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the investigation officer.	19 20
(3)	A copy of any such record must be provided by the investigation officer to the person who is questioned as soon as practicable after it is made.	21 22
(4)	A record may be made under this section despite the provisions of any other law.	23
<b>Division 4</b>	<b>Miscellaneous provisions applying to exercise of powers</b>	24
<b>8.13</b>	<b>Offences</b>	25
(1)	A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an investigation officer in accordance with this Part.	26 27
(2)	A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part that the person knows is false or misleading in a material respect.	28 29 30
(3)	A person must not intentionally delay or obstruct an investigation officer in the exercise of the officer's powers under this Part. Maximum penalty: Tier 3.	31 32 33
<b>8.14</b>	<b>Identification card to be produced</b>	34
(1)	An investigation officer who is exercising a function under this Part must produce the officer's identification card, if requested to do so by a person affected by the exercise of the function.	35 36 37
(2)	In this section, <i>identification card</i> means an identification card issued under section 8.2 (4) or identification of the kind referred to in section 8.2 (5).	38 39
<b>8.15</b>	<b>Assistance for investigation officers</b>	40
	The investigation authority may, by notice in writing given to the owner or occupier of premises, require the owner or occupier to provide reasonable assistance and facilities to an investigation officer in the exercise of the officer's powers under this	41 42 43

Part. The notice is to specify the assistance and facilities to be provided and the time and manner in which they are to be provided.	1 2
<b>8.16 Compensation</b>	3
The State must compensate all interested parties for any damage caused by a departmental investigation officer (and a council must compensate all interested parties for any damage caused by a council investigation officer) in exercising a power of entering premises but not any damage caused by the exercise of any other power, unless the occupier obstructed or hindered the officer in the exercise of the power of entry.	4 5 6 7 8 9
<b>8.17 Recovery of cost of entry and inspection</b>	10
If, as a result of an inspection of premises under this Part by an investigation officer, the investigation authority requires any work to be carried out on or in the premises, the investigation authority may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.	11 12 13 14
<b>8.18 Notices</b>	15
(1) More than one notice under a provision of this Part may be given to the same person.	16
(2) A notice given under this Part may be revoked or varied by a subsequent notice or notices (including by extending the time for compliance with the notice).	17 18
(3) A notice may be given under this Part to a person in respect of a matter or thing even though the person is outside the State, or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.	19 20 21
<b>8.19 Provisions relating to requirements to furnish records or information or answer questions</b>	22 23
(1) <b>Warning to be given on each occasion</b>	24
A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.	25 26 27
(2) <b>Self-incrimination not an excuse</b>	28
A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.	29 30 31
(3) <b>Information or answer not admissible if objection made</b>	32
However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:	33 34 35 36
(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	37 38
(b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.	39 40 41
(4) <b>Records admissible</b>	42
Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.	43 44 45

(5) <b>Further information</b>	1
Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:	2
(a) that the record or information had to be furnished or the answer had to be given, or	3
(b) that the record or information furnished or answer given might incriminate the person.	4
<b>8.20 Fire brigades inspection powers</b>	5
(1) An authorised fire officer may exercise the powers of an investigation officer under this Part for the purpose of inspecting a building to determine whether or not:	6
(a) adequate provision for fire safety has been made in or in connection with the building, or	7
(b) the fire safety provisions prescribed for the purposes of this section by the regulations have been complied with.	8
(2) An authorised fire officer cannot inspect premises under this section (other than places of shared accommodation) for the purposes of determining whether or not adequate provision for fire safety has been made except:	9
(a) when requested to do so by the council of the area in which the building is located, or	10
(b) when requested to do so by a person who holds himself or herself out as the owner, lessee or occupier of the building, or	11
(c) when the Commissioner of Fire and Rescue NSW has received a complaint in writing that adequate provision for fire safety has not been made concerning the building.	12
(3) A council must, at the request of the Commissioner of Fire and Rescue NSW, make available a council investigation officer for the purposes of an inspection under this section, and the officer concerned is to be present during the inspection.	13
(4) The Commissioner of Fire and Rescue NSW must send a report of any inspection carried out under this section to the council concerned.	14
(5) This Part applies (subject to the regulations) to an authorised fire officer in the same way that it applies to a council investigation officer. For that purpose (and subject to the regulations), a reference in this Part to the investigating authority is taken to be a reference to the Commissioner of Fire and Rescue NSW.	15
(6) A council must, at the written request of the Commissioner of Fire and Rescue NSW, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building. As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Commissioner.	16
<b>8.21 Building or subdivision certifiers</b>	17
(1) The regulations may confer on a building certifier or subdivision certifier specified powers of a council investigation officer under this Part for the purpose of exercising functions under the planning legislation as a building or subdivision certifier.	18
(2) This Act applies (subject to the regulations) to any such certifier in the same way that it applies to a council investigation officer.	19

