Independent Review of the *Landscape South Australia Act 2019*

Discussion Paper

September 2023

A review on the operation and effectiveness of the Act

Government of South Australia

Foreword

I am honoured to be appointed by the Minister for Climate, Environment and Water to conduct an independent review of the *Landscape South Australia Act 2019* (Landscape Act).

As the Minister for Environment and Conservation (2002-2006) I introduced the *Natural Resources Management Act 2004*, which has since been replaced by the Landscape Act. Whatever the name of the legislation, it is in all of our interests that our state's natural resources are managed and protected through a strong regulatory framework which enjoys broad community support.

It is essential that regulatory frameworks are contemporary, fit for purpose and balance the needs of this generation with those of the future. For the Landscape Act this means planning for land-use change, a changing climate, extreme weather events and invasive pest plants and animals.

The review of the legislation is designed to ensure that the purposes and provisions of the Landscape Act are still appropriate and working as well as possible.

This discussion paper has been prepared by the project team (within the Department for Environment and Water) to help those planning on making submissions to the review focus on key issues that have already been identified. However, submissions can cover any aspects of the legislation.

I welcome your participation and encourage you to consider contributing to the review by providing your feedback. I thank all contributors in advance, and look forward to continued discussions on this important piece of legislation for our state.

Hon John Hill
Independent Reviewer

First Nations acknowledgement

The South Australian Government acknowledges Aboriginal peoples as the state's First peoples and nations, and that Aboriginal peoples' deep knowledge and relationship with Country continues to be critical in sustainably caring for our lands and waters.

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About the independent review

Section 249 of the Landscape Act includes a requirement that the Act is independently reviewed within 3 years of that section commencing:

> ***(1) The Minister must, as soon as practicable after the expiry of 3 years from the commencement of this section, appoint an independent person who has, in the opinion of the Minister, extensive knowledge, skills and experience in relation to the management of natural resources, to conduct a review of the operation and effectiveness of this Act since that commencement.***
>
> ***(2) A report on the review must be submitted to the Minister within 6 months of the commencement of the review.***
>
> ***(3) The Minister must, within 12 sitting days after receiving the report, cause a copy of the report to be laid before both Houses of Parliament.***

In line with Section 249 of the Act and according to the **Terms of Reference**, as approved by the Minister for Climate, Environment and Water, this **independent review** commenced on 14 August 2023.

The review is being conducted by the Hon John Hill, former member of Parliament (1997 - 2014) including Minister for the Environment (2002 - 2006), as appointed by Minister Close on 3 July 2023.

The review will focus on the operation and effectiveness of the Landscape Act, including the regulations and the Act's statutory instruments (such as plans, policies and notices).

In conducting the review, Mr Hill will operate independently from any agencies, landscape boards and other organisations involved in implementing the Landscape Act, and will report directly to the Minister.

The Independent Reviewer must provide a final report to the Minister by 13 February 2024, summarising the outcomes from consultation and making recommendations on the operation and effectiveness of the Landscape Act since its commencement.

The Minister is required to table a copy of the final report in both Houses of Parliament within 12 sitting days of receiving the report. The government will then provide a response to the report, and consideration of policy or legislative reforms will take place as part of a separate project from 2024.

As outlined in its Terms of Reference, the review will be restricted to the operation and effectiveness of the Landscape Act and is not a major review considering the extensive reform process that was undertaken in 2018. It is not intended that the review re-examines the fundamental scheme and system of the Landscape Act.

The review will take into consideration interactions between the Landscape Act and other legislation, including where possible, legislative reviews completed prior to the conclusion of the review and available public information on proposed new Bills.

About the *Landscape South Australia Act 2019*

The origin of the Landscape Act dates back more than 150 years ago, with the introduction of South Australia's first weed control legislation – the *Thistle Act 1852*. It is likely that this was also the first of its kind worldwide.

Over the years, as the South Australian landscape continued to be modified and with a growing demand on natural resources, the community began seeking action and controls on its management and use.

Legislation introduced to address some of these issues included the *Water Conservation Act 1886*, *the Water Resources Act 1976, the Soil Conservation and Land Care Act 1989* and the *Animal and Plant Control Act 1986*.

Recognising that a more integrated regulatory approach was needed, the *Natural Resources Management Act 2004* (NRM Act) was developed to replace and build on these individual Acts.

The Landscape Act ultimately replaced the NRM Act, as a more contemporary approach to landscape management, following an **extensive and consultative legislative reform project**.

The **Landscape Act** provides the framework for promoting sustainable and integrated management of land, water, pest plants and animals, and biodiversity across the state, while recognising the social, economic and cultural significance of these landscapes.

The Landscape Act interacts with other key South Australian legislation that regulates our state's natural assets, including the *Native Vegetation Act 1991*, *National Parks and Wildlife Act 1972*, *Pastoral Land Management and Conservation Act 1989*, *Dog Fence Act 1946, Planning Development and Infrastructure Act 2016*, *River Murray Act 2003* and *Local Government Act 1999*.

