# Economic Development Bill 2012

# Explanatory Notes

## Short title

The short title of the Bill is the Economic Development Bill 2012.

## Policy objectives and the reasons for them

Establishing an Economic Development Act

The Economic Development Bill 2012 (the Bill) amends legislation administered under the State Development, Infrastructure and Planning portfolio to meet the Government's election commitments to drive economic development in Queensland.

The Bill establishes an Economic Development Act (ED Act) and the Minister for Economic Development Queensland (MEDQ), a corporation sole, to facilitate economic development and development for community purposes in Queensland and ensure policy priorities can be responded to in a timely manner.

The Bill establishes the Commonwealth Games Infrastructure Authority (the authority). The authority will assist the MEDQ in relation to the planning and development of the Gold Coast 2018 Commonwealth Games Village and other venues. The authority will report to the MEDQ through the Economic Development Board (the board), a board established to support the performance of the MEDQ's broader functions.

Further, the Bill makes amendments to other Acts, consequential to establishing an ED Act. The Bill repeals the *Industrial Development Act 1963* and the *Urban Land Development Authority Act 2007*.

Amendments to the *South Bank Corporation Act 1989*

The Bill amends the *South Bank Corporation Act 1989* (SBC Act). The objectives of the amendments to the SBC Act contained within the Bill are to:

- commence the process for the transfer of planning powers of the South Bank Corporation (SBC) to the Brisbane City Council (BCC);

- protect and confirm any existing/previous approvals and pre-existing uses;
- streamline the makeup of the SBC board;
- enable SBC to transfer a freehold interest in land, with the Minister's consent;
- ensure there are no impediments to SBC's ability to grant a lease of the parklands to BCC and contract to it the obligation to manage the parklands; and
- ensure that parkland security officers engaged by BCC for the South Bank parklands also have the ability to exercise the powers given to SBC engaged security officers under the current SBC Act.

*Planning powers of the South Bank Corporation be transferred to the Brisbane City Council*

As part of its 100 day plan commitments, the Queensland Government sought to identify certain statutory planning powers which were appropriate for transfer to local government, re-empowering local governments in the planning decision making for their local communities. SBC planning powers were identified as appropriate for transfer to the BCC. The development of the SBC area is virtually complete, and any future developments should appropriately be subject to BCC requirements, being the local government area South Bank is geographically located within.

It is not possible to transfer planning powers in full to BCC at this time as it does not have its own planning scheme in place for the SBC area, against which development applications can be assessed. Until BCC has prepared such a plan, applications will continue to be assessed against the SBC "approved development plan" (ADP) under the SBC Act.

The amendments to the SBC Act will transfer the power to receive and assess development applications from a date to be proclaimed, to the BCC. In general, current applications will remain with SBC to ensure current applicants have certainty about the progress of their applications and management of their approvals. In addition, all planning powers in respect of Sites 9A and 9B in the ADP, known as "South Point", will remain with SBC while the current approval holder continues to hold an approval in respect of the site.

*Protect and confirm any existing/previous approvals and pre-existing uses*

The SBC Act will be amended to confirm the validity of existing/previous development approvals.

*Streamline the makeup of the SBC board*

To facilitate the transition of the role of SBC, it is important that the responsible Minister has flexibility to adjust the structure of the SBC board from time to time to reflect a shift of focus for SBC, for example, from a place manager, to land owner, to winding down.

*Enable SBC to transfer a freehold interest in land*

The majority of land within the Corporation Area is owned in freehold by SBC. Both residential and commercial occupiers, in general, hold long term leases of their units or buildings. The SBC Act contemplates and supports these arrangements. By empowering SBC to dispose of freehold interests in land with the responsible Minister's consent, the land/premises can be disposed of at any time. The ability to dispose of a freehold interest in land provides Government with the opportunity to sell SBC real property assets, with proceeds utilised to reduce the SBC debt to Treasury, a proposal that has been considered by SBC and previous governments for a number of years.

The amendment proposed would also allow for the transfer of a freehold interest to existing long term leaseholders, in the event the Government and SBC considered it was appropriate to do so.

*Ensure there is no impediment to SBC's entry into a lease of the parklands to BCC*

The Government and BCC have an in-principle agreement for SBC to grant a long term lease of the parklands to BCC. In addition, the lease will obligate BCC to manage the parklands. Amendments to the SBC Act are required to ensure that SBC is not in breach of its obligations in entering into such an arrangement with BCC.

*Ensure the Parkland security officers engaged by BCC have same powers as those engaged by SBC*

Parkland security officers are currently engaged by SBC. As SBC is currently negotiating the lease of the parklands to BCC including maintenance and management responsibilities, it is anticipated that all security officers for the parklands will be engaged by BCC. This amendment gives security officers engaged by BCC the same powers in

carrying out their duties, in particular all those powers relating to the exclusion of persons from the parklands in circumstances of public nuisance.

Amendments to the *State Development and Public Works Organisation Act 1971*

The Bill will amend the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to clarify and improve the powers of the Coordinator-General to fast-track projects, better reflect Government policies and priorities, streamline assessment and prevent proponents from misusing the intent of the Coordinator-General's statutory powers to promote their individual projects, diverting limited Government resources and causing confusion for landowners and industry.

Amendments to the *Environmental Protection Act 1994*

The Bill will amend the *Environmental Protection Act 1994* (EP Act) to:

- Insert provisions which allow holders of environmental approvals to apply for a temporary emissions licence in response to an emergent event; and
- Amend the emergency powers to include a definition of 'emergency' and to allow all emergency directions to be issued orally.

Amendments to the *Disaster Management Act 2003*

The Bill will amend the *Disaster Management Act 2003* (DMA) to enable the appointment of an officer of Emergency Management Queensland to coordinate State Emergency Service operations in extraordinary circumstances.

## Achievement of policy objectives

Establishing an Economic Development Act

To achieve its policy objectives, the Bill integrates selected provisions of the *Industrial Development Act 1963* and the *Urban Land Development Authority Act 2007* to establish a single ED Act that:

- establishes the MEDQ, a corporation sole, to replace the Minister for Industrial Development Queensland; provides the MEDQ with the ability to deal commercially in land, property and infrastructure to encourage economic development and development for community purposes;

- integrates some of the powers and functions of the existing Property Services Group (PSG) in the DSDIP under the *Industrial Development Act 1963* and the Urban Land Development Authority (ULDA) under the *Urban Land Development Authority Act 2007*. Integrating these functions removes the potential for duplication and overlap, and will streamline the planning process and allow certain development activities to continue;
- transitions some of the powers and activities of the ULDA into the ED Act, to assist in achieving Government policy priorities, abolishes Urban Development Areas (UDAs), and in their place, establishes a more efficient delivery of services and products to the community, enabling the declaration of new Priority Development Areas (PDAs) and the progressive transition of UDAs to local governments; and
- establishes governance arrangements for the ED Act including a board of up to six members, including the Director-General, DSDIP (Chair), the Director-General of the Department of the Premier and Cabinet and the Under Treasurer of Queensland.

The MEDQ's powers to deal commercially in land, property and infrastructure are to encourage economic development and development for community purposes, and implement policy priorities, for example, in circumstances:

- when there is some impediment to the private sector's involvement, such as significant complexity of the site or tenure;
- where there is a market gap or where existing planning provisions are not sufficient to effect a timely or appropriate development outcome;
- on land adjacent to major infrastructure projects; and
- where there is an emerging or urgent Government priority.

The Bill also provides for the MEDQ to sell its surplus land at market value, and for the MEDQ to facilitate the grant of an appropriate lease under the *Land Act 1994* for an undertaking that supports economic development or development for community purposes.

The new ED Act will also establish the Commonwealth Games Infrastructure Authority (the authority), which will assist the MEDQ with the planning and development of the 2018 Commonwealth Games Village, and other venues if necessary, by providing advice to the MEDQ and by carrying out functions delegated to it by the MEDQ. The authority will report to the MEDQ and the board.

Amendments to the *South Bank Corporation Act 1989*

To achieve its policy objectives, the amendments to the SBC Act will:

- begin the process of transferring SBC statutory planning powers to the local statutory authority (BCC);
- put in place the ability for SBC to sell land assets to reduce debt;
- move SBC into a transition phase;
- ensure there are no impediments to the takeover of parklands management by BCC; and
- make sure BCC will be able to effectively manage public nuisance in the parklands once it takes a lease of the parklands and management role from SBC.

*Transferring statutory planning to the local statutory authority (BCC)*

The Bill will enable BCC to effectively manage the statutory planning processes for the Corporation Area at a local level. This is consistent with the Government's commitment to provide local authorities with greater power in relation to planning for development within their local government boundaries.

*Reducing debt*

The Bill provides the opportunity for the Government/SBC to reduce the SBC's debt by utilising the proceeds of the sale of commercial premises, which have the ability to be transferred from SBC itself or by long term lease arrangements. The ability for SBC to transfer a freehold interest gives potential purchasers the opportunity to acquire land, without being subject to the requirements of a long term lease *arrangement.*

*Moving SBC into a transition phase*

The Bill gives effect to the Government's position that the SBC board has substantially fulfilled its responsibilities in the delivery of the South Bank precinct. To ensure the smooth transition of the winding up of the SBC board, the Bill provides the appropriate mechanism to adjust the board structure to deliver the transition.

*Ensuring no impediments to BCC management of the parklands*

The Bill provides an express right for SBC to enter into a lease of the parklands and removes the express obligation that it must manage the parklands itself.

*Ensuring BCC will be able to effectively manage public behaviour in the parklands*

The amendments included in the Bill ensure that any arrangement entered into between SBC and BCC in respect of the management of the parklands will be effective and not in conflict with SBC's obligations under the SBC Act. The lease of the parklands will enable BCC to showcase to the community, the benefits that the parklands have to offer and ensure that the parklands remain in the ownership of the people.

In addition, the specific power to deal with particular anti-social, public nuisance behaviour will be extended to BCC security officers.

Amendments to the *State Development and Public Works Organisation Act 1971*

To achieve its objectives, the Bill will:

- rename and substantially restructure the process for consideration of an infrastructure facility of significance (IFS);
- rename significant projects to coordinated projects to remove any perception that they have an approval or level of State support and adopt more robust criteria for consideration of which projects should be coordinated projects;
- provide process improvements to enable the Coordinator-General to streamline environmental impact statement (EIS) assessment processes and approve short term leases for land held by the Coordinator-General in State development areas (to enable these matters to be expedited); and
- provide an improved fee amendment process by providing a head of power for fees to be contained in a regulation, rather than within the SDPWO Act.

Amendments to the *Environmental Protection Act 1994*

The Queensland Flood Commission of Inquiry (FCoI) Final Report identified a number of concerns about the use of transitional environmental programs (TEPs) as the mechanism for the release of waters from mines during flood conditions, including the number of criteria to be considered in making a decision, the time taken to process applications, and the lack of predictability of application outcomes.

The Government's response to these recommendations is to develop a new temporary emissions licence which is designed to licence the response to

an emergency event. Since it is not possible to predict what the next emergency event may be, the appropriate response to these issues has been considered in a general sense, rather than specifically for water releases from mines.

The proposed temporary emissions licence will fill the gap between the provisions which can be used during an emergency, and provisions for ongoing management, such as conditioning development approvals and environmental authorities, and approving TEPs.

The temporary emissions licence can be applied for where conditions of an environmental authority or development conditions of a development approval (as defined by the EP Act) need to be temporarily relaxed or modified to respond to an emergent event. It would override the stated conditions of the environmental authority or development approval.

To assist operators to apply for a temporary emissions licence, guidance material will be prepared setting out the type of information required from proponents seeking a relaxation or modification of different types of conditions. Information that proponents may be required to provide could include any changes expected as a result of the proposed additional discharges from a mine encompassing water quality changes and increased risk of damage to downstream habitat. Proponents will also be required to provide information on proposed monitoring and mitigation strategies to offset any increased risks arising from additional discharges.

The guidance material will also assist decision-makers in assessing applications for a temporary emissions licence to maximise the effective discharge of administrative responsibilities.

In order to enable quick decisions to be made where the full suite of information may not yet be available, the licence will be fully flexible and may be amended, suspended or revoked if further information becomes available, without fault being attributed to the licence holder. In addition, a licence could be granted for a limited period of time to potentially cover situations where information may be limited, with a longer licence subsequently granted once all necessary information is provided. The guidance material will assist departmental officers to make the appropriate decision in the circumstances and minimise any possible liability for the Government in approving the licence. The guidance material will also be published on the department's website, so that operators can anticipate the department's decision, including a decision to amend, suspend or revoke the licence.

The fully flexible nature of the temporary emissions licence means that if, for example, there are impacts on downstream habitat, the administering authority will be able to cancel, suspend or modify the temporary emissions licence immediately, to allow for further testing or to reduce the load on the catchment.

The grant of the temporary emissions licence will be evidence that the conditions of the environmental authority or development approval were not sufficient to plan for an emergency event of this nature. Consequently, the grant of the licence will be a trigger for the administering authority to review the conditions of the environmental authority or development approval and to update those conditions where necessary or desirable. Ideally, the conditions will be amended so that future temporary emissions licences are not needed.

In addition, two recommendations of the FCoI Report relate to the use of emergency directions under the EP Act and recommended amendments to provide a definition of the term 'emergency', and to permit an emergency direction to be given orally. This Bill also makes those amendments to the EP Act.

Amendments to the *Disaster Management Act 2003*

The FCoI Report recommended (Recommendation 15.5) that the DMA be amended to give the chief executive of the Department of Community Safety the authority to appoint an SES Coordinator (an officer of EMQ) to direct SES operations in extraordinary circumstances, to provide better command and control arrangements above the level of the local controller.

The amendments to the DMA establish the role of SES Coordinators, along with supporting provisions such as the extraordinary circumstances in which the appointment can be made and the authorising framework for activation of the role, including consultation with the local government. The amendments also require that approval of the Chair of the State Disaster Management Group is obtained before an SES Coordinator can be appointed.

It is intended that the Local Disaster Coordinator will retain primacy for disaster management within the local government area and the SES Coordinator will work to support the Local Disaster Coordinator within the local disaster management arrangements.

The amendments strike a balance between the need to enable coordination during large scale responses to disasters, while retaining the primacy of the

local area response, particularly given the preference of local governments to utilise local knowledge and operate within the disaster management arrangements that exist at the local level. The amendments seek to enable a cooperative approach between state and local level responses, recognising that local disaster management is the cornerstone of disaster response in Queensland.

## Alternative ways of achieving policy objectives

Establishing an Economic Development Act

The Bill provides the essential structure for the Government to drive economic development in Queensland, and enables economic development and development for community purposes to be addressed. There are no other viable alternatives that would achieve the Government's policy objectives. It will provide a legislative mechanism for fast-tracking planning and development superior to the existing regime.

Amendments to the *South Bank Corporation Act 1989*

The identified improvements in the SBC Act can only be addressed by legislative amendment.

For instance, in the case of planning powers, under the existing provisions of the SBC Act, it is empowered to delegate any of its powers. SBC could delegate its planning powers; however as it does not have the ability to delegate process provisions the assessment of applications would be more difficult, confusing and cumbersome for applicants. Full transfer of the assessment role can only be achieved though legislative change.

Amendments to the *State Development and Public Works Organisation Act 1971*

The Bill provides the necessary frameworks to achieve the objectives in relation to the amendments to the SDPWO Act. There are no other viable alternatives that would achieve the Government's policy objectives.

Amendments to the *Environmental Protection Act 1994*

Self-regulatory, co-regulatory and non-regulatory options are not suitable since the relevant recommendations of the FCoI Final Report are about regulatory tools (i.e. amendments to the existing emergency powers in the legislation, or a tool to override conditions of an environmental authority, which is created under legislation).

Amendments to the *Disaster Management Act 2003*

The Bill provides the necessary frameworks to achieve the objectives in relation to the amendments to the DMA. There are no other viable alternatives that would achieve the Government's policy objectives.

## Estimated cost for government implementation

Establishing an Economic Development Act

The operating costs of establishing an ED Act, including the authority, will be met from within existing Department of State Development, Infrastructure and Planning allocations.

Amendments to the *South Bank Corporation Act 1989*

The costs associated with the amendments to the SBC Act will result in a potential reduction in costs to the Government through:

- streamlining the SBC board;
- providing the power to transfer a freehold interest in land; and
- ensuring SBC debt is well managed.

Amendments to the *State Development and Public Works Organisation Act 1971*

The Office of the Coordinator-General intends to manage any need for increased resources resulting from the fast-tracking of EIS processes and the pre-feasibility test for significant project declarations from existing resources. The revised IFS process will be managed using existing resources and by continuing to require significant external expert advice to undertake assessment processes. A fee review is underway to assess the costs of the revised processes and make recommendations as to possible fees.

Amendments to the *Environmental Protection Act 1994*

There are no anticipated additional costs to Government to implement the proposal.

Amendments to the *Disaster Management Act 2003*

There are no anticipated additional costs to Government to implement the proposal.

## Consistency with fundamental legislative principles

The Bill has been drafted with regard to the Fundamental Legislative Principles as defined in section 4 of the *Legislative Standards Act 1992*. Particular clauses in the Bill raise concerns in relation to Fundamental Legislative Principles (FLPs). They are discussed as follows:

Establishing an Economic Development Act

*Does the legislation have sufficient regard to the rights and liberties of individuals—LSA, s 4(3*)

1. Absence of appeal rights in priority development areas, including provisional priority development areas

The Bill establishes a framework to facilitate economic development, and development for community purposes, in Queensland. Part of this framework includes providing for streamlined planning and development in areas of the State declared as PDAs. The Bill does not include a general right of appeal for provisions about development which is a potential FLP issue.

Unlike similar provisions about development in the *Sustainable Planning Act 2009* (SPA), there is no general right of appeal on the merits against a refusal to grant, or the imposition of conditions on, a PDA development approval. Also if the development approval is granted, there is no general right of appeal by people who have made submissions against the grant of a PDA development approval, or for extensions of the period required for development under PDA development approvals to substantially start before the approval lapses. Applicants have only a limited right to appeal against particular conditions. Allowing for the imposition of appeal processes similar to those under SPA could lead to substantial delays in the development in PDAs. This undermines the object of the Bill in ensuring economic development, and development for community purposes, is completed in a timely way.

Development approvals in PDAs must be consistent with either:

- development schemes which are prepared under a process involving public consultation and the requirement to consider all submissions; or
- provisional land use plans, which must be consistent with local government planning schemes and these, which are made under SPA, have been publicly notified.

PDA assessable development in the Bill is comparable to code assessable development under SPA and no general right of appeal applies under that Act for people who make submissions about the development.

Additionally, PDAs will only apply to small parts of the State and will fast-track development in particular areas where opportunities for economic development, and development for community purposes, exist.

The processes under the Bill are more streamlined than SPA and the Bill will therefore be to the benefit of developers, as well as the community generally, bringing development to the market in a timelier manner.

There are similar existing Acts about development in particular areas of the State in which there is a Sate interest and in respect of which there no appeal rights, for example, the SDPWO Act.

The *Judicial Review Act 1991* is also not excluded.

2. Penalties – the Bill imposes several penalties for offences of 1665 penalty units, and up to 2 years imprisonment for the contravention of court orders

These penalties contained in the Bill are similar to those applying under SPA. Given the close parallels with SPA, the penalty levels are considered appropriate.

3. Power to enter land without warrant

The Bill includes a provision applying relevant entry powers under the *Local Government Act 2009* and the *City of Brisbane Act 2012* for authorised employees or agents. They include the power to enter without a warrant. The power will only apply to agents and employees issued with identity cards. The usual provisions about displaying the cards while exercising powers apply. The applied power does not apply to residences. The applied provisions also include provisions about compensation for damage because of the exercise of the power. As the Bill contains these safeguards and since a number of the MEDQ's functions and powers are similar to those of a local government, the inclusion of these provisions in the Bill is considered suitable.

4. Immunity from civil proceeding

The Bill protects persons to whom functions or powers are conferred or delegated under the Act from civil liability for acts done or omissions under the Act. The immunity is limited to acts done, or omissions made,

honestly and without negligence, and the liability shifts to the State. Given these safeguards, the conferral of immunity is considered appropriate.

*Does the legislation have sufficient regard to the institution of Parliament—LSA, s 4(3*)

1. Categorising development in a non-legislative instrument

The Bill creates different offences for different categories of development under clauses 73 and 74. Clause 33 categorises development as PDA assessable development or PDA self-assessable development in a development scheme prepared by the MEDQ. No substantive differentiation of categories applies in the Act. Effectively, a development scheme will determine how the Act applies to particular development. Therefore, clause 33 falls within the definition of 'Henry VIII' clauses adopted by the former Scrutiny Committee. There are two significant justifications for this approach.

First, the particularity of the categorisation is such that it is not practicable to include it in legislation. In the development instruments, development is identified as exempt and self assessable development (and no application is required) and assessable development. For assessable development, the development instruments generally provide for two categories – permissible and prohibited development. For both of these an application must be made. This allows for a development instrument to provide guidance about the types of development that are consistent with the specific vision for each priority development area and where an application is required. Furthermore it allows a development instrument to incorporate community expectations about development that is proposed within the priority development area.

Secondly, development instruments are similar to planning schemes under SPA. Subject to specific categories prescribed under SPA, planning schemes generally may prescribe development categories under that Act unless the regulation designates categories of development for specific development or identifies development that may not be made assessable. Like SPA the Bill contains categories and the development instrument applies these to development. One of these categories (assessable development) is further divided into sub categories however the treatment of these subcategories is essentially the same – requiring an application and requiring public notification at the discretion of the assessing officers.

In the making of development instruments, and amendments to them, the Bill requires that these be approved by regulation before they can take

effect (outlined in clauses 64 and 68). Further, if the actual text is not in the regulation, the Minister is required to table it within the same period as for subordinate legislation, as provided for by clause 70. It is therefore considered appropriate that the provision operates as it does, as Parliament has an opportunity to consider the categorisation and (by disallowing the approving regulation) disallow it.

2. Transitional regulation-making power

Clause 215 of the Bill allows for a regulation to modify the operation of the Act to provide for transitional arrangements. The former Scrutiny Committee considered it inappropriate to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision' because this anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.

Given the complexity of the matters dealt with in the *Industrial Development Act 1963* and the *Urban Land Development Authority Act 2007* it is considered appropriate that the Bill contains a transitional regulation-making power. The transitional regulation-making power ceases after 1 year. The former Scrutiny Committee found transitional regulation-making powers with sunset provisions to be less objectionable. In addition, Parliament has an opportunity to consider the transitional regulation and disallow it if unsuitable.

Amendments to the *State Development and Public Works Organisation Act 1971*

*Whether legislation is consistent with the principles of natural justice – LSA s 4(3)(b)*

The new section 27ADB provides the grounds for cancellation of a coordinated project. Although the SDPWO Act does not provide an opportunity for the proponent to make a submission on the proposed cancellation, it is considered that sufficient regard is had to the rights and liberties of individuals given that before making his decision, the Coordinator-General will rigorously assess each application on a case by case basis and verify information where appropriate, including seeking external expert advice if necessary. This will involve the Coordinator-General consulting with the proponent to seek clarification or further information.

*Whether legislation has sufficient regard to the institution of Parliament – LSA s 4(2)(b)*

Currently under the SDPWO Act, the Governor in Council's approval is required for any proposed sale, lease or disposal of land held by the Coordinator-General in a State development area. The amended section 83 will remove that requirement in so far as it applies to leases of up to four years to improve time and resource efficiencies. This amendment is considered to have sufficient regard to the institution of Parliament as the interest in land is a lease that is not for an extended term.

*Whether legislation is subject to appropriate review – LSA s 4(3)(a)*

The new section 84AA provides for an application for approval for a use of land in a State development area. This is a potential FLP issue as the section does not include a merits based review or criteria for deciding an application.

It is considered that sufficient regard is had to the rights and liberties of individuals as the approval process for these applications is specified in an approved development scheme which is publically available. The criteria against which an application is weighed are also contained in the relevant development scheme. The process contains five stages namely: an application; referral; public consultation; review (if required); and decision. There are two opportunities for information requests. The development scheme contains objectives and precincts within which certain uses are either compatible, may be compatible or are not likely to be compatible. Each precinct also contains preferred development intents or purposes.

As applications are assessed against the relevant development scheme which is publicly available, it is considered that this amendment has sufficient regard to the rights and liberties of individuals.

*Whether legislation is subject to appropriate review – LSA s 4(3)(a)*

The new section 153AA provides that a proponent may apply to the Coordinator-General for approval as a private infrastructure facility and to take land required for the facility. This amendment may be a potential FLP issue as it does not include a merits-based review process for an application to the Coordinator-General to take land.

This provision is considered justified as the inclusion of a review process is deemed unnecessary given that rigorous processes already apply, including seeking public submissions on the application, undertaking consultation with affected landowners and seeking external expert advice where

necessary. A merits-based review process is inconsistent with the balance of the SDPWO Act and including such a process will likely result in unnecessary and inefficient time and cost implications for both the State and proponent. The Coordinator-General is not the sole decision-maker on this application as the Governor in Council decides to approve or not approve the project as a private infrastructure facility (for the purpose of enabling the Coordinator-General to take land) and this decision is not subject to a merits-based review. As the Governor in Council is designated as the final decision maker on whether a project should be approved as a private infrastructure facility, it is not considered appropriate for a third party to review these decisions.

It is considered that sufficient regard is had to the rights and liberties of individuals as the opportunity for a process/natural justice review will still be available to aggrieved parties through the *Judicial Review Act 1991*. This process has been used in the past. The taking of land process for a project for the purpose of a private infrastructure facility also includes an opportunity for affected interest holders to lodge objections and be heard in relation to their objections under the *Acquisition of Land Act 1967*.

*Whether legislation has sufficient regard to rights and liberties of individuals - whether administrative power is sufficiently defined and subject to appropriate review – LSA s 4(3)(a)*

The new section 153AF provides for the extension of the approval of a private infrastructure facility. It is considered justified to not include criteria for making a decision to extend the expiry date of an approval in the Act due to the varied nature of projects that can be declared a private infrastructure facility and the difficulty in predicting what could cause time delays to these projects.