<b>Part 9</b>	<b>Monitoring and environmental auditing of approved development</b>	1
		2
<b>9.1</b>	<b>Application of Part</b>	3
(1)	This Part applies to the carrying out of State significant development, or State infrastructure development, that has planning approval under the planning legislation.	4 5 6
(2)	This Part does not affect the other provisions of the planning legislation.	7
<b>9.2</b>	<b>Nature of monitoring and environmental audits</b>	8
(1)	For the purposes of this Part, <i>monitoring</i> of development is the monitoring of the carrying out of the development to provide data on compliance with the approval of the development or on the development's environmental impact.	9 10 11
(2)	For the purposes of this Part, an <i>environmental audit</i> of development is a periodic or particular documented evaluation of approved development to provide information to the proponent of the development and to the persons administering the planning legislation on compliance with the approval of the development or on the development's environmental management or impact.	12 13 14 15 16
(3)	A reference in this section to compliance with the approval of development includes a reference to compliance with:	17 18
(a)	the conditions to which the approval of the development is subject, and	19
(b)	the requirements of the planning legislation and of relevant provisions of any other Act referred to in Division 6.1 of Part 6 of the <i>Planning Act 2013</i> .	20 21
<b>9.3</b>	<b>Minister may require monitoring or environmental audits by imposition of conditions on approved development</b>	22 23
(1)	The Minister may, by the imposition of conditions on the approval of development, require monitoring or an environmental audit or audits to be undertaken to the satisfaction of the Minister by the proponent of the development.	24 25 26
(2)	A condition requiring monitoring or an environmental audit may be imposed at the time the approval of the development is given or at any other time by notice in writing to the proponent of the development.	27 28 29
(3)	Any such condition imposed by notice may be varied or revoked by a similar notice.	30
<b>9.4</b>	<b>Provisions relating to conditions for monitoring and environmental audits</b>	31
(1)	A condition requiring monitoring may require:	32
(a)	the provision and maintenance of appropriate measuring and recording devices for the purposes of the monitoring, and	33 34
(b)	the analysis, reporting and retention of monitoring data, and	35
(c)	certification of the monitoring data (including the extent to which the terms and conditions of any approval have or have not been complied with).	36 37
(2)	A condition requiring an environmental audit must specify the purpose of the audit. Such a condition may require:	38 39
(a)	the conduct of the audit by the proponent or by an independent person or body approved by the Minister or the NSW Planning Director-General (either periodically or on particular occasions), and	40 41 42
(b)	preparation of written documentation during the course of the audit, and	43
(c)	preparation of an audit report, and	44

(d)	certification of the accuracy and completeness of the audit report, and	1
(e)	production to the Minister of the audit report.	2
<b>9.5</b>	<b>Offences</b>	3
(1)	<b>False or misleading information in monitoring or audit report</b>	4
	A person must not include information in (or provide information for inclusion in):	5
(a)	a report of monitoring data, or	6
(b)	an audit report produced to the Minister in connection with an environmental audit,	7
	if the person knows that the information is false or misleading in a material respect.	8
(2)	<b>Information not included in monitoring or audit report</b>	10
	The proponent of approved development must not fail to include information in (or fail to provide information for inclusion in):	11
(a)	a report of monitoring data, or	12
(b)	an audit report produced to the Minister in connection with an environmental audit,	13
	if the proponent knows that the information is materially relevant to the monitoring or audit.	14
(3)	<b>Retention of monitoring data or audit documentation</b>	16
	The proponent of approved development must:	17
(a)	retain any monitoring data in accordance with the relevant condition of the approval for at least 5 years after it was collected, and	18
(b)	retain any documentation required to be prepared by the proponent in connection with an environmental audit for a period of at least 5 years after the audit report concerned was produced to the Minister, and	19
(c)	produce during that period any such documentation on request to an investigation officer under Part 8 who is a departmental investigation officer.	20
	Maximum penalty: Tier 3.	21
<b>9.6</b>	<b>Self-incriminatory information and use of information</b>	22
(1)	Information must be supplied by a person in connection with a report of monitoring or an environmental audit, and this Part applies to any such information that is supplied, whether or not the information might incriminate the person.	23
(2)	Any information in monitoring data or in an audit report or other documentation supplied to the Minister in connection with an environmental audit may be taken into consideration by the Minister and used for the purposes of the planning legislation.	24
(3)	Without limiting the above, any such information:	25
(a)	is admissible in evidence in any prosecution of the proponent of approved development for any offence (whether under the planning legislation or otherwise), and	26
(b)	may be disclosed by the Minister by publishing it in such manner as the Minister considers appropriate.	27