An overarching objective of the Landscape Act is to support and enhance ecologically sustainable development by establishing an integrated scheme to promote the responsible use and management of the natural resources that make up or contribute to our state's landscape.

The Landscape Act is wide-ranging in its scope, and is implemented through partnerships with a range of government departments, authorities and non-government organisations.

The key authorities under the Landscape Act include the Minister for Climate, Environment and Water, landscape boards, board chairs and General Managers, and the Chief Executive of the Department for Environment and Water (DEW).

Across the state, **9 landscape boards** including the metropolitan board, Green Adelaide, deliver many key functions under the Act across their distinct regions.

The boards support local communities to sustainably manage their region's natural resources with an emphasis on land and water management, biodiversity and pest animal and plant control. They also partner with government and regional communities to implement joint on-ground projects and education programs.

What are landscapes?

Landscapes are the natural systems and resources that make up our surroundings – the soil, water, plants and animals that make up our rivers and plains, forests and hills, coasts and seas. Landscapes also include the different ways people value and interact with their environment.

About this discussion paper

The purpose of this discussion paper is to gather feedback about the Landscape Act, to ensure it is operating as intended, and to identify areas for improvement.

The discussion paper highlights a number of focus areas of the review where input is sought. These focus areas, in the main, are linked to particular parts of the Landscape Act which are referenced in the sections in the document.

On the pages that follow, a brief summary of these focus areas is provided, followed by questions to help guide your input.

For further context on each section, refer to the relevant parts of the Landscape Act or click on the information links provided.

Feedback gathered from this discussion paper will be collated and will inform the Independent Reviewer's report to the Minister.

Focus areas

- **Outcomes of legislative reform**
  Looking at the desired outcomes from the reform process.
- **Objects and principles of the Landscape Act**
  The overarching intent of the Act and principles in implementing the Act.
- **Administration, Roles and Responsibilities**
  The key landscape authorities, their powers and functions.
- **Planning framework**
  The State Landscape Strategy, landscape board regional landscape plans, business plans and water allocation plans.
- **Levies and funding equity across landscape regions**
  Land and water levy arrangements, and funding equity across landscape board regions
- **Funds of the Landscape Act**
  Landscape Administration Fund, Landscape Priorities Fund and Board funds.
- **Management and protection of land**
  Provisions for protecting the condition of agricultural land.
- **Management and protection of water resources**
  Regulating access to and use of water resources, including licensing provisions, water affecting activities and control policies.
- **Control of pest animals and weeds**
  Provisions controlling the movement, possession and management of pest animals and weeds.
- **Compliance and enforcement provisions**
  Framework for compliance mechanisms and enforcement for breaching the Act.

Focus areas for feedback

Outcomes of legislative reform

Further to the introduction provided in the 'About the Act' section above, the legislative reform process which resulted in the Landscape Act replacing the former NRM Act, aimed for some particular outcomes, including:

- Greater decentralised decision-making
- A simpler and more accessible system
- Empowering the community and landowners
- Establishing programs that encourage a whole-of-landscape management approach.

Some key changes that came about through the reform process with the introduction of the Landscape Act are listed below.

> **Question: In general, do you believe the outcomes sought from the legislative reform process are operating effectively through the Landscape Act?**

Key changes

- **Eight landscape boards** – with greater autonomy and flexibility to respond to local issues, including managing their own budgets and staff.
- **Green Adelaide** – a new and innovative organisation charged with transforming Adelaide into a world-leading, sustainable, green and climate resilient city.
- **Simple regional plans** – with five priorities that are easy to understand.
- **Land and water levies capped** – to ease the financial pressures on landowners.
- **State Landscape Strategy** – to improve coordination between regional and state priorities.
- **Landscape Priorities Fund** – to support larger statewide management issues, such as bushfire recovery, drought and agricultural resilience.
- **Focus on climate resilience and biodiversity** – to support the development of resilient landscapes and sustainable primary production.
- **Grassroots Grants program** – with greater opportunities for volunteers and local community organisations.
- **Less red tape and simplified compliance** – to enable boards to get the job done more easily.
- **Strong partnerships with landholders and Aboriginal communities** – to ensure that the knowledge of our regional communities and First Nations is respected, recognised and used in the management of our landscapes.

Focus areas for feedback

Objects and principles of the Landscape Act

Refer to Part 1 'Preliminary' (Pages 24 – 26)

The objectives of the Landscape Act and the principles by which the Act should be implemented are comprehensive and wide-ranging. They are based on how the Landscape Act seeks to support and enhance ecological sustainable development in the use and management of the state's natural resources. The provisions through the Act should be consistent with, and result in delivering on the objects and principles of the Act. Similarly, all those involved in implementing the Act (for example, Minister, landscape boards) must seek to further the objects of the Landscape Act.

