

Building and Other Legislation Amendment Bill 2008

Explanatory Notes

Introduction

The purpose of the *Building and Other Legislation Amendment Bill 2008* (the Bill) is to clarify existing provisions and to make minor amendments to the *Building Act 1975* (BA), the *Fire and Rescue Service Act 1990* (FRSA), and the *Local Government Act 1993* (LGA).

BA amendments are proposed concerning the maintenance of conditions of use and occupation; to support enforcement powers regarding maintenance of fire safety measures specified in building approvals; to address ambiguity in the definition of budget accommodation buildings; to allow minimum standards for temporary buildings, such as buildings used for sleeping accommodation, to be introduced under the Act; and to remove restrictions on the local governments in which building surveying technicians can perform building certifying functions.

LGA amendments are proposed to clarify application of the *Ombudsman Act 2001* to local government owned corporations; resolve inconsistencies between the LGA and the Commonwealth's *Superannuation Industry (Supervision) Regulations 1994* regarding local government employees 65 years and older; facilitate more timely adjustment of superannuation contributions in line with changes in members' salaries; and clarify the meaning of the Local Government Superannuation Scheme membership.

Short Title of the Bill

The short title of the Bill is the *Building and Other Legislation Amendment Act 2008*.

Objectives of the Bill

The policy objective of the Bill is to clarify and make minor amendments to provisions in a number of Acts relevant to building and local government administrative matters, including:

- amend the BA to:
 - ensure alternative solutions used to comply with the building code are properly specified and that their maintenance can be adequately enforced;
 - clarify the definition of ‘*budget accommodation building*’ to ensure that share-houses are captured by the definition and that a boarding house is a ‘*budget accommodation building*’ irrespective of whether meals are provided to occupants or the means by which occupants hold or derive their tenancy within the premises or license to occupy their room or bed in the building;
 - require temporary buildings or structures to comply with any standard in force for temporary buildings or structures;
 - remove the restrictions on the local governments in which building surveying technicians can perform building certifying functions; and
 - update the BA to include the new parts of the Queensland Development Code and renumbering of recently republished parts of the Code; and
- make minor amendments to the FRSA to complement the amendments to the BA with regard to the definition of fire safety installations; and
- amend the LGA to:
 - clarify the application of the *Ombudsman Act 2001* to local government owned corporations;
 - make consistent local government superannuation provisions with Commonwealth regulations and amend the membership eligibility provisions in the LGA to the Local Government Superannuation Scheme (the Scheme); and
 - enable timely adjustment of superannuation contributions in line with changes in members’ salaries; and

Policy rationale

Building Act 1975

Amendments to the BA are necessary to ensure that share-houses are captured within the definition of a '*budget accommodation building*' and to further clarify that the definition (in light of a recent Magistrate's Court decision) was intended to apply to buildings configured to provide share accommodation irrespective of the tenancy arrangements and whether meals are provided to occupants.

Other amendments to the BA are necessary to ensure maintenance of conditions of use and occupation and to support enforcement powers for the duty to maintain fire safety measures specified by a building approval. Amendments relating to the restrictions on the local governments in which building surveying technicians can perform building certifying functions are also proposed to address the critical shortage of building certifiers and complement the proposed local government amalgamations in March 2008.

Temporary buildings used for sleeping accommodation are often sub-standard and it is proposed that a minimum standard be introduced for such buildings. Section 67 of the BA currently allows a building certifier to approve a temporary building or structure for an unspecified (discretionary) period that does not comply with the building assessment provisions provided that certain conditions relating to structure, fire, health and amenity are met. Amendments to the BA will provide that building certifiers will not be able to apply section 67 of the BA when this standard (i.e. a part of the Queensland Development Code) has been introduced by regulation.

Local Government Act 1993

Amendments to the LGA are required to implement a recommendation of the Queensland Ombudsman to amend section 728 of the LGA to ensure that Local Government Owned Corporations prescribed under a regulation do not have complete immunity from the jurisdiction of the Ombudsman. A similar recommended amendment to the *Government Owned Corporations Act 1993* was made in March 2007.

Other amendments to the LGA are necessary to remove inconsistencies between Queensland and Commonwealth superannuation provisions and to update provisions in line with changes in superannuation practices

requested by LG Super and supported by the Local Government Association of Queensland.