One of the considerations for approval as a private infrastructure facility is a demonstrated ability by the proponent for timely completion of the project. A proponent applying for an extension would need to provide well justified reasons for extending the expiry date. These reasons would then be rigorously assessed on a case by case basis and verified by the Coordinator-General, including seeking external expert advice where necessary. Including criteria for the Coordinator-General to consider in the Act could result in a lack of flexibility to deal with unforseen circumstances and unnecessary and inefficient time and cost implications for both the State and proponent.

It is also considered justified to not include a merits-based review process, as this would be inconsistent with the balance of the SDPWO Act. The is section is considered to have sufficient regard to the rights and liberties of individuals as the opportunity for a process/natural justice review will still be available to aggrieved parties through the *Judicial Review Act 1991*.

*Whether legislation has sufficient regard to rights and liberties of individuals - whether administrative power is sufficiently defined, subject to appropriate review and is consistent with the principles of natural justice – LSA ss 4(3)(a) and 4(3)(b)*

The new section 153AG provides the Governor in Council the power to amend or revoke an approval of a project as a private infrastructure facility. This amendment may be a potential FLP issue as it does not include a merits-based review process.

It is considered that this section has sufficient regard to the rights and liberties of individuals as the process to amend or revoke an approval is to be undertaken in the same way that the approval was made, including undertaking consultation with the proponent and owner of the land. An assessment is also made against the criteria under section 153AC(2) and as to whether the area of land required still satisfies section 153AA(1)(d) and external expert advice will be sought as necessary.

A merits-based review process is inconsistent with the balance of the SDPWO Act and will have unnecessary and inefficient time and cost implications for both the State and proponent.

This section is considered justified as the Coordinator-General is not the sole decision-maker, it is the Governor in Council who makes the final decision to amend or revoke an approval as a private infrastructure facility. It is not considered appropriate for a third party to review the merits of these decisions.

This section is considered to have sufficient regard to the rights and liberties of individuals as the opportunity for a process/natural justice review will still be available to aggrieved parties through the *Judicial Review Act 1991*.

*Whether legislation has sufficient regard to the institution of Parliament – LSA s 4(2)(b)*

The amended section 173 will provide a head of power to remove the setting of fees from the Act and to prescribe them under regulation. Given the quantum of the fees, this amendment may raise an FLP issue in regards

to whether there has been an appropriate delegation of legislative power. This delegated power is justified on the basis that it will be exercised to facilitate the timely and efficient revision of fees or introduction of new fees. The fees would only apply to a proponent who has voluntarily sought the services for which the fees apply. Similar sized fees under the *Environmental Protection Act 1994* (Qld) are also included in a regulation. The Commonwealth Government has advised that it is proposing to include its cost recovery provisions under the *Environment Protection and Biodiversity Conservation Act 1999* in a regulation.

*Whether legislation has sufficient regard to the institution of Parliament—LSA s 4(2)(b)*

Section 174 of the Act provides for the Coordinator-General to make guidelines. The Bill will amend the existing power to make guidelines to allow guidelines to be made about a range of matters relating to the private infrastructure facilities approval process or the making of an application to the Coordinator-General to take land for a project approved as a private infrastructure facility. Some of the matters, for example, specifying that contracts that may be entered into between the Coordinator-General and a proponent for the payment of costs of taking land, and payment of compensation for the land, are significant but are consistent with the current guidelines. It is noted that section 130 of the SDPWO Act already provides that the Governor in Council may require the payment by a specified person of the costs of taking land and the compensation by Gazette notice. There is a potential FLP issue as the guidelines are not required to be subordinate legislation.

The existing guidelines have not been prepared as subordinate legislation and this amendment is deemed necessary as the subject matter of the guidelines is generally not readily dealt with by regulation. The Bill also provides that public notice of the guidelines must be given.

Amendments to the *Environmental Protection Act 1994*

The amendments to the EP Act to introduce the new temporary emissions licence have raised concerns about a potential FLP issue as the proposed amendments allow for immediate suspension of the licence without receiving and considering submissions from the person on certain grounds.

These grounds are where further information becomes available that demonstrate that the impacts of the release are greater than anticipated, and if further applications are made.

However, the immediate suspension power is sufficiently justified, since it is necessary to protect the community and the environment from unanticipated adverse impacts of a release. Since the licence must be granted within 24 hours, and is likely to be granted on limited information, the department must be able to suspend, cancel or amend the licence if, for example, downstream drinking water is adversely affected by the release to the extent that it impinges on the health of the downstream community.

Other Queensland legislation that allows for immediate suspension where public safety or the environment has been endangered, or is likely to be endangered, includes the *Tow Truck Act 1973*, the *Gas Supply Act 2003*, the *Water Act 2000* and the *Food Production (Safety) Act 2000*.

In addition, the ability to immediately amend the licence ensures a level playing field where multiple operators can demonstrate a need to impact on the same environmental values. For example, many mines in the Fitzroy Basin may need to discharge mine water into the same catchment. The fact that one operator may apply for a temporary emissions licence in advance of the others, should not prevent all operators from receiving the same ability to discharge into the catchment.

## Consultation

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel, the Department of the Premier and Cabinet and Queensland Treasury and Trade.

Establishing an Economic Development Act

The following agencies were consulted regarding the proposal to establish an Economic Development Act:

- Department of Agriculture, Fisheries and Forestry
- Department of Energy and Water Supply
- Department of Environment and Heritage Protection
- Department of Housing and Public Works
- Department of Justice and Attorney-General
- Department of Local Government
- Department of Natural Resources and Mines
- Department of the Premier and Cabinet

- Public Service Commission
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Queensland Treasury and Trade
- Department of Transport and Main Roads

Amendments to the *South Bank Corporation Act 1989*

During the course of identifying the objectives of the legislative requirements and the drafting of the Bill, the Department of State Development, Infrastructure and Planning has consulted with BCC concerning the amendments to the SBC Act, with consideration given to the matters raised by BCC.

The Department of State Development, Infrastructure and Planning has also consulted with relevant state agencies, including the Department of the Premier and Cabinet and Queensland Treasury and Trade on the proposed amendments associated with the SBC Act.

Amendments to the *State Development and Public Works Organisation Act 1971*

Key Government agencies which may have an interest in the SDPWO Act amendments have been consulted.

Amendments to the *Environmental Protection Act 1994*

The following stakeholders were consulted with regards to the EP Act amendments: Australian Industry Group; Chamber of Commerce & Industry Queensland; Queensland Farmers Federation; Queensland Resources Council (QRC); Australian Petroleum Production and Exploration Association; Waste Contractors & Recyclers Association of Queensland Inc; the Local Government Association of Queensland; and Queensland Government departments.

In developing the options for legislative amendments in response to the Flood Commission of Inquiry recommendations, a discussion paper was developed and distributed to internal and external stakeholders for consultation.

All parties consulted were generally supportive of introducing the new temporary emissions licence and clarifying the emergency powers. The QRC did not support the compulsory amendment of conditions of an approval. However, the trigger for the administering authority does not

result in the compulsory amendment of conditions; rather it provides a head of power to enable amendment if necessary. QRC's suggestion that approvals could be amended by agreement would be unlikely to be effective for non-compliant sites. Also, any amendment is subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

The QRC also suggested that applications for temporary emissions licences should be able to be made by telephone, and that the holder of the license should be able to apply to amend the licence. However, a verbal application would result in evidentiary difficulties as there would not be a record of what was applied for, and the administering authority's approval must be based on what the applicant applied for.

Also, the application can be made by email or facsimile transmission. An application to amend the licence should not be necessary since these licences would only be granted for a very short period of time. If the licence needs to be amended to make a correction, this can be done by agreement.

Industry stakeholders also indicated a preference for changing conditions in the environmental authorities to make them 'flood ready', and this approach is supported by the government and is already being implemented. The temporary emissions licence approach is supported as an additional tool.

Amendments to the *Disaster Management Act 2003*

The Department of Community Safety, through Emergency Management Queensland, formally consulted with all local governments between 23 August 2012 and 12 September 2012.

With respect to the DMA amendments, 33 local governments formally responded, 32 of which were generally supportive of the appointment of an SES Coordinator and the legislative amendment.

Comments generally centred on the need for consultation with the local disaster management group in the lead up to an SES Coordinator being appointed, the appointee having local area knowledge and the need for clarity between the roles of the SES Local Controller and the SES Coordinator.

Much of the feedback indicated a preference for local input or advice into what was required of the SES Coordinator. Accordingly, the amendments require that an SES coordinator must perform their functions having regard

to the advice of the local disaster coordinator and any applicable disaster management plans.

Toowoomba Regional Council (TRC) is the only local government which was not supportive of the proposal. TRC has stated that an SES Coordinator would not add value to the current relationship between the TRC, the SES and EMQ. TRC has expressed the view that it does not see the need for such assistance in its area.

## Consistency with legislation of other jurisdictions

Establishing an Economic Development Act

The Bill is unique legislation to Queensland and is complementary to other Queensland legislation, for example, SPA. While not uniform, other jurisdictions have provision to fast-track planning and development.

Other comparable jurisdictions hosting Commonwealth or Olympic Games have used a variety of approaches for the planning and delivery of villages and venues. All have used expedited planning and assessment processes to guarantee timely delivery, but some governments have managed or are managing developments in-house (for example, Melbourne 2006; Glasgow 2014) while others have created statutory bodies or authorities (for example, Sydney 2000; London 2012). Regulatory differences, changes in market conditions, and differences in the nature of sites for village and venue developments mean the best approach will vary from jurisdiction to jurisdiction.

Amendments to the *South Bank Corporation Act 1989*

The amendments are to legislation which is specific to the State of Queensland and is not uniform with, or complementary to, legislation of the Commonwealth or another State.

Amendments to the *State Development and Public Works Organisation Act 1971*

The Bill is specific to the State of Queensland and many powers under the Bill are unique to the Coordinator-General. The amendments are not able to be compared to other legislation.

Amendments to the *Environmental Protection Act 1994*

The amendments are specific to the FCoI and its recommendations.

Amendments to the *Disaster Management Act 2003*

The amendments are specific to the FCoI and its recommendations.

# Notes on Provisions

# Chapter 1 Preliminary

## Part 1 Introduction

### Short title

*Clause 1* establishes the short title of the Act as the *Economic Development Act 2012* (the Act).

### Commencement

*Clause 2* provides that the Act will commence on a day to be fixed by proclamation, other than the provisions listed in the clause, which will commence on assent.

### Main purpose of Act

*Clause 3* establishes that the main purpose of the Act is to facilitate economic development, and development for community purposes in Queensland.

### How main purpose is primarily achieved

*Clause 4* outlines how the purpose of the Act is to be achieved, primarily by establishing and empowering the Minister for Economic Development Queensland (MEDQ) to plan, carry out, promote or coordinate economic development and development for community purposes in Queensland.

This provision also provides a streamlined planning and development framework for particular parts of the State (declared as priority development areas (PDAs) under this Act) to facilitate economic development and development for community purposes in the parts.

### Act binds all persons

*Clause 5* provides that the Act will bind all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States. The clause provides that nothing in this Act makes the State liable to be prosecuted for an offence.

## Part 2 Interpretation

### Definitions

*Clause 6* states that particular words used in the Act are defined in Schedule 3.

### Application of provisions

*Clause 7* clarifies that for any provisions of this Act that apply to other provisions of this Act or any other law (*applied law*), the applied law and any definition relevant to it apply to the provision with necessary changes.

The clause clarifies that the application of the applied law and any definition relevant to it is not limited by the provision stating how the applied law is to apply.

# Chapter 2 Minister for Economic Development Queensland

## Part 1 Establishment

### Establishment of Minister for Economic Development Queensland

*Clause 8* establishes the Minister for Economic Development Queensland as a corporation sole (which has perpetual succession) constituted by the Minister. The MEDQ has a seal and may sue and be sued in its corporate name.

### MEDQ represents the State

*Clause 9* provides that the MEDQ represents the State. Without limiting this, the MEDQ has all the State's privileges and powers.

### Legal capacity

*Clause 10* provides that the MEDQ has all of the powers of an individual and provides examples of the powers. It also clarifies that the MEDQ has the powers conferred on it by another Act in addition to this Act and may act both alone or together with public sector units, local governments, agencies or instrumentalities of the Commonwealth and other persons.

### Application of other Acts

*Clause 11* provides that the MEDQ is a part of the department for the purposes of the *Financial Accountability Act 2009*. In practice this means that the accountability arrangements for the MEDQ under the *Financial Accountability Act 2009* will be those of the department. This recognises the role of Economic Development Queensland, a commercialised business unit of the department, in performing (under delegation) the functions of the MEDQ.

Additionally the clause clarifies that the MEDQ is a unit of public administration and a statutory body under the *Statutory Bodies Financial*

*Arrangements Act 1982*. The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the MEDQ's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### MEDQ declared to be excluded matter

*Clause 12* provides that the MEDQ is declared to be an excluded matter for the *Corporations Act 2001* (Cwlth), section 5F, in relation to all of the Corporations legislation.

## Part 2 Functions

### MEDQ's functions

*Clause 13* provides the functions of the MEDQ. The MEDQ's main function is to give effect to the main purpose of this Act. Subclauses (2)(a) to (d) state the functions performed by the MEDQ for example, dealing in land or other property and coordinating the provision of, or providing, infrastructure and other services.

The clause requires the MEDQ to consult with each relevant local government when planning for, or developing land in, a PDA.

## Part 3 Matters about dealing in land or other property, or the provision of infrastructure

## Division 1 General

### Purpose of pt 3

*Clause 14* provides for particular powers and other matters for achieving the MEDQ's functions mentioned in clause 13(2)(a) and(b). This does not limit the MEDQ's powers under this or another Act.

### MEDQ to act commercially

*Clause 15* provides that the MEDQ, when dealing in land or other property, and when coordinating the provision of, or providing, infrastructure and other services to facilitate economic development or development for community purposes, carries out these functions on a commercial basis to the extent practicable.

## Division 2 Dealing in land or other property

### What power to deal in land or other property includes

*Clause 16* provides that for this Act, the MEDQ's power to deal in land or other property includes a power to deal in land or other property or an interest in land or other property. Also, for this Act, the MEDQ's power to deal in land includes the power to deal in land and improvements on land.

### Dealing in land or other property generally

*Clause 17* provides that the MEDQ may acquire land or other property for proposed development, or develop land, including by providing or contributing to the provision of infrastructure on the land, to facilitate the use of the land for economic development or development for community purposes, or dispose of, lease, license the use or occupation of, or sublease land or other property held by MEDQ to another entity for development by the entity.

### Selling surplus property

*Clause 18* provides for the MEDQ, where it holds land or other property that it does not require or no longer requires for carrying out its function under this Act, to sell the surplus property at its market value. The clause provides for how the property may be sold. This clause provides that the MEDQ may sell to a Commonwealth or State entity, or a local government, without the need for any prior public competition.

### Conditional disposal of land or other property

*Clause 19* provides that when selling, leasing or otherwise disposing of land or other property, or an interest in land or other property, the MEDQ

may impose a condition or restriction on the disposal of land or other property to an entity (a transferee).

Clause 19(2) clarifies that, without limiting subclause (1), the MEDQ and a transferee may agree that the transferee must make stated improvements to the land or property; must undertake a stated activity, within a stated period, in relation to the land or property; or that the transferee is subject to stated restrictions on the transfer of or dealing with the land or property.

Clause 19(3) provides that an agreement under subclause (2) may provide for remedies against, and the power to impose sanctions on, the transferee relating to the agreement. This enables enforcement of the conditions through contractual remedies.

## Division 3 Provision of infrastructure

### Construction of roads

*Clause 20* provides that the MEDQ may construct a road for achieving its functions mentioned in clause 13(2)(a) and (b). Subclause (2) states that the Governor in Council may, by Gazette notice, fix a day on and after which the *Local Government Act 2009* or the *City of Brisbane Act 2012* applies to the road.

This clause provides that until the fixed day the relevant Act does not apply to the road and the MEDQ incurs a duty, obligation, liability or responsibility in relation to an act done or omission made in relation to the road if, and to the extent, a local government would incur the duty, obligation, liability or responsibility if the act had been done or omission had been made by the local government.

This clause also provides that on and after the fixed day the relevant Act applies to the road as if the road has been constructed by the local government for the area in which the road is located and the MEDQ does not have any duty, obligation, liability or responsibility in relation to the road.

## Division 4 Financial arrangements

### Entering into financial arrangements

*Clause 21* provides that the MEDQ may lend money, or enter into other financial arrangements, as a part of a dealing in land or the other property, including, for example, by providing finance to a purchaser and enter into instalment contracts or other deferred payment arrangements as a creditor, including, for example, by constructing a research facility for an entity and recovering the costs of its construction by a lease of the facility to the entity.

This clause provides that the MEDQ may exercise a power under subclause (1) only if the MEDQ has considered a matter prescribed under a regulation about the exercise of power. The clause states that the MEDQ may take any form of security or charge over land or other property if the MEDQ considers it appropriate for doing a thing under subclause (1).

### Holding land or other property obtained as security

*Clause 22* applies if the MEDQ acquires or otherwise becomes entitled to land or other property as security for, or in satisfaction, liquidation or discharge of, a debt owing to the MEDQ. The MEDQ may hold the land or other property until it can be advantageously disposed of.

## Division 5 Other functions and powers

### Arrangements for facilitating economic development or development for community purposes

*Clause 23* provides that to help a person establish and carry on, or expand, an economic or community undertaking, the MEDQ may enter into arrangements to facilitate the grant of an appropriate lease under the *Land Act 1994* to the person for the undertaking. The clause also defines *economic or community undertaking* as an undertaking that facilitates or supports economic development or development for community purposes.

### Research

*Clause 24* provides that the MEDQ may contribute to, or undertake, research about land or other property or infrastructure to give effect to the main purpose of this Act.

## Part 4 Economic Development Fund

### Economic Development Fund

*Clause 25* provides that the Estates Construction Fund is continued in existence under this Act and renamed as the Economic Development Fund (the Fund). The Fund does not form part of the consolidated Fund.

### Payments of amounts into the Fund

*Clause 26* describes the Funds held by the MEDQ in the Fund; separate from the consolidated Fund.

### Payment of amounts from the Fund

*Clause 27* outlines the purposes a payment of an amount from the Fund may be made. For example, corporation's costs in performing its functions or exercising its powers, or an amount the Minister and the Treasurer direct the corporation, in writing, to pay into the consolidated Fund or departmental accounts.

### Administration of the Fund

*Clause 28* states that the Fund is to be administered by the MEDQ. The accounts for the Fund must be kept as part of the departmental accounts of the department. However, amounts received for the Fund must be deposited in a departmental financial institution account of the department used only for amounts received for the Fund. The clause also provides definitions for *departmental accounts* and *departmental financial institution account.*

# Part 5 Staffing arrangements and identity cards

## Staffing arrangements

*Clause 29* provides that the MEDQ may arrange with the chief executive for the services of officers or employees of the department to be made available to the MEDQ. An officer or employee continues to be an officer or employee of the department and continues to be employed or otherwise engaged by the department on the same terms of conditions applying to the officer or employee before his or her services were made available. The officer or employee is, for the period the services are made available and for the carrying out of the MEDQ's functions, taken to be a member of the staff of the MEDQ.

## Issue of identity card for particular employees and agents

*Clause 30* requires the MEDQ to issue an identity card to each individual whom the MEDQ authorises to enter premises under this Act. The note under this provision refers the reader to clause 123 (Application of local government entry powers for the MEDQ's functions and powers).

This clause provides the information and content that is required for the identity card and clarifies that the issue of a single identity card to a person for this Act and other purposes is not prevented.

## Production or display of identity card

*Clause 31* provides that in exercising a power under this Act in relation to another person, the individual must produce his or her identity card for the person's inspection before exercising the power or display the identity card in such a way that it is clearly visible to the person when exercising the power.

The clause provides that if the above requirements cannot be practically complied with, the individual must produce the identity card for the person's inspection at the first reasonable opportunity.

### Return of identity card

*Clause 32* provides that if an individual ceases to be authorised to enter premises under this Act, the individual must return the individual's identity card to the MEDQ within 20 business days after ceasing to be authorised, unless the individual has reasonable excuse. The provision stipulates the maximum penalty for contravention of this clause.

# Chapter 3 Planning and development

## Part 1 Preliminary

### Development and its types

*Clause 33* provides that the particular terms defined in this clause apply to this chapter. It provides the meaning of development, and is taken from the definition of development in section 7 of SPA. This provides consistency across planning legislation in Queensland.

The clause provides that *PDA assessable development* is development that a relevant development instrument states is PDA assessable development and provides that *PDA self-assessable development* is development that a relevant development instrument states is PDA self-assessable development. Development that is not either of the above is *PDA exempt development*.

The purpose of this provision is to permit a PDA development scheme, interim land use plan or provisional land use plan to determine the assessment level for development. This is consistent with the arrangements under SPA which provide for a local government planning scheme to identify development that is assessable or self-assessable under the planning scheme.

# Part 2 Priority development areas

## Division 1 Declaration of provisional priority development areas and provisional land use plans

### Declaration

*Clause 34* provides that a declaration regulation may declare a part of the State to be a provisional PDA. Provisional PDAs are intended to apply in very limited circumstances only where development can be brought to the market quickly and where the development is consistent with community expectations.

It requires that regard must be had to the main purpose of the Act in making the declaration regulation, for example, the facilitation of development of land in Queensland for economic development or development for community purposes. The proposed development of land in the area and the economic and community benefit to the State of the proposed development must be considered when making the declaration. In addition, the impact of SPA on the development if it were to apply in a provisional PDA must be considered: for example, whether the provisions under SPA would be likely to delay the delivery of the proposed development, compared to the provisions under this Act.

Subclause (3) stipulates the limitations that apply to the making of the declaration. The declaration may only be made if the area is a discrete site proposed to be used for a discrete purpose; the type, scale, intensity and location of the development is of the site is consistent with the relevant local government's planning scheme applying in the area and there is an overriding economic or community need to start the proposed development

quickly. These requirements recognise the absence of community consultation in the making of provisional land use plans, compared with the making of development schemes required for PDAs.

Provisional PDAs are intended to provide for development that is consistent with community expectations as expressed in the local government's planning scheme. An example is the proposed development is a use that is the same use proposed under the planning scheme although it may be at an increased intensity. Development sites are generally small, distinct sites containing single uses, where development can be progressed swiftly utilising the planning regime of this Act and brought to the market generally within the life of the provisional PDA.

It is not intended that provisional PDAs be declared to replace the need for making a development scheme in all PDAs. Where there is greater complexity of scale, land use, intensity and impacts, the declaration of a PDA is required along with an interim land use plan followed by the making of a development scheme.

### Provisional land use plan required for provisional priority development area

*Clause 35* requires that the declaration regulation must make a provisional land use plan regulating development in the provisional PDA declared under it. The purpose of this clause is to allow for the making of the making of the development instrument that regulates development in a provisional PDA.

The clause outlines that a provisional land use plan may provide for any matter mentioned in clause 57(2)(a) or (3) (Content of a development scheme) and must be consistent with the local government planning scheme for the area. This is in accordance with the limitations outlined in clause 34 (Declaration). The provisional land use plan also must require public notification for each PDA development application that is for carrying out PDA assessable development of the following kind of on land in the area – reconfiguring a lot and making a material change of use of premises. This is consistent with the intent for development in these areas to allow local communities to have a say in proposed development that would under the planning scheme be impact assessable under SPA.

The clause also provides in subclause 2(c) that the provisional land use plan is not prevented from requiring public notice to be given for PDA development applications for carrying out other development in the area.

### Tabling and inspection of documents adopted in declaration regulation

*Clause 36* provides that this clause applies if a declaration regulation makes a provisional land use plan for a provisional PDA by adopting, applying or incorporating all or part of another document (the adopted provisions) and the adopted provisions are not part of or attached to the regulation.

Subclause (2) states that the Minister must table a copy of the adopted provisions together with the regulation in the Legislative Assembly, as required under the *Statutory Instruments Act 1992*.

Subclause (3) provides that a failure to table the adopted provisions with the regulation does not invalidate or otherwise affect the regulation.

This purpose of this clause is to enable the Parliament to fully consider the provisional land use plan and any additional instruments or documents that form part of the land use plan but are not contained in the land use plan.

## Division 2 Declaration of other priority development areas and interim land use plans

### Declaration

*Clause 37* provides that a declaration regulation may declare a part of the State to be a PDA.

It requires that regard must be had to the main purpose of the Act in making the declaration regulation, for example, the facilitation of development of land in Queensland for economic development or development for community purposes. The proposed development of land in the area and the economic and community benefit to the State of the proposed development must be considered when making the declaration. In addition, the impact of SPA on the development if it were to apply must be considered, for example, whether the provisions under SPA would be likely to delay the delivery of the proposed development, compared to the provisions under this Act.

## Interim land use plan required

*Clause 38* provides that the declaration regulation must make an interim land use plan regulating development in the PDA declared under it. The purpose of this clause is to allow for the making of the development instrument that regulates development in a PDA from its declaration until a development scheme is made or the interim land use plan expires.

It outlines the matters that the interim land use plan may provide for any matter mentioned in clause 57(2)(a) or (3) (Content of a development scheme). The provision clarifies that an interim land use plan is not required to include either an infrastructure plan or an implementation strategy for the area.

The clause also provides that the interim land use plan has effect until the earlier of the following: a development scheme for the area takes effect; or the interim land use plan expires under clause 39.

## Expiry of interim land use plan

*Clause 39* provides that an interim land use plan for the PDA expires 12 months after it commences. The purpose of this clause is to outline the things that affect the expiry of an interim land use plan including the making of a new interim land use plan.

The clause clarifies that if a caretaker period occurs while an interim land use plan is in effect, the currency period for the interim land use plan is extended by the period equal to the caretaker period plus 20 business days. This provides for the circumstances where an interim land use plan may be due to expire during a caretaker period, however a development scheme for the area cannot be made during the caretaker period, meaning that no planning instrument regulating development in the area would be in effect for a period of time. The provision ensures that the interim land use plan can remain in effect until the development scheme for the area can be made, providing continuity for development.

The clause also establishes that a regulation may make a new land use plan for the PDA. This action may be required if the interim land use plan will expire before the development scheme for the area can be made.

