

Looking to the Future

Spatial Planning & Land Use Management Act (2013)



IMEL
INSTITUTE OF MARINE
& ENVIRONMENTAL LAW



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Provincial Government of the Western Cape



Looking to the Future

**Spatial Planning & Land Use
Management Act (2013)**

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Looking to the Past First

**City of JHB v Gauteng
Development Tribunal (CC) 2010**



City of JHB v Gauteng Development Tribunal (CC) 2010



GDT Case (CC)

orders

chapters 5 & 6 of DFA invalid

order suspended for 24 months

18 June 2012

conditions attached to suspension

the Replacement



**Spatial Planning & Land Use
Management Act (2013)**

Paterson Presentation

Removing the Old Parts

Development Facilitation Act (1995)

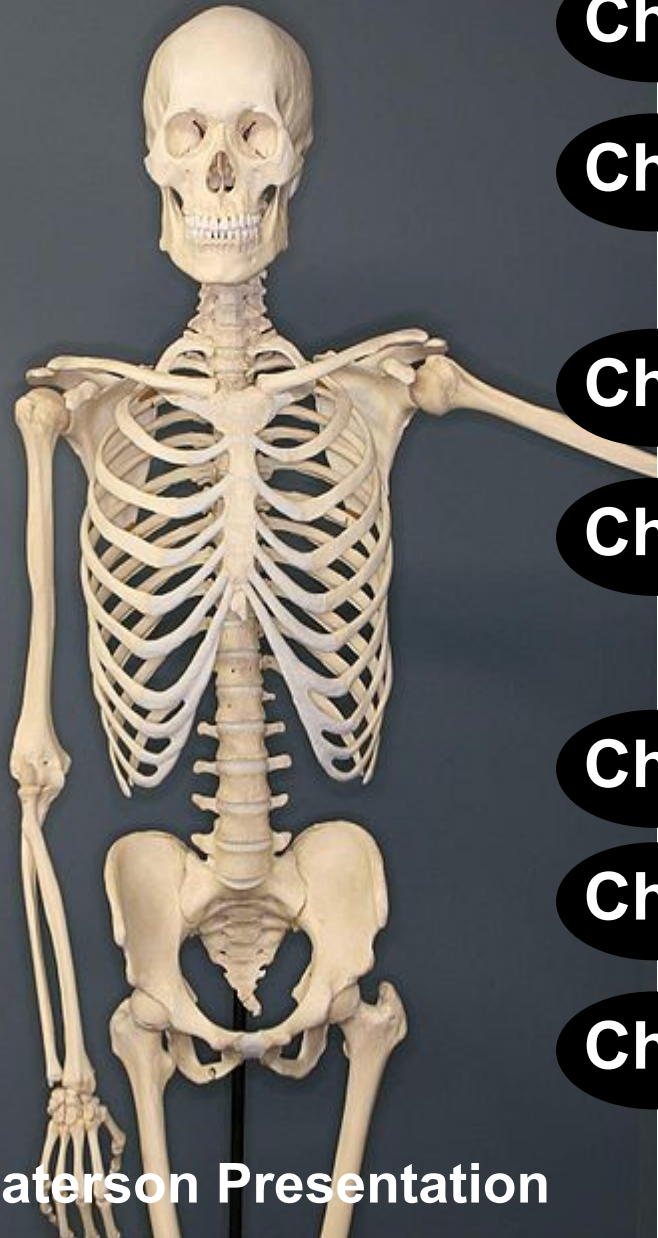
Less Formal T-ships Est'ment Act (1991)

Physical Planning Act (1991)

Physical Planning Act (1967)

Removal of Restrictions Act (1967)

Structure



Ch 1 Introductory Provisions

Ch 2 Development Principles & Norms & Standards

Ch 3 Intergovernmental Support

Ch 4 Spatial Development Frameworks

Ch 5 Land Use Management

Ch 6 Land Development Management

Ch 7 General Provisions

★ application

★ whole of South Africa

★ legislation enacted in terms of

S 44(2)

2. Parliament may intervene, by passing legislation in accordance with section 76(1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary
 - a. to maintain national security;
 - b. to maintain economic unity;
 - c. to maintain essential national standards;
 - d. to establish minimum standards required for the rendering of services; or
 - e. to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

S 155(7)

7. The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

★ objects

- (a) provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;
- (b) ensure that the system of spatial planning and land use management promotes social and economic inclusion;
- (c) provide for development principles and norms and standards;
- (d) provide for the sustainable and efficient use of land;
- (e) provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government; and
- (f) redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.