How objectives are achieved

Passage of the Bill will achieve the State's policy objectives by amendment of the relevant legislative provisions.

Alternative method of achieving the policy objectives

There are no other viable alternatives that would achieve the Government's policy objectives.

Estimated cost for Government implementation

There are no additional anticipated financial costs for Government arising from the amendments.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Consultation on the amendments has been undertaken with all relevant Departments.

Consultation on the amendments to the BA has been undertaken with industry stakeholders through the "Building Industry Consultative Group".

The Local Government Association of Queensland has been consulted in relation to amendments affecting the LGA. LG Super has been consulted on amendments affecting superannuation provisions in the LGA. Both bodies support the proposals contained in the Bill.

All stakeholders support the proposals contained in the Bill.

Notes on Clauses

Part 1 Preliminary

Clause 1 states the short title as the *Building and Other Legislation Amendment Act 2008*.

Part 2 Amendment of Building Act 1975

Clause 2 provides that the part and the schedule amend the *Building Act 1975*.

Clause 3 amends section 67 to provide for the introduction of minimum standards for temporary buildings or structures through the building assessment provisions such as the Queensland Development Code (QDC). Where no such standards are in force the existing provisions of section 67 will apply.

Clause 4 amends section 103 to provide that if a development uses alternative solutions, the '*certificate of classification*' must state the materials, systems, methods of building, procedures, specifications and other things required under the alternative solutions. This will provide owners and occupiers with a concise and practical explanation of alternative solutions that may have some operational implications which owners and occupiers need to remain aware of, so that the alternative solutions are observed and maintained. This will also ensure that the ongoing use of the building and any future modifications do not compromise compliance with the performance requirements of the applicable building code.

When alternative solutions were introduced in the Building Code of Australia 1996, no corresponding amendment was made to the BA or the FRSA concerning the maintenance of alternative methods of complying with fire safety requirements and associated conditions of use and occupation. This created a gap in Queensland Fire and Rescue Service (QFRS) enforcement powers for the duty to maintain fire safety measures

specified by the building approval. Under the FRSA, building occupiers are obliged to maintain fire safety installations prescribed under the BA to a standard of safety and reliability.

The amendment to section 103 is complemented by the inclusion of a new section 108A, section 114A and the definition of *'fire safety installation'*. Amendments to the definition of *'fire safety installation'* and the required information contained on a *'certificate of classification'* will enable QFRS to monitor and enforce maintenance of performance measures. Also, owners will be required to keep a copy of the certificate in the building to ensure occupiers are aware of the building's compliance requirements. This amendment complements the current section 114 which provides that particular buildings must not be occupied or used without a certificate of classification.

Clause 5 inserts a new section 108A that requires the display of the *'certificate of classification'*, for all buildings for which a *'certificate of classification'* has been given, other than a class 1a building, in a conspicuous place as near as practicable to the building's main entrance. This section creates an obligation on the owner of buildings where a *'certificate of classification'* has been given, the certificate was given on or after 1 July 1997 and all or part of the building is occupied. The note to the new section 108A clarifies that a *'certificate of classification'* is not required to be given for a particular class 1a building (a single detached class 1a building), or a class 10 building or structure. Other class 1a buildings, for which a *'certificate of classification'* has been given, are not required to display their *'certificate of classification'* under the new section 108A, due to their private, residential nature.

An authorised officer may require the owner of the building to produce the certificate for inspection under subsection (3). The maximum penalty for failing to comply with the direction is 165 penalty units. However, this is not required under subsection (5) where the certificate is displayed pursuant to subsection (2).

The intent of subsection (3) is that owners may not know about the requirement and they may need to obtain a copy of the certificate. In this case, the authorised officer (being either a fire service officer or an authorised person under the LGA) can ask for it to be produced.

This section complements the amendments made to section 103, and the amendment of the definition of *'fire safety installation'*. See the

explanatory notes to the amended section 103 for an explanation of the combined purpose of these amendments.

Clause 6 inserts a new section 114A to provide that if a ‘*certificate of classification*’ has been given for a building and the certificate contains a restriction mentioned in section 103(d) or a requirement of a type mentioned in section 103(e) then the owner of the building must, unless the owner has a reasonable excuse, ensure the requirement or restriction is complied with. Reasonable steps by the owner to comply with the certificate’s obligations would include ensuring occupancy and lease arrangements accurately reflect any requirement or restriction, and a reasonable level of monitoring of the occupier’s activities, in relation to any requirement or restriction.