The clause clarifies the matters under clause 38(2) and (3) (regarding the content of a development scheme) apply to the new land use plan if made and that it has effect only until a development scheme takes effect or it expires.

### Tabling and inspection of documents adopted in declaration regulation

*Clause 40* provides that this clause applies if a declaration regulation makes an interim land use plan by adopting, applying or incorporating all or part of another document (the adopted provisions) and the adopted provisions are not part of or attached to the regulation.

Subclause (2) states that the Minister must, when the regulation is tabled in the Legislative Assembly, under the *Statutory Instruments Act 1992*, section 49, table a copy of the adopted provisions.

The clause also provides that a failure to comply with this clause does not invalidate or otherwise affect the regulation.

This purpose of this clause is to enable the Parliament to fully consider the provisional land use plan and any additional instruments or documents that form part of the land use plan but are not contained in the land use plan.

## Division 3 Cessation of priority development areas

### Cessation of provisional priority development area

*Clause 41* states that a provisional PDA ceases to be a provisional PDA 3 years after its declaration. Provisional PDAs are intended only where the development is required to be in place quickly, and can be completed within 3 years. The purpose of this clause is to outline the things that must be done before a provisional PDA ceases and is transitioned to the local government area and to facilitate the orderly transition of planning regulations for a PDA to a local government.

The clause states that subject to subclause (4), before a provisional PDA ceases under subclause (1), the MEDQ may by giving notice to the relevant local government, approve an amendment to the local government's planning instruments. The MEDQ may approve an amendment to the local government's planning instruments in two ways: where the planning instrument change was prepared by the local government, or where the MEDQ prepared the planning instrument change.

The clauses also states that on the giving of a notice under subclause (2), the planning instrument change is, for SPA, taken to have been made by the

local government and clarifies that section 117 (Making or amending local planning instruments) of SPA does not apply for the making of the planning instrument change.

It also states that before making a planning instrument change where the MEDQ prepares the planning instrument change, subclause (2)(b), the MEDQ must give the relevant local government the proposed planning instrument change and invite it to, within 40 business days after it is given the proposed amendment, make submission to the MEDQ about the proposed planning instrument change. Before the change is made the MEDQ must consider the submissions made under subclause (5)(b). The clause ensures that the local government is made aware of the MEDQ's proposed planning instrument change and is given the opportunity to make submissions to the MEDQ about the proposed planning instrument change.

Finally, the clause clarifies that the planning instrument change takes effect at the same time as the provisional PDA ceases under subclause (1). This ensures the orderly transition of planning regulations for the former provisional PDA to the local government's planning instruments.

## Revocation or reduction of priority development area

*Clause 42* provides that this clause applies if it is proposed to amend or revoke a declaration regulation (the PDA change) so that land in a PDA will no longer be in a PDA. The purpose of this clause is to outline the things that must be done before a PDA is revoked and is transitioned to the local government area and to facilitate the orderly transition of planning regulations for a PDA to a local government.

The clause states that subject to subclause (4), before a PDA is revoked or reduced under subclause (1), the MEDQ may by giving notice to the relevant local government approve an amendment to the local government's planning instruments. The MEDQ may approve an amendment to the local government's planning instruments in two ways: where the planning instrument change was prepared by the local government, or where the MEDQ prepared the planning instrument change.

The clause also states that on the giving of a notice under subclause (2), the planning instrument change is, for SPA, taken to have been made by the local government and clarifies that section 117 (Making or amending local planning instruments) of SPA does not apply for the making of the planning instrument change.

It also states that before making a planning instrument change where the MEDQ prepares the planning instrument change, subclause (2)(b), the MEDQ must give the relevant local government the proposed planning instrument change and invite it to, within 40 business days after it is given the proposed amendment, make submission to the MEDQ about the proposed planning instrument change. Before the change is made the MEDQ must consider the submissions made under paragraph (b). The clause ensures that the local government is made aware of the MEDQ's proposed planning instrument change and is given the opportunity to make submissions to the MEDQ about the proposed planning instrument change.

Finally, the clause clarifies that the planning instrument change takes effect at the same time as the provisional PDA ceases under subclause (1). This ensures the orderly transition of planning regulations for the former provisional PDA to the local government's planning instruments.

## Interim local laws

*Clause 43* provides for the orderly transition of matters under a by-law made for a PDA to the local government, should the land cease to be in a PDA.

It enables a regulation to make a local law (the interim local law) for the land, about any matter previously provided for under the by-law made for the PDA. The purpose of the provision is to provide a mechanism for the by-laws to be converted into interim local laws that can be administered by the local government. Clause 43(3) ensures that the regulation may be made only if the relevant local government gives agreement.

The clause also provides that the interim local law is taken to have been made under the *Local Government Act 2009* or the *City of Brisbane Act 2010* by the relevant local government and provides that the interim local law expires 12 months after it commences. This is intended to give the relevant local government sufficient time to formally adopt a local law addressing the matters covered by the interim local law.

# Division 4 Relationship with Sustainable Planning Act

## Subdivision 1 Effect of declaration of priority development areas

### Existing SPA development applications

*Clause 44* provides that if immediately before the declaration of a priority PDA, a SPA development application had been properly made for land in the area and had not been decided, the SPA application must be decided under SPA and requirements under that Act continue to apply as if the land were not in a PDA (i.e. the application must be decided under the Integrated Development Assessment System (IDAS) by the assessment manager to whom the application was lodged, and if approved continues to have effect as a SPA development approval).

### Existing SPA development approvals

*Clause 45* provides that a SPA development approval encompassing a preliminary approval, development permit or deemed approval, and that is in effect immediately before the declaration of an area as a PDA, continues to have effect as a SPA development approval.

### Special provision for Northshore Hamilton urban development area

*Clause 46* applies to balance port land within the Northshore Hamilton urban development area (UDA). The note under subclause (1) clarifies that this Act applies as if the UDA were a PDA. Existing lawful uses and development approvals issued by the Port of Brisbane Corporation over former strategic port land are preserved under the Act. However, some of these uses are prohibited under the development scheme for the Northshore Hamilton UDA.

The clause provides a limited range of circumstances in which existing users can apply to the MEDQ to restart uses which have temporarily ceased (provided the application is made within 6 months), or to change conditions or layout for substantially the same development, provided the

term of the current lease for the premises the subject of the application has not ended.

The clause clarifies that an application may be made for development prohibited under the Northshore scheme, and the MEDQ may approve it and provides definitions for terms used in this clause, *balance port land*, *current lease*, *first interim land use plan*, and *Port of Brisbane Corporation*.

### Community infrastructure designations

*Clause 47* provides that community infrastructure designations under SPA, chapter 5, cannot be made for land in a priority PDA. Clause 47(3) states that this restriction prevails over SPA, chapter 5 (Designation of land for community infrastructure).

The clause ensures that any existing community infrastructure designations in force over land in a PDA immediately before the declaration continue in force.

## Subdivision 2 Effect of cessation of priority development areas

### Conversion of PDA development approval to SPA development approval

*Clause 48* provides that if land ceases to be in a PDA, any PDA development approval in force for the land is taken to be a SPA development approval for the land, effective from the same time the PDA development approval for the land took effect (a converted SPA development approval).

The clause provides that any appeal under clause 90 (Right of appeal against particular conditions) about the MEDQ's decision to impose a condition on a PDA development approval that is started before the cessation or within 20 business days after the cessation, is unaffected by the cessation and may be decided as if the cessation had not happened.

## Outstanding PDA development applications

*Clause 49* provides that where a PDA development application has been made but not decided when the land the subject of the application ceases to be in a PDA, the application continues to be decided as if the land were still in a PDA.

It provides that if a PDA development approval is granted for the application, the approval, on taking effect, is taken to be a SPA development approval (a converted SPA development approval).

## Provisions for converted SPA development approval

*Clause 50* deals with PDA development approvals in ceased PDAs addressed under clauses 48(2) or 49(3) that are SPA development approvals (converted SPA development approvals), and provides that the PDA development conditions for the PDA development approval are taken to be conditions of the SPA development approval.

The clause provides that an applicant may not appeal under section 461 of SPA (Appeals by applicants) in relation to the SPA development approval or the development conditions. This restriction does not affect appeals to which clause 49(3) applies (i.e. appeals about the PDA development approval started before the cessation or within 20 business days of the cessation of the PDA).

The clause also clarifies that the assessing authority for the SPA development approval is the entity that would have been the assessing authority if the land had never been in a PDA. This ensures that the assessing authority (i.e. the local government) is able to carry out any enforcement actions related to the SPA development approval.

Furthermore the clause clarifies that only the assessing authority for the SPA development approval may bring a proceeding under section 456 of SPA (Court may make declarations and orders) in relation to the SPA development approval.

## Lawful uses in priority development area

*Clause 51* confirms that a use of premises in a PDA that is lawful under an Act is deemed to be a lawful use of the premises under this Act. If the premises cease to be in a PDA, the use is taken to be a lawful use of the premises under SPA.

The purpose of this provision is to ensure that lawful uses involving exempt or self-assessable development are deemed to be lawful uses under SPA on the cessation of the PDA.

## Division 5 Miscellaneous provisions

### Exchange of documents and information with other entities with planning or registration functions

*Clause 52* provides that subclause (2) applies on the declaration of a PDA a government entity, government owned corporation (GOC) or local government has planning or registration functions for land or development in the area.

The clause clarifies that the MEDQ may ask a government entity, GOC or local government to give the MEDQ the documents or information the government entity, GOC or local government has that the MEDQ reasonably needs to perform its functions. It requires the entity must comply with the request within a reasonable period of time and provides that if land ceases to be in a PDA, the MEDQ must give each entity performing the functions mentioned in subclause (1) the documents and information the MEDQ has that the entity needs to perform its functions.

The clause also provides that the documents or information given under this clause must be given free of charge.

### Relationship with the City of Brisbane Act 2010 or the Local Government Act 2009

*Clause 53* provides that the relevant local government area or the jurisdiction of relevant local governments for an area under the *City of Brisbane Act 2010* or the *Local Government Act 2009* is not affected on the declaration of the area as a PDA. It provides that the performance of the relevant local government's functions or the exercise of its powers under the Acts is subject to the MEDQ's functions or powers under this Act. Subclause (3) states that subclause (1) is subject to clause 54 (By-laws).

### By-laws

*Clause 54* provides that the MEDQ may make by-laws under this Act for PDAs about any matter for which a local law may be made, including the creation of offences. It provides the maximum penalty units that can be fixed by a by-law. This provision allows the maximum penalty under a by-law that replaces a local law to fix the same penalty as that applying to a contravention of the local law it replaces.

The clause provides for the circumstances when a by-law replaces the local law (i.e. the by-law provides that the local law does not apply, or applies with stated changes, and the by-law applies to a matter within the PDA).

The clause also clarifies that a by-law may provide that all or part of a stated local law does not apply, or applies with stated changes. This provision recognises that part of a local law may continue to deal with matters that are not required to be covered by the by-law.

Finally, the clause provides that a by-law must be approved by the Governor in Council. The note under this provision clarifies that a by-law made under this Act is subordinate legislation, as described in the *Statutory Instruments Act 1992*.

# Part 3 Development schemes

## Division 1 Making development schemes

### Application of div 1

*Clause 55* provides that this division applies when a PDA is declared, and does not apply to a provisional PDA and clarifies that a development scheme is not required to be made for a provisional PDA.

### Development scheme required

*Clause 56* requires the MEDQ to prepare a development scheme for the PDA as soon as practicable after making the declaration. The clause confirms that the development scheme is a statutory instrument.

## Content of development scheme

*Clause 57* enables the development scheme made by the MEDQ to provide for any matter that the MEDQ considers will promote the proper and orderly planning, development and management of the area. The purpose of this provision is to provide for the things that a development scheme must include and identifies the things that a land use plan may contain to regulate development in a PDA. In addition the clause provides for the MEDQ to consider other planning instruments made under SPA or other Acts.

The clause establishes what the development scheme must include to promote the orderly planning, development and management of the area. It must include a land use plan, a plan for infrastructure and an implementation strategy for the area to achieve the main purpose of the Act (i.e. to encourage economic development and development for community purposes in Queensland through the declaration of PDAs and planning for development within these areas).

Without limiting subclause (2)(a), the clause establishes the matters that the land use plan may include. These matters include but are not limited to the identification of levels of assessment for development, including prohibitions, and public notification requirements for particular development.

The clause clarifies that existing lawful uses and prior development rights under a SPA development approval or a community infrastructure designation under chapter 5 of SPA, are not affected by the development scheme.

The clause also requires the MEDQ, in making the development scheme, to consider but not be bound by, the requirements under a planning instrument or any other plan policy or code made under SPA or another Act and relevant to the area. Examples may include the consideration of State interests such as flooding, roads or protected vegetation.

## Preparation of proposed development scheme

*Clause 58* requires the MEDQ to prepare a proposed development scheme as soon as practicable for the PDA. In preparing the proposed development scheme, the MEDQ must consult with the relevant local government, and must make reasonable endeavours to consult with any government entity or GOC, or any other person or entity, that the MEDQ considers will likely be affected by the development scheme.

The purpose of this provision is to ensure that parties the MEDQ identifies as likely to be affected by the development scheme are consulted during its development.

### Public notification

*Clause 59* requires the MEDQ to publicly notify the proposed development scheme and invite anyone to make submissions about the development scheme. The development scheme must be published on the department's website and notification in the Gazette and in a newspaper circulating in the area, advising that interested persons may inspect the proposed development scheme on the website and that submissions may be made. A submission period of at least 30 business days must be given.

### Submissions on proposed scheme

*Clause 60* enables anyone to make a submission to the MEDQ about the proposed development scheme within the submission period.

### Consideration of submissions

*Clause 61* requires the MEDQ to consider any submissions received within the submission period however, the MEDQ is not prevented from considering submissions received after the submission period has ended.

### Amendment of proposed scheme

*Clause 62* allows the MEDQ to amend the proposed development scheme after consideration of the submissions received. However, if the MEDQ considers the amendment significantly changes the proposed scheme, the proposed scheme must be re-notified, inviting submissions for consideration by the MEDQ, in accordance with clauses 59, 60 and 61.

### Making of scheme

*Clause 63* requires the MEDQ to make the development scheme as soon as practicable after considering the submissions and making any amendments considered appropriate.

It requires the MEDQ, as soon as practicable, to prepare and publish a report on the department's website that details the changes made including

changes to address submissions, summarises the submissions considered and provides information about the merits of the submissions.

The purpose of this provision is to provide submitters with feedback about how their submissions were addressed in the making of the development scheme.

### When proposed scheme takes effect

*Clause 64* requires the development scheme to be approved under a regulation before it can take effect.

### Notice of development scheme

*Clause 65* requires the MEDQ, as soon as practicable after the development scheme has taken effect, to publish the development scheme on the department's website and publish a notice in a newspaper circulating in the area stating that the development scheme has been approved and that it may be inspected on the department's website.

The MEDQ must also give each submitter a notice advising that the development scheme has been approved and that the MEDQ's report for the development scheme is available for inspection on the department's website.

The purpose of this provision is to ensure that a relevant local government, submitters and other interested parties are made aware that the development scheme has been approved.

## Division 2 Amendment of development schemes

### Power to amend

*Clause 66* gives the MEDQ power to amend a development scheme under certain circumstances.

The MEDQ may amend the development scheme if the amendment does not change the land use plan for the relevant PDA or the amendment is a minor administrative amendment. The MEDQ may also amend the land use plan only if the MEDQ considers the amendment is necessary to ensure the implementation of the development scheme complies with the Act, or there

is significant risk of serious environmental harm or serious adverse cultural, economic or social conditions occurring in the PDA.

The clause provides that an amendment to the land use plan under subclause (2) may be made even if it is materially detrimental to someone's interests.

### Division 1 process applies to particular amendments

*Clause 67* provides that the MEDQ may amend a development scheme under clause 66(2) only if procedures under division 1 (Making development schemes) have been followed. By exclusion this clause also clarifies that an amendment under clause 66(1) does not require a division 1 process to be followed and the MEDQ may make the amendment as it is a minor amendment that does not change policy in the development scheme.

The clause clarifies that the process for amending a development scheme is the same as the process for making a development scheme (i.e. division 1 applies to the amendment as if references to the making of a development scheme or proposed development scheme were references to the making of an amendment or proposed amendment). However, under the clause, public notification requirements for a proposed amendment of a development scheme are reduced to 15 business days.

The purpose of this provision is to ensure that a proposed amendment to a development scheme is given an appropriate level of scrutiny by the public and interested parties, and that submissions may be made for consideration by the MEDQ in making the amendment.

### When amendment takes effect

*Clause 68* clarifies that an amendment to a development scheme does not take effect until it is approved under a regulation.

### Notice of amendment

*Clause 69* establishes the notifications the MEDQ must undertake as soon as practicable after an amendment to a development scheme takes effect. The provision specifies the amended development scheme must be published on the department's website, and notification that the development scheme has been amended and its availability for inspection on the website must be published in a newspaper circulating in the area.

The purpose of this provision is to ensure that the public and all interested parties are made aware that a development scheme has been amended, and that the amended development scheme is available for inspection on the website.

## Division 3 Miscellaneous provisions

### Tabling and inspection requirement

*Clause 70* provides that if a development scheme or amendment to a development scheme is to be approved under a regulation, the Minister must table a copy of the development scheme or amended development scheme together with the regulation in the Legislative Assembly, as required under the *Statutory Instruments Act 1992*. The purpose of this provision is to enable Parliament to fully consider the development scheme as part of the decision to approve the regulation.

The MEDQ is required to keep a register of development schemes and proposed amendments of development schemes, and publish the documents on the department's website.

The clause also clarifies that a failure to comply with this provision does not invalidate or affect the regulation.

### Development scheme prevails over particular instruments

*Clause 71* provides that if there is an inconsistency between a development scheme and particular statutory instruments, the development scheme will prevail over the other instrument. The provision specifies that a development scheme prevails over any other planning instrument or plan, policy or code made under SPA or another Act.

The purpose of this provision is to clarify the relationship between a development scheme and planning instruments made under SPA or other Acts.

# Part 4 Development and uses in priority development areas

## Division 1 PDA development offences

### Application of div 1

*Clause 72* provides that the application of division 1 (PDA development offences) is subject to provisions within division 2 (Protection of particular uses and rights).

The purpose of this provision is to clarify that the PDA development offences specified in division 1 do not apply to the particular existing uses and rights specified in division 2.

### Carrying out PDA assessable development without PDA development permit

*Clause 73* makes it an offence to carry out PDA assessable development in a PDA without a development permit for the development. The provision specifies a maximum penalty which may be applied for activity which contravenes this provision. The maximum penalty is 1665 penalty units.

The clause establishes that a greater maximum penalty applies for development involving the demolition of a building of cultural heritage significance under the development scheme or a Queensland heritage place under the *Queensland Heritage Act 1992*.

### PDA self-assessable development must comply with relevant development instrument

*Clause 74* makes it an offence to carry out PDA self-assessable development which does not comply with the requirements for PDA self-assessable development under the relevant development instrument for the area. The provision specifies the maximum penalty which is to be applied for development which contravenes this provision. The maximum penalty is 165 penalty units.

### Compliance with PDA development approval

*Clause 75* makes it an offence to contravene the requirements of a PDA development approval. The provision specifies the maximum penalty which is to be applied for activity which contravenes this provision. The maximum penalty is 1665 penalty units.

### Offence about use of premises

*Clause 76* makes it an offence to use premises in a PDA unlawfully. The provision specifies the maximum penalty which is to be applied for activity which contravenes this provision. The maximum penalty is 1665 penalty units.

## Division 2 Protection of particular uses and rights

### Exemption for particular SPA development approvals and community infrastructure designations

*Clause 77* provides that particular existing uses and rights do not constitute a PDA development offence. It establishes the circumstances to which division 1 (PDA development offences) does not apply (i.e. existing SPA development approvals or land designated under SPA prior to the declaration of the PDA).

The clause also provides that development carried out or the use of premises under the SPA development approval or the community infrastructure designation does not constitute a PDA development offence.

### Lawful uses of premises protected

*Clause 78* provides that an existing lawful use of premises within a PDA continues to be lawful after the commencement or amendment of a relevant development instrument. It establishes the circumstances for which a relevant development instrument or an amendment of a relevant development instrument does not affect an existing lawful use of premises.

The clause clarifies that a development instrument or an amendment of a relevant development instrument does not affect the continuation, further regulate or otherwise affect the existing lawful use.

### Lawfully constructed buildings and works protected

*Clause 79* provides that the commencement or amendment of a relevant development instrument does not affect a building which has been lawfully constructed or works which have been lawfully carried out.

### Amendment of relevant development instrument does not affect existing SPA or PDA development approval

*Clause 80* establishes the circumstances for which an existing SPA development approval or PDA development approval is not affected by an amendment to a relevant development instrument.

It provides that an amendment of a relevant development instrument can not affect the continuation, further regulate or otherwise affect a SPA development approval or PDA development approval which is in effect at the time the relevant development instrument is amended.

### Development or use carried out in emergency

*Clause 81* establishes the circumstances in which it is not an offence to carry out development or a use of premises which would otherwise be a PDA development offence.

It provides that it is not a PDA development offence where the development of use of premises is carried out because of an emergency endangering the life or health of a person, the structural safety of a building or the operation or safety of community infrastructure.

The clause also provides the MEDQ must be given notification of the development or use as soon as practicable after the development or use has commenced. However, subclause (1) does not apply if the person is required by an enforcement order to stop carrying out the development or use.

# Division 3 PDA development applications

## Subdivision 1 Making application

### How to make application

*Clause 82* establishes the process for making a properly made PDA development application and provides that the MEDQ can consider the degree of any noncompliance before accepting a PDA development application.

The clause provides that a PDA development application must be made to the MEDQ in the approved form, include owner's consent if relevant and be accompanied by the correct application fee. The note under clause 82(1) clarifies that a single PDA development application can be made for both a PDA preliminary approval and a PDA development permit.

The clause provides that the MEDQ has the discretion to accept an application as properly made despite any noncompliance with clause 82(1).

## Subdivision 2 Processing application

### Information requests to applicant

*Clause 83* provides that the MEDQ can request any further information from the applicant the MEDQ requires to decide a development application. It allows the MEDQ to issue an information request asking the applicant to provide further information within a stated period (20 business days) and limits the period of time the MEDQ has to issue an information request.

The clause provides that the applicant must comply with the information request within the stated period or the MEDQ may refuse the application however, the MEDQ must give the applicant notice of their intention to refuse an application at least 10 business days before refusing the application.

## Notice of application

*Clause 84* provides that the public and all interested parties are made aware of particular PDA development applications.

It establishes the circumstances for which an applicant will be required to publically notify a PDA development application, (i.e. if the land use plan requires public notification of the PDA development application, or the MEDQ notifies the applicant that public notification is required).

The clause establishes the requirements for public notification of a PDA development application. The applicant must publish a notice of the development application in a newspaper circulating in the area and give a copy of the notice to the MEDQ, all owners of adjoining land and any other entity the MEDQ requires be given a copy of the notice. The applicant must also place the notice on the land. The regulation establishes the way in which the notice on the land must be placed, for example, the format for the notice and where the notice must be placed.

The clause also provides that public notification of a PDA development application can only commence after the applicant has provided a response, if relevant, to an information request for the PDA development application.

Additionally, the clause prescribes the content of the notice to be published in a newspaper, placed on the land and given to adjoining land owners or any other entity. At a minimum, the notice must include the particulars of the proposed development and the development site, advise that the application may be inspected on the department's website, and invite anyone to make submissions to the MEDQ about the application within the submission period. The notice must also advise that making a submission does not give the submitter appeal rights against a decision about the application.

The clause stipulates the minimum period of time that a PDA development application can be publically notified (the submission period). The submission period must not include any business day from 20 December in a particular year to 5 January in the following year, both days inclusive. The date for the end of the submission period must be indicated in the notice of application.

Finally, the clause provides that the MEDQ may only require notification of a PDA development application to an entity which the MEDQ considers has an interest in the outcome of the application.

## Deciding application generally

*Clause 85* provides that the MEDQ has the power to decide to approve, refuse or condition a PDA development application. It establishes the requirements that must be met before the MEDQ may decide a development application (i.e. that the MEDQ must be satisfied that an information request and any public notification requirements have been complied with, and that any relevant public notification period for the application has finished).

The clause provides that the MEDQ must decide a PDA development application within a stated period of time (40 business days) and that the MEDQ is not prevented from deciding the application after the 40 business day period has elapsed.

The clause also allows the MEDQ to approve, refuse or condition all or part of the PDA development approval applied for. It allows the MEDQ to grant a PDA preliminary approval in place of a PDA development permit and provides that if only part of the application is approved, the balance of the application is taken to have been refused.

## Restrictions on granting approval

*Clause 86* restricts the MEDQ from granting a PDA development approval which is inconsistent with the relevant development instrument for the PDA. It establishes the circumstances in which the MEDQ may grant a PDA development approval which is inconsistent with the land use plan for the PDA (i.e. when the relevant development would be consistent with a SPA or PDA preliminary approval, or the development is consistent with a proposed development scheme for a PDA (NB: development schemes are note made in provisional PDAs).

The clause clarifies that the MEDQ is not bound to grant the PDA development approval just because the exemption rules established in clause 86(1) apply to the relevant development.

The clause also defines proposed development instrument as a proposed amendment of a development scheme which has been made but not yet commenced, for a PDA.

## Matters to be considered in making decision

*Clause 87* provides that the MEDQ must consider particular things when deciding a development application including, for example the purposes of the Act, any state interest, submissions on the development application.

For a PDA, the MEDQ must also consider any relevant development scheme, interim land use plan or proposed development scheme for the area and may give the weight it considers appropriate to the proposed development scheme when deciding an application. For provisional PDAs the MEDQ must consider the provisional land use plan. The MEDQ must also consider any PDA or SPA preliminary approvals in force.

The MEDQ may consider a submission that is made after the public notification period has finished.

P*roposed development scheme* is defined as a proposed development scheme, or a proposed amendment of a development scheme for the area, that has been publicly notified but has not yet taken effect. State interest is defined as an interest relating to this Act or an interest that the MEDQ considers affects an economic, community or environmental state or regional interest.