In contrast to the former NRM Act, there are at least 3 important additions in the objectives and principles of the Landscape Act:

- Recognition and support for the interests of First Nation peoples.
- Recognition of climate change as a significant factor in our environment.
- Recognition of the need to promote, protect and conserve biodiversity.

Question: Do you think the objects and principles of the Landscape Act have been adequately reflected through the legislation resulting in positive outcomes in the use and management of the state's natural resources?

Administration, Roles and Responsibilities

Refer to Part 2 'Administration of the Act' (Pages 27 – 51)

The administrative provisions under this part of the Landscape Act relate to the functions of the Minister, the establishment, function, powers and membership of landscape boards, and staffing arrangements for landscape boards.

The Minister for Climate, Environment and Water has the ultimate responsibility in administering and overseeing the Landscape Act. The Minister is able to direct and control landscape boards, and has numerous other powers throughout the Act, many of which have been delegated to the Chief Executive of DEW and other staff.

The 9 landscape boards (including Green Adelaide) are an integral part of the Landscape SA system in South Australia. They work with a range of partners to deliver practical, on-ground programs to manage their landscapes.

They invest landscape and water levies, and other funds from the State and Commonwealth Government, together with other external funding, towards managing and protecting our productive and natural landscapes.

Amongst many other functions, landscape boards are expected to:

> ***...undertake, promote and integrate the management of natural resources within its region, with particular reference to land management, water resource management and pest animal and plant control, to build resilience in the face of change and to facilitate integrated landscape management and biodiversity conservation (section 25 of the Landscape Act).***

In this part of the Landscape Act, the community **Grassroots Grants program** is also established, which is mostly funded from levy income and operated by each landscape board.

Landscape boards operate as individual statutory boards, at arm's length from government agencies. Boards are responsible for their own budgets, may enter into funding agreements and employ a general manager who is able to employ staff assigned to the board (except for Green Adelaide, where a Director and staff are employed by DEW). Boards also have the power to set and manage their own levies.

Landscape boards are required to meet high standards of governance and accountability, as required for all government statutory boards.

More information about landscape boards and their regions can be found here: **Landscape Boards SA**

Question: Do you believe the current system of decentralised decision-making and priority-setting by landscape boards, which was established under the Landscape Act, is working effectively?

What skills and knowledge do landscape board members need to have?

Collectively, landscape board members must have knowledge, skills and experience across the following areas:

- community affairs;
- primary production or pastoral land management;
- soil conservation and land management;
- conservation and biodiversity management;
- water resources management; business management;
- local government administration;
- urban or regional planning;
- Aboriginal interest in the land and water and Aboriginal heritage;
- pest animal and plant control;
- natural and social science;
- coast, estuarine and marine management, fisheries or aquaculture.

Under the Landscape Act, landscape boards are to be made up of 4 members appointed by the Minister (including the presiding member, also known as the chair) and 3 members elected by the community within the region of the board, with the exception of Green Adelaide where all members are appointed by the Minister.

Although election arrangements exist for members to landscape boards, currently all members have been appointed by the Minister.

The Landscape Act specifies that the first elections were to be held in November 2022, at the same time as local council elections. Before this occurred the Minister for Climate, Environment and Water invoked a clause in the Landscape Act to allow her to appoint all members for a term of up to 3 years, rather than hold elections. Previously the Minister had already directed that all members of the Alinytjara Wilurara Landscape Board could be appointed.

This decision was made due to ongoing lack of stakeholder support for holding elections, cost and other particular circumstances in landscape regions.

The appointments were made after each landscape board ran an extensive campaign to invite nominations from their community, with an online portal available for interested people to nominate themselves and submit an application to the Minister.

Members are reflective of the communities they serve and have a broad range of often complementary skills. The Landscape Act gives the Minister the responsibility to appoint all members to Green Adelaide.

Question: Do you think a comprehensive and transparent nomination process for board members prior to appointment by the Minister, is appropriate for landscape boards rather than holding an election for a portion of the members?

Green Adelaide is established under the Landscape Act as one of the 9 landscape boards, covering Adelaide's metropolitan area – in recognition of the unique environmental challenges faced in urban areas.

It is one of Australia's first urban dedicated natural resource management bodies.

While Green Adelaide is established as one of the 9 landscape boards, it operates differently as staff, including its Director, are employed by DEW.

Green Adelaide also has **additional functions and priorities** under the Landscape Act to reflect its urban focus (see section 26 of the Landscape Act).

Question: Do you think the creation of Green Adelaide, under the Landscape Act, has been successful in achieving positive environmental outcomes in metropolitan Adelaide?

Focus areas for feedback

Question: Do you believe the current functions and priorities of Green Adelaide, as prescribed under the Act, are appropriate in achieving the best landscape management outcomes for metropolitan Adelaide?

As outlined above, the Landscape Act is implemented by a range of authorities, including government and non-government organisations.

The key authorities under the Landscape Act include the Minister for Climate, Environment and Water, landscape boards, board chairs and General Managers, and the Chief Executive of the Department for Environment and Water (DEW).