★ spatial planning system

★ development principles, norms and standards

- ★ guide implementation of all sub-components

★ spatial development frameworks

- ★ national

- ★ provincial

- ★ municipal

★ land-use schemes to manage and control land use

★ land development applications

★ 'planning differences'

'national planning'

'provincial planning'

'local planning'

★ 'planning differences'

★ 'national planning'

- ★ compilation, approval and review of spatial development plans and policies ... including a national spatial development framework;
- ★ planning by the national sphere for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use;
- ★ making and review of policies and laws necessary to implement national planning, including the measures designed to monitor and support other spheres in the performance of their spatial planning, land use management and land development functions.

★ 'planning differences'

★ 'provincial planning'

- ★ compilation, approval and review of a provincial spatial development framework;
- ★ monitoring compliance by municipalities with this Act and provincial legislation in relation to the preparation, approval, review and implementation of land use management systems;
- ★ the planning by a province for the efficient and sustainable execution of its legislative and executive powers insofar as they relate to the development of land and the change of land use; and
- ★ the making and review of policies and laws necessary to implement provincial planning.

★ 'planning differences'

★ 'local planning'

- ★ compilation, approval and review of integrated development plans;
- ★ compilation, approval and review of the components of an integrated development plan prescribed by legislation and falling within the competence of a municipality, including a spatial development framework and a land use scheme; and
- ★ the control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use do not affect the provincial planning mandate of provincial government or the national interest.

★ content:

- ★ principle of spatial justice
- ★ principle of spatial sustainability
- ★ principle of efficiency
- ★ principle of spatial resilience
- ★ principle of good administration

★ application (all organs of state):