## PDA development conditions

*Clause 88* provides a non exhaustive list of the conditions the MEDQ may impose on a PDA development approval. The MEDQ may nominate an entity to be the assessing authority for the condition, relate to infrastructure and the payment of contributions or the surrender of land for infrastructure, require making improvements to the land, or restrict the disposal of the land.

## Decision notice

*Clause 89* prescribes that the MEDQ must notify the applicant and any relevant local government or nominated assessing authority of their decision to grant or refuse a PDA development approval within a stated period (5 business days of making the decision).

A decision notice must comply with particular requests. Where the MEDQ decides to refuse a PDA development approval, reasons for the refusal must be stated in the decision notice.

Where the MEDQ decides to grant a PDA development approval, a copy of any approved plans and specifications must be provided to the applicant and any relevant local government or nominated assessing authority.

## Subdivision 3 Appeals

### Right of appeal against particular conditions

*Clause 90* provides that an applicant can seek a review of a condition imposed on the PDA development application as the result of the advice of a nominated assessing authority and that the MEDQ may elect to become a party to an appeal. That right of appeal exists only against PDA development conditions which include a nominated assessing authority.

The applicant may appeal to the Planning and Environment Court against the MEDQ's decision to impose the condition. The appeal must be started within a stated period of time after the decision notice has been given.

Clause 90(4) provides that SPA, chapter 7, part 1, divisions 11 to 13, apply to the appeal. These divisions include provisions for the process for making an appeal, alternative dispute resolution processes, and court processes.

The applicant is required to give the MEDQ a copy of the appeal, and provides that the MEDQ may elect to become a party to the appeal. The MEDQ gives the other parties to an appeal a copy of the notice of election to become a party to the appeal.

The purpose of this provision is to allow the applicant limited rights to appeal a condition applied by the MEDQ about a nominated assessing authority.

## Subdivision 4 Miscellaneous provisions

### Approved material change of use required for particular developments

*Clause 91* establishes the circumstances for which a PDA development application is deemed to include a material change of use. These circumstances include when a structure or works, the subject of the application, may not be used unless a PDA development permit exists for

the material change of use, and there is no PDA development permit for the material change of use and approval has not been applied for.

The purpose of this provision is to clarify that where a material change of use is implied by a PDA development application, but is not specifically applied for, the application can be considered by the MEDQ without the applicant having to make an amendment to include a specific reference to a material change of use.

### Changing application

*Clause 92* provides that an applicant may change a PDA development application under certain circumstances. The provision requires the applicant to notify the MEDQ of the proposed change and that the MEDQ must agree in writing of making the change.

The MEDQ may agree to the change only if the change would not result in the development being substantially different.

The purpose of this provision is to provide an applicant with an opportunity to make minor changes to a PDA development application which has not yet been decided. This provision also limits an applicant from making a change to a development application which would result in a substantially different development.

### Withdrawing application

*Clause 93* provides that an applicant of a PDA development application may withdraw the application at anytime before the MEDQ decides the application. The MEDQ has the discretion to refund all or part of the development application fee paid.

## Division 4 PDA development approvals

### Types of PDA development approvals

*Clause 94* defines a *PDA preliminary approval* as a development approval that approves development subject to conditions of the approval but does not authorise PDA assessable development to take place.

A *PDA development permit* is defined as a development approval that authorises PDA assessable development to take place subject to the conditions of the permit and any relevant PDA preliminary approval.

The clause clarifies that there is no requirement to obtain a PDA preliminary approval for development. The note inserted under this provision advises that a PDA preliminary approval can assist in the staging of approvals.

The purpose of this provision is to establish two types of development approval, similar to the types of development approvals available under SPA. The purpose of the PDA preliminary approval is to approve development, not just development identified as PDA assessable, which could provide for development that may be conceptual in nature. The PDA preliminary approval could also support the staging of approvals.

The PDA preliminary approval requires a subsequent PDA development permit to authorise PDA assessable development to take place, which is subject to the conditions of the permit and any relevant PDA preliminary approval.

## Duration of approval

*Clause 95* provides that a PDA development approval takes effect from when the decision notice for the approval is given, and clarifies that development for which an approval has been given may commence when the PDA development approval takes effect.

The approval ceases to have effect if it is cancelled under clause 98 or lapses under clauses 100 or 102.

The purpose of this provision is to clarify when a PDA development approval takes effect or ceases to have effect.

## Approval attaches to the relevant land

*Clause 96* clarifies that a PDA development approval is attached to the relevant land, not to the applicant. The approval binds the owner of the land, their successors in title and any occupier of the land.

Even if subsequent development on the land is approved, the PDA development approval continues to apply to the land or the land as reconfigured under the PDA development approval.

The purpose of this provision is to clarify that the rights and obligations conferred by a PDA development approval continue to apply to the land, even where that land may subsequently be reconfigured or where a subsequent development approval is granted.

## Provision for enforcement of PDA development conditions

*Clause 97* provides that if there is a nominated assessing authority for a PDA development condition, the giving of show cause notices and enforcement notices under SPA or any other Act which refers to a SPA development approval applies to the condition as if: the PDA development approval were a SPA development approval; a nominated assessing authority were an assessing authority under SPA for development under a PDA development approval; and reference to a development offence under SPA were a reference to a PDA development offence.

The provision does not limit or otherwise affect the MEDQ's ability to take action under this Act for an enforcement order or proceeding for an offence relating to the condition.

The purpose of this provision is to ensure that a nominated assessing authority for a PDA development condition can exercise the same powers to administer development conditions as it would have if the land were not in a PDA. The provision also clarifies that the MEDQ may take action to enforce a PDA development condition where there is a nominated assessing authority.

## Cancellation

*Clause 98* provides that the MEDQ may cancel a PDA development approval only if the owner of the land subject to the approval gives written consent to the cancellation. The MEDQ may not cancel a PDA development approval if the development has substantially commenced. The MEDQ has the discretion to refund all or part of the development application fee paid if it cancels the PDA development approval.

The purpose of this provision is to allow the MEDQ to cancel a PDA development approval that has not commenced.

## Application to change PDA development approval

*Clause 99* provides that a person may make an amendment application to the MEDQ seeking a change to a PDA development approval.

The MEDQ may agree to the change only if it considers the change would not result in the development being substantially different.

Division 3 of the Act applies to an amendment application (i.e. how development and use in PDAs is dealt with including how an amendment application is made, considered and decided by the MEDQ).

The clause provides that public notification applies to the amendment application only if the MEDQ requires it. The amendment application must be accompanied by the owner's consent if the person seeking the change is not the owner of the land.

The purpose of this provision is to provide an opportunity to make minor changes to a PDA development approval, for which development has not yet commenced. This provision also limits making a change to a development approval which would result in a substantially different development.

### When approval lapses generally

The operation of this provision is subject to the ability of an applicant to extend the currency of a PDA development approval under clause 102 (Deciding extension application).

*Clause 100* establishes the circumstances for which a PDA development approval does not lapse at the end of its currency period. The provision specifies that this occurs where: the development is a material change of use and the change of use happens before the currency period ends; the development is a reconfiguring a lot and the plan for the reconfiguration is given to the MEDQ for approval before the currency period ends; or other development under the approval is substantially started before the currency period ends.

For a PDA development approval that is other than a material change of use or a reconfiguration of a lot, the currency period is two years from the day the approval takes effect, unless the approval states a different period.

For a PDA development approval that is a material change of use, the currency period is four years from the day the approval takes effect, unless the approval states a different period.

For a PDA development approval that is a reconfiguration of a lot not involving operational work, the currency period is two years from the day the approval takes effect, unless the approval states a different period. For a PDA development approval that is a reconfiguration of a lot involving

operational work, the currency period is four years from the day the approval takes effect, unless the approval states a different period.

The clause clarifies that if there is more than one related approval for a PDA development for a material change of use or a reconfiguration of a lot, the currency period starts again on the day the latest related approval takes effect.

The lapsing of a PDA development for a material change of use or a reconfiguration of a lot does not cause any approval for other than a material change of use or reconfiguration of a lot to lapse.

The purpose of the clause is to provide for the "roll forward" provisions for related approvals, enabling the currency period for PDA development approvals for a material change of use or for reconfiguration of a lot to be extended by certain later development permits associated with and necessary for the material change of use or reconfiguration to occur. The beginning of the currency period for PDA development approvals for material changes of use and reconfiguring a lot will "roll forward" in some circumstances to align with the beginning of the currency period for related approvals. Provided development applications continue to be made for a related approval within 2 years of the latest related approval, and associated development continues to occur on the land, the earlier PDA development approval will not lapse.

A *related approval* involves, for an earlier material change of use approval:

- the first PDA development permit for a PDA development application made to the MEDQ or the first SPA development permit for a development application made to the local government or private certifier, within 2 years of the earlier PDA development approval for the material change of use (being either a PDA preliminary approval or a PDA development permit), and the application is necessary for the material change of use to take place; or
- each further PDA development permit for a PDA development application made to the MEDQ or the first SPA development permit for a development application made to the local government or private certifier, within 2 years after the day the last related approval takes effect, that is for building work or operational work necessary for the material change of use to take place.

A *related approval* for an earlier reconfiguring a lot approval is the first PDA development permit for a PDA development application for the

reconfiguration made to the MEDQ if the earlier approval is a PDA preliminary approval, or is for operational work related to the reconfiguration if the earlier approval is a PDA development permit.

The provision defines *private certifier* as a building certifier who has private certification endorsement under the *Building Act 1975*.

The purpose of this provision to clarify the currency periods for PDA development approvals so that development rights under a PDA development approval are exercised within the required timeframes. The currency periods provided in this provision are consistent with currency periods under SPA for equivalent development and related approvals.

## Application to extend currency period

*Clause 101* provides that a person with an interest in land subject to a PDA development approval may apply to the MEDQ to extend the currency period for development approvals in PDAs and prescribes the requirements of an application to do so.

For PDA development approvals in provisional PDAs, an application for extending the currency period can not be made.

The clause prescribes the requirements of an application to extend the currency period of a PDA development approval.

The purpose of this provision is to provide a person with an interest in land subject to a PDA development approval to seek an extension to the currency period to ensure that the rights and obligations under the approval do not lapse, should the related approval provisions not be available to enable the currency period for the approval to be "rolled forward".

The purpose of limiting the PDA approvals in provisional development areas is to limit the currency period in order to support the purpose of establishing these areas to fast-track development.

## Deciding extension application

*Clause 102* applies to an application to extend a currency period (clause 101).

The MEDQ must consult with each nominated assessing authority under the PDA development approval, before deciding the extension.

The MEDQ must decide the application for an extension within 20 days after the making of the application or during the next 20 business days, the MEDQ and the applicant agree on a longer period.

The MEDQ must, within 5 business days after making the decision, give notice of the decision to the applicant and each nominated assessing authority under the PDA development approval.

Despite clause 100 (When approval lapses generally) the PDA development approval does not lapse until the MEDQ has given the applicant the notice under subclause (4).

The clause clarifies that if the decision was to refuse the extension, the notice must state the reasons for the refusal.

The purpose of this provision is to ensure that each nominated assessing authority is aware of an application to extend the currency period of an approval. The provision clarifies that if an application to extend a currency period is made before the currency period ends, the PDA development approval does not lapse until the MEDQ makes a decision.

## Division 5 Miscellaneous provisions

### Restriction on particular land covenants

*Clause 103* clarifies the relationship between a PDA development scheme and a covenant under the *Land Title Act 1994* or the *Land Act 1994* for land in a PDA, and provides that such a covenant is of no effect to the extent the covenant is inconsistent with the development instrument for the area.

### Plans of subdivision

*Clause 104* establishes the circumstances for which this provision applies to a plan of subdivision. The provision specifies that this clause applies if the plan requires the MEDQ's approval under another Act or compliance assessment under the SPA.

The clause provides that a plan of subdivision requires SPA compliance assessment. The clause also provides how the SPA compliance assessment provisions apply to the plan of subdivision.

*Plan of subdivision* is defined as a plan or agreement for reconfiguring a lot. The provision also defines SPA compliance provisions as the provision

of a regulation made under the SPA about compliance assessment for a plan of subdivision.

The purpose of this provision is to give the MEDQ power to approve plans of subdivision of land within a PDA. This is in accord with the process in SPA but allows for the MEDQ to do the actions that the local government does under that Act.

# Part 5 Court orders for PDA development offences etc.

## Division 1 Enforcement orders

### Starting proceeding for enforcement order

*Clause 105* provides that the MEDQ may start enforcement proceedings in the Planning and Environment Court to seek an enforcement order to remedy or restrain the commission of a PDA development offence, or to seek an interim enforcement order.

The purpose of the provision is to provide jurisdiction to the Planning and Environment Court, in relation to enforcement proceedings commenced by the MEDQ.

The clause clarifies that the MEDQ may commence enforcement proceedings whether or not anyone's right has been or may be infringed by, or because of, the commission of the offence.

### Making interim enforcement order

*Clause 106* enables the Planning and Environment Court to make an interim enforcement order before it makes a decision on the proceeding for the enforcement order, where the court is satisfied it is appropriate to make the interim order, such as where urgently required to limit further continuation of the offence.

The clause provides that the court may make the interim enforcement order subject to conditions, but prevents the court from imposing a condition requiring the MEDQ to give an undertaking about damages.

## Making enforcement order

*Clause 107* provides that the Planning and Environment Court may make an enforcement order about an offence that is being or has been committed, or will be committed if the enforcement order is not made.

The court may make the enforcement order, whether or not there has been a prosecution for the offence, if the court is satisfied the offence is being or has been committed. This means that making the enforcement order is not reliant on a prosecution for the offence.

## Effect of enforcement order

*Clause 108* provides that an enforcement order given by the court may direct a party to the proceeding to stop an activity or not to start an activity that constitutes or will constitute a PDA development offence. The enforcement order may also direct the party to return anything to a condition as close as possible to its condition immediately before the PDA development offence was committed or to do anything else about a development or use to ensure compliance with the Act.

The clause provides a non-exhaustive list of what the enforcement order given by the court may require, such as the repairing, demolition or removal of a building, rehabilitation or restoration of cleared vegetation, or where rehabilitation or restoration of the vegetation is not possible, the planting and nurturing of specific vegetation over an equivalent sized area of land.

The enforcement order must provide a time by which the order must be complied with. The enforcement order may be in whatever terms the court considers is required to secure compliance with the Act, and may state that contravention of the order is a public nuisance.

The meaning of *clearing* of vegetation for the purposes of this clause is defined.

## Powers about enforcement orders

*Clause 109* provides guidance to the Planning and Environment Court in exercising its power to make an enforcement order.

The power to make an order to stop or not to start an activity may be exercised whether or not the relevant person has engaged in the activity in the past or intends to continue to engage in the activity again, and whether

or not the person's ongoing engaging in the activity is likely to cause substantial damage to property or the environment or injury to any other person.

The clause also provides that the power to make an order to do anything may be exercised whether or not the relevant person intends to fail or continue to fail to do the thing, and whether or not the person's has previously failed to do a thing of the same type, and whether or not the person's ongoing failure to do the thing is likely to cause substantial damage to property or the environment or injury to another person.

The clause gives the court the power to hear and determine an application to cancel or change an enforcement order made by the MEDQ or the person against whom the order is made.

This clause provides the court with additional power and this power does not limit the court's other powers and clarifies that the meaning of environment for this clause is the same as the meaning in schedule 3 of SPA.

### Offence to contravene enforcement order

*Clause 110* makes it an offence for a person to contravene an enforcement order, and provides a maximum penalty of 3000 penalty units or 2 years imprisonment.

The note under clause 110 refers users to section 439 (Contempt and contravention of orders) of SPA, which provides that if a person contravenes an order of the court, the person is also taken to be in contempt of court.

## Division 2 Magistrates Court orders

### Orders Magistrates Courts may make in PDA offence proceeding

*Clause 111* gives the Magistrates Court the power to hear a complaint for an offence against the Act and make an order if appropriate. The court order may be in addition to or in substitution for any penalty that the court may otherwise impose.

The clause lists what the court order may do. The order may require the defendant: to stop the development or the carrying on of a use; to demolish or remove work that has been carried out; to restore premises, as for as practicable, to the condition they were in before the development or use of the premises started; to do or not to do any act to ensure compliance with a PDA approval or a development scheme; or to make a PDA development application for the development that has started.

The court order will state the date or period by which the order must be complied with. The court order may state that contravention of the order is a public nuisance.

### Offence to contravene Magistrates Court order

*Clause 112* makes it an offence for a person to fail to comply with an order made by the court under clause 111 and imposes the maximum penalty applying to any contravention. The maximum penalty is 1665 penalty units.

## Division 3 Other provisions relating court orders or proceedings

### MEDQ's power to remedy stated public nuisance

*Clause 113* provides that if an enforcement order or an order under clause 85 made by the Magistrates Court states that contravention of the order is a public nuisance and the order is not complied with, the MEDQ has the power to undertake any work necessary to remove the nuisance. The provision also enables the MEDQ to recover the reasonable cost of the works, as a debt, from the person against whom the order was made.

### Planning and Environment Court may make declarations

*Clause 114* provides the Planning and Environment Court with the power to make declarations about certain matters under the Act. The clause provides that the MEDQ may bring a proceeding in the Planning and Environment Court seeking a declaration about: a matter done, to be done or that should have been done for this chapter or the repealed *Urban Land Development Authority Act 2007* (ULDA Act); the construction of this

chapter or the repealed ULDA Act; or the lawfulness of land use or development in a PDA.

# Part 6 Special rates and charges

## Levying special rates or charges

*Clause 115* provides that the MEDQ may make and levy a special rate or charge on owners or occupiers of rateable land in a PDA in certain conditions.

This is consistent with the ability of local government to make and levy special rates and charges for services, facilities and activities that have special association with particular land as provided for under section 92 (Types of rates and charges) of the *Local Government Act 2009* and section 94 (Types of rates and charges) of the *City of Brisbane Act 2010*.

The special rate or charge may be made and levied on the bases the MEDQ considers appropriate. The MEDQ may fix a minimum amount of the special rate or charge.

The clause provides that the MEDQ's instrument for making the special rate or charge must identify the rateable land for which the special rate or charge applies and the overall plan for the supply of the service, facility or activity.

The MEDQ may identify parcels of rateable land to which the rate or charge applies in any way the MEDQ considers appropriate.

In this clause, rateable land means rateable land under the *Local Government Act 2009* or the *City of Brisbane Act 2010.*

## Application of special rate or charge

*Clause 116* provides that a special rate or charge collected for a particular service, facility or activity must be used for that purpose, and clarifies that the special rate or charge need not be held in trust.

### Recovery of special rate or charge

*Clause 117* provides for the recovery of a special rate or charge by the MEDQ including the recovery of overdue amounts as though they were overdue rates or charges recoverable by a local government:

- the special charge or rate becomes owing 20 business days after the recipient receives the MEDQ notice stating the special rate or charge and its amount (subclause 1);
- where there is more than 1 owner or occupier of the land, all owners or occupiers are jointly and severally liable to pay the amount (subclause 2);
- if the amount becomes owing under subclause 1, the MEDQ may recover it from the owner or occupier as a debt (subclause 3); and
- the MEDQ may recover the amount from the owner for the time being of the land (subclause 4).

## Part 7 Infrastructure agreements relating to land that is or was in a priority development area

### Application of pt 7

*Clause 118* provides that this part applies to an infrastructure agreement to which the MEDQ is a party if it relates to land that is or was in a PDA.

### Exercise of discretion unaffected by infrastructure agreements

*Clause 119* provides that the infrastructure agreement is not invalid merely because its fulfilment depends on the exercise of discretion by the MEDQ about a relevant development instrument or an existing or future PDA development application.

### Infrastructure agreements prevail if inconsistent with PDA development approval

*Clause 120* clarifies that the infrastructure agreement prevails over a PDA development approval, to the extent of any inconsistency with the PDA development approval.

### Infrastructure agreement continues beyond cessation of priority development area

*Clause 121* applies if an infrastructure agreement applied to land and was in force immediately before the land ceased to be in a PDA. The superseding public sector entity for the land is taken to be a party to the agreement in place of the MEDQ, and is responsible for the rights and responsibilities of the MEDQ under the agreement.

The clause provides that clause 119 (Exercise of discretion unaffected by infrastructure agreements) and clause 120 (Infrastructure agreements prevail if inconsistent with PDA development approval) continue to apply to the infrastructure agreement.

### Consultation with public sector entities before entering into particular infrastructure agreements

*Clause 122* applies if a proposed infrastructure agreement would be likely to continue to apply to land after the land ceases to be in a PDA. The MEDQ must consult about the terms of the agreement with the entities the MEDQ considers will be superseding public sector entities for the land.

## Part 8 MEDQ's powers relating to priority development areas

### Application of local government entry powers for MEDQ's functions or powers

*Clause 123* applies to land in, or a structure on, a PDA or a lot that adjoins a PDA, and provides that employees or agents of the MEDQ may enter such land or premises without a warrant.

The existing powers under section 144 (Entry by a local government worker, at reasonable times, to repair etc. facilities), section 146 (Entry with, and in accordance with, a court order) and section 147 (Compensation for damage or loss caused) of the *Local Government Act 2009* apply to the MEDQ. Section 134 (Entry by a council worker, at reasonable times, to repair etc. facilities), section 136 (Entry with, and in accordance with, a court order) and section 137 (Compensation for damage or loss caused) of the *City of Brisbane Act 2010* also apply. Each authorised employee or agent of the MEDQ in relation to land in, or a structure on, a PDA or a lot that adjoins a PDA, giving the same powers and jurisdiction to the MEDQ in performing its functions as if the MEDQ were a local government and to authorised employees or agents as if the authorised employee or agent were an employee or agent of the local government.

The clause requires the authorised employee or agent of the MEDQ, before entering the place, to make a reasonable attempt to identify himself or herself to the occupier of the land or structure by producing the required identity card under this Act, advise of the purpose of entry, seek consent of the occupier to the entry and advise that the officer is permitted under this Act to enter the place without the occupier's consent.

If the occupier is not present, the authorised employee or agent of the MEDQ must take reasonable steps to advise the occupier of the employee's or agent's intentions to enter the place.

The authorised employee or agent of the MEDQ is not required to take a step that the employee or agent reasonably believes may frustrate or hinder the purposes of entry.

An *authorised employee or agent* of the MEDQ in this clause means a MEDQ employee or MEDQ agent who has been issued with an identity card under this Act that is still in force. Reference to a *lot* is taken from section 10 of SPA.

## Roads and road closures

*Clause 124* provides for the MEDQ to perform functions or exercise powers for a road that the MEDQ considers necessary or desirable to perform its other functions in relation to a PDA.

This includes, but does not limit, the MEDQ's ability to permanently or temporarily close all or part of a road (subclause (2)) and doing everything necessary to stop traffic using a road or part of a road closed under this clause (subclause (4)).

The clause provides for the notification requirements the MEDQ must carry out before closing a road.

This clause applies whether or not the road is a State-controlled road under the *Transport Infrastructure Act 1994* or whether or not the *Land Act 1994* applies to a road.

### Vesting land in permanently closed road or unallocated State land in MEDQ

*Clause 125* provides for land to be granted to the MEDQ, if the land comprises a road under the *Land Act 1994* that has been permanently closed by the MEDQ within a PDA under this Act, or under the *Land Act 1994* the land is unallocated State land.

The process for this to occur – the MEDQ requires that, by Gazette notice, the land is vested in the MEDQ in fee simple is that the chief executive of the department administering the *Land Act 1994* must register specific documentation for the vesting if the MEDQ lodges in the land registry under that Act, and the Governor in Council may then issue to the MEDQ a deed of grant for the land the subject of the vesting.

No fee is payable by the MEDQ in relation to the registration of the vesting or to give effect to it, despite the *Land Act 1994* and the *Land Title Act 1994*.

### Giving information about roads to relevant local government

*Clause 126* applies if the MEDQ performs a function or exercises a power relating to a road or former road in a PDA.

The MEDQ must give the relevant local government the information the MEDQ has to allow the local government to comply with its obligation for its map and register of roads under section 74 (Roads map and register) of the *Local Government Act 2009* or, for the Brisbane City Council, section 81 of the C*ity of Brisbane Act 2012*.

### Direction to government entity or local government to accept transfer

*Clause 127* provides that the MEDQ may give a written direction to a government entity or local government (the *directed entity*) to accept a transfer of stated owned land from the MEDQ, or of a stated Fund the

MEDQ has established, to ensure the provision of infrastructure relating to stated land owned by the MEDQ.

The direction may only be given if the MEDQ is satisfied the transfer is reasonable necessary for the carrying out of the relevant development instrument for the PDA.

Clause 127(5) provides that land transferred to a local government under this clause is taken to be land that the local government holds on trust in fee simple to which section 659 (Sale of particular land held on trust by local governments) of SPA applies.

### Direction to government entity or local government to provide or maintain infrastructure

*Clause 128* provides that the MEDQ may give a written direction to a government entity or local government (the directed entity) to provide or maintain stated infrastructure in, or relating to, a stated priority directed area. The direction may only be given if the MEDQ is satisfied that this work is necessary for the carrying out of the relevant development instrument for the PDA.

## Part 9 Fees

### Application fees

*Clause 129* provides that, where the MEDQ sets a fee for an application under the Act, the fee cannot be more than the actual cost of considering and processing the application.

This clause also provides that the MEDQ may set a fee which includes a reasonable component to recover the MEDQ's costs of making or amending the relevant development instrument where the fee is for a PDA development application, or an application under clause 99 to change a PDA development approval.

# Chapter 4 Establishment etc. of other entities

## Part 1 Economic Development Board

### Division 1 Establishment and functions

#### Establishment

*Clause 130* provides that the Economic Development Board (the board) is established.

#### Board's functions

*Clause 131* prescribes the board's functions. Functions include, for example, advising and making recommendations to the MEDQ about how it can give effect to the main purpose of the Act. The board may do all things necessary or convenient to be done for the performing of its functions.