Numerous other bodies play an important role in administering the Landscape Act. These include DEW, the Department of Primary Industries and Regions (PIRSA) and local councils. Their roles are outlined in the relevant sections of this discussion paper.

In addition, there are organisations designated as 'peak bodies' under the Landscape Act. These are Primary Producers SA, Conservation Council SA and the Local Government Association of SA. These organisations act as consultative bodies for the Minister when certain provisions under the Landscape Act are enacted, such as the appointment of landscape board members.

A summary of the roles and responsibilities of the key authorities who implement the Landscape Act is presented in the following Roles and responsibilities box.

Question: Do you consider that the roles and responsibilities are appropriately assigned in the Landscape Act?

Question: Do you consider that the roles and responsibilities are exercised responsibly by each relevant authority?

Roles and responsibilities

Minister for Climate, Environment and Water

- Ultimate responsibility for administering Act, and able to delegate powers.
- Establish clear policies and guidelines and a performance reporting mechanism for each board.
- Set out clear expectations with the chairs of each regional landscape board and Green Adelaide, as well as monitoring the landscape boards' and Green Adelaide's achievements against priorities.
- Issue directions, as required, to achieve specific functions under the Act.

Landscape Boards

- Statutory bodies accountable to, and subject to the direction of, the Minister.
- Regional landscape boards have authority over:
  - developing partnerships.
  - where and what to invest their funding.
  - employing staff.
  - exercising compliance powers, and other powers and functions under the Act.

Green Adelaide

- Statutory board accountable to, and subject to the direction of, the Minister.
- Governed by a ten-member expert and skills-based board that promote coordination and partnerships with other entities, agencies and authorities.
- Supported by a Director, Green Adelaide and staff who are provided by DEW and responsible to the Chief Executive of DEW for their performance in supporting the board.
- Implements the Act in metropolitan Adelaide adopting seven key priorities outlined under section 26 of the Act.

Board Chairs (Presiding Members)

- Lead the board and ensure good governance.
- Foster the principal relationships, including at national, statewide and local community level.
- Ensure priorities articulated in the regional landscape plan and annual business plan encompass regional and community aspirations, values and needs.
- Facilitate the proceedings of the board and develop a culture of performance excellence through regular performance reviews and reporting to the Minister.
- Work with the Chief Executive of DEW to recruit and appoint a General Manager; oversee performance with the Chief Executive on behalf of the board in line with an established agreement.

Board Members

- Involve landholders, communities and other key stakeholders in planning for, and managing, the landscapes in their region.
- Focus on developing strong local partnerships to prioritise effort and action on the issues that matter most to their community.
- Board members are accountable to the Minister. Expected to promote the landscape guiding principles and key elements of the Act.

General Managers

- Work with the board to develop a 5-year regional landscape plan and annual business plans.
- Employ, lead and manage staff in accordance with all relevant legislation, industrial instruments, and whole of government guidelines and determinations.
- Provide executive support to the board and deliver their programs within all statutory and whole of government requirements.
- Develop strategic, operational and delivery partnerships with the community, all levels of government and key stakeholders.

Chief Executive DEW

- Accountable to the Minister and provides assistance and advice to the Minister in the administration and enforcement of the Act.
- Supports the Minister by enacting delegated powers (and is able to sub-delegate some powers)
- Has key statutory functions under the Act, including working with chairs to appoint a general manager for each regional landscape board and appointing the Director, Green Adelaide.

DEW

- Support the Minister, Chief Executive DEW, landscape boards and Green Adelaide in areas of policy and administration of the Act, including water regulation.
- Support the Minister and boards in development and review of State Landscape Strategy.
- Provides legislative interpretation and facilitates legal advice for Minister, DEW and boards.
- Administers Landscape Priorities Fund.
- Supports Minister in regional landscape board recruitment and appointment.

PIRSA

- Lead agency for biosecurity in SA.
- Provides technical and policy expertise including managing the declaration process for pest animals and weeds under Part 9 of the Act.
- Supports landscape boards and partners in projects relating to pest animals and weeds, including assisting landholders to understand and meet their obligations under the Act.

Peak Body

- Under the Act, the designated peak bodies are Primary Producers SA; Conservation Council of SA; Local Government Association.
- Peak bodies act as consultative bodies that the Minister must refer to in exercising certain powers under the Act (for example, appointment of landscape board members, or in reviewing the State Landscape Strategy)

Local Government

- Local Councils collect landscape levies on behalf of landscape boards.
- Council staff also play a role in managing pest plants and animals under the Act.
- Partner with landscape boards and other bodies in on-ground programs.

Focus areas for feedback

Planning framework

Refer to Part 3 'State Landscape Strategy' (pages 52 – 53)

The Landscape Act requires that the Minister prepares a State Landscape Strategy that sets out principles, policies and high-level strategic directions for achieving the objects of the Act throughout the state.