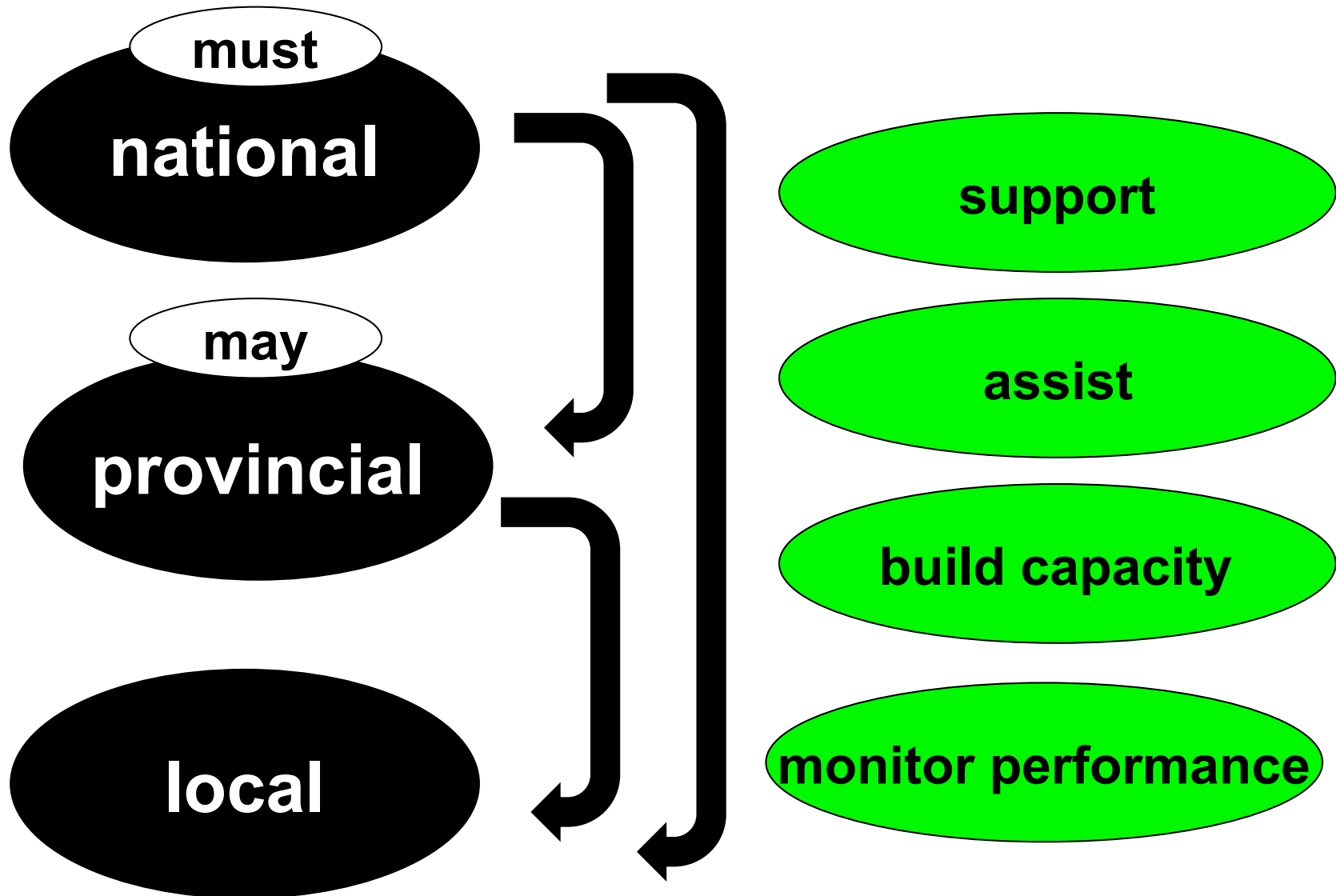
- ★ guide content and implementation of SDF, policies and by-laws concerning spatial planning, dev'tment or land use
- ★ guide content and implementation of municipal zoning schemes
- ★ guide land development decisions

★ Minister must prescribe

★ content guide:

