Housing and Other Legislation Amendment Bill 2012

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Housing and Other Legislation Amendment Bill 2012*

Policy Objectives and the reasons for them

Amendments to *Housing Act 2003*

Australian Housing Ministers (State, Territory and Commonwealth) are establishing a consistent regulatory environment to support the growth and development of the not-for-profit community housing sector.

This Bill amends the *Housing Act 2003* to enable the Queensland Government, alongside other jurisdictions, to participate in the National Regulatory System for community housing. Through an Inter-Government Agreement, each participating State and Territory has undertaken to implement this system by introducing legislation that either applies, or substantially corresponds to (mirrors), model National Law made by the host State (New South Wales).

The Housing and Other Legislation Amendment Bill 2012 aims to secure Queensland's participation by mirroring in the *Housing Act 2003* the model National Law made by NSW. These amendments will result in the State's existing registration and regulatory regime being replaced and succeeded by a nationally consistent approach.

The objectives underpinning the National Regulatory System include to:

- provide a consistent regulatory environment to support the growth and development of not-for-profit community housing providers
- provide an avenue for regulated participation by for-profit community housing providers in the provision of social housing
- reduce the regulatory burden for community housing providers working across jurisdictions
- provide a level playing field for community housing providers seeking to enter new participating jurisdictions.

The regulatory arrangements delivered under this system are designed to maintain ongoing arrangements with registered community housing providers, across the participating jurisdictions, that:

- improve tenant outcomes and protect vulnerable tenants
- protect present and future government funding and equity in social housing and affordable housing, and
- enhance confidence for persons (including investors and financiers) having dealings with registered community housing providers.

Enacting the system through the *Housing Act 2003* strengthens and supports the main objects of the Act, which are to improve the access of Queenslanders to safe, secure and appropriate housing; and to help build sustainable communities.

To enable this national approach, each participating State and Territory enacts its own legislation under which it appoints a jurisdiction registrar who works on a mutual recognition basis with the registrars of other participating jurisdictions. These registrars maintain a single national registrar of providers aiming for a consistent approach to monitoring the performance of the regulated sector.

This Bill amends the *Housing Act 2003* to provide for the registration of providers and allows the chief executive to appoint a registrar, who makes decisions independent of the Minister or the chief executive about the registration and regulation of community housing providers. The registrar's functions and powers include making decisions on the registration of providers, monitoring their performance, taking action on non-compliance with the legislation and providing information and advice to the Minister and the chief executive about the performance of registered providers and the regulated sector.

These registrar functions assist the chief executive when making decisions on the use of the Queensland Housing Fund and portfolio property, to fund or otherwise provide for the provision of housing services to vulnerable Queenslanders and communities.

The National Regulatory System aims to give the chief executive other funding bodies or an investor assurance that a registered provider has good governance, is viable and delivers quality community housing services. The National Regulatory System does this by applying an active approach to registration where providers demonstrate ongoing compliance against a nationally applied Regulatory Code, at Schedule 1 of the Amendment Bill.

The Bill amends the *Housing Act 2003* to make registration a condition of funding for community housing services. To shift to the new requirements for registration, the Bill includes a transition period for providers registered under existing provisions, to apply and obtain national registration, to allow funding provided under the Housing Act for the provision of community housing to continue.

Funding agreements will terminate with community housing providers that do not obtain registration at the end of the transition period. These providers will need to transfer or dispose of funded assets in a way prescribed under regulation. This will have the effect of ensuring that community housing assets are retained and continue to be applied for the purposes of the *Housing Act 2003*.

The *Housing Act 2003* amendments will contribute to developing a viable community housing industry, promote confidence in the good governance of registered providers and

enable providers of community housing services to operate across jurisdictions. Service quality is supported by registration being a condition of funding under the *Housing Act 2003*, and also ensures that Queensland providers are well positioned to perform within the social housing sector nationally.

Minor amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*

The proposed amendments introduce a red tape reduction initiative for relocatable buildings; address issues with licence renewals for building certifiers and pool safety inspectors; and facilitate the introduction of the notifiable works scheme, which will significantly simplify the approval process for most plumbing work. Minor typographical errors identified by the Office of the Queensland Parliamentary Counsel and the Department of Housing and Public Works are also corrected.

Achievement of policy objectives

Amendments to the Housing Act 2003
To achieve the policy objects, the amendments to the *Housing Act 2003* will:

- replace the existing registration and regulatory system with a national and state community housing system.
- establish a community housing registrar.
- require registration as a condition of funding for community providers
- create a clear separation between the registration and funding decisions under the Act.

Minor amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*

The policy objectives are achieved through amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*.

Alternative ways of achieving policy objectives

Amendments to the *Housing Act 2003*
There are no effective alternative ways of achieving the stated policy objectives.

Minor amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*

No alternatives that would achieve the Government's policy objectives were identified.

Consistency with fundamental legislative principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions.

New section 38E provides that the State will not be liable for any loss, incurred by a provider during the appointment of a statutory manager, unless the loss was attributable to the statutory manager's wilful misconduct, gross negligence or wilful failure to comply with the *Housing Act 2003* or a corresponding law. These provisions may raise concerns on the grounds they preclude liability attaching to, and the ability to claim compensation from, the State.

Appointment of a statutory manager is a critical feature of the National Regulatory System where, in the event of serious non-compliance of a provider, the registrar, acting for the State, has the power to protect vulnerable tenants and government funded assets. They are considered necessary to ensure that suitably qualified persons are not deterred from accepting appointment to this role.

The National Law imposes some restraints to ensure appointment of a statutory manager is a reserve power, only applied in the limited circumstances set out in new section 38D. A statutory manager may only be appointed where a provider has been given a notice of intent to cancel registration or the provider is in breach of their obligations and urgent steps are required because the provider's failure has potentially serious consequences.

The registrar must revoke the appointment of the statutory manager if they are satisfied that the provider has come back to compliance with the *Housing Act 2003*, or has been wound up or ceases to exist.

New section 38G provides that no compensation is payable by or on behalf of the State if a provider has, for example, had a statutory manager appointed to their housing service or had their registration cancelled. This is also consistent with the National Law and is considered appropriate on a similar basis to new section 38E as set out above.

Amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*

Validation provisions have been included to address potential issues relating to:

- the renewal of particular building certifier and pool safety inspector licenses. The proposed amendments provide retrospective validation of licences renewed between the commencement of the requirements and the commencement of the retrospective provisions. They also act to validate any functions undertaken by the licensees during the relevant periods.
- the issue of certificates of classification issued following the commencement of the notifiable work reforms. The proposed provisions facilitate the notifiable work reforms by validating a certificate of classification issued on the strength of a notifiable work notice.
- the exercise of powers to inspect plumbing work under the PDA by inspectors appointed under the *City of Brisbane Act 2010*. The proposed provisions remove any doubt about the lawfulness of powers exercised by inspectors under section 114 of the PDA.

Each of the proposed provisions will have retrospective effect. The proposed provisions are entirely beneficial in nature and are restricted to remedying possible

unintended consequences arising from recent amendments to the BA and PDA. For these reasons it is considered that the amendments do not offend fundamental legislative principles relating to retrospectivity.

Consultation

Public consultation was undertaken in all states and territories during the preparation of the National Law.

Stakeholders in the community housing sector have advised they are strongly supportive of this initiative and consultation has helped identify the opportunities to be realised and the risks to be managed in implementation. Stakeholders appreciate the significance of the changes and, in particular, welcome the move away from prescriptive funding and regulation to a more business-like approach that is focused on outcomes and delivers public accountability.

Consistency with legislation of other jurisdictions

Amendments to the *Housing Act 2003*

All Australian States and Territories have agreed to participate in the National Regulatory System for Community Housing. New South Wales is hosting the national law and all other states are adopting the law through either an applied law or mirror law approach. Queensland is using the mirrored law approach.

Amendments to the *Building Act 1975* and *Plumbing and Drainage Act 2002*

The red tape reduction measures for relocated buildings were undertaken in consultation with the Department of Premier and Cabinet, Department of Treasury and Trade and the Department of Local Government who supported the measures. The Building Industry Consultative Group and Local Government Association of Queensland also expressed their support.

Selected local governments were directly consulted: Brisbane City Council, Logan City Council, Redland City Council and Somerset Regional Council. All were in favour of the amendments.

Wide ranging and ongoing consultation has been undertaken for the notifiable work scheme since its inception. Further public consultation for the notifiable work scheme has not been undertaken as the amendments are minor and do not represent a change in Government policy. The proposed amendment validating particular certificates of classification is purely beneficial and is restricted to allowing certifiers the flexibility to operate as if the amendments to the BA necessary to accommodate the notifiable work scheme which commenced on 1 November 2012 have already commenced

The amendments for the renewal of licences for level 3 building certifiers and pool safety inspectors are restricted to remedying a possible unintended consequence arising from the recent amendments to the BA. Because they reinstate the original

intent of the amendments, no further consultation was undertaken. The Department of Justice and Attorney General supported the changes.

Similarly, the amendments for certificates of classification and the functions and powers of inspectors under the *City of Brisbane Act* align the PDA with the original policy intent. No consultation was undertaken for these amendments.

Consultation on proposed minor amendments has not been undertaken as the amendments are technical in nature (typographical corrections) and do not represent a change in policy.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act as the *Housing and Other Legislation Amendment Act 2012*.

Clause 2 provides that part 2, which amends the *Housing Act 2003*, commences on a day to be fixed by proclamation.

Part 2 Amendment of Housing Act 2003

Clause 3 provides that part 2 amends the *Housing Act 2003.*

Clause 4 makes a consequential amendment to section 7 of the Act, as result of the dictionary moving from 'schedule 3' to 'schedule 4'.

Clause 5 replaces section 8 with 'Key concepts'. The new section specifies the meaning of 'housing service' to be a 'social housing service' or an 'ancillary housing service'. A 'social housing service' is the provision of housing to an individual for residential use other than crisis accommodation and includes both public housing and a community housing service. 'Ancillary housing services' include giving financial or other assistance to obtain housing and a range of housing related services, including the provision of crisis accommodation, home maintenance and modification services and tenancy advisory and tenant advocacy services. Section 8 also defines 'community housing service' and 'public housing' as social housing services. Public housing is a social housing service provided directly by the State.

The two categories of housing services, being social housing services and ancillary housing services are required as certain prescribed requirements will only apply to entities delivering social housing services, for example, a requirement to be registered in order to be eligible to be funded.

Clause 6 omits section 9 of the Act.

Clause 7 amends the heading of part 3.

Clause 8 replaces the heading for part 4 from 'Registered providers' to 'Funding'.

Clause 9 omits section 20.

Clause 10 replaces sections 21 and 22. Section 21 establishes the meaning of 'funding' and a 'funded provider'. The section also provides, for the definition of funded provider as an entity providing or required to provide housing services using funding, and that it does not matter if other resources are used to provide the services or that an agreement under which the funding is given by the chief executive under this part has ended.

A new section 22 provides that only particular providers are eligible to receive funding to deliver social housing services. The chief executive may give funding only to a registered provider or an exempt provider to deliver a social housing service.

Clause 11 replaces the heading of part 4, division 2 from 'Assistance' to 'Providing funding'.

Clause 12 replaces section 23 and inserts a new section to describe the types of funding that the chief executive may give to a provider. Some examples of types of funding include: making a monetary grant or grants on appropriate conditions; making a secured loan; transferring land subject to appropriate security or covenant; or leasing land to the entity.

Clauses 13 to 16 make consequential amendments to sections 24 to 27, reflecting the terminology change from 'assistance' to 'funding'.

Clause 17 omits all of part 4 Division 3 (Registration) of the Act. This section sets out that the existing system of registration will be replaced by the National Regulatory System.

Clause 18 renumbers the existing Part 4, Division 4 as Part 4, Division 3.

Clause 19 amends section 33 regarding prescribed requirements. The section is amended to reflect that prescribed requirements relate to the provision of housing services by funded providers.

Clause 20 replaces section 34 to state that a funded provider must not contravene a prescribed requirement that relates to the provision of a housing service for which the provider receives funding.

Clause 21 amends section 35 to provide that the chief executive may issue a compliance notice to a funded provider where a prescribed requirement is contravened.