### Division 2 Membership

#### Membership of the board

*Clause 132* provides that the board will consist of up to 6 board members, as follows:

The chief executive of the department; the chief executive of the department in which the *Auditor-General Act 2009* is administered; the chief executive of the department in which the *Financial Accountability Act 2009* is administered and; no more than 3 members, appointed by the Governor in Council.

A person appointed by the Governor in Council as a board member must have extensive knowledge of an experience in one or more of the areas of

expertise listed or other knowledge and experience, which the Governor in Council considers appropriate.

Clause 132 also states that a member appointed under subclause (1)(d) may be appointed on a full-time for part-time basis and is appointed under this Act not the *Public Service Act 2008.*

## Chairperson and deputy chairperson

*Clause 133* states that the chief executive of the department is the chairperson of the board. The MEDQ must appoint another board member as the deputy chairperson. The deputy chairperson acts as the chairperson when the chairperson is absent or cannot perform the functions of the office. A person resigning the office of the deputy chairperson may continue to be a board member.

## Terms and conditions of appointment etc.

*Clause 134* provides that an appointed board member holds office for the term stated in the member's instrument of appointments. The term stated in the instrument of appointment must not be more than 5 years. An appointed board member is to be paid the remuneration and allowances decided by the Governor in Council. An appointed board member holds office on the terms and conditions decided by the Governor in Council. Subclause (5) states that an appointed board member may resign by signed notice given to the MEDQ. The Governor in Council may terminate the appointment of a board member in certain circumstances which are described in subclause (6).

## Disclosure of interests

*Clause 135* requires a board member to disclose direct or indirect pecuniary interests (of their own or of a close relative) in a matter being considered by the board where the interest could conflict with the proper performance of the board member's functions. The chairperson must disclose an interest to all other board members: other board members must disclose relevant interests to the chairperson. If a board member has disclosed an interest relating to a matter, the member must not participate in the board's consideration of the matter. A board member must not fail to comply with this clause. The maximum penalty is 100 penalty units. This provision requires that a conflict of interest is identified and will assist in

minimising the risk of a conflict of interest interfering with the functions of the board.

## Division 3 Meetings and other business of the board

### Conduct of business

*Clause 136* states that subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

### Times and places of meetings

*Clause 137* provides that board meetings are to be held at the times and places the chairperson decides. However, the chairperson must call a meeting if asked, by written notice, to do so by at least 2 members. The chairperson must also call a meeting at least once in each quarter.

### Quorum

*Clause 138* states that the quorum for a board meeting is more than half of the number of board members.

### Attendance by proxy

*Clause 139* states that a board member may attend a meeting of the board by proxy, and that a board member is not entitled to preside at a meeting of the board merely because the member is the proxy holder for the chairperson or deputy chairperson.

### Presiding at meetings

*Clause 140* provides that the chairperson is to preside at all board meetings at which the chairperson is present. If the chairperson is not present, the deputy chairperson is to preside. If neither is present, the board member chosen by the board members present must preside.

### Conduct of meetings

*Clause 141* states that the board may hold meetings, or allow board members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. A person who takes part in a board meeting in this way is taken to be present at the meeting. This provision allows for appropriate technology to be used for members to be present remotely at meetings. A decision at a board meeting must be a majority decision of the members present. The clause also provides for the presiding member to have a casting vote where there is an equal vote.

### Decisions outside meetings

*Clause 142* provides that a decision of the board, other than a decision at a board meeting, may be made only with the written agreement of a majority of the members.

### Minutes and record of decisions

*Clause 143* states that the board must keep minutes of its meetings and a record of any decisions under clause 142.

## Part 2 Commonwealth Games Infrastructure Authority

## Division 1 Establishment and functions

### Establishment of authority

*Clause 144* establishes the Commonwealth Games Infrastructure Authority (the authority). The authority will oversee the planning and development of the Gold Coast 2018 Commonwealth Games Village, and other venues if necessary. The authority reports to the MEDQ and the board.

### Authority's functions

*Clause 145* outlines the main function of the authority of facilitating, for the purpose of the Commonwealth Games and this Act, the planning and development of the Commonwealth Games village and other venues. The MEDQ will delegate particular functions and powers to the authority to enable the authority to achieve its main function.

The authority will advise and make recommendations to the MEDQ and the board and perform the functions and exercise the powers of the MEDQ delegated to the authority under this Act. It will perform the functions and exercise any other powers delegated to the authority under this Act or another Act, and report to the MEDQ and the board about the authority's performance of its functions.

The authority may do all things necessary or convenient to be done for the performance of its functions. This clause also defines the terms *Commonwealth Games* and *Commonwealth Games Village* for the purpose of the authority's functions.

## Division 2 Membership

### Membership of the authority

*Clause 146* provides for the membership of the authority. The authority will be comprised of the chief executive of the Department of State Development, Infrastructure and Planning, the chief executive of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, and the chief executive officer of the Gold Coast City Council and the chairperson of the Gold Coast 2018 Commonwealth Games Corporation.

The chief executive officer of the Gold Coast City Council and the chairperson of the Gold Coast 2018 Commonwealth Games Corporation, are appointed as authority members by the Governor in Council. The Governor in Council may also appoint other authority members as appropriate to achieve the functions of the authority.

For this clause the *Gold Coast 2018 Commonwealth Games Corporation* is defined as the Gold Coast 2018 Commonwealth Games Corporation established under section 6 of the *Commonwealth Games Arrangements Act 2011*.

## Chairperson and deputy chairperson

*Clause 147* requires the MEDQ to appoint a chairperson and a deputy chairperson and to specify the terms of the appointments. If the chairperson is absent or unable to perform the chairperson's duties, the deputy chairperson is to act as chairperson. Either position becomes vacant if the person holding the office stops being a member of the authority, or resigns as chairperson or deputy chairperson by signed notice to the MEDQ.

Resignation as chairperson or deputy chairperson does not, of itself, stop the person from being a member of the authority.

## Terms and conditions of appointment etc.

*Clause 148* provides that an appointed authority member holds office for the term stated in the member's instrument of appointment (subject to subclauses (4) and (5). An appointed authority member is to be paid the remuneration and allowances decided by the Governor in Council. An appointed authority member holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council. Subclause (4) states that an appointed authority member may resign by signed notice given to the MEDQ. Subclause (5) provides the grounds on which the Governor in Council may terminate the appointment of an authority member.

## Disclosure of interests

*Clause 149* requires authority members to disclose direct or indirect pecuniary interests (of their own or of a close relative) in a matter being considered by the authority where the interest could conflict with the proper performance of the authority member's functions. The chairperson must disclose an interest to all other authority members and other authority members must disclose an interest to the chairperson. If an authority member has disclosed an interest relating to a matter, the member must not participate in the authority's consideration of the matter. An authority member must not fail to comply with this clause. The maximum penalty is 100 penalty units. This provision requires that a conflict of interest is identified and will assist in minimising the risk of a conflict of interest interfering with the functions of the authority.

## Division 3 Meetings and other business of the authority

### Conduct of business

*Clause 150* states that subject to this division, the authority may conduct its business, including its meetings, in the way it considers appropriate.

### Times and places of meetings

*Clause 151* provides that authority meetings are to be held at the times and places the chairperson decides. However, the chairperson must call a meeting if asked, by written notice, to do so by at least 2 members. The chairperson must also call a meeting at least once in each quarter.

### Quorum

*Clause 152* states that the quorum for an authority meeting is more than half of the number of authority members.

### Attendance by proxy

*Clause 153* states that an authority member may attend a meeting of the authority by proxy and that an authority member is not entitled to preside at a meeting of the authority, merely because the member is the proxy holder for the chairperson or deputy chairperson.

### Presiding at meetings

*Clause 154* provides that the chairperson is to preside at all authority meetings at which the chairperson is present. If the chairperson is not present, the deputy chairperson is to preside. If neither is present, the authority member chosen by the authority members present must preside.

### Conduct of meetings

*Clause 155* states that the authority may hold meetings, or allow authority members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. A person who takes part in an authority meeting in this way is taken to be present at the meeting. This provision

allows for appropriate technology to be used for members to be present remotely at meetings. A decision at an authority meeting must be a majority decision of the members present.

### Decisions outside meetings

*Clause 156* provides that a decision of the authority, other than a decision at an authority meeting, may be made only with the written agreement of a majority of the members.

### Minutes and record of decisions

*Clause 157* states that the authority must keep minutes of its meetings and a record of any decisions under clause 156.

## Part 3 Local representative committees

### Establishment

*Clause 158* provides that the MEDQ may establish a committee (a local representative committee) for a PDA to help the MEDQ (or its delegates) perform the MEDQ's functions in the area. A local representative committee is to consist of the following persons appointed by the MEDQ: a board member; and no more than 4 other persons who the MEDQ considers can appropriately represent the interests of entities affected by development in the PDA, including for example, a councillor of a local government. A member of a committee is appointed on the terms and conditions the MEDQ considers appropriate, including terms about remuneration. A committee may conduct its business, including its meetings, in the way it considers appropriate.

### Functions

*Clause 159* provides the functions of a local representative committee for a PDA. For example, advising and making recommendations to the MEDQ regarding the impact of proposed development in the area and reporting to the MEDQ about the committee's performance of its functions under this Act. A local representative committee established for an area would also perform any functions or exercise any powers delegated to it by the MEDQ

under this Act. A local representative committee may do all things necessary or convenient to be done for the performance of its functions under this Act.

# Part 4 Provisions applying to members

### Report about person's criminal history for particular appointments

*Clause 160* provides that when deciding whether to recommend to the Governor in Council a person for appointment as a board member or an authority member, the MEDQ may ask the commissioner of the police service for a written report about the person's criminal history and a brief description of the circumstances of any conviction mentioned in the criminal history.

The MEDQ may make a request about a person only if the person has given their written consent.

### Duty to act honestly and exercise care and diligence

*Clause 161* provides that a board member, committee member or authority member must act honestly, and must exercise a reasonable degree of care and diligence when performing the member's functions and exercising the member's powers. A person who is or was a board member, authority member or committee member must not make improper use of information acquired because of their position as a member to gain an advantage, directly or indirectly, for the person or any other person, or to cause detriment to the corporation.

A board member, committee member or authority member must not make improper use of the member's position as a member to gain, directly or indirectly, an advantage for the member or for any other person; or to cause detriment to the MEDQ.

This clause has effect in addition to, and not in derogation of, any law relating to the civil or criminal liability of a person because of the person's office as a board member, authority member or committee member. It does not prevent the starting of a civil or criminal proceeding in respect of civil or criminal liability.

### MEDQ may bring proceedings

*Clause 162* states that if a board member, committee member or authority member contravenes clause 161, the MEDQ may recover from the member a debt due to the MEDQ. This would occur if the member or any other person made a profit or caused a loss to the MEDQ as a result of the contravention. In this case the debt due would be an amount equal to the profit and/or if the MEDQ has suffered loss or damage as a result of the contravention, an amount equal to the loss or damage. A proceeding mentioned in subclause (1) may be brought in the name of the MEDQ and started in a court of competent jurisdiction.

# Chapter 5 General

## Part 1 Other offences

### Privacy

*Clause 163* applies to a person who is or has been performing functions or exercising powers under this Act and obtains personal or confidential information in the course of, or because of, the performance of a function or exercise of a power under this Act.

The clause provides that a person must not make a record of the information, divulge or communicate that information to anyone else, whether directly or indirectly, or use the information to benefit any person. The provision establishes the maximum penalty for contravening this requirement.

The clause also provides an exception when compliance with subclause (2) is not required (i.e. if the record is made, or the information is divulged, communicated or used for, or as part of, a function of the MEDQ, or with the consent of the person to whom the information relates, or as required by the law).

### Liability of executive officer for particular offences committed by corporation

*Clause 164* provides for the liability of executive officer for particular offences committed by a corporation. Specifically an executive officer of a corporation commits an offence if the corporation commits an offence against an executive liability provision and the officer does not take all reasonable steps to ensure the corporation does not engage in the conduct constituting the offence. The clause provides that the maximum penalty is the penalty for a contravention of the relevant executive liability provision by an individual and lists the applicable executive liability provisions.

### Giving MEDQ a false or misleading document

*Clause 165* makes it an offence for a person to give the MEDQ false or misleading information. The clause clarifies that a complaint made against a person for giving the MEDQ false or misleading information must state that, to the person's knowledge, the document was false or misleading. However the complaint is not specifically required to state that it was false or misleading. The clause provides a penalty for the offence.

## Part 2 Proceedings

### Proceedings for offences

*Clause 166* provides that an offence against clause 110 and clause 164, to the extent the offence relates to an offence by a corporation against clause 110 is a misdemeanour. Any other offence against this Act is a summary offence. Only the MEDQ or a person acting for the MEDQ may bring a proceeding for a summary offence against the Act.

### Limitation on time for starting proceeding for summary offence

*Clause 167* provides that a proceeding for a summary offence against the Act must commence within 1 year after the commission of the offence. If the MEDQ is made aware of the offence more than 1 year after the offence was committed, the proceeding must commence within 6 months of becoming aware of the offence, provided the proceeding is started within 2 years after the offence was committed.

### Evidentiary aids

*Clause 168* provides that a certificate for a particular matter which is signed by or on behalf of the MEDQ is evidence of the matter. The clause provides for the particular matters that may be dealt with by a certificate including: a decision; direction; or notice under this Act or the repealed ULDA Act.

# Part 3 Provisions about performance of functions etc. under this Act

## Delegations

*Clause 169* provides who the MEDQ may delegate its functions or powers to under the Act. Subclause (2) states that the chief executive of the department may subdelegate a function or power of the MEDQ delegated to the chief executive under subclause (1) to an appropriately qualified officer or employee of the department.

The clause provides that the board may, with the MEDQ's approval, subdelegate a function or power of the MEDQ delegated to it under subclause (1) to the authority.

The clause also provides that a board member or authority member may delegate the member's functions as a member to an appropriately qualified officer or employee of the department.

### MEDQ may give directions

*Clause 170* states that an entity to whom a function or power is delegated under clause 169 must perform the function or exercise the power subject to the general direction and control of the MEDQ and any specific written directions given to it by the MEDQ. Without limiting subclause (1)(b), a direction under that provision may require the entity to give stated information to the MEDQ.

### Protection from civil liability

*Clause 171* states that a prescribed person carrying out functions, or exercising powers under this Act is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act or a direction or a requirement under this Act. If this clause prevents a civil liability attaching to the member or person, the liability attaches to the State.

## Part 4 Other administrative matters

### Registers

*Clause 172* lists the registers the MEDQ must keep, and provides that the MEDQ may also keep a register of other documents or information relating to the Act that the MEDQ considers appropriate.

The clause provides that the MEDQ has discretion about how the registers may be kept, however the documents included in the registers must also be published on the department's website.

### Access to registers

*Clause 173* requires the MEDQ to allow public access to the registers and the documents in each register.

The MEDQ must keep each register open for inspection during office hours on business days at the places the MEDQ considers appropriate. The MEDQ must allow a person to search and take extracts from the register, and if a person asks, give a copy of all or part of the document or information held in the register on payment of the fee decided by the MEDQ.

The fee for a copy of all or part of a document or information held in the register cannot be more than the actual cost of giving the copy.

### Matters to be included in department's annual report

*Clause 174* states that the chief executive must ensure the department's annual report for a financial year includes information about the performance of the MEDQ's functions in the year. The clause provides that

without limiting subclause (1), the report must include information about how the board, the authority or local representative committees have contributed to the achievement of the MEDQ's functions and any other matters prescribed under a regulation.

### Approved forms

*Clause 175* provides that the MEDQ may approve forms for use under this Act. An example of a form which may need to be approved is a PDA development application form.

### Regulation-making power

*Clause 176* provides that the Governor in Council may make regulations under this Act. A regulation made under this Act may provide for any matter for which by-laws may be made; or to impose a penalty for the contravention of a regulation. The maximum penalty that can be prescribed for contravention of a regulation is no more than 20 penalty units.

# Chapter 6 Transitional provisions and repeals

## Part 1 Preliminary

### Definitions for ch 6

*Clause 177* states the definitions used in chapter 6.

# Part 2 Abolition of former entities and transfer of their assets etc.

## Abolition of former entity etc.

*Clause 178* provides that at the commencement each former entity is abolished and the members of the former ULDA stop being members of the authority. It provides that the appointment and employment of the chief executive officer of the former ULDA ends. This does not affect the member's or chief executive officer's appointment in any other office.

## Employees of former ULDA to be employed by department

*Clause 179* provides that this clause applies to a person who, immediately before the commencement, was employed by the former ULDA. From the commencement, the person is taken to be employed by the department on the same terms, conditions and entitlements as those applying to the person's employment by the former ULDA immediately before commencement. Subject to this clause, the chief executive may issue a direction to a person to facilitate the transition of employees from the former ULDA to the department. A person given a direction must comply with the direction. If a person employed was employed by the former ULDA under a contract, the person is taken to be employed by the department under the contract under which the person was employed before commencement.

## MEDQ is legal successor

*Clause 180* provides that the MEDQ is the successor in law of each former entity. This is not limited by another provision of this part.

## Assets and liabilities etc. of a former entity

*Clause 181* provides that the assets and liabilities of a former entity immediately before the commencement become assets and liabilities of the MEDQ. Any infrastructure arrangements, contracts, leases, undertakings or other arrangements to which a former entity is a party, in force immediately before the commencement, are taken to have been entered into by the MEDQ and may be enforced against or by the MEDQ. At commencement, any property that immediately before the commencement was held on trust

or subject to a condition by a former entity, continues to be held on the same trust or subject to the same condition, by the MEDQ. The registrar of titles or other person responsible for keeping a register for dealings in property must, if asked by the MEDQ, record the vesting of property under this clause in the MEDQ.

### Proceeding not yet started by or against a former entity

*Clause 182* provides that this clause applies if, immediately before the commencement, a proceeding could have been started by or against a former entity within a particular period. The proceeding may be started by or against the MEDQ within the prescribed period.

### Proceeding to which a former entity was a party

*Clause 183* provides that this clause applies to a proceeding that, immediately before the commencement, had not ended and to which a former entity was a party. At commencement, the MEDQ becomes a party to the proceeding in place of the former entity.

### Records of a former entity

*Clause 184* provides that all records of a former entity are records of the MEDQ under this Act.

### References to former entity and former entity's website

*Clause 185* provides that in an Act or document, a reference to a former entity is taken if the context permits, to be a reference to the MEDQ. In an Act or document, a reference to a former entity's website is taken, if the context permits, to be a reference to the department's website.

### Amounts in Estates Construction Fund at the commencement

*Clause 186* states that the amount that, immediately before the commencement, is the balance credited to the Estates Construction Fund under the repealed *Industrial Development Act 1963* forms part of the Fund continued in existence under clause 25.

## Annual reporting

*Clause 187* provides that this clause applies if the commencement falls in the middle of a financial year. The department's annual report (under the *Financial Accountability Act 2009*) for the financial year must include information about the former entity's operations that would have been required to be included in the annual report if the *Industrial Development Act 1963* and ULDA Act had not been repealed.

## Offences relating to former entity

*Clause 188* provides that this clause applies if under a provision of an Act, as in force before the commencement, a person who did or omitted to do an act in relation to a former entity, or something done or required to be done, by a former entity, committed an offence. The provision is amended by this Act so that it no longer applies in relation to the former entity, or something done or required to be done, by the former entity, or repealed by this Act.

The clause provides that a proceeding for the offence may be continued or started, and the provisions of the relevant law that are necessary or convenient to be used in relation to the proceeding continue to apply, as if this Act had not commenced.

The clause also provides that for subclause (2), section 20 of the *Acts Interpretation Act 1954* applies, but does not limit the subclause. Subclause (2) applies despite section 11 of the Criminal Code.

## Other things done by former entity

*Clause 189* provides for anything done by a former entity under an Act whose effect had not ended immediately before the commencement, and at commencement is to be something that the MEDQ can do under that Act where this is not otherwise dealt with by a provision of this part. The thing done by the former entity continues to have effect and from the commencement, is taken to have been done by the MEDQ.

# Part 3 Existing urban development areas

## Existing urban development areas

*Clause 190* provides that a part of the State that was an UDA under the repealed ULDA Act immediately before the commencement is, from commencement, taken to be a PDA under this Act. A transitioned UDA may keep the name given to it under the repealed ULDA Act. The operation of subclause (1) is not affected by the transitioned UDA having a name that includes the term 'urban development area' or 'UDA'.

## Existing interim land use plans for transitioned UDAs

*Clause 191* provides that this clause applies if an interim land use plan made under the repealed ULDA Act for a transitioned UDA was in effect immediately before the commencement.

The clause provides that from commencement, the interim land use plan is taken to be an interim land use plan made under this Act for the transitioned UDA and the interim land use plan applies with necessary and convenient changes to facilitate the application of this Act to the transitioned UDA.

Without limiting subclause (3), the clause outlines instances where there is a reference in the interim land use plan to the former ULDA it taken to be a reference to the MEDQ and a reference to an UDA is to be taken to be a reference to a transitioned UDA. A reference in the interim land use plan to any of the terms under subclause (4)(c) is taken to be a reference to the corresponding term under this Act for PDAs.

The clause outlines that the interim land use plan expires subject to paragraph (b), on the day it would have expired under section 9 (Expiry of land use plan) of the repealed ULDA Act if that section had not been repealed. Also, the interim land use plan expires under subclause (5)(b), if the former ULDA had prepared a proposed development scheme for the transitioned UDA, under the repealed ULDA Act, part 3, division 1 and with the earlier of the following: when the MEDQ makes a development scheme under this Act for the transitioned UDA; or 60 business days after the commencement.

The clause states that without limiting subclause (2), the interim land use plan may be amended or revoked under this Act.

An interim land use plan may keep the name given to it under the repealed ULDA Act.

Finally, the clause provides that the operation of this clause is not affected by the interim land use plan having a name that included the term 'urban development area' or 'UDA'.

## MEDQ must make development scheme transitioned UDA

*Clause 192* applies to transitioned UDAs where at the commencement, a development scheme had not been made under the repealed ULDA Act. The MEDQ must make a development scheme under this Act for the transitioned UDA.

The clause provides that anything that had been done or that was in existence in relation to the preparation of the proposed development scheme is taken to have been done under this Act including preparing the development scheme, publicly notifying the scheme, taking receipt of submissions and considering the submissions as under clauses 58 to 61 of this Act.

The provisions of the repealed ULDA Act for these PDAs are transitioned here with respect to the rights of affected owners to request the MEDQ amend the proposed scheme to protect their interests. The MEDQ must notify submitters about making the proposed scheme including where the scheme can be inspected and invite affected owners to request the MEDQ amend the scheme to protect their interests. An affected owner has 20 business days to make the request of the MEDQ.

The MEDQ may amend the scheme to protect the affected owners interest, ensure the implementation of the scheme complies with this Act or make minor amendments. If the MEDQ considers the amendment significantly changes the scheme the MEDQ must re-comply with clauses 58 to 61.

Subclause (6) provides that an *affected owner* for a PDA, means a person who owns land that, for example, is in the area, shares a common boundary with the area or has a boundary, along a road, that is directly opposite a boundary of the area, along the same road.

## Existing development schemes for transitioned UDAs

*Clause 193* states that this clause applies if a developments scheme made under the repealed ULDA Act for a transitioned UDA was in effect immediately before the commencement. From the commencement, the development scheme is taken to be a development scheme made under this Act for the transitioned UDA. The development scheme applies with necessary and convenient changes to facilitate the application of this Act to the transitioned UDA.

The clause, without limiting subclause (3), outlines instances where there is a reference in the development scheme to the former ULDA it taken to be a reference to the MEDQ and a reference in the development scheme to UDA is to be taken to be a reference to a transitioned UDA. A reference in the development scheme to any of the terms under subclause (4)(c) is taken to be a reference to the corresponding term under this Act for PDAs.

The clause states that without limiting subclause (2), the development scheme may be amended or revoked by the MEDQ under this Act.

The clause also states that for subclause (5), anything done by the former ULDA in relation to amending the development scheme under the repealed ULDA Act is taken to have been done by the MEDQ under this Act.

## Application of this Act to transitioned UDAs

*Clause 194* states that this clause provides for the application of this Act to transitioned UDAs. The clause also provides that this Act applies in relation to a transitioned UDA with necessary and convenient changes including, for example, changes to allow for the transitioned UDA having been declared before the commencement of this Act and a transitioned interim land use plan or transitioned development scheme, or an amendment of a transitioned development scheme, having been made before the commencement of this Act.

The clause also states that without limiting subclause (2), and to remove any doubt, it is declared that development that a transitioned interim land use plan or transitioned development scheme for the transitioned UDA provides is UDA assessable development is PDA assessable development under this Act for the transitioned UDA. Development that a transitioned interim land use plan or transitioned development scheme for the transitioned UDA provides is UDA self-assessable development is PDA self-assessable development under this Act for the transitioned UDA.

## Relationship with Sustainable Planning Act

*Clause 195* provides that subclause (2) applies if section 13 of the repealed ULDA Act applied to a SPA development application and the application has not been decided at the commencement.

The clause provides that section 13 of the repealed ULDA Act continues to apply in relation to the land application as if that Act had not been repealed.

The clause also provides that an SPA development approval for land in a transitioned UDA granted under section 13(2) of the repealed ULDA Act, (whether before the commencement or under subsection (2)) is taken to be an SPA development approval for land in the transitioned UDA granted under clause 44(2) of this Act.

The clause states that an SPA development approval for land in a transitioned UDA continued under section 14 of the repealed ULDA Act, is taken to be an SPA development approval for land in the transitioned UDA continued under clause 45 of this Act.

The clause provides that an application relating to the Northshore Hamilton urban area made under section 14A of the repealed ULDA Act, that has not been decided at the commencement may be decided by the MEDQ under clause 46 of this Act. For subclause (5), anything done by the former ULDA in relation to the application under the repealed ULDA Act, is taken to have been done by the MEDQ.

The clause outlines that a community infrastructure designation continued in force, under section 15(2) of the repealed ULDA Act, for land in a transitioned UDA is, from the commencement, taken to be a community infrastructure designation for land in the transitioned UDA continued in force under clause 47(2) of this Act.

## Regulation about transitioned UDAs

*Clause 196* provides that a regulation under this Act may include details of each transitioned UDA and any of the following applying to a transitioned UDA: an interim land use plan and a development scheme; or an amendment of a development scheme.