<b>Part 10 Miscellaneous</b>	1
<b>10.1 Disclosure and misuse of information</b>	2
(1) A person must not disclose any information obtained in connection with the administration of the planning legislation unless that disclosure is made:	3
(a) with the consent of the person from whom the information was obtained, or	4
(b) in connection with the administration of the planning legislation, or	5
(c) for the purposes of any legal proceedings arising out of the planning legislation or of any report of any such proceedings, or	6
(d) in accordance with a requirement imposed under the <i>Ombudsman Act 1974</i> , or	7
(e) with other lawful excuse.	8
(2) A person acting in the administration of the planning legislation must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for himself or herself, or a person with whom he or she is associated.	9
(3) A person acting in the administration of the planning legislation, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for himself or herself, or a person with whom he or she is associated, influence:	10
(a) the making of any provision of a strategic plan or infrastructure plan or of a proposal for any such provision, or	11
(b) the determination of an application for planning approval, or	12
(c) a decision concerning a complying development certificate, or	13
(d) the giving of a development control order.	14
(4) In this section, a person is associated with another person if the person is the spouse, de facto partner, sibling, parent or child of the other person.	15
Maximum penalty: Tier 3 or imprisonment for a term not exceeding 6 months, or both.	16
<b>Note.</b> "De facto partner" is defined in section 21C of the <i>Interpretation Act 1987</i> .	17
<b>10.2 Exclusion of personal liability</b>	18
A matter or thing done, or omitted to be done, by:	19
(a) the Minister, or	20
(b) the NSW Planning Director-General, or	21
(c) any member of staff of the Department of Planning and Infrastructure, or	22
(d) a member of a committee or panel established by the Minister or the NSW Planning Director-General under Part 2, or	23
(e) a member of the Planning Assessment Commission, or	24
(f) a member of a regional planning panel, or	25
(g) a member of a subregional planning board, or	26
(h) a member of an independent hearing and assessment panel, or	27
(i) any individual acting as an investigation officer under Part 8, or	28
(j) any individual acting under the direction of a person or body referred to above, or	29



(k)	any individual acting as the delegate of a person or body referred to above,	1
	does not subject the Minister, the NSW Planning Director-General or any such	2
	member or individual so acting personally to any action, liability, claim or demand	3
	if the matter or thing was done, or omitted to be done, in good faith for the purpose	4
	of the administration of the planning legislation.	5
<b>10.3</b>	<b>Delegation by public authorities other than councils and subregional planning boards</b>	6
		7
(1)	In this section, <i>public authority</i> does not include a council or a subregional planning board.	8
	<b>Note.</b> See sections 377–381 of the <i>Local Government Act 1993</i> in relation to the delegation of functions by councils.	9
		10
		11
(2)	A public authority may delegate any function of the public authority under the planning legislation (other than this power of delegation) to a member of staff of the public authority. If the public authority is a chief executive officer, the function may be delegated to any member of staff of the public authority of which he or she is the chief executive officer.	12
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(3)	A member of staff of a public authority may delegate any function of the member of staff under the planning legislation (other than this power of delegation) to any other member of staff of the public authority. However, if the function is a delegated function, the function cannot be subdelegated unless subdelegation is authorised by the terms of the original delegation.	17
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(4)	A power conferred by this section is in addition to any other power of delegation of the public authority or member of staff or any power of a person to exercise functions on behalf of the public authority.	22
		23
		24
<b>10.4</b>	<b>Publication of instruments of delegation</b>	25
(1)	Any instrument of delegation under this Act by the Minister, the Planning Ministerial Corporation, the NSW Planning Director-General, the Planning Assessment Commission or a regional planning panel is to be published on the NSW planning portal.	26
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		29
(2)	Failure to comply with this section does not affect the validity of any such delegation.	30
<b>10.5</b>	<b>Regulations</b>	31
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	32
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		35
(2)	The regulations may create offences punishable by a penalty not exceeding \$11,000.	36
(3)	Regulations that may be made in connection with a particular Part of this Act may be made separately or by amending a Schedule to this Act that contains provisions relating to that Part.	37
		38
		39
(4)	A regulation may apply, adopt or incorporate any publication as in force from time to time.	40
		41

<b>Schedule 1</b>	<b>Property provisions relating to Planning Ministerial Corporation</b>	1
		2
	(Section 3.3)	3
<b>1.1</b>	<b>General land functions of Corporation</b>	4
(1)	For the purposes of the planning legislation, the Planning Ministerial Corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the Corporation and grant easements or rights-of-way over that land or any part of it.	5 6 7 8
(2)	Without affecting the generality of subclause (1), the Planning Ministerial Corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to:	9 10 11
(a)	the erection of any building on that land by the purchaser within a specified period, or	12 13
(b)	conferring on the Corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a), or	14 15
(c)	conferring on the Corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the Corporation a sum determined in a specified manner where the Corporation does not exercise that option or right, or	16 17 18 19 20
(d)	the determination of the repurchase price payable by the Corporation pursuant to a condition referred to in paragraph (b) or (c).	21 22
(3)	A condition included in a contract of sale pursuant to subclause (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.	23 24 25
(4)	In addition to other functions conferred or imposed on the Planning Ministerial Corporation under the planning legislation or under any other legislation, the Corporation may, for the purposes of the planning legislation:	26 27 28
(a)	manage land vested in the Corporation, and	29
(b)	cause surveys to be made and plans of surveys to be prepared in relation to land vested in the Corporation or in relation to any land proposed to be acquired by the Corporation, and	30 31 32
(c)	demolish, or cause to be demolished, any building on land vested in the Corporation of which it has exclusive possession, and	33 34
(d)	provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the Corporation, and	35 36 37
(e)	subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the Corporation, and	38 39
(f)	set out and construct roads on land vested in the Corporation or on land of which the Corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested, and	40 41 42
(g)	erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the Corporation or any other land, with the consent of a person in whom it is vested, and	43 44 45
(h)	cause any work to be done on or in relation to any land vested in the Corporation or any other land, with the consent of the person in whom it is	46 47