In 2022 the Minister approved the 10-year **State Landscape Strategy** that was developed with contributions from landscape boards, peak bodies, local and state government agencies, and other landscape management stakeholders.

The Act prescribes that the strategy will include a long-term vision for managing the state's landscapes, high-level principles for the Landscape Priorities Fund *(see focus area Funds of the Landscape Act)*, provisions for monitoring and evaluating the state and condition of the natural resources, and support an effective and adaptive planning cycle, with an emphasis on links and alignment between state and regional planning.

The Landscape Act also outlines matters that the strategy must take into account – such as regional priorities, government strategies and the best available climate science information.

The Minister may make amendments to the strategy at any time, and must conduct a review of the strategy at least once every 10 years.

Question: Do you think the Act provides appropriate guidance and a clear framework to develop and implement a State Landscape Strategy that is valuable to statewide and local efforts?

The Landscape Act establishes a relationship between the State Landscape Strategy and the Landscape Priorities Fund *(see focus area Funds of the Landscape Act)*. The Minister must take into account any principles relating to the use of the fund that are specified in the strategy.

The strategy sets out 6 high-level principles relating to the types of Landscape Priorities Fund projects that should be funded and how they should be delivered.

The principles, which are quite general, include delivering through partnerships, achieving landscape-scale restoration and rehabilitation (or testing scalable methods), regional governance by landscape boards, delivering tangible long-term outcomes, well-planned strategic and aligned projects, and taking a learning approach that supports innovation.

Question: Do you believe there are opportunities to improve the connection between the State Landscape Strategy and the Landscape Priorities Fund?

Refer to Part 4 'Regional and water allocation plans' (Pages 53 – 69)

Landscape boards are required to develop regional landscape plans, annual business plans and water allocation plans. These are publicly accessible on **landscape board websites**.

Regional landscape plans set the 5-year direction for the board in caring for the region and guiding activities such as climate change, pest plant and animal control, soil quality and water management, as well as guiding the allocation of the regional landscape levy and water levy.

Annual business plans are 1-year plans that outline how the landscape boards will invest the money it raises through levies and other funding sources to achieve outcomes identified in the regional landscape plan.

Question: Do you consider the planning process under the Act effective in providing adequate transparency to stakeholders about landscape board projects and funding?

Water allocation plans are legal documents that set out the rules for managing the take and use of prescribed water resources. A water allocation plan ensures the needs of the environment are taken into account when determining how much water is made available to be taken and used for other purposes. Water allocation plans set out the amount of water available for use, how that water may be allocated to water users, rules around trade of water, and the types of activities permitted with that water.

Important water resources in South Australia are protected and managed by being 'prescribed' under the Act. Prescribing an area means that the water resource must be sustainably managed to provide security for all water users *(see focus area Management and protection of water resources)*.

Water allocation plans are required to be reviewed every ten years by landscape boards.

> **Question: Do you think the process for developing Water Allocation Plans leads to water resources being sustainably managed?**

Levies and funding equity across landscape regions

Refer to Part 5 'Landscape and water levies' (Pages 70 – 89)

The landscape levy is paid by most local council ratepayers and out-of-council landowners and lessees across South Australia – recognising that all landowners are responsible for sustaining and managing our state's landscapes for the benefit of the community, as outlined in the principles of the Landscape Act.

Principles of the system under the Landscape Act include that levies collected in a region will be spent for the benefit of the region (except for a portion of levies shared across regions for priority landscape-scale or cross-boundary projects via the Landscape Priorities Fund).

The landscape levy is mostly collected by local councils and appears on council rate notices. Councils pay the collected levies to DEW, which then forward the income to landscape boards through the Landscape Administration Fund.

Local councils may claim costs from the board for the collection of levies each year, as outlined in the Act's General Regulations. Levies for out-of-council areas are collected directly by the boards.

Landscape boards determine the basis of levies for each council area (for example, by the capital value of the land, or by a fixed charge). Increases to landscape levies are capped at the Consumer Price Index (CPI), and any proposed increase beyond CPI requires a consultation process, approval by the Minister and tabling in Parliament, which is subject to disallowance.

Water levies are collected from water licensees and other water authority holders in each region by DEW, on behalf of the Minister, and the funds are passed on to landscape boards from where the levy was collected. Water levies may be based on a range of different types of charges, such as a fixed charge, quantity of allocation or quantity of water used. Water levy rates are published in the South Australian Government Gazette each year.

Landscape boards publish details on levy income and expenditure on projects in their annual business plans, annual reports and other publications (available on **landscape board websites**)

> **Question: Do you think the system of setting levy amounts and levy collection, as specified under the Act, operates effectively?**

> **Question: Do you believe there is adequate transparency about how levies are used on regional programs?**

Levies are an important funding source for some landscape boards. However, levy income and the amounts raised between land and water levies varies significantly from region to region. For example, the Alinytjara Wilurara Landscape Board has no revenue from land or water levies and must instead rely on external sources of income, such as from the Australian Government's National Landcare Program or funding from the South Australian Government.