A reference in clause 42 to a declaration regulation includes a reference to a regulation made under subclause (1)(a).

This clause applies if a regulation made under subclause (1) includes an interim land use plan or development scheme that was made by adopting,

applying or incorporating all or part of another document and the adopted provisions are not part of, or attached to, the regulation.

The clause provides that the Minister must, when the regulation is tabled in the Legislative Assembly under section 49 of the *Statutory Instruments Act 1992,* also table a copy of the adopted provisions.

The clause outlines that a failure to comply with subclause (4) does not invalidate or otherwise affect the regulation.

# Part 4 Provisions about cessation of an urban development area

### Particular provisions about land or premises that were in urban development area

*Clause 197* provides that the repeal of the ULDA Act does not affect the operation of the following provisions of the Act applying to land or premises in an area that ceased to be a UDA under that Act before the commencement of section 16(2): section 18; and section 19. Subclause (1) does not limit section 20 of the *Acts Interpretation Act 1954*.

# Part 5 Development and uses in existing urban development areas

### Existing UDA development applications

*Clause 198* provides that this clause applies to a UDA development application made under the repealed ULDA Act that was a properly made application under section 51 of the repealed ULDA Act, and has not been decided at the commencement.

The clause provides that subject to subclauses (3) to (5), the UDA development application is taken to be a PDA development application made under this Act and must be decided by the MEDQ under this Act.

The clause outlines that for subclause (2) anything done or existing in relation to the UDA development application under the repealed ULDA Act: is taken to have been done or existing in relation to the PDA development application under this Act; and a reference in clauses 86 and 87 to a proposed development scheme includes a reference to a proposed development scheme, or a proposed amendment of a development scheme, published under the section 25 of the repealed ULDA Act, or section 25 as applied under section 38 of that Act, that has not taken effect before the commencement.

Despite clause 87(1)(a), the MEDQ must consider the main purposes of the repealed ULDA Act, not the main purpose of this Act, in deciding the application.

The clause provides that if section 17 of the repealed ULDA Act, applied to the UDA development application, the application must be decided as if the land the subject of the application were in a PDA. If a PDA development approval is granted because of the application, the approval is, immediately after it takes effect under this Act, taken to be an SPA development approval.

## Appeals against existing decisions on UDA development applications

*Clause 199* provides that subclause (2) applies if immediately before the commencement, a person could have, under section 61 of the repealed ULDA Act, appealed to the Planning and Environment Court against the former ULDA's decision to impose a UDA development condition that includes a nominated assessing authority. Also, at commencement, the period within which the appeal could have been started has not ended and the person has not started the appeal.

The clause provides that a person may, within the appeal period, appeal to the Planning and Environment Court against the decision and the court must hear and decide the appeal under the repealed ULDA Act as if it has not been repealed.

The clause also states that subclause (4) applies if before commencement, a person has under the repealed ULDA Act, appealed to the Planning and Environment Court against a decision of the former ULDA and the appeal has not been finally dealt with at the commencement.

The clause also provides that the Planning and Environment Court must hear, or continue to hear, and decide the appeal under the repealed ULDA Act as if it had not been repealed.

The MEDQ must give effect to the outcome of an appeal started under subclause (2), or continued under subclause (4), in relation to the relevant PDA development approval under this Act.

The clause provides that if the appeal relates to land that has ceased to be in a UDA under section 16(3) of the repealed ULDA Act, applied to the appeal, the appeal must be decided as if the cessation had not happened.

### Ministerial call in for existing decisions on UDA development applications not started at the commencement

*Clause 200* provides that this clause applies if immediately before commencement, the Minister administering the repealed ULDA Act could have, under section 63 of the repealed ULDA Act, called in a UDA development application for which a decision notice had been given by the former ULDA and at the commencement the person has not started the appeal.

This clause provides that the Minister may, by notice to the MEDQ given before the call in period ends, call in the application.

The clause also provides that sections 64 to 66 of the repealed ULDA Act apply in relation to the call in as if a reference to the call in notice were a reference to the notice given under subclause (2) and the requirement to give a copy of the call in notice under section 65 of the repealed ULDA Act, were a requirement that the MEDQ give the copy to the persons mentioned in that section.

Additionally, the clause provides that the Minister's decision on the call in is taken, for this Act other than clause 90, to be a decision of the MEDQ on a development application decided under clause 198.

The clause outlines that to remove any doubt it is declared that no right of appeal applies under sections 61 or 90 of the repealed ULDA Act in relation to the Minister's decision on the call in.

## Ministerial call in for existing decisions on UDA development applications started but not finished at the commencement

*Clause 201* provides that this clause applies if before commencement, the Minister administering the repealed ULDA Act has, under section 63 of the repealed ULDA Act, called in a UDA development application for which a decision notice had been given by the former ULDA and at the commencement, the UDA development application has not been finally dealt with under part 4, division 3, subdivision 4 of the repealed ULDA Act. The repealed ULDA Act, sections 64 to 66 continue to apply in relation to the call in.

The clause provides that if the requirement to give a copy of the call in notice under section 65 of the repealed ULDA Act, has not been complied with at the commencement, the requirement applies as if it were a requirement that the MEDQ give the copy to the persons mentioned in that section.

The clause also provides that the Minister's decision on the call in is taken, for this Act other than clause 90, to be a decision of the MEDQ on a development application decided under clause198.

To remove any doubt, it is declared that no right of appeal applies under section 61 of the repealed ULDA Act, or clause 90 of this Act in relation to the Minister's decision on the call in.

## Existing UDA development approvals

*Clause 202* provides that a UDA development approval in effect under the repealed ULDA Act immediately before the commencement is, from the commencement, taken to be a PDA development approval of the same kind under this Act.

The clause provides that to remove any doubt, it is declared that, in this Act a reference to:

- a PDA development approval includes a reference to a UDA development approval that is taken to be a PDA development approval under subclause (1); and
- a PDA preliminary approval includes a reference to a UDA preliminary approval that is taken to be a PDA preliminary approval under subclause (1); and

- a PDA development permit includes a reference to a UDA development permit that is taken to be a PDA development permit under subclause (1); and
- a PDA development condition includes a reference to a condition imposed by the former UDLA on a UDA development approval that is taken to be a PDA development approval under subclause (1).

The clause also provides that subject to clause 102(5) and any extension granted under clause 102, the development approval's currency period for clause 100 is the currency period applying, under the repealed ULDA Act, to the UDA development approval immediately before the commencement.

Additionally, the clause provides that development approval applies with necessary and convenient changes to facilitate the application of this Act to the approval.

Without limiting subclause (4) a reference in the development approval to the former ULDA is to be taken to be a reference to the MEDQ and a reference in the development approval to UDA is to be taken to be a reference to a transitioned UDA. A reference in the development approval to any of the terms subclause (5)(c) is taken to be a reference to the corresponding term under this Act for PDAs.

## Existing applications to extend currency period

*Clause 203* states that this clause applies if before commencement, a person has applied for an extension of a UDA development approval's currency period under section 77 of the repealed ULDA Act, and the application has not been decided at the commencement.

The clause outlines that the application is taken to be an application made under clause 101 of this Act and must be decided by the MEDQ under this Act. Subclause (3) states that for subclause (2), anything done or existing in relation to the application under the repealed ULDA Act is taken to have been done or existing in relation to the application under this Act.

## Plans of subdivision requiring former ULDA's approval

*Clause 204* outlines that this clause applies to a plan of subdivision for which compliance assessment under SPA required under section 80 of the repealed ULDA Act, has started but not ended, at commencement.

The clause provides that compliance assessment may be finished under clause 104 of this Act if that clause applied to the plan of subdivision. Subclause (3) states that for subclause (2), anything done by the former ULDA under the repealed ULDA Act in relation to the SPA compliance assessment is taken to have been done by the MEDQ. This clause provides a definition for *plan of subdivision.*

### Special provision for Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012

*Clause 205* provides that subclauses (2) and (3) apply if this part commences before the commencement of section 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, to the extent it inserts section 679 into the *Environmental Protection Act 1994* (EP Act).

The clause provides that section 679 of the EP Act, applies with the particular changes, including references to the repealed ULDA Act and UDA development approval and conditions.

Subclause (5) states that the carrying out of a *prescribed ERA* (prescribed environmentally relevant activity) under UDA development conditions of a UDA development approval that, under section 679 of the EP Act are taken to be an environmental authority under chapter 5 of the EP Act is not a PDA development offence. This subclause applies if this part commences after the commencement of section 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, to the extent it inserts section 679 into the EP Act.

## Part 6 Proceedings and related matters

### Starting proceeding for enforcement order for offence committed before the commencement

*Clause 206* provides that this clause applies if a UDA development offence under the repealed ULDA Act was committed before the commencement and at the commencement, the former ULDA had not started a proceeding for an enforcement order under section 81 of the repealed ULDA Act in relation to the offence. Subclause (2) states that the MEDQ may start a

proceeding under clause 105 for an enforcement order to remedy or restrain the commission of the offence.

### Existing proceeding for enforcement order

*Clause 207* provides that this clause applies in relation to a proceeding for an enforcement order started under section 81 of the repealed ULDA Act, that has not been decided at the commencement. Subclause (2) states that the Planning and Environment Court must decide the proceeding under part 5, division 1 of the repealed ULDA Act, as if that Act had not been repealed.

The clause provides that sections 81 to 85 of the repealed ULDA Act, continue to apply in relation to the proceeding. Subclause (4) outlines that if the court makes an enforcement order, the enforcement order is taken to be an enforcement order made under chapter 3, part 5, division 1 of this Act, and clauses 110 and 113 apply to the order.

### Existing enforcement order

*Clause 208* provides that an enforcement order made under the repealed ULDA Act, part 5, division 1 that is still in force at the commencement, is from the commencement, taken to be an enforcement order made under chapter 3, part 5, division 1 of this Act, and clauses 110 and 113 apply to the order.

### Proceedings for offence committed before commencement

*Clause 209* provides that this clause applies in relation to a proceeding for an offence committed against the repealed ULDA Act before the commencement that, is started after the commencement or was started before the commencement but has not been decided at commencement.

The clause provides that section 89 of the repealed ULDA Act, continues to apply in relation to the offence, as if that Act had not been repealed. Subclause (3) states that if the Magistrates Court makes an order under section 89 of the repealed ULDA Act, the order is taken to be an order made under section 89, the order is taken to be an order made under clause 111 of this Act, and clauses 112 and 113 apply to the order.

## Existing Magistrates Court order

*Clause 210* provides that an order made under section 89 of the repealed ULDA Act, that is still in force at the commencement is, from the commencement, taken to be an order made under clause 111 of this Act, and clauses 112 and 113 apply to the order.

## MEDQ's power to recover cost of works to remedy stated public nuisance

*Clause 211* provides that this clause applies if before the commencement, the former ULDA carried out works under section 91(2) the repealed ULDA Act, and the former ULDA has not recovered the costs of the works from a person under section 91(3) of the repealed ULDA Act. Subclause (2) states that the MEDQ may recover the costs from the person as debt.

## Existing proceedings for declaration

*Clause 212* outlines that this clause applies if in relation to a proceeding for a declaration started under section 92 of the repealed ULDA Act that has not been decided at commencement. Subclause (2) states that the Planning and Environment Court may make a declaration about either or both the matter mentioned in section 92(1) of the repealed ULDA Act, for which the declaration was sought and a matter mentioned in clause 114(1) of this Act that corresponds with section 92(1) in the repealed ULDA Act. The Planning and Environment Court may make an order about the declaration made under paragraph (a).

The clause provides that if the court makes a declaration under subclause (2)(a), the declaration is taken to be a declaration made under clause 114(1). Subclause (4) states that if the court makes an order under subclause (2)(b), the order is taken to be an order made under clause 114(2).

# Part 7 Other transitional provisions

## Existing directions to government entity or local government to accept transfer

*Clause 213* states that this clause applies if the Governor in Council has given a direction to a government entity or local government (the directed entity) under section 137 of the repealed ULDA Act, and at the commencement, the transfer the subject of the direction has not happened.

The clause provides that the direction continues in effect and the directed entity must do everything reasonably necessary to comply with the direction. Subclause (3) states that if the directed entity is a local government, on the making of a transfer, the stated land is taken to be land that the local government holds on trust in fee simple to which section 659 of SPA, applies. Subclause (4) states that the transfer of the stated land or stated Fund to the MEDQ under clause 181 does not affect the operation of this clause.

## Existing directions to government entity or local government to provide or maintain infrastructure

*Clause 214* provides that this clause applies if the Governor in Council has given a direction to a government entity or local government (the directed entity) under section 137 of the repealed ULDA Act, and at the commencement, the direction has not been fully complied with. Subclause (2) states that the direction continues in effect and the directed entity must comply with the direction. Subclause (4) states applies despite any other Act or law.

## Transitional regulation-making power

*Clause 215* provides that a regulation (a transitional regulation) may make provision about a matter for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the repealed *Industrial Development Act 1963* or the repealed ULDA Act to this Act and this Act does not make provision or sufficient provision.

The clause provides that a transitional regulation may have retrospective operation to a day that is not earlier than the day this clause commences. This clause states that a transitional regulation must declare it is a

transitional regulation. This clause and any transitional regulation expire 1 year after the day this clause commences.

## Part 8 Repeals

### Repeals

*Clause 216* repeals the *Industrial Development Act 1963* and *Urban Land Development Authority Act 2007*.

# Chapter 7 Consequential amendments for this Act

## Part 1 Amendment of this Act

### Act amended

*Clause 217* provides that this part amends this Act.

### Amendment of long title

*Clause 218* amends the long title.

### Amendment of s 6 (Definitions)

*Clause 219* amends the definitions schedule.

### Renumbering of sch 3 (Dictionary)

*Clause 220* renumbers the dictionary schedule.

## Part 2 Amendment of other Acts

### Acts amended in sch 1

*Clause 221* states that schedule 1 amends the Acts it mentions.

# Chapter 8 Amendments of other Acts

## Part 1 Amendment of Disaster Management Act 2003

### Act amended

*Clause 222* states that this part amends the *Disaster Management Act 2003*.

The *Disaster Management Act 2003* is amended to implement Recommendation 15.5 of the final report of the Queensland Floods Commission of Inquiry (the Commission).

Recommendation 15.5 recommends that the *Disaster Management Act 2003* be amended to give the chief executive of the department administering the Act (or his or her delegate) the authority to appoint an officer of Emergency Management Queensland (EMQ) to direct State Emergency Services (SES) operations in extraordinary circumstances.

The Commission found that there is confusion within the SES and EMQ as to the authority and responsibility for SES command and control in certain circumstances, but also between the SES and EMQ, on the one hand, and local disaster managers, on the other, as to the nature and limits of their respective roles.

The Commission found that the absence of any clear command structure above the level of the local controller causes uncertainty about who should direct large-scale SES operations that involve multiple units and the handling of tasks that exceed a local unit's capacity to cope, and that the

potential for confusion becomes most obvious in the context of inter-regional SES deployments.

The Commission stated that in large scale disasters, the SES needs better command and control arrangements above the level of the local controller, when the local capacity to respond effectively has been overwhelmed and the mobilisation of a major (or State-level) SES response is called for.

Disaster management arrangements established under the *Disaster Management Act 2003* provide capacity for directions to be issued at a State and District level to provide assistance where issues cannot be resolved at a local level.

The amendments strike a balance between the need to enable coordination during large scale responses to disasters, while retaining the primacy of the local area response, particularly given the preference of local governments to utilise local knowledge and operate within the disaster management arrangements that exist at the local level. The amendments seek to enable a cooperative approach between state and local level responses, recognising that local disaster management is the cornerstone of disaster response in Queensland.

It is intended that the Local Disaster Coordinator will retain primacy for disaster management within the local government area and the SES Coordinator will work to support the Local Disaster Coordinator within the local disaster management arrangements.

## Amendment of s 11 (Definitions)

*Clause 223* amends the reference to schedule 2 to 'the schedule' as schedule 1 has been removed.

Insertion of new ss 86A–86C

*Clause 224* (86A SES coordinator) (86B Functions of SES coordinator):

- establishes the role and functions of an SES Coordinator, including that the appointee may provide advice about SES functions to local controllers and coordinate additional SES resources deployed into an area during a disaster;
- provides supporting provisions such as the extraordinary circumstances in which the appointment can be made; and
- provides the authorising framework for activation of the role, including that approval of the Chair of the State Disaster Management

Group is obtained and that consultation occurs with the relevant local government before an SES Coordinator can be appointed.

### Amendment of s 113 (Definition for pt 10)

*Clause 225* establishes the SES Coordinator as an *authorised person* for the purpose of offence provisions.

### Amendment of s 142 (Chief executive to insure particular persons)

*Clause 226* establishes protections for SES Coordinators undertaking their role, similar to those of SES and Emergency Service Unit members.

### Amendment of sch (Dictionary)

*Clause 227* provides a definition of "relevant ES unit" and SES Coordinators.

## Part 2 Amendment of Environmental Protection Act 1994

### Act amended

*Clause 228* states that this part amends the *Environmental Protection Act 1994*.

### Amendment of s 73C (Adding, changing or cancelling a development condition)

*Clause 229* amends section 73C of the *Environmental Protection Act 1994* which sets out when the administering authority may add, change or cancel a development condition. This amendment makes the issue of a temporary emissions licence a new ground for amending a development condition. The grant of a temporary emissions licence may demonstrate that the conditions of the development approval were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence is a trigger for the administering authority to review the development conditions of the development approval and to update those conditions

where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed. This amendment is subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

Note: *development condition*, of a development approval, is defined by the *Environmental Protection Act 1994* to mean a condition of the approval imposed by, or imposed because of a requirement of, the administering authority as assessment manager or concurrence agency for the application for the approval.

## Amendment of s 292 (Other amendments)

*Clause 230* amends section 292 of the *Environmental Protection Act 1994* which sets out when the administering authority may add, change or cancel a condition of an environmental authority (mining activities). This amendment makes the issue of a temporary emissions licence a new ground for amending a condition. The grant of a temporary emissions licence may demonstrate that the conditions of the environmental authority were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence is a trigger for the administering authority to review the conditions of the environmental authority and to update those conditions where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed. This amendment is subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

## Amendment of s 312E (Other amendments)

*Clause 231* amends section 312E of the *Environmental Protection Act 1994* which sets out when the administering authority may add, change or cancel a condition of an environmental authority (Chapter 5A activities). This amendment makes the issue of a temporary emissions licence a new ground for amending a condition. The grant of a temporary emissions licence may demonstrate that the conditions of the environmental authority were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence is a trigger for the administering authority to review the conditions of the environmental authority and to update those conditions where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed. This amendment

is subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

## Insertion of new ch 7, pt 4A

*Clause 232* inserts a new part 4A into chapter 7 of the *Environmental Protection Act 1994*. The Queensland Flood Commission of Inquiry (FCoI) Final Report identified a number of concerns about the use of transitional environmental programs (TEPs) as the mechanism for the release of waters from mines during flood conditions, including the number of criteria to be considered in making a decision, the time taken to process applications, and the lack of predictability of application outcomes (Recommendations 13.9, 13.10, and 13.11).

The Government's response to these recommendations is to develop a new temporary emissions licence which is designed to licence the response to an emergency event. Since it is not possible to predict what the next emergency event may be, the appropriate response to these issues has been considered in a general sense, rather than specifically for water releases from mines.

As a result, this clause inserts a new part 4A into chapter 7 of the *Environmental Protection Act 1994* which provides for when a temporary emissions licence may be granted.

The policy intent is to introduce a new licensing tool to permit temporary relaxations or modifications of conditions of environmental authorities, or development conditions of development approvals (as defined by the *Environmental Protection Act 1994*), in order to respond to an emergent event or events.

The licence can be granted in anticipation of an emergent event (for example,. discharges to water when flood waters are due to reach the operation within hours or days), or can be granted in response to an emergent event (for example, allowing a waste transfer station to accept additional materials and for longer operating hours as part of the flood response after the flood waters have receded).

While it is in effect, the licence will override the conditions of the environmental authority or development approval, to temporarily allow emissions which would not otherwise be permitted. In this sense, it operates similarly to a transitional environmental program.

The licence is intended to be fully flexible (i.e. it can be granted quickly on limited information, but can also be cancelled, suspended or amended without prior notice and with no fault attributed to the licence holder). This is justifiable because the licence is only intended to be temporary, and feedback from industry was that a fully flexible licence is preferred, since otherwise decision makers may be reluctant to grant the licence when limited information is available in emergency circumstances.

Where limited information is available about the possible impacts of the emissions, the licence can be granted for a shorter timeframe, less emissions, or with stricter conditions than what is applied for.

The grant of the temporary emissions licence may demonstrate that the conditions of the environmental authority or development approval were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence will be a trigger for the administering authority to review the conditions of the environmental authority or development approval and to update those conditions where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed. Any amendments will be subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

Since the temporary emissions licence is designed to only be in effect for a short time (possibly as little as hours, no longer than months), it cannot be transferred or surrendered. However, the holder of the licence is (by definition) the registered operator or holder of the environmental authority, so if underlying approval is transferred, the temporary emissions licence would automatically belonging to the new owner. If the operator no longer requires the temporary emissions licence, they would need to return to compliance with the conditions of their environmental authority or development approval.

# Part 4A Temporary emissions licences

### 357A What is an emergent event

This section defines the term ‘emergent event’ for the purposes of the temporary emissions licence. An ‘emergent event’ is one which was not foreseen when the relevant conditions were imposed on an environmental

authority or development approval. The relevant conditions are those which the applicant seeks to relax or modify with the temporary emissions licence. An 'emergent event' may be natural, such as a flood or bushfire, or caused by sabotage.

### 357B Who may apply for temporary emissions licence

This section sets out who may apply for a temporary emissions licence. The applicant is restricted to the holder of a registration certificate for a development approval, or the holder of an environmental authority. The application must be made in person, or by email or facsimile transmission due to the short decision timeframes. The application is for a licence which permits the temporary relaxation or modification of conditions that relate to the release of a contaminant into the environment in response to an emergent event. This may include moving the location of monitoring points and changing reporting requirements.

If the application is not supported by enough information for the administering authority to make a decision on the application, then it is not a properly made application and the administering authority is not required to make a decision until the application is properly made. The Department of Environment and Heritage Protection will produce guidance material which will assist an applicant to know what information is required for the application in the circumstances. The applicant must pay the administering authority the fee for the application prescribed under a regulation. The administering authority may recover the fee as a debt if the applicant does not pay the fee within a period of at least 20 business days. The timeframe for payment is specified in a notice given to the applicant by the administering authority.

### 357C Deciding application

This section specifies the timeframe for the administering authority to make its decision. The decision must be made as soon as practicable, but no later than 24 hours after receiving the application.

### 357D Criteria for decision

This section specifies the criteria for the decision. The criteria are more limited than the decision criteria for other decisions under the *Environmental Protection Act 1994* because the temporary emissions

licence is designed to only be in effect for a short time (possibly as little as hours, no longer than months).

### 357E Decision about temporary emissions licence

This section states the decision which the administering authority can make about a temporary emissions licence. Where, for example, limited information is available about the possible impacts of the emissions, the licence can be granted for a shorter timeframe, less emissions, or with stricter conditions than what is applied for. The administering authority may impose conditions which it considers are necessary or desirable.

### 357F Information notice

This section states that the administering authority must give the applicant an information notice about the decision if the decision if different from what was applied for. This enlivens the review and appeal provisions in chapter 11, part 3 of the Act.

### 357G Temporary emissions licence

This section sets out what the temporary emissions licence must state and the effect of the licence. While it is in effect, the licence will override the conditions of the environmental authority or development approval, to temporarily allow emissions which would not otherwise be permitted. The conditions of any transitional environmental program which are inconsistent with the licence will also be overridden.

### 357H Licence can not be surrendered or transferred

This section specifies that the licence cannot be surrendered or transferred. Since the holder of the licence is (by definition) the registered operator or holder of the environmental authority, the licence does not need to be transferred because it will automatically become applicable to the new operator. If the operator no longer requires the temporary emissions licence, they must comply with the conditions of their development approval or environmental authority.

### 357I Failure to comply with conditions of licence

This section provides an offence for failure to comply with the conditions of the licence. The maximum penalty is 1665 penalty units. This is justified because it is consistent with the penalty for failing to comply with the conditions of a development approval or environmental authority.

### 357J Amendment, cancellation or suspension of temporary emissions licence

This section gives the administering authority the power to immediately amend, cancel or suspend the temporary emissions licence. This raises the fundamental legislative principle that unless there is sufficient justification, legislation should not provide for the immediate suspension of a person's licence or other authority without receiving and considering submissions from the person. However, this section is justified because since it is necessary to protect the community and the environment from unanticipated adverse impacts of a release. Since the licence must be granted within 24 hours, and is likely to be granted on limited information, the department must be able to suspend, cancel or amend the licence if, for example, downstream drinking water is adversely affected by the release to the extent that it impinges on the health of the downstream community.

Other Queensland legislation that allows for immediate suspension where public safety or the environment has been endangered, or is likely to be endangered, includes the *Tow Truck Act 1973*, the *Gas Supply Act 2003*, the *Water Act 2000*, and the *Food Production (Safety) Act 2000*.

In addition, the ability to immediately amend the licence ensures a level playing field where multiple operators can demonstrate a need to impact on the same environmental values. For example, a number of mines in the Fitzroy Basin may need to discharge mine water into the same catchment. The fact that one operator may apply for a temporary emissions licence in advance of the others, should not prevent all operators from receiving the same ability to discharge into the catchment.

The licence can also be amended with the written agreement of the holder.

### Insertion of new ss 466A and 466B

*Clause 233* inserts new sections 466A (Application of pt 4) and 466B (What is an emergency) into the *Environmental Protection Act 1994*. These

sections specify when this part applies and define the term 'emergency' for the purposes of this part.

This is in response to recommendation 13.14 of the Queensland Flood Commission of Inquiry report which recommended that the *Environmental Protection Act 1994* be amended to provide a definition of the term 'emergency' for the purposes of section 468.