vested, for the purpose of rendering it fit to be used for any purpose for which it may be used under the local plan which applies to the land, and	1 2
(i) by notification published in the Gazette, dedicate any land vested in the Corporation as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.	3 4 5
(5) In the exercise of any function under subclause (4) (f), consultations are to be held with Roads and Maritime Services, the relevant council and such other persons as the Minister determines.	6 7 8
(6) In relation to any land (whether vested in the Planning Ministerial Corporation or not), the Corporation may exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Planning Growth Fund.	9 10 11 12
<b>1.2 Power of Corporation to acquire land etc</b>	13
(1) The Planning Ministerial Corporation may, for the purposes of the planning legislation or pursuant to any function conferred or imposed on the Minister or the NSW Planning Director-General by the planning control provisions of a local plan, acquire land by agreement or by compulsory process in accordance with the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .	14 15 16 17 18
(2) Without limiting the generality of subclause (1), the Planning Ministerial Corporation may acquire in any manner authorised by that subclause:	19 20
(a) any land to which the planning control provisions of a local plan apply and which the Minister considers should be made available in the public interest for any purpose, or	21 22 23
(b) any land of which that proposed to be acquired under this Schedule forms part, or	24 25
(c) any land adjoining or in the vicinity of any land proposed to be acquired under this Schedule, or	26 27
(d) a leasehold or any other interest in land.	28
(3) The Planning Ministerial Corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of the planning legislation and may agree to the condition of any such gift, devise or bequest.	29 30 31
(4) The rule of law against remoteness of vesting does not apply to any such condition to which the Planning Ministerial Corporation has agreed.	32 33
(5) If the Planning Ministerial Corporation acquires property under subclause (3), neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the <i>Duties Act 1997</i> .	34 35 36
(6) For the purposes of the <i>Public Works Act 1912</i> , any acquisition of land under this clause is taken to be for an authorised work and the Planning Ministerial Corporation is, in relation to that authorised work, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of the <i>Public Works Act 1912</i> do not apply in respect of works constructed by the Planning Ministerial Corporation.	37 38 39 40 41
<b>1.3 Notification of interests</b>	42
(1) The Registrar-General must, at the request of the Planning Ministerial Corporation made in a manner approved by the Registrar-General and on payment of the fee	43 44

- prescribed under the *Real Property Act 1900*, make, in the Register kept under that Act, a recording appropriate to signify: 1  
2
- (a) that land specified in the request is held subject to a condition authorised under clause 1.1 (2), or 3  
4
- (b) that a recording made pursuant to paragraph (a) has ceased to have effect. 5
- (2) The Planning Ministerial Corporation is not to make a request pursuant to subclause (1) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General is not to be concerned to inquire whether any such request has been made for that purpose. 6  
7  
8  
9
- (3) Where a recording pursuant to subclause (1) (a) has been made in respect of any land, the Registrar-General must not register under the *Real Property Act 1900* a transfer of that land to or by a person other than the Planning Ministerial Corporation unless it would be so registrable if this Schedule had not been enacted and unless: 10  
11  
12  
13
- (a) a recording pursuant to subclause (1) (b) has been made in respect of the land, or 14  
15
- (b) the consent of the Corporation to the transfer has been endorsed on the transfer. 16  
17
- (4) When a recording is made pursuant to subclause (1) in respect of any land, the NSW Planning Director-General must notify the council in whose area the land is situated of the recording. 18  
19  
20