(2) The norms and standards must—

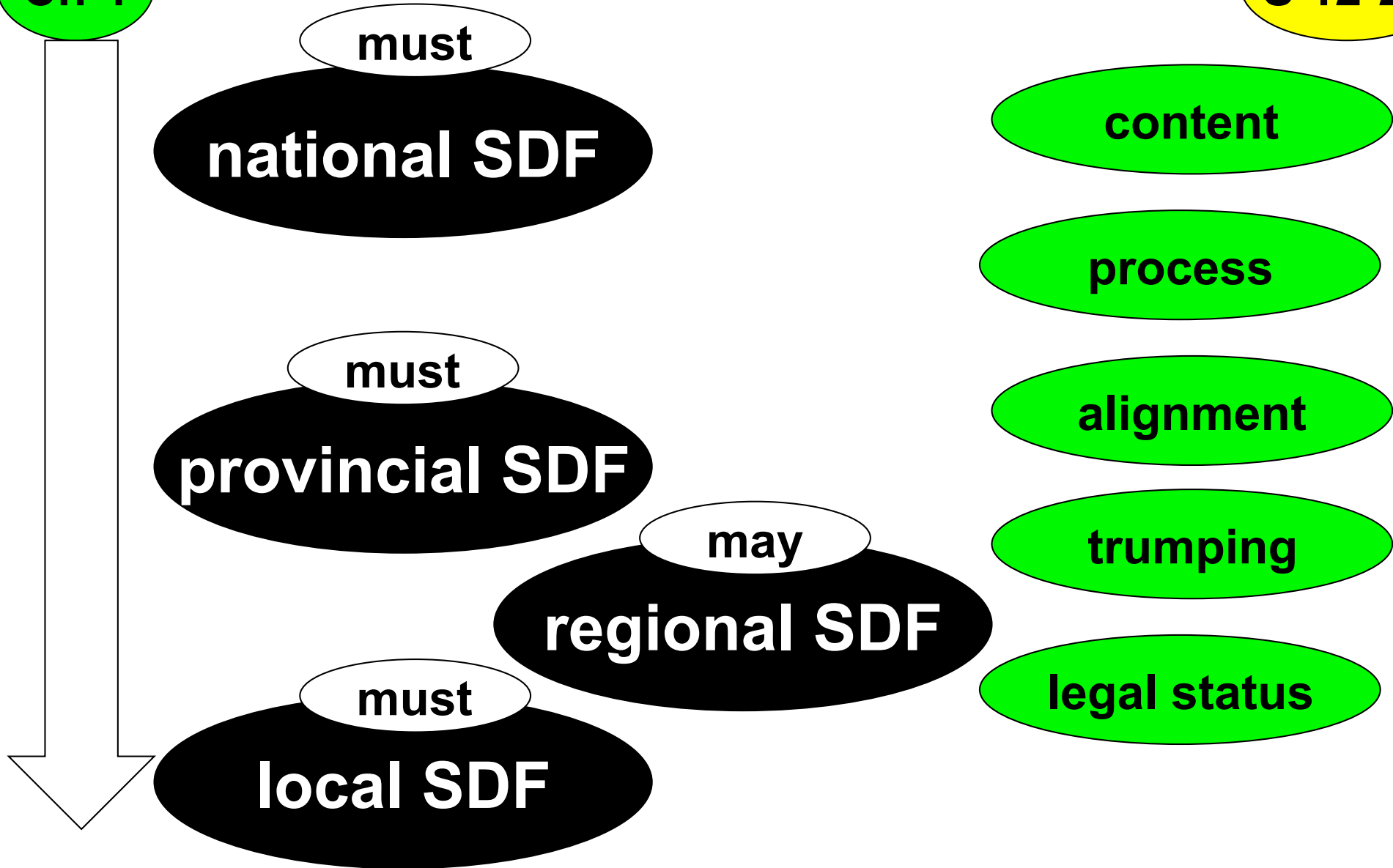
- (a) reflect the national policy, national policy priorities and programmes relating to land use management and land development;
- (b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalisation, urban regeneration and sustainable development;
- (c) ensure that land development and land use management processes, including applications, procedures and timeframes are efficient and effective;
- (d) include—
 - (i) a report on and an analysis of existing land use patterns;
 - (ii) a framework for desired land use patterns;
 - (iii) existing and future land use plans, programmes and projects relative to key sectors of the economy; and
 - (iv) mechanisms for identifying strategically located vacant or under-utilised land and for providing access to and the use of such land;
- (e) standardise the symbology of all maps and diagrams at an appropriate scale;
- (f) differentiate between geographic areas, types of land use and development needs; and
- (g) provide for the effective monitoring and evaluation of compliance with and enforcement of this Act.



spatial development frameworks

Ch 4

S 12-22



★ All SDFs

legal status

- ★ must guide and inform the exercise of any discretion or of any decision taken in terms of this Act or any other law relating to land use and development of land by that sphere of government (s12(2)(b))

★ National SDFs

- ★ little specific clarity provided!

★ Provincial SDFs (s17)

- ★ must be consistent with NSDF
- ★ PSDFs do not confer or take away land rights
- ★ provincial development plans, projects and programmes must be consistent with it.

★ Municipal SDFs

legal status

- ★ must be consistent with NSDF & PSDF
- ★ all land development decisions must be consistent with MSDF
- ★ planning authority can depart from MSDF where:
 - ★ site specific circumstances justify departure
 - ★ application of SDF would lead to illogical/unintended result

Clarity as to legal status?

- ★ municipalities must adopt consolidated scheme for entire area within 5 years
- ★ scheme must
 - ★ include categories
 - zoning map
 - zoning regulations
 - management authority (5. Bioregional Plans etc)
 - ★ comply with all environmental
 - ★ provide for incremental regulation of informal settlements!
 - ★ include incentives SDF
 - ★ include provincial and provincial policies
 - ★ give effect to municipal SDF and IDP

record of departures

★ status of new zoning scheme**S 26**

- ★ has force of law
- ★ replaces all existing schemes
- ★ provides for land use and development rights

★ must review every 5 years**S 27****★ amendment and rezoning****S 28**

- ★ Municipality can amend and rezone

★ alignment of authorisation**S 30**

- ★ where potentially overlapping authorisations required for one development
 - ★ authorities can each issue own
 - ★ if agreed – can issue joint authorisation

★ enforcement**Paterson Presentation****S 32**

land development management

Ch 6

decision-making institutions

municipal planning tribunal

powers

composition

functions

provincial planning tribunal

municipal executive authority

appeal authority

appeals from MPT

land development management...