The powers in both sections 467 and 468 should be exercised on the same grounds. Section 467 currently specifies these as where the authorised person is satisfied on reasonable grounds that:

(a) serious or material environmental harm has been, or is likely to be caused; and

(b) urgent action is necessary to:

    (i) prevent or minimise the harm being caused; or

    (ii) rehabilitate or restore the environment because of the harm.

These grounds form a working definition of 'emergency' which has been applied across the tools in the existing sections 467 and 468.

The definition is also amended to specifically refer to when human health or safety is threatened. This is arguably already covered by consideration of the definitions of 'environmental value' and 'environmental harm' in sections 9 and 14 of the *Environmental Protection Act 1994*, but feedback from industry was that the provisions have been interpreted narrowly, when they were intended to cover an emergency involving a threat to human health and safety.

## Amendment of s 467 (Emergency powers)

*Clause 234* amends section 467 of the *Environmental Protection Act 1994* which sets out the emergency powers which may be exercised by an authorised person.

In addition, recommendation 13.16 of the Queensland Flood Commission of Inquiry report recommended that the *Environmental Protection Act 1994* be amended to permit an emergency direction (under the existing section 468) to be given orally where it is not practicable to provide the direction in writing, with provision for its subsequent confirmation in writing. This is consistent with directions under the existing section 467.

As a result, in addition to the consequential amendments from the insertion of sections 466A and 466B, this section has been amended to also include the power to direct emergency release of a contaminant, and thereby combine the emergency directions in one section.

Note that sections 487 and 488 are amended in schedule 2 to this Bill to amend cross references from this section.

### Omission of s 468 (Authorised person may direct emergency release of contaminant)

*Clause 235* omits section 468 of the *Environmental Protection Act 1994* which specified when an authorised person could direct the emergency release of a contaminant. This power will now be contained in section 467 of the *Environmental Protection Act 1994*.

### Amendment of s 478 (Failure to comply with authorised person's direction in emergency)

*Clause 236* amends section 478 of the *Environmental Protection Act 1994* which contains the offence for failing to comply with a direction under section 467 of the *Environmental Protection Act 1994*. These amendments are consequential to the amendments in clause 234.

### Omission of s 479 (Offences in relation to release of contaminant in emergency)

*Clause 237* omits section 479 of the *Environmental Protection Act 1994* which contained the offence for failing to comply with a direction under section 468 of the *Environmental Protection Act 1994*. Section 468 is being omitted by clause 235 of this Bill, so this offence must also be omitted.

### Amendment of s 520 (Dissatisfied person)

*Clause 238* amends section 520 of the *Environmental Protection Act 1994* which defines who is a dissatisfied person for purposes of reviews and appeals of decisions. This amendment ensures that decisions about temporary emissions licences are subject to the review and appeal provisions in chapter 11, part 3 of the Act.

### Amendment of sch 2 (Original decisions)

*Clause 239* amends schedule 2 of the *Environmental Protection Act 1994* which lists the decision which may be reviewed and appealed under the Act. This amendment ensures that decisions about temporary emissions licences are subject to the review and appeal provisions in chapter 11, part 3 of the Act. Decisions about chapter 4 activities are appealable to the Planning and Environment Court, and decisions about mining activities and chapter 5 activities are appealable to the Land Court.

### Amendment of sch 4 (Dictionary)

*Clause 240* amends the Dictionary of the *Environmental Protection Act 1994* to insert definitions of 'emergent event', 'emergency' and 'temporary emissions licence' and amend the definition of 'emergency direction' and 'holder'.

## Part 3 Amendment of Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012

### Act amended

*Clause 241* states that this part amends the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Amendments are needed to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to ensure that the amendments to the *Environmental Protection Act 1994* in the Bill continue to apply after the commencement of the new approvals process.

### Amendment of s 8 (Insertion of new chs 5 and 5A)

*Clause 242* amends section 215 of the *Environmental Protection Act 1994* as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which sets out when the administering authority may add, change or cancel a condition of an environmental authority. This amendment makes the issue of a temporary

emissions licence a new ground for amending a condition. The grant of a temporary emissions licence may demonstrate that the conditions of the environmental authority were not sufficient to plan for an emergent event of this nature. Consequently, the grant of the licence is a trigger for the administering authority to review the conditions of the environmental authority and to update those conditions where necessary or desirable. Ideally, the conditions would be amended so that future temporary emissions licences are not needed. This amendment is subject to the usual process involving notice of proposed amendments, considering representations from the holder, and the decision being subject to appeal.

## Insertion of new ss 24A-24C

*Clause 243* inserts new sections 24A to 24C into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to amend sections 357A (What is an *emergent event*), 357B (Who may apply for a temporary emissions licence), and 357G (Temporary emissions licence) which were inserted by clause 232 of this Bill. These amendments remove references to 'development approvals' and 'registered operators' which are no longer required after commencement of the new approvals process introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

## Amendment of s 40 (Amendment of s 520 (Dissatisfied person))

*Clause 244* amends section 520 of the *Environmental Protection Act 1994* as amended by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which defines who is a dissatisfied person for purposes of reviews and appeals of decisions. This amendment ensures that decisions about temporary emissions licences are subject to the review and appeal provisions in chapter 11, part 3 of the Act.

## Amendment of s 61 (Amendment of sch 2 (Original decisions))

*Clause 245* amends schedule 2 of the *Environmental Protection Act 1994* as amended by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which lists the decisions which may be reviewed and appealed under the Act. This amendment ensures that decisions about temporary emissions licences are subject to the review and appeal provisions in chapter 11, part 3 of the Act. Decisions about prescribed ERAs are appealable to the Planning and Environment Court,

and decisions about resource activities (for example, mining, petroleum etc) are appealable to the Land Court.

### Amendment of s 62 (Amendment of sch 4 (Dictionary))

*Clause 246* amends schedule 4 of the *Environmental Protection Act 1994* as amended by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to change the definition of 'holder' to include the holder of a temporary emissions licence. The holder of the licence is (by definition) the holder of the environmental authority, so if underlying authority is transferred, the temporary emissions licence would also be transferred.

## Part 4 Amendment of Queensland Reconstruction Authority Act 2011

### Act amended

*Clause 247* states that this part amends the *Queensland Reconstruction Authority Act 2011*.

### Amendment of s 139 (Expiry)

*Clause 248* amends section 139 of the *Queensland Reconstruction Authority Act 2011* to extend the application of the Act until 30 June 2014. This continues the term of the Queensland Reconstruction Authority (QRA) to enable the QRA to deliver its current work program by June 2014.

# Part 5 Amendment of South Bank Corporation Act 1989

## Act amended

*Clause 249* amends the *South Bank Corporation Act 1989.*

## Amendment of s 3 (Definitions)

*Clause 250* amends the definition of "*appropriate authority*" required as a consequence of the partial transfer of planning powers to the Brisbane City Council (the council) to be effected in later provisions. The term is principally dealt with in part 6 of the Act which deals with roads, reconfiguration of lots and stratum lots. The purpose of the amendment is to ensure that the relevant body to approve plans which achieve any of these proposals, accords with the division of planning powers contemplated in the Transitional Provisions in part 11, division 7. Approval of a proposed road opening will remain with South Bank Corporation (the corporation) to ensure the timely opening of the existing private roads in the corporation area.

The definition of "*decision notice*" has been moved to section 61.

The definition of "*lawful use*" has been moved to section 50(1).

The amendment of the definition of "*security officer*" has been redrafted to accord with current drafting style with no impact on the meaning.

## Amendment of s 10 (Composition of the board)

*Clause 251* states in section 10(1) that the number of members on the corporation board will be a minimum of 2 and a maximum of 10 (including the chair) at the Minister's discretion. By removing the reference to a specific number of public service officers the amendment allows the Minister to appoint any number of public service officers subject to other restrictions contained in the section. This amendment allows the Minister to adjust the board structure to appropriately fit the requirements of the Corporation from time to time. Section 10(4): the deletion of this subsection has the effect of removing the prohibition on a public service officer holding the position of Chairperson.

Section10(5): the amendment is a renumbering necessitated by the deletion of subsection 10(4).

## Amendment of s 18 (Riverside parkland)

*Clause 252* omits section 18(4) of the Act, which provides that the corporation is to manage the parkland precinct. To ensure there is no impediment to the corporation contracting with council that it will take on the obligation to manage the parklands, this section is deleted. The corporation will still be able to manage the parklands, if it is required to do so, by virtue of other provisions in the Act which empower it to manage the corporation area as a whole; for example, section 24(a) and (f) 'Objects' and 25(c),(e) and (h) 'Functions'.

Section 18(6) is renumbered as a consequence of the deletion of subsection (4).

The definition of "*parklands precinct*" has been removed from section 3 to section 18. The definition is only used in this section. The definition itself has not changed.

Subsections (5) to (7) have been renumbered as a consequence of the deletion of subsection (4).

## Amendment of s 25 (Functions)

*Clause 253* amends section 25(1)(b) in respect of the functions of 'facilitation' and 'control' of development are reinstated in the insertion of section 25(1)(ba) below.

Section 25(1)(ba) is a new section and has the effect of giving the corporation the functions of facilitating and controlling development in the corporation area in conjunction with the council. This reflects the partial transfer of planning powers to council which is contemplated in the transitional provisions below.

Sections 25(1)(c) to (j) are renumbered as a consequence of the insertion of section 25(1)(ba) above.

## Amendment of s 26 (Powers in relation to land)

*Clause 254* deletes section 26(2) and therefore removes the prohibition on the transfer of a freehold interest in land which the section imposed upon the corporation (save in limited circumstances). The corporation will now

be entitled to transfer a freehold interest in land in accordance with section 26 generally but subject to the Minister's consent.

In section 26(5) the reference to subsection (4) is renumbered as a reference to subsection (3) following the deletion of subsection (2) above and the renumbering of all following subsections below.

Section 26(3) to (8) these subsections are renumbered as a consequence of the deletion of subsection (2) above.

## Amendment of s 27 (Agreement with public agencies)

*Clause 255* amends section 27(1) which must be read in conjunction with the amendment below inserting a new subsection (2). This amendment reduces the section to a general statement regarding the ability of the corporation to enter into agreements with public agencies. It moves the examples of the types of agreements to a new subsection (2). The amendment to section 27 as a whole is to ensure the corporation will not be impeded in its proposed entry into a lease with the council in respect of the parklands.

Section 27(2) amends the example agreement with a public agency (sub subsection (a)) previously included in subsection (1) to include an additional example in sub subsection (b).

## Amendment of s 49 (Definitions for part)

*Clause 256* amends the definition of "*approved form*" to change the person or entity that approves forms relating to development applications and approvals from the corporation manager to the council. This is appropriate where planning powers have been transferred to the council.

## Amendment of s 55 (Applying for a development approval)

*Clause 257* amends section 55. The process provisions set out in section 55 are amended to ensure dealings with applications for development approvals are dealt with by council rather than by the corporation.

The decision about the amount of any fee payable in respect of an application will be made by the council rather than by the corporation manager.

## Amendment of s 56 (changing an application)

*Clause 258* amends section 56. The amendment to this section has the effect of requiring any application for a change to an undecided development application to be made to the council rather than to the corporation.

## Amendment of s 57 (Withdrawing an application)

*Clause 259* amends section 57. Subsections (1) and (2) are amended by providing that any notice to withdraw an application is given to the council and the refund of any fee as a consequence of the withdrawal will be made by the council rather than by the corporation.

## Amendment of s 58 (Information requests to applicant)

*Clause 260* amends section 58 to give effect to the transfer of planning powers to the council. The section is amended by providing that the council is entitled to make information requests regarding applications, rather than the corporation.

## Amendment of s 59 (Applicant responds to any information request)

*Clause 261* amends section 59 to give effect to the transfer of planning powers to council. In subsection (1) the obligation imposed upon applicants to respond to an information request given by the council under section 58, is amended to an obligation to provide the information to council rather than to the corporation. Similarly in subsection (2) amendments provide that the failure to give the information as requested by the council, entitles the council to refuse the application.

## Amendment of s 60 (Deciding the application generally)

*Clause 262* amends section 60 by deleting section 60(1) which requires consultation with the council in deciding any application becomes obsolete following the transfer of planning powers to the council.

To give effect to the transfer of planning powers, in part, this subsection must be amended by changing the body that approves or refuses any application from the corporation to the council.

The ability to impose infrastructure charges is changed from the corporation to the council and the cross reference is changed to account for the deletion of original subsection (1).

Following the deletion of subsection (1) the subsections are renumbered.

### Amendment of s 61 (Decision notice)

*Clause 263* amends section 61. As a consequence of the transfer of planning powers to the council, in part, the requirement to give a decision notice to council in section 61(1) is no longer necessary. In addition the body giving the decision notice is changed from the corporation to the council.

Section 61(3) is amended to change the obligation to give copies of plans and specifications with a decision notice from the corporation to the council.

### Amendment of s 62 (Conditions must be relevant or reasonable)

*Clause 264* provides that the cross reference to section 60(2)(b) is amended as a consequence of the renumbering of the subsections in section 60.

### Amendment of s 63 (Particular approvals to be recorded on planning scheme)

*Clause 265* provides that as development approvals will be given by the council from commencement of the amendments, the reference in section 63(1)(a) is changed from the corporation to the council.

### Amendment of s 66 (When development approval lapses)

*Clause 266* provides that in section 66(1)(b) the reference to the corporation receiving a plan of reconfiguration of a lot is changed to the council receiving a plan for reconfiguring a lot, as the other changes to the Act require plans for reconfiguration to be given to the council.

### Amendment of s 67 (Request to extend currency period)

*Clause 267* provides that the body to which a request for an extension to a currency period should be directed to is changed from the corporation to the council in subsection (1). Similarly the form to be used to make the

request is changed from a form approved by the corporation to a form which is approved by the council in subsection (2).

The fee which will accompany the request in subsection (3) is changed from a fee determined by the corporation manager to a fee determined by the council.

## Amendment of s 68 (Deciding request to extend currency period)

*Clause 268* gives effect to the partial transfer of planning powers from the corporation to the council, by changing the references to the corporation in subsections (1) to (3) regarding the deciding of an extension request to the council.

The requirement for a copy of the decision notice to be given to the council is deleted and the obligation to give the notice to the applicant is amended from the corporation to the council.

## Amendment of s 70 (Request to change or cancel development approval)

*Clause 269* amends section 70 to change references to the corporation in subsections (2) and (3) to be references to the council.

In subsection (4) the reference to the "corporation manager" deciding the fee for an application to change or cancel a development approval is amended to the council.

## Amendment of s 71 (Deciding request to change or cancel development approvals)

*Clause 270* amends section 71 to give effect to the transfer of planning powers from the corporation to the council, by changing the references in subsections (1), (2) and (3) to the corporation making a decision about a request to change or cancel a development approval to the council.

In subsection (4) the requirement for a copy of the written notice of decision to be given to the council is deleted and the obligation to give the written notice to the person is amended from the corporation to the council.

## Amendment of s 76 (Development or use carried out in emergency)

*Clause* amends section 76. As the corporation will continue to carry on a number of its functions in respect of the corporation area, the obligation to give notice about starting a development or use in an emergency situation, can be given to either the corporation or the council.

## Amendment of s 80 (Approved forms)

*Clause 272* amends section 80 to provide that the council may approve forms for use under part 7.

## Amendment of s 83 (Power to exclude persons causing public nuisance)

*Clause 273* amends section 83(8) to ensure that where any proceedings are commenced in QCAT, a written notice given by a security officer under section 83(5), will be treated as a notice given by the security officer's appointer (i.e. either the corporation or the council). One important effect of this will be that the security officer will not be required to self represent in the Tribunal. The amendment extends the protection to both corporation and council ("the relevant entity") engaged security officers.

A new definition of "*relevant entity*" is inserted and has the effect of extending powers and obligations given to security officers under this Act to both corporation and council appointed security officers. Security officers appointed by the corporation have not been excluded from the definition to ensure that unless or until a lease of the parklands is entered into with the council, which may not be until after the section commences, the corporation engaged security officers will continue to be able to operate in the parklands and provide a service to the public, as they currently do. In addition, the area to be leased to the council is smaller than the area currently covered by the corporation security officers and the corporation may wish to continue patrols in those additional areas after any lease to the council commences

## Amendment of s 108 (Security officers)

*Clause 274* reflects the other changes to the provisions regarding security officers extending the Act to apply to both council and corporation engaged security officers.

### Amendment of s 110 (Issue of identity card)

*Clause 275* reflects the other changes to the provisions regarding security officers extending the Act to apply to both council and corporation engaged security officers.

### Amendment of s 113 (Resignation)

*Clause 276* reflects the other changes to the provisions regarding security officers extending the Act to apply to both council and corporation engaged security officers

### Amendment of s 114 (Return of identity card)

*Clause 277* reflects the other changes to the provisions regarding security officers extending the Act to apply to both council and corporation engaged security officers.

### Insertion of new pt 11, div 7

*Clause 278* provides for the inclusion of a new part into the Act to introduce transitional provisions about how existing and current development applications and approvals, as at the date of commencement of the amendments, will be dealt with. The part also deals in a particular way with current and future development applications in respect of Sites 9A and 9B (known as "South Point") under the approved development plan.

## Division 7 Transitional provisions for Economic Development Act 2012

### 132 definitions for div 7

*"amending act"* means the Act in which these amendments are introduced, the *Economic Development Act 2012.*

"*commencement*" means the date on which the sections in the part will commence, which will be fixed by proclamation.

*"unamended Act"* the transitional provisions will work by applying certain sections under the Act, which applied before the amendments which form

part of this legislation, commenced. In this way the corporation will continue to retain its planning powers in respect of certain development applications and approvals as if the amendments hadn't occurred.

### 133 Continuing effect of development approvals

This subsection provides that any development approval in force before the amendments commenced will continue as an approval after the amendments commence.

This subsection provides that any development approval made, but which has not yet taken effect, will continue as an approval after the amendments commence.

An approval referred to in subsection (2) takes effect from the time it is given.

### 134 Existing uses

The inclusion of this section is to ensure that any use of premises within the corporation area, before the commencement of the amendments is lawful after the commencement of the amendments.

### 135 Application of unamended Act to applications made before commencement

The effect of section 135 is to provide that development applications made to the corporation before the commencement of the amendments but not yet decided or a decision notice given by the corporation will be assessed and decided by the corporation as if the amendments to the Act had not occurred.

### 136 Application of unamended Act to particular development approvals

Section 136 applies to any development approval that is given by the corporation before the commencement of the amendments and is in force at the time of commencement of the amendments or is given by the corporation under this part 11, division 7 (Transitional arrangements).

The development approvals to which this section apply will be dealt with in accordance with the provisions in parts 6 and 7 division 3, as if the amendments had never occurred.

This section does not apply to a development approval for sites 9A and 9B.

### 137 Application of unamended Act to development approvals for sites 9A and 9B

Sites 9A and 9B are references to precincts identified in the approved development plan. As at the date of commencement of the amendments it is expected that there will be a development approval in place in respect of those sites.

Section 137 applies specifically to those sites and any current development application in respect of them. It also provides that the inclusion of section 137 does not override the general position regarding existing approvals set out in section 133. Subsection (2) provides, in effect, that the provisions of parts 6 and 7, division 3 of the Act, before the commencement of the amendments, will apply to any existing development approval, a new development application by the current development approval holder for the sites, an application to change an existing development approval, an application to cancel an existing development approval and any approval for such applications. This means that the corporation will continue to deal with planning matters in respect of the sites and the current approval holder.

"*relevant applicant*" is defined and is a reference to the holder of the current development approval for the site. The definition is relevant to determining which applications will continue to be dealt with by the corporation.

"*sites 9A and 9B* " are sites identified in the approved development plan and are made up of the land listed in the definition.

### Amendment of sch 6 (Provisions not to apply after development completion date)

*Clause 279* states that a change to a reference to section 25(1)(a) and (b) is required as a consequence of the renumbering in the Act.

### Amendment of sch 15 (Commercial precinct)

*Clause 280* states that the reference in this schedule to section 26(8) is changed because of the renumbering of that section**.**

# Part 6 Amendment of State Development and Public Works Organisation Act 1971

## Act amended

*Clause 281* states that this part amends the *State Development and Public Works Organisation Act 1971*.

## Amendment of s 10 (Functions and duties of Coordinator-General)

*Clause 282* provides for the amendment of section 10 (Functions and duties of Coordinator-General). This amendment will expand the application of this section so that the Coordinator-General can undertake and commission investigations and studies, prepare plans and strategies, give directions and take steps etc in relation to all of the functions and duties assigned to the Coordinator-General under section 10(1). This amendment will enable the Coordinator-General to better undertake the work that may be expected.

## Amendment of s 24 (Definitions for pt 4)

*Clause 283* provides for the amendment of section 24 (Definitions for pt 4). This amendment will remove the existing definitions of proponent and significant project from this part of the Act so that the amended definitions can be included in a schedule.

## Amendment of s 25A (Fees for pt 4)

*Clause 284* provides for the amendment of section 25A (Fees for pt 4). This amendment removes the prescribed fees from the body of the Act and provides that the fees now be prescribed under a regulation.

This clause provides that if a fee for an application under section 35C (Application for evaluation of environmental effects of proposed change) is prescribed; the Coordinator-General may waive or reduce the fee. As amendments to the Coordinator-General's report can be for very minor issues, this amendment will provide the Coordinator-General with the ability to vary or waive the fee so that it is proportionate to the change required. If waiving or reducing the fee, the Coordinator-General must

have regard to the complexity of the proposed change and the extent of public consultation required.

This clause also provides that a proponent for a coordinated project must pay the fees prescribed under a regulation at the times provided. The Coordinator-General's obligations under this part for the coordinated project will be suspended until the fee has been paid. The payment of a fee will not guarantee a favourable outcome.

## Replacement of s 27 (Matters Coordinator-General considers before making declaration)

*Clause 285* amends section 27 (Matters Coordinator-General considers before making declaration).

This clause provides that the Coordinator-General must have regard to the following when considering whether to declare a project a coordinated project: detailed information about the project as contained in the initial advice statement; relevant planning schemes or policy frameworks of a local government, the State or the Commonwealth; relevant State policies and Queensland Government priorities; a pre-feasibility assessment of the project, including how it satisfies an identified need or demand; the capacity of the proponent to undertake and complete the environmental impact statement (EIS); and any other matter the Coordinator-General considers relevant. The Coordinator-General may determine the weight considered appropriate to give to each of the above considerations.

The clause also provides that the Coordinator-General is not required to consider an application for a declaration for a coordinated project unless satisfied that section 27AB (Requirements for application) has been complied with and that the project has at least one of the following four attributes: complex local, Queensland or Australian Government approval requirements; strategic significance to the locality, region or the State, including for the infrastructure, economic and social benefits, capital investment or employment opportunities; significant environmental effects; or significant infrastructure requirements.

## Amendment of s 27AB (Requirements for application)

*Clause 286* amends section 27AB (Requirements for application). This amendment will include a new requirement that a separate statement detailing the proponent's financial and technical capability to complete an EIS for the project and provide any supplementary information that may be

requested by the Coordinator-General under section 35(2), and a separate statement assessing the technical and commercial feasibility of the project, be included with an application for a declaration of a coordinated project. The statement assessing the technical and commercial feasibility of the project will be referred to as the pre-feasibility assessment.

This amendment is to provide that applications for a coordinated project contain sufficient information for the Coordinator-General to assess them against the revised criteria listed in section 27(1).

## Insertion of new s 27ABA

*Clause 287* inserts a new section 27ABA (Coordinator-General may refuse to receive or process application for declaration) which provides that the Coordinator-General may refuse to receive or process an application for a declaration of a coordinated project if the Coordinator-General is not satisfied that it includes enough information for the Coordinator-General to consider the matters mentioned in section 27(1)(b) to (f) or (2) for the project. This provision aims to avoid the Coordinator-General having to spend time and resources assessing applications that do not contain sufficient information to allow the Coordinator-General to make a decision.

The Coordinator-General may immediately refuse to receive or process the application; or give the proponent a reasonable opportunity to provide the information before refusing to receive or process it. If the Coordinator-General decides to refuse to receive or process the application, the Coordinator-General must give the applicant written notice of the decision and the reasons for it and must refund the application fee to the applicant.

## Amendment of s 27AC (Deciding application)

*Clause 288* amends section 27AC (Deciding application). This amendment is designed to clarify that the Coordinator-General can decide to declare or not declare a project to be a coordinated project based on one or more of the matters set out in section 27. The Coordinator-General is also not bound to declare a project as a coordinated project merely because the project satisfies one or more of the matters set out in section 27.

## Insertion of new ss 27AE and 27AF

*Clause 289* provides for the insertion of two new sections 27AE (Notice of change of proponent, contact details or registered office) and 27AF (Cancellation of declaration). As the proponent's identity and integrity are important considerations when declaring a coordinated project, this amendment will enable the Coordinator-General to consider each proponent's capability (financial and technical resources) to undertake the EIS.

The new section 27AE provides that the proponent for a coordinated project must give the Coordinator-General written notice of the following: a change of the proponent for the project; a change in the proponent's contact details; or if the proponent is a corporation, a change in the proponent's registered office. The notice must be given within 21 days after the change occurring, or by a later time as allowed by the Coordinator-General in writing.

The new section 27AF provides for the Coordinator-General to cancel a declaration for a coordinated project anytime prior to the Coordinator-General completing the report for the project. A report is considered complete once the Coordinator-General has provided a copy of the report to the proponent and publicly notified the report under section 35(5). There is currently no power in the Act to allow the Coordinator-General to cancel a coordinated project. This anomaly has resulted in some projects "languishing on the books".

The following are grounds for cancelling a declaration as a coordinated project:

- the proponent of the project makes a written request to the Coordinator-General to cancel the declaration;
- the Coordinator-General considers that the proponent no longer has the capability to undertake and complete the EIS for the project;
- the Coordinator-General considers it is in the public interest to cancel the declaration;
- if the proponent for the project changes;
- if the proponent substantially changes the project from that described in the initial advice statement mentioned in section 27(1)(a);
- the proponent fails to give the Coordinator-General written notice of a proposed change in the proponent as required by section 27AE.

Note that not providing written notice of a change in the proponent's contact details or registered office is not grounds for cancelling a declaration.