<b>Schedule 2</b>	<b>Provisions relating to Planning Assessment Commission</b>	1
		2
	(Section 4.5)	3
<b>2.1</b>	<b>Definitions</b>	4
	In this Schedule:	5
	<i>chairperson</i> means the person appointed by the Minister as the chairperson of the Commission.	6
		7
	<i>Commission</i> means the Planning Assessment Commission.	8
<b>2.2</b>	<b>Public hearings by Commission</b>	9
(1)	The Commission must conduct a public hearing if (and only if):	10
(a)	the Commission is requested to do so by the Minister under section 4.3 (1) (c),	11
	or	12
(b)	the Minister has determined in a gateway determination that the Commission is to conduct a public hearing into a planning proposal for provisions of a local plan.	13
		14
		15
(2)	The Commission must give reasonable notice of the public hearing:	16
(a)	by advertisement published in such newspapers as the Commission thinks fit, to the public, and	17
		18
(b)	by notice in writing to any public authorities that the Commission thinks are likely to have an interest in the subject-matter of the public hearing.	19
		20
(3)	The notice of a public hearing must contain the following matters:	21
(a)	the subject-matter of the public hearing,	22
(b)	the time, date and place of the public hearing,	23
(c)	a statement that submissions may be made to the Commission in relation to the subject-matter concerned not later than the date specified in the notice (being a date not less than 14 days after the notice is given),	24
		25
		26
(d)	if the public hearing relates to an application for development consent—a statement of the effect the public hearing will have on any appeal rights in relation to the application.	27
		28
		29
(4)	If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that part of any public hearing is to take place in private and give directions as to the persons who may be present.	30
		31
		32
		33
<b>2.3</b>	<b>Attendance of witnesses and production of documents at public hearings</b>	34
(1)	The chairperson of the Commission may require a person:	35
(a)	to attend a public hearing of the Commission to give evidence, or	36
(b)	to produce to the Commission a document that is relevant to a public hearing conducted by the Commission,	37
		38
	at a time, date and place specified in a notice given to the person.	39
(2)	A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.	40
		41
	Maximum penalty: \$11,000.	42

(3)	The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement.	1 2
<b>2.4</b>	<b>Commission may restrict publication of evidence</b>	3
(1)	If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that evidence given before the Commission or contained in documents lodged with the Commission not be published or may only be published subject to restrictions.	4 5 6 7 8
(2)	A person must not, without reasonable excuse, fail to comply with a direction given by the Commission under this clause. Maximum penalty: \$11,000.	9 10 11
<b>2.5</b>	<b>Reports by Commission after public hearing</b>	12
(1)	The Commission must provide a copy of its findings and recommendations after a public hearing held by it (a <i>final report</i> ):	13 14
(a)	to the Minister or to such other person or body as the Minister may direct, and	15
(b)	in the case of proposed development the subject of an application for development consent—to the consent authority and to any public authority whose concurrence is required to the development, and	16 17 18
(c)	to such other persons as the Commission thinks fit.	19
(2)	A final report must contain a summary of any submissions received by the Commission in relation to the subject-matter of the public hearing.	20 21
(3)	A final report is to be made publicly available on the NSW planning portal within a reasonable time after it has been provided to the Minister or to a person or body directed by the Minister.	22 23 24
<b>2.6</b>	<b>Annual report by Commission</b>	25
(1)	The Commission must provide to the Minister an annual report on its operations in the preceding year.	26 27
(2)	An annual report is to be made publicly available on a government website within a reasonable time after it has been provided to the Minister.	28 29
<b>2.7</b>	<b>Regulations</b>	30
	The regulations may make provision for or with respect to the following:	31
(a)	the procedures of the Commission, including the procedures for public hearings relating to any or all, or a class, of its functions,	32 33
(b)	without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,	34 35 36
(c)	requiring the provision of information to the Commission for the purposes of a public hearing or the exercise of any of its other functions,	37 38
(d)	the provision of information or reports by the Commission.	39

<b>Schedule 3</b>	<b>Constitution of regional planning panels</b>	1
	(Section 5.1)	2
<b>3.1</b>	<b>Constitution of regional planning panels</b>	3
	The following regional planning panels are constituted for the parts of the State situated within the local government areas specified in relation to each panel:	4
		5
(a)	Sydney East Regional Planning Panel—local government areas of Ashfield, Botany Bay City, Burwood, Canada Bay, Canterbury City, Hunter’s Hill, Hurstville City, Kogarah, Lane Cove, Leichhardt, Manly, Marrickville, Mosman, North Sydney, Pittwater, Randwick City, Rockdale City, Ryde City, Strathfield, Sutherland Shire, Warringah, Waverley, Willoughby City and Woollahra.	6 7 8 9 10 11
(b)	Sydney West Regional Planning Panel—local government areas of Auburn, Bankstown City, Blacktown City, Blue Mountains City, Camden, Campbelltown City, Fairfield City, Hawkesbury City, Holroyd City, Hornsby, Ku-ring-gai, Liverpool City, Parramatta City, Penrith City, The Hills Shire and Wollondilly.	12 13 14 15 16
(c)	Hunter and Central Coast Regional Planning Panel—local government areas of Cessnock City, Dungog, Gloucester, Gosford City, Great Lakes, Greater Taree City, Lake Macquarie City, Maitland City, Muswellbrook, Newcastle City, Port Stephens, Singleton, Upper Hunter Shire and Wyong.	17 18 19 20
(d)	Northern Regional Planning Panel—local government areas of Armidale Dumaresq, Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour City, Glen Innes Severn, Gunnedah, Guyra, Gwydir, Inverell, Kempsey, Kyogle, Lismore City, Liverpool Plains, Moree Plains, Nambucca, Narrabri, Port Macquarie-Hastings, Richmond Valley, Tamworth Regional, Tenterfield, Tweed, Uralla and Walcha.	21 22 23 24 25 26
(e)	Southern Regional Planning Panel—local government areas of City of Albury, Bega Valley, Bombala, Boorowa, Coolamon, Cooma-Monaro Shire, Cootamundra, Eurobodalla, Goulburn Mulwaree, Greater Hume Shire, Gundagai, Harden, Junee, Kiama, Lockhart, Palerang, Queanbeyan City, Shellharbour City, Shoalhaven City, Snowy River, Temora, Tumbarumba, Tumut Shire, Upper Lachlan Shire, Wagga Wagga City, Wingecarribee, Wollongong City, Yass Valley and Young.	27 28 29 30 31 32 33
(f)	Western Regional Planning Panel—local government areas of Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Bogan, Bourke, Brewarrina, Broken Hill City, Cabonne, Carrathool, Central Darling, Cobar, Conargo, Coonamble, Corowa Shire, Cowra, Deniliquin, Dubbo City, Forbes, Gilgandra, Griffith City, Hay, Jerilderie, Lachlan, Leeton, City of Lithgow, Mid-Western Regional, Murray, Murrumbidgee, Narrandera, Narromine, Oberon, Orange City, Parkes, Urana, Wakool, Walgett, Warren, Warrumbungle Shire, Weddin, Wellington and Wentworth.	34 35 36 37 38 39 40 41