Clause 22 omits Part 4, Division 5.

Clause 23 inserts a new part 4A, and sections 36 to 38H into the Act. This part establishes the National Regulatory System for community housing providers, and a system for registering state based housing providers.

A new Division 1, Preliminary, is inserted.

A new section 36 sets out the objects of part 4A, to facilitate the National Regulatory System.

A new section 36A establishes the meaning of a 'primary jurisdiction' of a national provider or potential provider, being a national entity intending to provide a community housing service. It sets out the process whereby the registrars of

participating jurisdictions agree on the primary jurisdiction for national or potential providers.

A new section 36B provides for extraterritorial operation of part 4A.

A new section 36C declares that for the purpose of the corresponding laws of the other participating jurisdictions, the chief executive as agent for the State is the housing agency for Queensland.

A new Division 2, Registrar, is inserted.

A new section 36D provides that the chief executive may appoint an appropriately qualified person as the registrar of the national register and the state register. The registrar is to be appointed and employed under the *Public Service Act 2008*.

A new section 36E provides that the registrar is to control the national register and the state register, subject to the Minister and the chief executive. However, the registrar is not subject to the control of the chief executive or the Minister in making decisions about certain matters.

A new section 36F sets out the registrar's functions, which include maintaining the national register and state register, assessing suitability of entities and registering entities as either national or state providers, cancelling registration, monitoring and enforcing compliance, investigating complaints and any other functions conferred or imposed on the registrar under the Act or another Act. The registrar also has additional functions in relation to the national register.

A new section 36G provides that the registrar has the power necessary or convenient to carry out the registrar's functions.

A new section 36H requires the registrar to comply with the guidelines made jointly by the Minister and ministers of other participating jurisdictions and published in the New South Wales Government Gazette or on the New South Wales legislation website in the performance of a function in relation to the national register.

A new section 36I provides that the registrar is not personally liable for any matter or things done or omitted to be done in good faith, in the performance of a function or exercise of a power, of a registrar under the Act.

A new section 36J provides for the delegation of functions or powers by the registrar. Subsection (3) restricts the delegation of certain functions or powers of the registrar to an authorised officer only.

A new Division 3, Registration is inserted.

A new section 37 establishes the national register of national entities providing community housing services and the state register of local governments and prescribed state providers providing community housing services. The national

register is a single national register. A state provider may provide a community housing service only within Queensland.

A new section 37A provides that where the registrar approves an application by a national entity on the national register or a local government or prescribed state entity on the state register, specified information must be recorded on the relevant national or state register.

The national register must also record the category of registration, primary jurisdiction and any other information deemed relevant for the purposes of the corresponding law of another jurisdiction.

The national register may be divided into different parts. The registrar may vary the category of registration of a national provider or move the provider's registration to another part of the national register.

This section provides that each register must be publicly available and upon payment of a prescribed fee, the registrar may give a person a copy of the information kept on the relevant register.

A new section 37B allows an entity providing, or intending to provide, a community housing service to make an application in the approved form with the prescribed fee to the registrar, for registration on the national register, or to apply for variation of the provider's existing registration on the national register or apply for registration on the state register.

The registrar may require the applicant entity to give the registrar particular information or documents, but this does not include anything that identifies an individual who is an occupier of residential premises.

A new section 37C sets out that the registrar must approve an application made under 37(B)(i)(a) or (b) if the registrar is satisfied that certain requirements have been met.

A new section 37D establishes the conditions of registration for a registered provider. The conditions that apply to the registration of each registered provider are set out at Schedule 2. Schedule 3 part 1 sets out conditions that apply to registration of a national provider for which the State is the primary jurisdiction. Schedule 3 part 2 sets out conditions that apply to the registration of a state provider.

A new section 37E enables registrars to impose additional standard conditions of registrar on the registration of a national provider. A registrar may revoke an additional standard condition at any time. A decision by the registrar to impose or revoke an additional standard condition is a reviewable decision.

A new section 37F specifies that nothing in s37D or 37E authorises a registered provider to provide information that identifies an individual who is an occupier of residential premises without the individual's consent to the registrar or the registrar of another participating jurisdiction. The registrar or registrar of another participating jurisdiction cannot enter an individual's residential premises without their consent.

A new section 37G allows the registrar to cancel the registration of a national provider, where the registrar is the primary registrar, or a state provider, if the provider applies for cancellation or has been wound up or otherwise ceased to exist. The registrar may also cancel the registration of a national provider or state provider if the registrar has issued a notice of intent to cancel registration, and the provider has not satisfied the registrar within the stated time that the registration should not be cancelled, and the registrar has notified the provider of the decision to cancel the provider's registration.

A new section 37H sets out that community housing assets are to be transferred if registration is cancelled, to the chief executive or a prescribed entity or the chief executive consents in writing to another national provider or state provider.

A new Division 4, Enforcement powers of registrar, is inserted.

A new section 38 provides that a registrar may take action under Division 4 in relation to a national provider or a state provider if the registrar reasonably believes that the provider is not complying with the Act or where a national provider is not complying with the corresponding law of another participating jurisdiction that applies to the provider.

A new section 38A enables the registrar to issue a notice of noncompliance if the registrar reasonably believes that the provider is noncompliant with the Act or a corresponding law that applies to the provider.

A new section 38B allows the registrar to issue binding instructions to a registered provider specifying the manner in which the provider is to address any matter that is the subject of a notice of noncompliance.

A new section 38C enables the registrar to issue a notice of intent to cancel registration to a registered provider if the registrar reasonably believes the provider has not addressed the matters identified in a notice of noncompliance within the stated period of time, or the provider has not complied with binding instructions, or the provider failed to comply with the provisions of the Act.

A new section 38D allows the registrar to appoint a statutory manager to conduct affairs and activities of the registered provider as far as they relate to the provider's community housing assets. The registrar may only appoint a manager under certain conditions.

A new section 38E set outs other matters relating to the performance of a function or exercise of a power by a statutory manager, including expenses payable by a registered provider. A statutory manager appointed under Division 4 is not liable for any loss incurred by the provider during the period of that appointment unless the loss is attributable to the statutory manager's wilful misconduct or gross negligence or wilful failure to comply with the Act or where relevant corresponding law, or any other law regulating the conduct of members of the governing body of the provider.