It is not intended that meeting any of the grounds in this section will automatically result in the cancellation of a coordinated project declaration. For example, if there is a change in proponent, and the Coordinator-General determines that the new proponent does not have the capacity to complete the project or the EIS, the Coordinator-General may cancel the coordinated project declaration.

If the Coordinator-General decides to cancel a declaration, the Coordinator-General must give the proponent written notice of the decision and the reasons for it within 14 days after making the decision. A decision to cancel the declaration takes effect on the latter of: the day the written notice is given to the proponent; or the day of effect stated in the written notice.

## Amendment of s 27A (Lapsing of declaration)

*Clause 290* amends section 27A (Lapsing of declaration). This amendment will provide a clear link between an extension of the lapsing date under the amended section 27A(4) and the time to provide an EIS under section 32(4)(b).

This amendment is to provide that the time for providing an EIS remains consistent with and is not exhausted before a declaration lapses.

## Replacement of s 28 (Application of divs 3-6)

*Clause 291* provides for the amendment of section 28 (Application of divs 3-6). This corrects a previous drafting oversight to also include the application of divisions 6A, 6B, 6C, 7 and 8 for coordinated projects for which an EIS is required.

## Amendment of s 29 (Notice of requirement for EIS and draft terms of reference)

*Clause 292* amends section 29 (Notice of requirement for EIS and of draft terms of reference).

Section 29(1)(b) of the SDPWO Act currently provides that the Coordinator-General must publicly notify that an EIS is required for the

project; where copies of the draft terms of reference (TOR) may be obtained; and that comments on the draft TOR are invited.

This amendment will provide the Coordinator-General with discretion to publicly notify that an EIS is required and to invite comments on the draft TOR. Public consultation results in increased time and advertising costs for the proponent, however as TOR are comprehensive and are becoming increasingly generic; benefit is not always gained from public notification. The Coordinator-General will still have the ability to require public notification where deemed appropriate.

## Amendment of s 30 (Finalising terms of reference)

*Clause 293* amends section 30 (Finalising terms of reference). This amendment reflects the amended section 29 to take into account circumstances where there has been no public consultation.

## Amendment to s 32 (Preparation of EIS)

*Clause 294* amends section 32 (Preparation of EIS). This amendment reduces the timeframe for completion of the EIS by project proponents from two years to 18 months. This is to encourage that an EIS be completed in the most efficient timeframe.

This clause also provides the Coordinator-General with the power to extend the time for preparing an EIS at any time before the time for providing the EIS lapses. The Coordinator-General can presently only give extensions within the current two year timeframe after the finalisation of the terms of reference for the EIS. This amendment gives the Coordinator-General greater flexibility to provide extensions. This will provide the opportunity to allow the proponent additional time to complete an EIS where it can be proved that the 18 month period, and any extended period, was insufficient.

## Amendment to s 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report)

*Clause 295* amends section 35 (Coordinator-General evaluates EIS, submission, other material and prepares report). This amendment provides the Coordinator-General with the power to state requirements for the Coordinator-General's request to the proponent for supplementary information or comment about the EIS and the project.

Although a proponent is required to prepare a comprehensive and satisfactory EIS in the first instance, there are times when the Coordinator-General requires further information from a proponent in order to evaluate the EIS. Also, issues may be raised in submissions that require further input from the proponent. This amendment is to provide a clear process and timeframes for a request for supplementary information or comment and, if the Coordinator-General decides to publicly notify the supplementary information or comment, to provide that any submissions made have the same rights as a properly made submission about the EIS.

The Coordinator-General may extend the time to provide additional information or comment by providing written notice to the proponent.

## Amendment to s 35A (Lapsing of Coordinator-General's report)

*Clause 296* amends section 35A (Lapsing of CG's report). This amends the current default four year lapsing period to three years as this is deemed a sufficient and more efficient timeframe.

The amendment also aims to clarify that the Coordinator-General's report will last for three years, but possibly longer if an application (for example, for an approval, licence or lease) is made before the three year period expires and a decision is still being considered or is subject to appeal at the time of expiry. The section has been amended to clarify that, if multiple approvals are to be obtained by the proponent and the first approval is applied for within three years after the day the report is publicly notified, the Coordinator-General's report will lapse progressively in accordance with subsection (1)(c) as each approval is applied for. This will also cover instances where an appeal against a decision has been made, in which case the Coordinator-General's report, to the extent that it relates to the approval, does not lapse until the appeal is finally decided or the process otherwise ends.

The clause also provides that the report, to the extent that it includes imposed conditions for the project, does not lapse and continues to have effect if division 8 (Application of Coordinator-General's report if no relevant approval) applies and the project substantially starts within three years of the Coordinator-General's report being publicly notified under section 35(5)(b).

## Insertion of new pt 4, div 3A, sdiv 1, hdg

*Clause 297* provides for the insertion of a new part 4, division 3A, subdivision 1, heading "Assessment of changes to project or condition of project on proponent's application".

## Insertion of new pt 4, div 3A, sdiv 2

*Clause 298* provides for the insertion of a new part 4, division 3A, subdivision 2 titled "Assessment of changes to project on Coordinator-General's own initiative".

This subdivision includes two new sections. Section 35M (Application of sdiv 2) provides that this subdivision applies if, after the Coordinator-General notifies the report for the coordinated project, the Coordinator-General wishes to assess a proposed change to the project on the Coordinator-General's own initiative.

This amendment seeks to address the case where the Coordinator-General has become aware of activity that is regarded as a change to the project; however, the Coordinator-General is unable to seek to assess the change if an application is not made by a proponent.

Section 35N (Procedure for making assessment) provides that the Coordinator-General may assess the proposed change and provides the procedure for doing so.

The Coordinator-General must give the proponent written notice that the Coordinator-General proposes to assess a proposed change to the coordinated project. The proponent must be invited to give the Coordinator-General its written views about whether the proposed assessment should be made. The written views must be provided within five business days of the proponent receiving the notice; however the Coordinator-General may extend the time allowed for the proponent to provide the written views. This extension may be provided either before or after the five days has elapsed.

If, after considering any written views, the Coordinator-General decides to assess the proposed change, the Coordinator-General must give the proponent a written notice stating the decision and the reasons for it. The notice must also state that the proponent must apply to the Coordinator-General to evaluate the environmental effects of the proposed change, its effects on the project and any other related matters. The proponent must make this application within 20 business days after

receiving the notice that the Coordinator-General has decided to assess the proposed change. The Coordinator-General may extend the 20 business days to apply to evaluate the effects of the proposed change. The extension must be requested by the proponent in writing before the time for lodging the application ends.

The maximum penalty that can be imposed if the proponent does not comply with the requirement to apply to the Coordinator-General to evaluate the change under section 35N(4)(b) is 1665 penalty units. As there is the potential for significant environmental harm to occur from an unapproved activity, it is essential to have a substantial deterrent in the Act. This penalty is consistent with penalties imposed under SPA for development offences, for example section 578 of that Act imposes the same penalty for carrying out assessable development without a permit.

## Amendment of s 39 (Application of Coordinator-General's report to IDAS)

*Clause 299* amends section 39 (Application of Coordinator-General's report to IDAS) by inserting a new subsection 7. The new subsection provides that if there is any inconsistency between a condition that must attach to the development approval mentioned in the Coordinator-General's report and a concurrence agency condition under SPA for the development approval, then the condition mentioned in the Coordinator-General's report prevails to the extent of the inconsistency.

## Amendment of s 76D (Definitions for pt 5A)

*Clause 300* provides for the omission of the definition of infrastructure facility from section 76D (Definitions for pt 5A). This will allow the definition to be placed with the other definitions in schedule 2 (Dictionary).

## Amendment of s 82 (Acquisition of land in State development area)

*Clause 301* amends section 82 (Acquisition of land in State development area) to reflect the new section numbering that results from these amendments.

## Amendment of s 83 (Disposal of land in State development area)

*Clause 302* amends section 83 (Disposal of land in State development area). This amendment will allow the Coordinator-General to dispose of land in a State development area by way of a lease, for up to a maximum of four years (including options to renew) without the need to obtain approval by Governor in Council. The lease must still comply with section 83(2)(a), that is, it must be for the purpose of implementing a development scheme that relates to the development of the land.

Currently, Governor in Council approval is required for all short term leases of land in a State development area. This amendment is to reduce the large volume of processing requirements and to reduce the timeframes for approval.

Governor in Council approval is still required for all leases for a term of more than four years and for all sales and other disposals of land in a State development area.

## Amendment of s 84 (Use of land under approved development scheme)

*Clause 303* amends section 84 (Use of land under approved development scheme) by including a note stating "For how to apply for the approval, see section 84AA".

## Insertion of new ss 84AA and 84AB

*Clause 304* inserts new sections 84AA and 84AB.

Section 84AA (Application for approval for use of land) provides a clear application process to seek the approval of the Coordinator-General for a use of land within a State development area. The application must be in the approved form and address the requirements for obtaining an approval that are stated in the approved development scheme for that State development area. The application must also be accompanied by the fee prescribed under a regulation. The payment of a fee will not guarantee a favourable outcome. The Coordinator-General can not accept an application that does not meet these requirements.

There is currently no clear application process contained in the Act to seek the approval of the Coordinator-General for a use of land within a State development area.

Section 84AB (Deciding application for approval for use of land) provides that the Coordinator-General may approve an application for a use of land within a State development area, approve it subject to conditions, or refuse the application. The Coordinator-General must give the applicant written notice of the decision. If the application is refused, the written notice must include reasons for the decision.

## Amendment of s 125 (Power of Coordinator-General to take land)

*Clause 305* amends section 125 (Power of the Coordinator-General to take land). This clause amends section 125(1)(f) to provide that land may be taken for a private infrastructure facility. It also removes the parts of section 125 which relate to an infrastructure facility that is approved as being of significance under the current section 125(1)(f)(ii). These sections are no longer required as they will be replaced by the new provisions relating to private infrastructure facilities.

Section 125(2) has been inserted because the power to take land under section 125(1)(f) is only available for private infrastructure facilities that the Coordinator-General is satisfied meet the requirements of section 153AH.

## Omission of s 126 (Ensuring reasonable steps are taken to acquire land by agreement)

*Clause 306* removes section 126 (Ensuring reasonable steps are taken to acquire land by agreement). This section is no longer required as the revised requirements to take reasonable steps to purchase the land by agreement and to enter into an indigenous land use agreement will be included with the new provisions relating to private infrastructure facilities.

## Amendment of s 130 (Payment of costs of taking land and compensation)

*Clause 307* amends section 130 (Payment of costs of taking land and compensation) to clarify that costs include operational, administrative and legal costs.

## Replacement of pt 6, div 6A and pt 6, div 7, hdg

*Clause 308* removes the existing part 6, division 6A (Coordinator-General's costs for infrastructure facilities mentioned in section 125(1)(f)). The requirements of these sections will be covered in the new fee and cost recovery provisions for private infrastructure facilities.

This clause also removes the heading for part 6, division 7 and replaces it with a new heading (Infrastructure facilities). A new subdivision heading is inserted - subdivision 1 (Investigating potential infrastructure facility).

## Amendment of s 141 (Purpose of div 7)

*Clause 309* amends section 141 (Purpose of div 7). This amendment clarifies the application of the new subdivision and the updated section of the Act relating to approval of a project as a private infrastructure facility.

## Insertion of new pt 6, div 7, sdivs 2-4

*Clause 310* inserts two new subdivisions in part 6, division 7.

The introduction of the new division 7 provides for the approval of a project as a private infrastructure facility. This division consolidates the previous infrastructure facility of significance provisions and includes the processes for application, assessment and acquisition of land for relevant projects. The term "infrastructure facility of significance" is no longer used. The approval is now as a "private infrastructure facility" to clarify that an approval does not imply a level of State support for the project and aims to remove the ability of a proponent to use the term as a marketing or negotiating tool which can create confusion for landowners and industry uncertainty.

Subdivision 2 (Requirements for Coordinator-General to take land for private infrastructure facility) includes seven new sections, 153AA to 153AG.

The new section 153AA (Application for approval of project as a private infrastructure facility and for Coordinator-General to take land) outlines the requirements for an application for the approval of a project as a private infrastructure facility and for the Coordinator-General to take land required for the facility.

This amendment streamlines the current process by reducing the two step process to one. The provision provides that a proponent may apply, in the

one application, for both the approval of the project as a private infrastructure facility and for the Coordinator-General to take land required for the facility.

This revised application will still require a two step decision making process. The Governor in Council will decide whether the project meets the criteria to be approved a private infrastructure facility, and the Coordinator-General will decide whether the Coordinator-General may take land required for the facility.

The proponent may only apply for approval as a private infrastructure facility and for the Coordinator-General to take land required for the facility if the project is an infrastructure facility as defined in the Act, has been declared a coordinated project for which an EIS is required, and the Coordinator-General's report for the project been publicly notified. The report must also not have lapsed and the area of land identified as required for the infrastructure facility must be consistent with the land assessed in the EIS. This amendment aims to ensure that the project has been sufficiently progressed and assessed and the land required clearly defined prior to the application being made.

An application for approval of a project as a private infrastructure facility and for the Coordinator-General to take land required for the facility must address the criteria listed in subsection 2 of the new section 153AC and any relevant requirements contained in the guidelines. The application must include enough information about the project to allow the Governor in Council to assess the required matters, including evidence of compliance with the guidelines about undertaking negotiations. The application must also be accompanied by the relevant fee. The payment of a fee will not guarantee a favourable outcome.

Section 153AB (Coordinator-General to seek submissions and undertake consultation) requires the Coordinator-General to seek submissions on the economic or social significance and economic and social benefits of the proposed infrastructure facility by persons affected by it. The Coordinator-General must also undertake consultation with the owners of the land that the proponent is applying to the Coordinator-General to acquire about the negotiations undertaken by the proponent with the landowner to purchase the land by agreement. This will assist the Coordinator-General to assess whether the proponent has complied with the guidelines and taken reasonable steps to purchase the land by agreement.

Section 153AC (Criteria for approval of project) details the criteria for approval of a project as a private infrastructure facility. The Governor in Council may only approve the project as a private infrastructure facility if each of the criteria listed in subsection 2 is satisfied.

Section 153AD (Roles of Governor in Council and Coordinator-General for decision about approval of project) sets out the roles of the Governor in Council and Coordinator-General for a decision about approval of a project as a private infrastructure facility.

Following completion of the consultation required under section 153AB, the Coordinator-General must assess the application and make a recommendation to the Governor in Council as to whether the criteria for a private infrastructure facility listed in section 153AC(2) are satisfied.

The Governor in Council may decide to approve the project, approve it subject to conditions or to not approve the project. If the project is approved as a private infrastructure facility, the Coordinator-General must prepare a statement giving reasons why the project was approved and publish a copy in the Gazette. The Minister must then table the statement in the legislative assembly within three sitting days after the Gazette notice is published.

If the project is not approved, the Coordinator-General must give the proponent written notice of the decision and the reasons for it. This must be provided to the proponent within 28 days after the decision.

Section 153AE (Final negotiations with owner of land) requires that after approval as a private infrastructure facility, the proponent of a project must negotiate one final time with the owner of the land that the proponent is applying to the Coordinator-General to acquire and make the owner a final unconditional offer to purchase the land.

As some time will elapse between the formal negotiation period with landowners and the decision by the Coordinator-General as to whether the Coordinator-General may take land, at the beginning of the final negotiations, the proponent will be required to provide the owner any updated information about the project or land that differs to information previously given to the owner by the proponent. The proponent must also provide information at this time on any change, or proposed change to the project or the land which has not previously been advised to the owner.

The proponent must then give the Coordinator-General evidence of compliance with this section.

Section 153AF (Expiry of approval and extension of expiry day) provides that an approval as a private infrastructure facility expires on the day that is two years after the Gazette notice notifying the approval is published.

The purpose of approving a private infrastructure facility is to enliven the power of the Coordinator-General to take land for a private infrastructure facility that is ready to proceed. Under the current provisions, once an infrastructure facility is declared as being of significance under section 125(1)(f), it remains declared in perpetuity, even if it does not proceed. An approved private infrastructure facility is expected to exist only for the period covering the taking of land and the granting of tenures to the proponent.

Before an approval of a private infrastructure facility expires under this section, the proponent may apply in writing to the Coordinator-General to extend the expiry date of the approval. The application must be accompanied by the prescribed fee. The payment of a fee will not guarantee a favourable outcome. The Coordinator-General may also extend the expiry day of the private infrastructure facility approval of the Coordinator-General's own motion. The Coordinator-General must give the proponent written notice of the decision. If the proponent's application is refused, the notice must be provided within 28 days after making the decision and state the reasons for the decision. If the Coordinator-General extends the expiry day of the approval, the Coordinator-General must give the proponent and the registered owner of the land a copy of the decision.

Section 153AG (Amendment of revocation of approval) provides that the Governor in Council may amend or revoke an approval of a project as a private infrastructure facility. The Coordinator-General, on the Coordinator-General's own motion or following application from a proponent, may recommend to the Governor in Council that an approval be amended or revoked, however must first consult with persons affected by the proposal. An application provided by a proponent under subsection (2) must be accompanied by the prescribed fee. The payment of a fee will not guarantee a favourable outcome.

The Governor in Council may only amend the approval if it is satisfied that the area of land identified as required for the infrastructure facility (as amended) is consistent with the land assessed in the EIS for the project and that each criteria under section 153AC(2) will be met if the amendment is made. The Governor in Council may only revoke the approval if it is satisfied that at least one of the criteria under section 153AC(2) is no longer satisfied.

If the Coordinator-General decides to refuse the application, the Coordinator-General must give the proponent written notice of the decision and the reasons for it within 28 days after the refusal.

Subdivision 3 (Taking land for private infrastructure facility) includes a new section 153AH.

Section 153AH provides that the Coordinator-General must not exercise the power to take land for a private infrastructure facility under section 125(1)(f) unless the Coordinator-General is satisfied the proponent has complied with the final negotiation provisions in section 153AE, the project will proceed in reasonable timeframes and, if native title exists in relation to the land, that the proponent has taken reasonable steps to enter into an indigenous land use agreement.

The clause also provides that the Coordinator-General is not required to take land that is in a State development area or owned by the State or a local body. The power of the Coordinator-General to take land under section 125(1)(f) is discretionary. Despite compliance with the criteria in section 153AH, the Coordinator-General is not obliged to acquire any land for a private infrastructure facility. Subsection (2) has been included to clarify that the Coordinator-General is not likely to exercise this discretion to take land in a State development area or land owned by the State or a local body.

This section also provides the Coordinator-General with the power to take land for a private infrastructure facility if the proponent and the registered owner agree to this taking of land in writing. This power can only be used to assist in cases where the proponent has agreed to purchase the land with the owner, but statutory restrictions affect the ability to complete the purchase in a timely way.

Subdivision 4 (Fees and cost of advice or services) includes three new sections, 153AI – 153AK.

Section 153AI (Application sdiv 4) provides that the subdivision applies to a person who applies for an investigator's authority under section 143 or makes a private infrastructure facility application.

Section 153AJ (Fees) provides that an application for a private infrastructure facility or an investigator's authority must be accompanied by the appropriate fee prescribed by regulation. Any obligations of the Coordinator-General under this division in relation to the application are suspended until the fee has been paid.

The payment of a fee will not guarantee a favourable outcome.

Section 153AK (Recovering cost of advice or services) provides for the recovery of third party costs that are incurred by the Coordinator-General and are considered necessary to take action under this division in relation to a private infrastructure facility or proposed private infrastructure facility such as:

- specialist advisors, experts, consultants and contractors to be engaged by the Coordinator-General
- costs invoiced to the Coordinator-General by other agencies or business units for their assessments
- advertising, printing, travel and accommodation, and incidentals.

## Insertion of new s 157OA

*Clause 311* inserts a new section 157OA (Coordinator-General may require relevant information). This section provides that the Coordinator-General may give a notice to a person to require them to provide information relevant to the administration or enforcement of this Act. The penalty for not complying with this provision without a reasonable excuse is 50 penalty units.

This amendment arose from a response to the Queensland Ombudsman's report titled *Airport Link Project – An investigation into complaints about night-time surface work, June 2011* which highlighted the limited statutory tools available to the Coordinator-General to compel a proponent to provide information necessary to investigate the compliance with conditions imposed by the Coordinator-General under the Act.

The provision provides a person with appropriate protection against self incrimination.

## Amendment of s 173 (Regulation-making power)

*Clause 312* amends section 173 (Regulation-making power). This amendment includes a head of power to impose fees by regulation as opposed to including all fees in the body of the Act.

It is standard practice for an Act to contain a head of power to prescribe fees under a regulation. This amendment is to allow a timely and efficient process for any change of fee or introduction of new fees.

## Replacement of s 174 (Coordinator-General must make guidelines)

*Clause 313* replaces the current section 174. The revised section (Power of Coordinator-General to make guidelines) states the Coordinator-General may make guidelines about matters mentioned in the new schedule 1B. In addition, where the Act provides that a thing must be done in accordance with the guidelines, the Coordinator-General must make guidelines about that thing.

The guidelines are statutory instruments and must be publicly notified.

## Replacement of s 175 (Annual report)

*Clause 314* removes section 175 (Annual report) and replaces it with (Approved forms). The requirement for the Coordinator-General to prepare a "report on the operations of the department under the direction of the Coordinator-General…" is redundant as the Coordinator-General no longer has a department under its direction. This section is also redundant as annual reporting of departments and statutory bodies is now prescribed in the *Financial Accountability Act 2009* and *Financial and Performance Management Standard 2009*.

The replacement section allows the Coordinator-General to approve forms for use under the Act.

## Insertion of new pt 9, div 5

*Clause 315* inserts a new part 9 division 5 (Transitional provisions for Economic Development Act 2012).

Section 188 (Definitions for div 5) provides for definitions for division 5.

Section 189 (Continuation of former matters Coordinator-General considers before making declaration under s 26(1)) provides that applications for a significant project declaration made prior to the commencement of these amending provisions will continue to be assessed under the provisions existing at the time of application.

Section 190 (Existing significant projects) provides that a project that was a significant project immediately before the commencement of these provisions will be taken to be a coordinated project when these provisions commence. Existing sections 32(4) and 35A(1) will continue to apply to the project as if the amending Act had not been enacted.

Section 191 (References to significant project) provides that a reference to significant project in an Act or other document may, if the context permits, be taken to be a reference to coordinated project.

Section 192 (Application of s 35(6)-(9)) provides that the new section 35(6) to (9) relating to supplementary information for an EIS only applies to requests for supplementary information or comment about an EIS and the project made by the Coordinator-General after the commencement of these amended provisions.

Section 193 (Existing requests for Coordinator-General's approval of use of land for s 84(4)(b)) provides that a request to the Coordinator-General for approval for a use of land under the existing section 84(4)(b) continues and if a decision is made, it must be decided as if the amending Act had not been enacted.

Section 194 (Continuation of particular former provisions) provides that the part 6, division 6 and the guidelines made under section 174 in force immediately prior to these amendments will continue to apply to an infrastructure facility that has been approved as being of significance under section 125(1)(f)(ii) or that is the subject of a request made to the Coordinator-General for this approval prior to the commencement of these amendments.

## Omission of schs 1 and 1A

*Clause 316* omits schedules 1 and 1A from the Act as the amended Act provides that the fees will now be prescribed under a regulation.

## Insertion of new sch 1B

*Clause 317* inserts a new schedule 1B (Subject matter for guidelines). The guidelines specified under the existing section 174 do not match the new private infrastructure facility provisions. This schedule identifies the following eight subject matters for guidelines made under s 174(1):

1. Investigating the potential of land for infrastructure facilities
2. Making a private infrastructure facility application
3. How the Coordinator-General may undertake consultation
4. Negotiations with the landowner to purchase land by agreement for a private infrastructure facility

5. How to demonstrate a project will proceed within reasonable timeframes

6. Process for amending or revoking an approval as a private infrastructure facility

7. Arrangements that may be entered into between the Coordinator-General and a proponent of a project about the payment of costs and compensation

8. Native title guidance.

### Amendment to sch 2 (Dictionary)

*Clause 318* amends schedule 2 (Dictionary). This clause amends the definitions of Coordinator-General's change report, Coordinator-General's report and proponent and omits the definition of significant project. The clause also includes definitions for amending Act, commencement, coordinated project or project, former, guidelines, indigenous land use agreement, infrastructure facility, pre-feasibility assessment, private infrastructure facility, private infrastructure facility application and registered owner.

The term significant project is replaced with the new term 'coordinated project'. This change is to reduce the ability of proponents to use a coordinated project declaration as a marketing or negotiating tool and so as not to mislead any parties about the level of State support for the project.

The definition of coordinated project or project captures the changing phases of the project from declaration as a coordinated project to after the Coordinator-General issues an Evaluation Report about the EIS.

## Part 7 Amendment of Water Supply (Safety and Reliability) Act 2008

### Act amended

*Clause 319* states that this part amends the *Water Supply (Safety and Reliability) Act 2008*.

### Amendment of sch 3 (Dictionary)

*Clause 320* amends the definition of 'EP Act authorisation' in the Dictionary of the *Water Supply (Safety and Reliability) Act 2008* to include reference to the temporary emissions licence inserted by chapter 8, part 2 of this Bill. This amendment is consequential to the insertion of the new part 4A into chapter 7 of the *Environmental Protection Act 1994* by this Bill. This clause also amends the definition of 'EP Act authorisation' to replace paragraph (c) which refers to an emergency direction given under section 467 or 468 of the *Environmental Protection Act 1994*. This amendment removes the reference to section 468 as it is being deleted by clause 235 of this Bill.

## Part 8 Amendment of other Acts

### Acts amended in sch 2

*Clause 321* provides for the Acts amended in schedule 2.

## Schedule 1 Consequential amendments for this Act

Schedule 1 provides for a range of amendments to other Acts which reference the *Industrial Development Act 1963* and *Urban Land Development Authority Act 2007*, now repealed by this Act.

## Schedule 2 Consequential amendments for Acts amended in chapter 8

Schedule 2 provides for a range of consequential amendments for Acts amended in chapter 8.

# Schedule 3 Dictionary

Schedule 3 provides for the definitions of common expressions used in the Act.