Ch 6

applications affecting “national interest”

matters with
the Constitution,
strategic national policy objectives, principles or priorities, including food
security, international relations and co-operation, defence and economic
unity; or
land use for a purpose which falls within the functional area of the national
sphere of government.

municipal planning tribunal

application

outcome

may be prejudicial
provinces or
may impede the eff
municipalities or provinces r
legislative competence.

Minister

copy

21 days

land development management

Ch 6

internal appeal

S 51

★ Who can appeal?

★ “whose rights are affected by the decision”

★ applicant

★ municipality where land situated

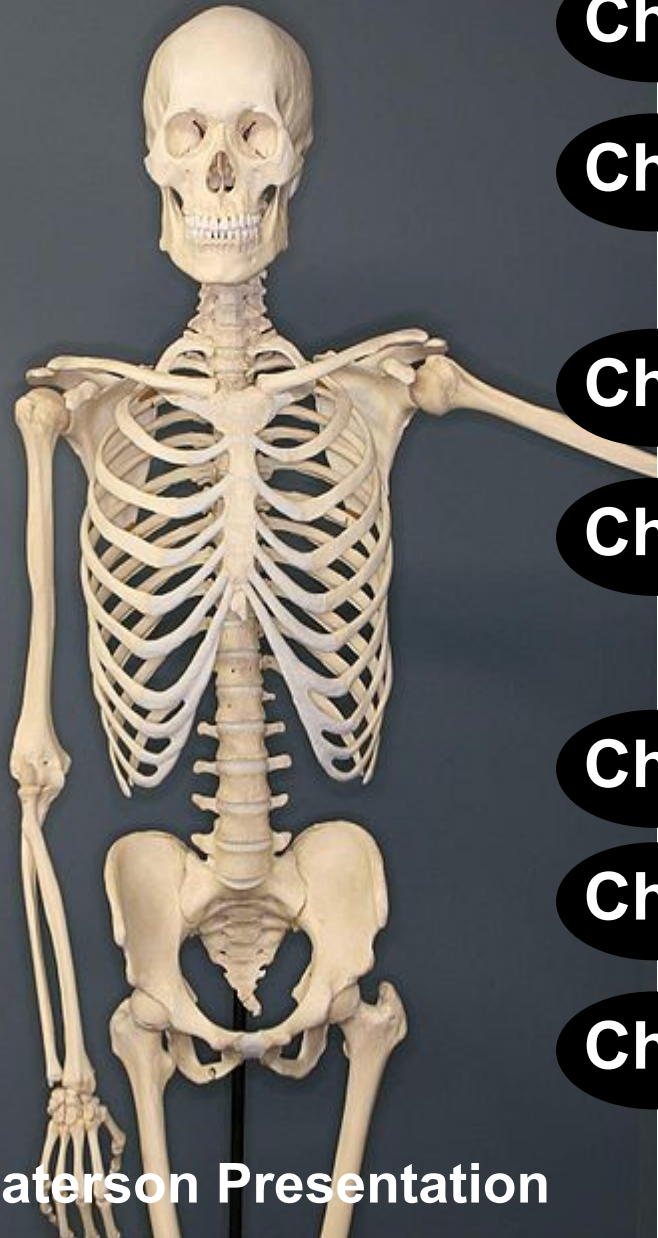
★ interested person who may reasonably be expected to be affected by the outcome of the LD application

★ “interested person”

★ “person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that they will be adversely affected by the decision”

★ **No LGMSysAct (section 62) appeal**

Structure



Ch 1 Introductory Provisions

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Compulsory Norms & Standards

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Frameworks

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