Green Adelaide, covering the majority of metropolitan Adelaide, has the highest levy income of all landscape boards. An approach taken in the Landscape Act to re-balance revenue opportunities across all board regions is to re-direct a portion of Green Adelaide's levy income to the Landscape Priorities Fund. The Minister has determined that 15% of Green Adelaide's levy income must be directed to that fund, which is then distributed to other landscape boards through an annual grant process for different types of on-ground programs *(see focus area Funds of the Landscape Act for more information on the Landscapes Priority Fund)*.

Focus areas for feedback

Green Adelaide is also required by the Minister to fund certain large projects mostly along the Adelaide coastline, such as the operation and maintenance of the Patalwalonga Lake System, and beach and coastal management activities including sand pumping.

The government is committed to reviewing funding arrangements between Landscape Boards as part of this statutory review.

> **Question: Do you believe alternative funding arrangements should be considered to ensure all landscape boards share levy income more equitably?**

Funds of the Landscape Act

Refer to Part 6 'Statutory Funds' (Pages 90 - 93)

Statutory funds established under this part of the Act include the:

- Landscape Administration Fund
- Landscape Priorities Fund
- Regional Landscape Board funds.

The Landscape Administration Fund (Sections 90-92) is a treasury account that operates as the central clearing account to receive and disburse fees, levies and other monies authorised by the Act. For example, levy income collected by local councils is paid into this fund, and these funds are then paid to the relevant landscape board.

The Landscape Priorities Fund (Sections 93-95) primarily consists of levy income collected from the Green Adelaide region – stipulated at 15% of the total levies collected from that region (which is approximately $4.5 million to $5 million per year).

The fund may be distributed by the Minister in a variety of ways, including addressing priorities for the state's landscapes (taking into account the principles set in the State Landscape Strategy relating to the use of the fund), or by making any other payment required or authorised under the Landscape Act.

Since 2020, the fund has been distributed to landscape boards by the Minister via a competitive grant process, for mostly 2 to 3 year projects. These funds have helped boards increase their partnerships with other groups and individuals to invest in landscape-scale land management and restoration projects.

A summary of funded projects can be found at **Landscape Priorities Fund**.

Both the Landscape Administration Fund and Landscape Priorities Fund are audited at least once per year by the auditor-general and included in the Administered Financial Statements of DEW.

This part of the Act also requires each regional landscape board to establish a Regional Landscape Board fund, which functions as each board's central operating account. These funds are managed in accordance with the *Public Finance and Audit Act 1987* and are audited at least annually. Details can be found at the **Auditor-General's Department website**.

> **Question: Do you believe the system of statutory funds established under the Landscape Act are fit-for-purpose and administered as intended by the Act?**

> **Question: Do you think the Landscape Priorities Fund is operating effectively and being administered in a manner as intended by the Act?**

Management and protection of land condition

Refer to Part 7 'Management and protection of land' (Pages 93 - 96)

Sustainable primary production and improvements to land management are important ways to achieve a productive, climate-resilient and biodiverse landscape.

To do this, landscape boards work alongside landholders and provide support, advice and assistance where needed. This is embodied in the

functions of the landscape boards as required under the Landscape Act.

Measures are in place under the Landscape Act to ensure agricultural land is managed appropriately and to protect against degradation, with an emphasis on taking into account local conditions and industry best-practice to get the right outcome.

What is land degradation?

The Landscape Act defines degradation to mean '*any change in the quality of land, or any loss of soil, that has an adverse effect on water, native vegetation or other natural resources associated with, or reliant on, land, any other aspect of the environment, or biological diversity*'.

Landscape boards can recommend land management practices to protect land from unreasonable degradation, including guidelines to assist in determining degradation, in 'landscape-affecting activities control policies'.

Landscape boards and authorised officers under the Landscape Act can ask landowners to prepare an action plan when they consider the landowner to be in breach, or likely to be in breach, of their statutory duties regarding land management practices in relation to land that have resulted in, or could result in, unreasonable degradation or a risk of degradation.

A fine may be payable for failing to comply with this section of the Landscape Act. The requirements in preparing and implementing an action plan are further outlined in Part 7 of the Landscape Act.

Question: Do you think the Landscape Act adequately provides for the prevention and management of land degradation?

Management and protection of water resources

Refer to Part 8 'Management and protection of water resources' (Pages 96 – 160)

While some changes were made to water regulation provisions with the introduction of the Landscape Act in replacing the NRM Act, they were mostly administrative in nature.

All water taken and used from prescribed surface water and groundwater resources in South Australia is regulated under the Landscape Act. Rights in relation to the ability to take and use water include:

- water licences and water access entitlements
- stock and domestic rights (where these uses are not prescribed)
- Notice of Authorisation under section 105 of the Act.