Subsection 38E(5) specifies that the State and the registrar are not liable for any loss incurred by a registered provider during the period of the statutory manager's appointment, irrespective of the statutory manager's liability to the provider.

Section 38F declares sections 38B and 38D to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001*(Cwth). The effect of this section is to enable sections 38B and 38D to prevail despite any inconsistencies with the Commonwealth Act. Section 38 makes similar provision in relation to the Queensland *Associations Incorporation Act 1981* and the *Cooperatives Act 1997*.

Section 38G provides that there is no compensation payable by or on behalf of the State or registrar in connection with the operation of division 4 of the Act.

A new Division 5, Miscellaneous is inserted.

A new section 38H sets out the scope for permitted disclosure of information by the registrar in the performance of the registrar's functions or powers under the Act.

Clause 24 amends the heading to Part 5.

Clause 25 replaces section 39 (Definitions for Part 5) and establishes definitions for terms that are used in this part.

Clause 26 amends section 40 to provide that the chief executive may appoint a person as interim manager 'of the business of a funded ancillary provider'.

Clause 27 replaces section 41 and sets out the basis for appointing an interim manager to a funded ancillary provider.

Clause 28 amends section 42 by omitting the words 'funded services' and inserting 'the ancillary housing or services provided by the funded ancillary provider'.

Clauses 29 to 40 make consequential amendments to sections 43, 44, 46, 47, 48, 50, 51, 52, 56, 57, 59 and 60, relating to the appointment of an interim manager of the funded service to the business of a funded ancillary provider.

Clause 41 omits section 61.

Clause 42 replaces sections 63 to 66 with new sections relating to reviewable decisions.

A new section 63 sets out the types of decision made by the chief executive and the registrar that are reviewable decisions.

A new section 64 specifies that the chief executive or the registrar must give the entity a notice of the reviewable decision.

A new section 65 provides that an entity may apply to the chief executive for the review of a reviewable decision and provides the timeframes for such applications.

A new section 66 provides that an application under section 65 for review of a reviewable decision does not stay the decision.

Clause 43 replaces section 68 and provides for matters for which powers may be exercised under part 7 of the Act.

Clause 44 replaces section 69 and sets out the appointment and qualifications for persons who can be authorised officers. The registrar is an authorised officer under the Act.

Clause 45 amends section 70 to state that the powers of an officer of the department, appointed by the chief executive as an authorised officer under section 69(1)(b) are limited to the instrument of appointment.

Clause 46 amends section 72 to specify that the registrar may not resign as an authorised officer without resigning as registrar.

Clause 47 amends section 77 to permit the registrar to enter the premises of a registered provider, other than a residence, to inspect the premises or provider's records. This is without limiting subsection 77(1)(c).

Clause 48 inserts a new section 81A which provides that a registrar may by notice given to a registered provider, require the provider to attend a meeting with the registrar and provide oral information about the provider's affairs.

Clause 49 amends section 86 to note that within this section, 'authorised officer' does not include the registrar.

Clause 50 amends section 87 to include the registrar.

Clause 51 inserts a new section 99A in relation to delegation by the Minister or chief executive may delegate a function or power of the Minister or chief executive under the Act to an appropriately qualified public service employee or other employee of the department. The provision also enables subdelegation of functions and powers.

Clause 52 amends section 101 to provide additional regulation making power to the Governor-in-Council.

Clause 53 amends section 127 to insert a note that provides the chief executive cannot register an entity under section 127(2) after commencement of the amending Act.

Clause 54 inserts a new Part 10, Division 7 (Transitional provisions for the Housing and Other Legislation Amendment Act 2012) and subdivision 1, Interpretation

A new Section 156 defines terms used within Division 7.

A new Subdivision 2, Other registered providers is inserted.

A new Section 157 sets out the transitional provisions for existing registration of other registered providers as defined by section 156. Cancellation of a provider's registration does not affect the provision of funding to the provider under an existing assistance agreement.

A new subdivision 3 (Accommodation providers) is inserted.

A new section 158 is inserted, and applies to accommodation providers as defined in section 156 that are able to be registered under part 4A. Section 158(3) gives providers the option to apply for registration during the application period. Section 158(4) provides that if registration is approved under part 4A, the existing registration is cancelled, however existing agreements will continue until otherwise terminated.

A new section 159 is inserted which sets out the transitional provisions for accommodation providers capable of being registered under part 4A. If the provider does not apply or has their application refused, the provider must transfer or dispose of each asset in the prescribed way.

A new section 160 is inserted which provides for cancellation of existing registration on completion of the transfer of disposition of an accommodation provider's relevant assets under section 159.

A new section 161 applies to providers that are not capable of registration under part 4A but are eligible to apply for registration in another jurisdiction and have agreements under the Act.

A new section 162 applies to providers mentioned in section 161 that do not apply for registration or have their application refused. These providers must apply for registration under the corresponding law of the relevant jurisdiction during the application period. If the provider does not apply or has their application refused, the provider must transfer or dispose of each asset in the prescribed way.

A new section 163 applies to providers mentioned in section 162, and cancels registration of these providers once assets are transferred. If assets are not transferred or otherwise disposed of within the timeframes required under section 162, the provider is taken to be in breach of their existing assistance agreement.

A new subdivision 4 Other Provisions is inserted.

A new section 164 applies to existing applications made under the former section 28 that have not been finally dealt with prior to commencement. From commencement any undecided applications under former section 28 will be taken to have been made under section 37B. If the provider does not deliver any relevant housing services, the application is taken to have been withdrawn and no further action is required.

A new section 165 applies to existing applications for cancellation of registration. Any applications for cancellation of registration may be dealt with as if the amending Act had not commenced.

A new section 166 deals with existing notices of proposed cancellation of registration. Any applications for cancellation under the former section 31 can continue to be dealt with as if the amending Act had not commenced. If the chief executive cancels registration, the former part 6 applies to that decision as if the decision had been made before the commencement.

A new section 167 applies if immediately before the commencement the chief executive has appointed a person as an interim manager of a funded service under part 5 of the pre-amended Act. The appointment continues until the interim manager's period of appointment ends, or the chief executive ends the appointment under the former section 47.