<b>Schedule 4</b>	<b>Constitution of subregional planning boards</b>	1
	(Section 6.1)	2
<b>4.1</b>	<b>Constitution</b>	3
	The following are constituted as subregional planning boards:	4
	<b>Note.</b> The boards and their respective subregions to be inserted by Ministerial order.	5



<b>Schedule 5</b>	<b>Provisions relating to planning bodies</b>	1
	(Sections 2.3, 4.5, 5.4 and 6.4)	2
<b>Part 1</b>	<b>Preliminary</b>	3
<b>5.1</b>	<b>Definitions</b>	4
	In this Schedule:	5
	<i>appoint</i> means nominate in relation to a council nominee of a regional planning panel or a subregional planning board.	6 7
	<i>member</i> means the chairperson, council nominee or other member of a planning body.	8 9
	<i>planning body</i> means any of the following:	10
	(a) the Planning Assessment Commission,	11
	(b) a regional planning panel,	12
	(c) a subregional planning board,	13
	(d) a committee or panel established by the Minister or NSW Planning Director-General under section 2.3 of this Act.	14 15
<b>Part 2</b>	<b>Provisions relating to members</b>	16
<b>5.2</b>	<b>Terms of office of members</b>	17
	(1) A member of a planning body holds office, subject to this Act and the regulations, for such period as is specified in the member's instrument of appointment:	18 19
	(a) in the case of the Planning Assessment Commission—not exceeding 3 years, or	20 21
	(b) in the case of a regional planning panel—not exceeding 3 years, or	22
	(c) in the case of a subregional planning board—not exceeding 4 years.	23
	(2) That period may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the planning body.	24 25
	(3) A member is eligible (if otherwise qualified) for re-appointment.	26
	(4) A member of the Planning Assessment Commission may not hold office as a member for more than 6 years in total.	27 28
<b>5.3</b>	<b>Full-time or part-time office</b>	29
	(1) The Minister may appoint a member of the Planning Assessment Commission on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member's term of office.	30 31 32
	(2) The office of a member of any other planning body is a part-time office.	33
<b>5.4</b>	<b>Deputy chairperson—regional planning panels and subregional planning boards</b>	34
	(1) A regional planning panel or subregional planning board may elect a deputy chairperson from among its State members.	35 36
	(2) The deputy chairperson vacates office as deputy chairperson if he or she:	37
	(a) is removed from that office by the panel or board, or	38
	(b) resigns that office by instrument in writing addressed to the panel or board, or	39
	(c) ceases to be a member of the panel or board.	40

<b>5.5 Remuneration of members</b>	1
(1) A member of a planning body (other than a full-time member of the Planning Assessment Commission) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	2 3 4 5
(2) A full-time member of the Planning Assessment Commission is entitled to be paid:	6
(a) remuneration in accordance with the <i>Statutory and Other Offices Remuneration Act 1975</i> , and	7 8
(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.	9 10
<b>5.6 Alternate members (except for Planning Assessment Commission)</b>	11
(1) In this clause:	12
<i>appointing authority</i> for a member of a planning body means the Minister, the NSW Planning Director-General or the council that appointed the member.	13 14
<i>planning body</i> does not include the Planning Assessment Commission.	15
(2) The appointing authority may, from time to time, appoint a person to be the alternate of a member of a planning body, and may revoke any such appointment.	16 17
(3) In the absence of a member, the member's alternate may, if available, act in the place of the member.	18 19
(4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.	20 21
(5) A person may be appointed as the alternate of 2 or more members, but may represent only one of those members at any meeting of the planning body.	22 23
(6) In the case of State members of a regional planning panel or a subregional planning board, a number of persons may be appointed as the alternate of one or more members. The person who may act in the place of a member on any particular occasion is the person determined by the chairperson of the panel or board concerned.	24 25 26 27 28
(7) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.	29 30 31
(8) If the chairperson of a planning body is appointed from among a number of members of the body, the alternate of a member who is the chairperson does not have the member's functions as chairperson unless the appointing authority authorises the alternate to exercise those functions.	32 33 34 35
<b>5.7 Removal from office of members</b>	36
(1) Except as provided by this clause, the Minister may remove a member of a planning body from office for any or no stated reason and without notice.	37 38
(2) The Minister may only remove a member of the Planning Assessment Commission from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the <i>Independent Commission Against Corruption Act 1988</i> , recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.	39 40 41 42 43
(3) In the case of a council nominee of a regional planning panel or a subregional planning board, the applicable council may remove the member from office for any or no stated reason and without notice. The Minister may also remove the member	44 45 46