When a water resource is prescribed, the Minister issues water licences which provide the holder with an ongoing right to take water. Licences may currently be issued as bundled or unbundled rights. Further information on unbundling water rights can be located on the **DEW website**.

Once a person has a water licence with a specified volume or an entitlement share, they have a right to be allocated a volume of water. In some areas, a holder of a water access entitlement may also be entitled to carry over their water allocation to a future water use year.

What is a 'prescribed water resource'?

Prescription is a means by which water resources can be sustainably managed to provide security for all water users into the future. It occurs when the level of water-use demand is high, and regulatory control is needed to secure sustainable management and to support natural water dependent ecosystems. Both surface and groundwater resources can be prescribed, as shown on this **map**.

Focus areas for feedback

Stock and domestic rights may include using water to water a domestic garden, for personal household use or for drinking water for stock not subject to intensive farming. This right is defined under the Landscape Act and a person does not require a licence or other authorisation to take and use water. This means that when a water resource is prescribed, water can continue to be taken for stock and domestic purposes without a water licence in the majority of cases. In some cases, these stock and domestic rights are excluded when a water resource is prescribed and then a water licence will be required to take water for stock and domestic purposes.

The Minister may specifically authorise the taking and use of water from a prescribed water resource for a particular purpose via a Notice of Authorisation issued (under section 105 of the Landscape Act). For example, general state-wide authorisations apply for firefighting, road making and cultural water purposes while others apply specifically in respect of taking roof run-off. These rights are subject to the conditions of the notice and may be ongoing or expire at a specified date.

New commercial plantations and farm forestry are permitted providing there is sufficient water in the water resources to offset the impacts of new plantings. The water resource impacts of plantation forests are managed through a **state-wide framework** to guide the water planning process in regions where commercial forestry is a key land use.

The Minister is responsible for maintaining a publicly available **Water Register**, consisting of water licences, water access entitlements, forest water licences and permits granted under the Act.

Water allocation plans (WAPs) set out the rules for managing the take and use of water in prescribed water resources. A water allocation plan ensures the needs of the environment are taken into account when determining how much water is made available to be taken and used for other purposes. Water allocation plans set out the amount of water available for use, how that water may be allocated to water users, rules around trade of water, and the types of activities permitted with that water.

Landscape boards are responsible for preparing WAPs for their region, except in the Green Adelaide region or where the Minister considers that special circumstances apply, in which case the WAPs are prepared by DEW. WAPs in the Murray-Darling Basin must seek to further the objectives of the *River Murray Act 2003* and be consistent with the Murray-Darling Basin Agreement and Basin Plan.

Water licences and water access entitlements are not required for non-prescribed areas. In non-prescribed areas the water resources are managed through landscape boards' regional plans, **water affecting activities** policies and other provisions in the Act. Both DEW on behalf of the Minister and landscape boards play a role in managing water affecting activities.

What is a water-affecting activity?

Some activities can have adverse impacts on the health and condition of water resources and ecosystems, such as watercourses, dams, lakes, floodplains, springs, wetlands, waterholes, as well as impacting other water users. These activities require a permit or other authorisation to undertake. Such activities can include constructing or enlarging dams or structures to collect or divert water; building structures, obstructing, or depositing materials and waste; excavating material; destroying vegetation; draining or discharging water or brine; drilling, deepening and back-filling.

Water levies are determined by landscape boards and paid by the holders of water licences and water access entitlement shares, where applicable. The levy is based on the water allocation or number of shares that are held on 1 July each year. In some areas a minimum charge has also been declared. The levy is collected by DEW, on behalf of the Minister, and the funds are passed on to landscape boards from the region from where the levy was collected.

Further information on the water regulatory framework is available on the **DEW website**, and on **landscape board** websites.

> **Question: Do you consider there are opportunities to improve the operation and effectiveness of the water resources regulatory framework under the Landscape Act?**

Control of pest animals and weeds

Refer to Part 9 'Control of animals and plants' (Pages 160 – 174)

Pest animals and weeds have socio-economic, cultural and environmental impacts. They cost primary producers in South Australia millions of dollars each year in damage, lost production and control costs.

The Landscape Act addresses this challenge by setting up a regulatory and compliance scheme to control pest animal and weed threats. The scheme is implemented by a diverse group of stakeholders, including landscape boards, PIRSA, local councils, Landcare and various 'Friends' volunteer groups and importantly, landholders.

Under the Landscape SA Act, the Minister declares **pest animals and weeds**, under designated categories to regulate activities including their management, movement, possession, sale and release. As the lead agency for biosecurity in the State, PIRSA supports the declaration process and also provides other technical and policy support to stakeholders.

The Landscape Act requires that both public and private landholders manage pest animals and weeds in accordance with the declarations. Landscape boards support landholders to ensure they understand and meet their obligations to manage pest animals and weeds.

On roadsides, Landscape boards are responsible for the management of declared pest animals and weeds. This usually requires joint approaches with adjacent landowners, local councils and government departments such as the Department for Infrastructure and Transport.