A new section 168 applies if immediately before the commencement a person was entitled to apply under part 6 of the pre-amended Act for review of a decision by the chief executive to appoint another person as an interim manager of a funded service.

A new section 169 provides that from the commencement of the Amendment Act, an entity mentioned in the former section 127(1) cannot be registered under section 127.

A new section 170 which lists certain reference in Acts and documents to former terminology are taken from the commencement of the amending Act to be a reference the new terminology set out in the section.

Clause 55 renumbers Schedule 3 as Schedule 4.

Clause 56 inserts new Schedules 1-3.

Schedule 1 - sets out the National Regulatory Code provisions that are identified on the relevant register as applying to the provider's registration

Schedule 2 - prescribes the conditions that apply to the registration of each registered provider.

Schedule 3, part 1 prescribes the conditions that apply to the registration of a national provider for which the State is the primary jurisdiction.

Schedule 3, part 2 prescribes the conditions that apply to the registration of a state provider.

Clause 56 amends Schedule 4, the dictionary.

Part 3 Amendment of Building Act 1975

Clause 58 - Act amended

Provides that part 3 amends the *Building Act 1975*.

Clause 59 - Amendment of s 71 (When demolition, removal and rebuilding must start and be completed)

Section 71 of the *BA* currently provides a lapsing period of 6 months for building development approvals that involve demolition, removal and rebuilding. This is significantly shorter than the 2 year lapsing period that applies to all other building development approvals provided under section 341 of the *Sustainable Planning Act 2009*. The shorter period reflects the particular issues that this type of development poses for local governments.

Currently under section 71, there is no mechanism to apply for an extension of time for the building approval if the work is incomplete. As a result the applicant must reapply for a new building development approval to finalise any building work not completed within 6 months.

In response to industry concerns and requests from local governments, amendments to section 71(1) have been prepared to extend the period allowed to complete the work to 1 year. New subsection 71(5) will also empower the relevant local government to grant a one off extension of this time period for up to 6 months.

These changes are intended to take effect on commencement and will therefore only apply to existing building approvals that have not already lapsed. To remove any doubt, it is not intended that building approvals expiring before the commencement date be extended to a full year retrospectively.

For example, if the six month period for completing building work finished on 30 June and the legislation commenced the following day, the approval will have lapsed by the time the legislation commences and the amendments will not revive the approval.

New subsection 71(6) provides that an application for an extension must be made in writing and submitted to the local government prior to the end of the 12 month lapsing period. It must be supported with sufficient information to allow the local government to assess the merits of the application.

New subsection 71(7) provides that the applicant for an extension must provide the assessment manager for the application with a copy of the application to extend, within 5 days of it being lodged with local government. The purpose of this provision is to ensure that building certifiers who are acting as assessment managers will be made aware of the application for extension.

New subsections 71(8)-(9) provide that local government must decide the application within 10 business days and may consult with any person, including neighbours and other local residents, likely to be affected by the application. The power for the local government to decide the extension does not include an ability to impose any conditions on the extension of time.

New subsection 71(10) provides that in assessing the application the local government may have regard to how much work has been undertaken at the time of making the application, whether it is structurally sound and any impact on the community arising from any further delay in the completion of the work.

New subsections 71(11) and (12) provide that the local government must notify the applicant and the assessment manager of the local government's decision on the application within 5 business days of deciding the application, and require that a decision to refuse an application must be in the form of an information notice. An applicant can appeal a decision to refuse to extend the approval, to a building and development committee under section 532 of the *Sustainable Planning Act 2009*.

New subsection 71(13) provides that where a local government grants an application, the building development approval is extended for the period granted by the local government. The local government may grant an extension for a period of up to 6 months.

New subsections 71(14) and (15) make explicit provision for cases where the local government fails to make a decision within the 10 business days provided for by subsection 71(9). In these cases there is no deemed approval of the application. Instead the lapsing period is deemed to be extended until either the local government notifies the applicant of its decision, or 6 months has passed since the end of the original 12 month lapsing period, whichever happens first.

Clause 60 - Amendment of s 101 (Meaning of substantially completed)
Chapter 5, Part 2 of the BA provides a regime for the issuing of building certificates for all buildings, other than detached class 1a buildings (houses) and class 10 buildings (sheds). Under section 114 of the BA, it is an offence to occupy a building, unless it has a certificate of classification.

Section 102 of the BA provides that before issuing a certificate of classification the building certifier must be satisfied that the building is substantially complete. Currently section 101 provides that a building may be considered to be substantially completed when, among other things, the local government has issued a compliance certificate under the *Plumbing and Drainage Act 2002* (PDA) stating the plumbing work, drainage work and on-site sewerage work for the building has been completed.

As a result of amendments to the PDA that commenced on 1 November 2012, plumbers are able to self-certify some plumbing and drainage work known as notifiable work. Previously such work would have required local government approval, evidenced by the issue of a compliance certificate. Under the new notifiable work provisions, a licensee need only lodge a notice of notifiable work with the PIC.

The proposed amendments to section 101(1)(d) allow a building certifier to be satisfied that a building is substantially completed if, among other things, either the local government has issued a compliance certificate for the plumbing or drainage work for the building, or the PIC has been given a notice of notifiable work for plumbing and drainage work undertaken for the building. The amendments also

remove the reference in section 101(1)(d) to 'on-site sewerage work', which is redundant.

Clause 61 - replacement of section 155 (Who may apply)
Amendments to section 155 of the BA adopt nationally consistent terminology for the licensing of building certifiers which came into effect on 1 November 2012.

There is a concern however that the amended provision may inadvertently prevent a building certifier level 3 from renewing their licence if they have not worked under the supervision of a private building certifier or been employed by a local government for a period of one year in the preceding two year period. This result was unintended

The proposed amendments to section 155 address this concern by expressly providing that a building certifier level 3 is eligible for a licence if they have previously held a licence at an equivalent level and hold a current accreditation issue by an accreditation standards body.

In this context, the reference to a licence at an equivalent level is a reference to a Building Surveying Technician licence that existed prior to the 2011 national licensing changes.