from office, but only if the Independent Commission Against Corruption has made a recommendation of the kind referred to in subclause (2).	1 2
<b>5.8 Vacancy in office of member</b>	3
(1) The office of a member becomes vacant if the member:	4
(a) dies, or	5
(b) completes a term of office and is not re-appointed, or	6
(c) resigns the office by instrument in writing addressed to the Minister (or, in the case of a council nominee of a regional planning panel or subregional planning board, addressed to the applicable council), or	7 8 9
(d) is removed from office under this or any other Act, or	10
(e) is absent from 3 consecutive meetings of the planning body of which reasonable notice has been given to the member personally or by post, except on leave granted by the planning body or unless the member is excused by the planning body for having been absent from those meetings, or	11 12 13 14
(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	15 16 17
(g) becomes a mentally incapacitated person, or	18
(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	19 20 21 22
(2) If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.	23 24
<b>5.9 Chairperson—vacation of office</b>	25
(1) If the chairperson of a planning body is appointed by the Minister or the NSW Planning Director-General from among a number of members of the body, the person vacates office as chairperson if he or she:	26 27 28
(a) is removed from the office of chairperson by the Minister or the NSW Planning Director-General, or	29 30
(b) resigns the office of chairperson by instrument in writing addressed to the Minister or the NSW Planning Director-General.	31 32
(2) A person vacates office as chairperson of a planning body if the person vacates office as a member of the body.	33 34
<b>5.10 Effect of certain other Acts</b>	35
(1) The statutory provisions relating to the employment of Public Service employees do not apply to the appointment or office of a member.	36 37
(2) If by or under any Act provision is made:	38
(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	39 40
(b) prohibiting the person from engaging in employment outside the duties of that office,	41 42
the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.	43 44 45

<b>Part 3</b>	<b>Provisions relating to procedure</b>	1
<b>5.11</b>	<b>General procedure</b>	2
(1)	The procedure for the calling of meetings of a planning body and for the conduct of business at those meetings is, subject to the planning legislation and any directions by the Minister, to be as determined by the planning body.	3 4 5
(2)	Subject to this clause, a planning body is not bound by the rules of evidence.	6
(3)	Nothing in this Schedule derogates from any law relating to Crown privilege.	7
<b>5.12</b>	<b>Quorum</b>	8
	The quorum for a meeting of a planning body is a majority of its members for the time being.	9 10
<b>5.13</b>	<b>Presiding member</b>	11
(1)	The chairperson or, in the absence of the chairperson, the deputy chairperson (if any) or a person elected by the members, is to preside at a meeting of a planning body.	12 13
(2)	In the case of the Planning Assessment Commission, the chairperson may appoint a member to preside at a meeting of the Commission, in which case a reference in subclause (1) to the chairperson includes a reference to any such appointed member.	14 15 16
(3)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	17 18
<b>5.14</b>	<b>Voting</b>	19
	A decision supported by a majority of the votes cast at a meeting of a planning body at which a quorum is present is the decision of the planning body.	20 21
<b>5.15</b>	<b>Public meetings</b>	22
	A planning body may (unless the Minister otherwise directs) conduct its meetings in public, and is required to do so for the conduct of any business that is required to be conducted in public by a direction of the Minister.	23 24 25
<b>5.16</b>	<b>Transaction of business outside meetings or by telephone etc</b>	26
(1)	A planning body may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.	27 28 29 30
(2)	A planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	31 32 33 34
(3)	For the purposes of:	35
(a)	the approval of a resolution under subclause (1), or	36
(b)	a meeting held in accordance with subclause (2),	37
	the chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.	38 39
(4)	A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the planning body.	40 41