Landholders are responsible for complying with statutory requirements in relation to declared animals and plants, and where they are unwilling to do so, a compliance intervention may become necessary by landscape boards and authorised officers. However, the priority for landscape boards is to always seek a collaborative approach and voluntary compliance with the community through education and shared on-ground action.

Further information on the management of pest animals and weeds can be found on the **PIRSA** and **landscape board** websites.

> **Question: Do you believe that the regulation of pest animals and weeds under the Landscape Act system is working effectively?**

Compliance and enforcement provisions

Refer to Part 10 'Enforcement' and Part 11 'Appeals' (Pages 175 – 194)

The Landscape Act includes a number of mechanisms and powers through the Act for enforcing compliance, with roles and responsibilities shared between the Minister, Chief Executive and staff of DEW, landscape boards and authorised officers, who may work for a range of different agencies including landscape boards, DEW, PIRSA and local councils.

A consistent approach to compliance and enforcement across the state is always sought so landholders are treated fairly and to maximise outcomes related to the sustainable use of our landscapes.

What is an authorised officer?

Under the Landscape Act, an authorised officer is an individual that has been appointed by the Minister to enact or enforce compliance with the Act using their prescribed powers. Powers may include the ability to enter and inspect land, take samples and seize evidence. Authorised officers may be an employee of DEW, another government agency, contractor or non-government organisation.

Focus areas for feedback

Several improvements were made to the compliance system with the introduction of the Landscape Act. These included introducing action orders (Section 198) to enforce compliance specifically related to declared pest plants and animals, increasing financial penalties and decentralising powers to landscape boards.

The important role of landscape boards and agency staff in encouraging voluntary compliance through extension and education is enshrined in the objects of the Landscape Act. However, when a cooperative approach is not effective, a range of enforcement mechanisms are able to be used depending on the nature of the breach:

- **Orders and authorisations**
  These are protection orders, reparation orders, action orders and reparation authorisations, which enforce compliance for various land management obligations under the Act, for example, to restore degraded lands or take action against declared pest plant or animal species.
- **Notices**
  There are a number of different types of enforcement notices available under the legislation. For example, a notice that requires a person to rectify the effects of an unlawful water-affecting activity.
- **Sanctions against licences**
  A breach of certain provisions of the Act may result in action being taken to cancel or revoke, suspend or vary the conditions of a licence or permit issued (for instance, water licences or permits for water-affecting activities, or permits to keep certain animals).
- **Administrative penalties**
  Penalties for unlawful and unauthorised taking of water that are declared by Ministerial notice under the Act.
- **Expiations**
  A number of offences are expiable under the Act. Some authorised officers have the power to issue expiation notices in certain circumstances. For example, a person who fails to comply with a water conservation measure.
- **Direct actions by officers**
  Authorised officers may exercise certain tools or powers directly to achieve compliance, such as seizure of goods, monitoring, or giving directions.

The Landscape Act also provides for both criminal and civil court proceedings:

- **Civil proceedings**
  These are generally taken in the Environment, Resources and Development (ERD) Court for the purpose of seeking a court order to either prevent or remedy a contravention of the Act.
- **Criminal proceedings**
  These involve the prosecution, including the application of a financial penalty, for an alleged offence against the Landscape Act, and are heard within the criminal jurisdiction of the ERD Court.

Under the Landscape Act, the legal right exists for landowners to appeal against a range of compliance and enforcement decisions, and these appeals are heard in the ERD Court. For some compliance decisions, a landowner may request a review by the Chief Executive of DEW.

> **Question: Do you think the compliance and enforcement mechanisms in the Landscape Act are fit-for-purpose?**

Other areas for feedback

> **Question: Are there any other topics not included in this discussion paper that you would like to provide feedback about?**

How to have your say

Public consultation is a critical component in contributing to the independent review of the Landscape Act. As such, the Independent Reviewer would like to hear from interested community members, environmental and primary industry groups, local government, First Nations people and landowners in relation to the questions posed in this discussion paper.

Targeted consultation with key stakeholders will also be undertaken to discuss and understand any issues in more detail.

You may provide feedback on any part of the Act, Regulations or the Act's statutory instruments (plans, policies, etc), irrespective of whether they are mentioned in this discussion paper.

To have your say:

- complete the survey via **YourSAy** (please note that the questions posed in this discussion paper are repeated in the YourSAy survey)
- send a written submission in response to the questions posed in this discussion paper. Email **LSActIndependentReview@sa.gov.au** or post your submission to: Independent Review of the Landscape Act, GPO Box 1047, Adelaide SA 5001

All contributions, regardless of how they are submitted, will be considered in the same way.

The closing date for all submissions is 23 October 2023. If you need assistance or have any queries, please get in touch using the above contact details.

Useful links

Department for Environment and Water

Landscape Boards SA

Department of Primary Industries and Regions

South Australian Legislation

YourSAy

We're changing NRM in South Australia | YourSAy

Government of South Australia

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