Clause 62 - Amendment of s 246BN (Applying for renewal)

The *Vocational Education and Training (Commonwealth Powers) Act 2012* made amendments (VET amendments) to chapter 8 of the BA in relation to training courses for swimming pool safety inspectors. The amendments reflect the State's referral of legislative powers for vocational education and training to the Commonwealth. These amendments took effect on 29 June 2012.

There is a concern that these amendments may inadvertently prevent a pool safety inspector from renewing their licence if they have not undertaken a course approved under the national training scheme. It was always intended that pool safety inspectors who undertook their training prior to the referral of power would remain eligible for a licence.

The proposed amendments to section 246BN address this concern by removing the reference to eligibility under section 246BH. As a result it will be sufficient for an inspector applying for renewal to show that they have previously held a pool safety inspection licence and that they satisfy the additional requirements under section 246BN(3).

Clause 63 Amendment of ch 11, hdg (Savings and transitional provision)
The heading to Chapter 11 is amended.

Clause 64 - Insertion of new ch 11, pt 16
The clause inserts new chapter 11, part 16 which facilitates the notifiable work reforms by validating certain certificates of classification issued by building certifiers prior to commencement. Part 16 also provides transitional arrangements for the renewal of particular building certifier - level 3 and pool safety inspector licences.

The transitional provisions relate to recent amendments made to sections 155 and 246BN of the BA.

The purpose of these provisions is to remove any doubt about the validity of:

- particular certificates of classification issued by a building certifier prior to commencement
- particular licences renewal issued for a building certifier – level 3 or a pool safety inspector, renewed prior to commencement
- particular building certifying functions or pool safety inspection functions, carried out prior to the commencement of these provisions

Section 316 defines 'commencement' and 'previous' for the new part. It also defines 'relevant period' to mean the period from 1 November 2012 to the commencement of these amendments.

Section 317 provides that a certificate of classification given for a building during the relevant period is as valid as it would have been if section 101(1)(d) had been in effect when the certificate was given.

The purpose of this provision is to ensure that building owners can take full advantage of the notifiable work reforms by ensuring that certifiers can rely on the proposed changes to section 101(1)(d) to issue a certificate of classification, before they commence.

Without this provision building owners could be required to lodge an application for compliance assessment with council for a renovation, even if the only plumbing and drainage undertaken for the renovation is notifiable work. This is inconsistent with the purpose of the notifiable work reforms that seek to minimise red tape for the building industry.

The proposed provisions address this issue by allowing a building certifier who is aware that a notice of notifiable work carried out for the building has been given to the PIC under section 87 of the PDA to decide to issue a certificate of classification to a building owner prior to the commencement of the amendments to section 101(1)(d) of the BA.

Section 318 provides that an application for renewal of a licence lodged by a building certifier – level 3 during the relevant period is taken to be as valid as if the new section 155 had been in effect when the application was lodged.

The purpose of this provision is to overcome the current wording of section 167(2) which provides that an application to renew a licence "can not be made" if a building certifier is not qualified under section 155 to apply for a licence.

The effect of the provision is that if an application is lodged during the relevant period and under the new section 155, the person would be able to make an application, they will be taken to have been able to make the application when it was lodged.

Section 319 provides that if during the relevant period the Queensland Building

Services Authority (BSA) renews a licence held by a building certifier – level 3, the renewed licence is taken to be valid to the extent it would have been if new section 155 had been in effect when the licence was issued.

The purpose of this provision is to retrospectively validate the renewal of a licence issued by the BSA to a building certifier – level 3 during the relevant period where the licensee did not meet the requirements of previous section 155(b)(ii) or (iii). The provision will only validate the renewal if no other issues of non-compliance affected the renewal of the licence. Similarly, subsection 319(3) provides that if the renewed licence was issued subject to a restriction, condition or endorsement, these will continue to have effect.

Section 320 validates any building certifying functions performed by a licensee during the relevant period. The purpose of section 320 is to remove any doubt about the validity of any actions taken by a building certifier – level 3 whose licence is renewed during the relevant period and validated under section 319. The effect of the provision is that a building certifier – level 3 whose license is renewed during the relevant period is taken to be, and always have been, licensed to perform building certifying functions. As a result there will be no increase or decrease in the ability of the building certifier to undertake certifying functions during the relevant period.

Section 321 validates particular applications for the renewal of licences for pool safety inspectors. The section provides, in effect, that an application for the renewal of a licence lodged before the commencement of part 16 that was invalid because the person making the application did not comply with section 246BN as in force at the time, is as valid as if new section 246BN had been in force when the application was lodged.

Section 322 provides that if the Pool Safety Council (PSC) issues a renewed licence to a pool safety inspector between 29 December 2012 and commencement of these amendments, the issue of the licence is taken to be valid to the extent it would have been if the new section 246BN had been in effect when the licence was issued.

The purpose of this provision is to retrospectively validate any licence issued by the PSC to a pool safety inspector after 29 December 2012 where the licensee did not meet the eligibility requirements of section 246BH, so long as there were no other issues of non-compliance involved with the issue of the licence. Similarly subsection 322(3) provides that if the licence was issued subject to a restriction or condition, the restriction or condition will continue to have effect.

Section 323 validates any pool safety inspection functions performed by a licensee during the relevant period. The purpose of this provision is to remove any doubt about the validity of any actions taken by a pool safety inspector whose licence is renewed between 29 December 2012 and commencement of these amendments and validated by section 322. The effect of the provision is that pool safety inspector is taken to be, and always to have been, licensed to perform pool safety inspection functions. As a result there will be no increase or decrease in the ability of the pool safety inspector to undertake pool safety inspection functions.

Clause 65 – Amendment of sch 2 (Dictionary)

Clause 65 provides that for the new Chapter 11, Part 16, the definitions of commencement', 'previous' and 'relevant period' are those set out in section 316.

Part 4 Amendment of Plumbing and Drainage Act 2002

The expression 'on-site sewerage work' is defined and is a subset of 'drainage work'. For this reason, and to simplify the relevant provisions, all references to 'on-site sewerage work' have been removed unless there is a need to distinguish this work from other 'compliance assessable work' or 'drainage work'.

Clause 66 - Act amended
Clause 66 provides that part 4 amends the PDA.

Clause 67 – Amendment of long title
Clause 67 removes a redundant reference to 'on-site sewerage facilities'.