The maximum penalty for not complying with this requirement is 165 penalty units.

This section complements the amendments made to section 103, the insertion of a new section 108A and the amendment of the definition of ‘*fire safety installation*’. See the note to the amendment of section 103 for an explanation of the combined purpose of these amendments.

Clause 7 amends section 154(1) to omit “other than a designated local government”.

Clause 7 also omits section 154(2).

With the proposed local government boundary changes in March 2008, some designated local governments will combine with non-designated local governments, meaning that building surveying technicians would be able to perform building certifying functions in some areas of the new local governments, but not in others, if section 154 is not amended. This section has also been amended to remove the restrictions on the local governments in which local government building surveying technicians can perform building certifying functions.

To fully achieve the desired policy objective section 282 has also been omitted in clause 12.

Clause 8 amends section 185 to insert a new subsection (3). This provides that section 185(2)(b) does not apply to:

- (a) a building surveying technician employed as mentioned in section 154(a); or

- (b) a person who has applied to be licensed as a building surveying technician and who will, if so licensed, be employed as mentioned in section 154(a).

The amendments to 185 clarify that an accreditation standards body can develop standards for building surveying technicians not currently covered by the National Accreditation Framework for building certifiers.

Clause 9 amends the definition of budget accommodation building in section 216.

In 2007, the Maroochydore Magistrates Court decided in favour of a budget accommodation building owner by dismissing a complaint brought by the QFRS. The magistrate decided the definition of a budget accommodation building in the BA was too ambiguous on several points. The owner argued that the accommodation provided was more akin to a 'share-house or beach house', not a '*budget accommodation building*'. The Magistrate concluded more clarity on concepts such as 'boarding houses' was required before 'share houses' were included.

Section 216 has been amended to better reflect the original intent of the definition. Section 216 of the BA was intended to apply to buildings configured to provide share accommodation irrespective of the tenancy arrangements and the policy was never intended to require the provision of daily food or meals.

Share houses with six persons or more cannot be considered to be friends agreeing to pool resources and rent a house together. Rather, this situation is a boarding house where the owner is deriving the economic benefits of letting a boarding house.

Amendments to the definition of a '*budget accommodation building*' are designed to ensure that particular share-houses are captured in the definition of a '*budget accommodation building*' and to clarify that boarding houses are '*budget accommodation buildings*' irrespective of whether meals are provided to occupants or the means by which occupants hold or derive their tenancy within the premises or license to occupy their room or bed in the building.

Clause 10 amends section 217 to provide the new number for the relevant part of the QDC. This is necessary with the recent renumbering of parts of the QDC.

Clause 11 amends section 256 to complement the alternative authorised officer arrangements specified in the new section 108A. The amendment of

section 256 confirms that a fire service officer under the FRSA may act as an authorised officer in relation to the enforcement of the requirements of the new sections 108A and 114A and the prosecution of any offences against the new sections 108A and 114A. Alternatively, an authorised person under the LGA carrying out functions in relation to the BA may also enforce the new sections 108A and 114A and prosecute any offences against the new sections.

The new sections 108A and 114A relate to discrete fire safety issues affecting the ongoing safe use of buildings and for this reason, these minor amendments in relation to authorised officers have been made. As well as an authorised person under the LGA, authorised officers under the FRSA will also have authority to demand production of, and enforce compliance with a particular building's certificate of classification.

Clause 12 omits section 282. The omission complements the amendments to section 154. With the limitations on the use of building surveying technicians removed by amendment to section 154, section 282 is no longer required.

Clause 13 amends section 283(4) to insert an editor's note regarding the amendment of the QDC, Part 25, from 1 September 2006 to 1 July 2007. Further, it also notes that this part of the QDC was replaced and renumbered as MP4.2 which took effect from 1 January 2008.

Clause 14 inserts a new chapter 11, part 6 to provide a transitional provision for the new section 108A for a building given a '*certificate of classification*' on or after 1 July 1997, but before the commencement of the new section 108A. This provides that the commencement of the requirement under the new section 108A for these buildings will not apply until the first anniversary of the commencement of the section.

Clause 15 amends Schedule 1 to provide the new numbers for the relevant parts of the QDC. This is necessary with the recent renumbering of parts of the QDC.