(5)	Papers may be circulated among the members for the purposes of subclause (1) by electronic transmission of the information in the papers concerned.	1 2
<b>5.17</b>	<b>Disclosure of pecuniary interests</b>	3
(1)	If:	4
(a)	a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the planning body, and	5 6
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	7 8
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the planning body.	9 10 11
(2)	A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:	12 13
(a)	the member, or	14
(b)	the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or	15 16
(c)	a company or other body of which the member, or a nominee, partner or employer of the member, is a member.	17 18
(3)	However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):	19 20
(a)	if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or	21 22
(b)	just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or	23 24
(c)	just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.	25 26 27
(4)	A disclosure by a member at a meeting of the planning body that the member, or a spouse, de facto partner, relative, partner or employer of the member:	28 29
(a)	is a member, or is in the employment, of a specified company or other body, or	30
(b)	is a partner, or is in the employment, of a specified person, or	31
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	32 33
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).	34 35 36
(5)	Particulars of any disclosure made under this clause must be recorded by the planning body and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the planning body.	37 38 39
(6)	After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the planning body otherwise determines:	40 41
(a)	be present during any deliberation of the planning body with respect to the matter, or	42 43
(b)	take part in any decision of the planning body with respect to the matter.	44

- (7) For the purposes of the making of a determination by the planning body under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the planning body for the purpose of making the determination, or
  - (b) take part in the making by the planning body of the determination.
- (8) A contravention of this clause does not invalidate any decision of the planning body.
- (9) This clause extends to a council nominee of a regional planning panel or of a subregional planning board, and the provisions of Part 2 (Duties of disclosure) of Chapter 14 of the *Local Government Act 1993* do not apply to any such nominee when exercising functions as a member of the panel or board.

**5.18 Provision of information by planning bodies**

A planning body must provide the Minister with such information and reports as the Minister may, from time to time, request.

<b>Schedule 6</b>	<b>Savings, transitional and other provisions</b>	1
<b>Part 1</b>	<b>General</b>	2
<b>6.1</b>	<b>Definitions</b>	3
	In this Schedule:	4
	<i>assets</i> means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	5 6 7 8
	<i>liabilities</i> means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).	9 10
	<i>rights</i> means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).	11 12
	<i>the former Act</i> means the <i>Environmental Planning and Assessment Act 1979</i> .	13
<b>6.2</b>	<b>Regulations</b>	14
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the <i>Planning Act 2013</i> or any Act that amends this Act.	15 16
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	17 18
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	19 20 21
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	22 23 24
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	25 26 27
(4)	Any such provision has effect despite anything to the contrary in this Schedule.	28
(5)	The regulations may make separate savings or transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.	29 30
<b>Part 2</b>	<b>Provisions consequent on enactment of this Act</b>	31
<b>6.3</b>	<b>Planning Ministerial Corporation</b>	32
(1)	The Planning Ministerial Corporation constituted under Part 3 of this Act is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the corporation constituted as the “Minister administering the <i>Environmental Planning and Assessment Act 1979</i> ” under section 8 of the former Act.	33 34 35 36 37
(2)	Without limiting the operation of this clause, the assets, rights and liabilities of the corporation constituted under section 8 of the former Act are the assets, rights and liabilities of the Planning Ministerial Corporation.	38 39 40
<b>6.4</b>	<b>Planning Assessment Commission</b>	41
(1)	The Planning Assessment Commission constituted under Part 4 of this Act is taken for all purposes, including the rules of private international law, to be a continuation	42 43

of, and the same legal entity as, the Planning Assessment Commission established under section 23B of the former Act.	1 2
(2) Without limiting the operation of this clause, the assets, rights and liabilities of the Planning Assessment Commission established under section 23B of the former Act are the assets, rights and liabilities of the Planning Assessment Commission established under Part 4 of this Act.	3 4 5 6
(3) A person holding office as a member of the Planning Assessment Commission established under section 23B of the former Act immediately before the repeal of the former Act is taken to have been appointed as a member of the Planning Assessment Commission established under Part 4 of this Act for the balance of the member's term of office under the former Act.	7 8 9 10 11
<b>6.5 Regional planning panels</b>	12
(1) A person holding office as a member of a joint regional planning panel (including a council nominee) under section 23G of, and Schedule 4 to, the former Act immediately before the repeal of the former Act is taken to have been appointed or nominated as a member of the corresponding regional planning panel established under this Act for the balance of the person's term of office under the former Act.	13 14 15 16 17
(2) A reference in this clause to a member includes a reference to an alternate of a member appointed under the former Act.	18 19
<b>6.6 Subregional planning boards</b>	20
<b>Note.</b> Committees are to be established under the former Act that will become subregional planning boards on the commencement of this Act and the listing by order of the relevant boards in Schedule 4 to this Act. Relevant savings and transitional provisions will be included here.	21 22 23 24
<b>6.7 Delegation of functions under former Act</b>	25
A delegation of functions under the former Act may be recognised by the delegator, by notice published on the NSW planning portal, as a delegation of a corresponding function under the planning legislation. Any such delegation has effect as a delegation under the planning legislation according to the tenor of the notice.	26 27 28 29
<b>6.8 Administration of, or functions under, the planning legislation—former Act</b>	30
For the purposes of this Act, the administration of, or functions under, the planning legislation is taken to include the administration of, or functions under, the former Act.	31 32 33