Clause 68 - Amendment of s 78 (Compliance permit)
Clause 68 removes the redundant references to 'on-site sewerage work' from subsections 78(1) and (2).

Clause 69 - Amendment of s 79 (Compliance certificate)
Clause 69 removes the redundant reference to 'on-site sewerage work' from section 79.

Clause 70 - Amendment of s 80 (Purpose of compliance assessment)
Clause 70 removes the redundant references to 'on-site sewerage work' from subsections 80(a) and (b).

Clause 71 - Amendment of s 81 (Compliance assessable work must be assessed for compliance)
Clause 71 removes the redundant references to 'on-site sewerage work' from the heading and body of section 81.

Clause 72 - Insertion of new s 81A (Work that is notifiable work may be assessed for compliance)

Under the new notifiable work provisions which commenced on 1 November 2012 plumbing licensees are allowed to carry out notifiable work (for example work for a renovation of a class 1 building), without having to apply for a compliance permit or obtain a certificate from the relevant local government stating that the work complies with the *Standard Plumbing and Drainage Regulation 2003* (SPDR).

There may however be some situations, for example in relation to a complex installation, or where the work involves both compliance assessable and notifiable work, where a licensee may wish to have all of their work assessed as compliance assessable work.

New section 81A allows a licensee proposing to undertake a combination of notifiable work and compliance assessable work, or notifiable work only, to make a compliance request and seek a compliance permit and certificate from the relevant local government for the work.

Once the compliance request has been lodged the work will be assessed solely under the compliance assessment process for compliance assessable work. Licensees will not be required to comply with any of the requirements under section 87 for notifiable work.

Clause 73 - Amendment of s 82 (All plumbing and drainage work must comply
Clause 73 removes the redundant references to 'on-site sewerage work' from the heading and body of section 82(1).

Clause 74 - Amendment of s 83 (Compliance permit required for certain compliance work)
Clause 74 removes the redundant references to 'on-site sewerage work' from the heading and body of subsection 83(1).

Subsection 83(2) has been amended to clarify that no change is intended to be made to the power of a local government to exclude compliance assessable work from the need to obtain a compliance permit. This is achieved by providing that the power of a local government to exclude compliance assessable work from the need to obtain a compliance permit does not extend to on-site sewerage work.

Clause 75 - Amendment of s 84 (Compliance assessable work by a public sector entity)
Clause 75 removes the redundant references to 'on-site sewerage work' from the heading and body of section 84.

Clause 76 - Amendment of s 85 (Process for assessing plans)
Clause 76 removes the redundant reference to 'on-site sewerage work' from the body of section 85.

Clause 77 - Amendment of Division heading
Clause 77 amends the heading of Division 4 to reflect the purpose of the Part which is to provide a process for assessing compliance assessable work.

Clause 78 - Amendment of s 86 (General process for assessing compliance assessable work)
Clause 78 removes the redundant references to 'on-site sewerage work' from the heading and body of section 86.

Clause 79 - Amendment of s 86A (Process for assessing certain regulated work in remote areas)
Clause 79 removes the redundant references to 'on-site sewerage work' from the heading and body of section 86A.

Clause 80 - Amendment of s 86C (Conditions of compliance certificate)
Clause 80 amends section 86C(1) to clarify that conditions continue to be able to be issued in relation to compliance assessable work involving on-site sewerage work for an on-site sewerage facility. No change is proposed in relation to work for a greywater use facility.

The head of power to impose conditions for on-site sewerage work provided in section 86C(3) is not affected by the proposed amendment to subsection 86C(1).

Clause 81 - Amendment of s 87 (Notifiable work)
Clause 81 amends section 87 to facilitate the introduction of the notifiable work reforms.

Section 87 includes requirements for notifiable work that has been completed, the most important of which is the requirement to give the PIC a notice of the work. The provision clarifies when notifiable work is completed for the purposes of section 87(1), and therefore when the requirements in section 87 are triggered. The subsection allows multiple pieces of notifiable work that form part of a single transaction, for example plumbing work for a kitchen renovation, to be included in one notice.

The words “for the purposes of section 87(1),” in section 87(2) make it clear that the concept of “completed” relates solely to the operation of section 87 and to the question of when a notice must be given to the PIC. It is not intended that the statement in section 87(2) providing that work is completed will have any impact outside of this operation of this provision. For example, if a licensee issues an invoice to a customer in relation to work that they had not in fact undertaken, it is not intended that the provision will allow a licensee to assert that they should be paid for work they have not in fact undertaken.

Section 87(2) provides that the work is completed when either the work is operational (in working order and ready for use) or an invoice for the work is issued, whichever happens first. In many cases notifiable work will be operational before an invoice for the work is issued. However, the provision contemplates the possibility that an invoice may be issued for work that is not operational. In these cases the work that is the subject of the invoice will be considered to be complete for the purposes of the section. As a result a notice must be issued to the PIC for the work covered by the invoice.

Without this provision it would be unclear whether a licensee is required to lodge a separate notice for each piece of work if the work is completed on different days. This would be contrary to the underlying objective of the notifiable work provisions which is to remove unnecessary red tape from the plumbing industry. The intention is to allow a combination of notifiable work to be covered by a single notifiable work notice provided the work forms part of a single transaction such as an engagement to to undertake plumbing work for the addition of an en-suite bathroom and a kitchen to an existing home.

The term ‘single transaction’ is not defined, and as such is to be given its ordinary meaning. In determining whether a combination of notifiable work forms

part of a single transaction the following factors are considered to be relevant:

- whether the work was included in a single work order or quotation;
- whether the work was carried out continuously in a short period of time or at different times over a lengthy period of time.

Section 87(2)(a) and (b) provides for cases where the notiable work involves a single piece of work, and section 87(2)(c) provides for cases where a combination of notifiable work is carried out as part of a single transaction.

To provide some guidance on the operation of section 87(2), the following examples are provided.

Example 1
A licensee gives a quote to replace a water heater. The quote is accepted and the licensee completes the work on the same day. Under section 87(2)(a) this is a single piece of work that is completed when it becomes operational. The licensee must give a notice to the PIC within 10 business days of the new water heater becoming operational.