Clause 16 amends schedule 2 (Dictionary) to amend the definition of '*fire safety installation*' and to update the numbering in the definition of '*QDC boundary clearance and site cover provisions*'. The updating of the numbering is necessary following the recent renumbering of parts of the QDC.

The amendment to the definition of '*fire safety installation*' and the required information contained on a '*certificate of classification*' will

enable authorised officers to effectively monitor building occupiers' obligation to maintain performance measures.

Part 3 **Amendment of Fire and Rescue Service Act 1990**

Clause 17 provides that Part 3 of the Act amends the *Fire and Rescue Service Act 1990*.

Clause 18 amends section 58C by inserting the words '*or the fire safety systems for a building*' after '*in a building*'.

Clause 19 amends the Dictionary by omitting '*for Part 9A, division 3A*' from the definition of '*fire safety system*'. The omission of '*for Part 9A, division 3A*' enables the definition of '*fire safety system*' in section 104KA, to also apply to other parts of the FRSA. This complements clause 18 which adds a reference to '*fire safety systems*' to section 58C.

Part 4 **Amendment of Local Government Act 1993**

Clause 20 provides that Part 4 of the Act and the schedule will amend the LGA.

Clause 21 amends section 728 of the LGA by deleting the existing section 728(1)(a) and inserting new section 728(2) to provide that a Local Government Owned Corporation (LGOC) prescribed under regulation is not a public authority under the *Ombudsman Act 2001*.

These amendments will remove the total immunity of LGOCs from the *Ombudsman Act 2001* and will ensure that the Ombudsman can obtain information relevant to an investigation into an agency without compromising the competitive neutrality of LGOCs.

Clause 22 updates the definition of '*scheme*'. While the name used in the definition has changed the scheme referred to is the same. (Also refer to clause 23.)

Clause 23 amends section 1180(1) to specify that the term ‘*LG Super scheme*’ refers to the Local Government Superannuation Scheme.

Clause 23 also amends 1180(2) by updating the reference to ‘*scheme*’ accordingly.

Clause 24 amends section 1181 of the LGA. The amendment introduces provisions for eligibility to membership of the Local Government Superannuation Scheme for classes of people that are currently provided for in the *Local Government Regulation 2005*.

Clause 25 amends section 1182 of the LGA to make it consistent with the provisions of Regulation 07.04 of the Commonwealth’s *Superannuation Industry (Supervision) Regulations 1994* (the SIS Regulation). The existing section 1182 obliges local governments to make superannuation contributions on behalf of all permanent employees regardless of age or weekly hours worked. The SIS Regulation, however, places restrictions on contributions for certain employees aged over 65 years. The proposed amendments have been drafted to remove inconsistencies with Commonwealth law, while avoiding any further need to change the LGA each time changes are made to the Commonwealth law.

Clause 26 amends section 1183(1) to establish consistency for section 1183 with the conditions imposed by Commonwealth law, by linking obligations for contributions from employees to the provisions of new section 1182.

The existing section 1183A of the LGA allows an employee to request that a local government cease making superannuation contributions for the employee, where benefits to the employee exceed the Reasonable Benefits Limit (RBL) specified by section 140ZD of the Commonwealth’s *Income Tax Assessment Act 1936*.

As the RBL was abolished by the Commonwealth from 1 July 2007, clause 27 of the Bill omits section 1183A from the LGA.

Clause 28 amends section 1184(1) to update a reference to the ‘*scheme*’ to be a reference to the ‘*LG Super scheme*’. (Refer to clause 82.)

Clause 28 also inserts new subsection 1184(3) to ensure the section is consistent with Commonwealth law.

Clause 29 amends section 1186 of the LGA to allow for continuous reporting by local governments of changes in employee salaries. This will enable timely adjustment of superannuation benefits for employees, in line with salary changes.

Section 1186 is also amended to reflect that the calculation of yearly contributions payable for employees is now done by local governments and not the Local Government Superannuation Board.

Schedule Minor amendments

Building Act 1975

The Schedule also includes minor amendments to the BA to correct minor errors.

Local Government Act 1993

The Schedule also includes minor amendments to the LGA brought forward by the Office of the Queensland Parliamentary Counsel to update references to the *LG Super scheme*, introduce a definition for the '*Commonwealth Superannuation Act*' in the Dictionary, and make other minor technical amendments in line with contemporary drafting practices.