Example 2
A licensee is engaged to seal a sanitary drain upstream from the connection point for a sewerage provider's sewerage system prior to the demolition of a building. The licensee carries out the work, however the work is not and will never be operational for the purposes of the section 87(2)(a). The licensee issues an invoice for the work two days after sealing the drain. Under section 87(2)(b) the work is completed when the invoice is issued and a notice must be given to the PIC within 10 business days of the invoice being issued.

Example 3
A licensee gives a quote for the installation of 10 toilets. This is considered to be a single transaction for the purposes of section 87(2)(c). The quote is accepted and the licensee commences work. Each toilet becomes operational in turn over a period of 5 days. Under section 87(2)(c)(i) the work is taken to be completed after the 10^{th} toilet becomes operational on the 5^{th} day. An invoice is issued 5 days later. As all of the work covered by the single transaction becomes operational prior to an invoice for the work being issued, a notice must be issued to the PIC within 10 business days of day 5.

Example 4
A licensee gives a quote for the installation of 10 toilets. This is considered to be a single transaction for the purposes of section 87(2)(c). The quote is accepted and the licensee commences work. The first 6 toilets each become operational over a period of 3 days. On day three, following the installation of the 6^{th} toilet the

licensee issues an invoice for the work undertaken to date. Under section 87(2)(c)(ii) the work for the first 6 toilets is completed when the invoice is issued. As a result the licensee is required to issue a notice to the PIC for the 6 toilets referred to in the invoice within 10 business days of day 3.

The licensee proceeds to install the remaining 4 toilets with the 10th toilet becoming operational on day 5. The installation of the remaining 4 toilets is still considered to form part of the single transaction. Under section 87(2)(c)(i) work for the transaction is completed on day 5 when the 10th toilet becomes operational. As a result the licensee will be required to issue a notice to the PIC for the remaining 4 toilets within 10 business days of day 5.

In relation to example 2 it would have been open to the licensee to delay the issue of the invoice until after the 10th toilet was operational. This would have allowed the licensee to give one notice to the PIC instead of two.

In some cases more than one licensee is involved in some way in the performance of the notifiable work. The proposed amendments to section 87(3) specify who has responsibility for lodging a notice of notifiable work with the PIC.

Section 87(3)(a) provides that if the work is carried out by or for a relevant entity, the entity will be responsible for giving the notice to the PIC.

Section 87(3)(b) provides that if a single supervising licensee is involved in directing or supervising the work, the supervising licensee must give the notice to the PIC.

Section 87(3)(c) provides for the case where two or more supervising licensees are involved in directing or supervising the work. In these cases the supervising licensees are jointly responsible for giving the notice to the PIC.

Section 87(3)(d) provides for other cases where a licensee (the relevant licensee) carries out their work independently of supervision. In these cases the relevant licensee is solely responsible for giving the notice to the PIC.

Section 87(4)(a) provides that a notice must be given in the approved form or electronically under section 87A.

Section 87(4)(b) provides a head of power for a regulation to set an alternative period for licensees to lodge notifiable work notices with the PIC. If no period is prescribed, the notice must be given within 10 business days after completion of the work.

Section 87(4)(c) provides that the notice must be accompanied by the fee prescribed by regulation.

To remove any doubt regarding the operation of section 87(2), section 87(5) makes it clear that a notice can be given for all or some of the notifiable work that is part of a single transaction.

Section 87(6) applies when more than one supervising licensee is required by section

87(3) to lodge a notice. In these cases if one supervising licensee lodges a notice then all of the supervising licensees are taken to have complied with the requirement to lodge a notice. This provision clarifies that only one notice needs to be given to the PIC where multiple supervising licensees are involved.

Proposed section 87(7) provides a defence of reasonable excuse for the offence of failing to lodge a notice. It is intended that a person be able to establish a reasonable excuse for failing to give the PIC a notice if they can show that their failure to lodge the notice resulted from an honest and reasonable but mistaken belief or some other reasonable excuse. The following example provides guidance in relation to the policy intention for section 87(7).

Example
Two supervising licensees, SL 1 and SL 2, supervise or direct the performance of notifiable work. The company they work for has established a business practice that requires that every time both SL 1 and SL2 play a role in relation to the performance of notifiable work, SL 1 must lodge a notifiable work notice for the work. However, on one occasion, SL 1 fails to issue the required notice to the PIC. In these circumstances it would be open for SL 2 to rely on the reasonable excuse defence based on an honest and reasonable but mistaken belief that SL 1 would issue the required notice to the PIC when it was due. In seeking to establish the defence of reasonable excuse SL 2 would need to adduce evidence to establish that it was reasonable in the circumstances to rely on SL 1 to issue the notice to the PIC. This could involve pointing to existing company policies or previous business practice.

The amended section 87(8) provides that local governments may, but need not, inspect notifiable work as a result of notice being given to the PIC. The purpose of this provision is to clarify that a local government may be required, as a result of the operation of another provision of the Act or a regulation, to inspect notifiable work. The provision makes it clear that such a requirement will not be inconsistent with the discretion provided under section 87(8), which is limited to inspections that arise solely as a result of the lodging of a notifiable work notice with the PIC.

The new section 87(9) provides that the relevant licensee, supervising licensee or relevant entity who gave the notice to the PIC must also give the owner of the premises, or the person who asked for the work to be done, a copy of the notice. The provision clarifies that the requirement is satisfied when the licensee provides a copy of the form to the owner or the person who asked the licensee to carry out the work.

The new section 87(10) specifies that particular information must be provided to the owner or the person who requested the work. This information must must accompany the copy of the notice required under section under 87(9). The purpose of providing this information is to:

- provide evidence that a licensed person has carried out the work
- raise the possibility of an audit of the work being undertaken by local government.

Sections 87 (11) (12) and (13) are existing provisions that have been renumbered to accommodate the changes to section 87.

Clause 82 - Insertion of new s 87B

New section 87B provides that the PIC may disclose personal information relating to notifiable work to local governments. This measure is particularly important to support the enforcement role that local governments will undertake for notifiable work.

Because the notifiable work scheme will result in less plumbing and drainage work being inspected prior to its completion, the ability to store and disclose information relevant to the replacement system of audits is vital.

Random and targeted audits under the scheme will maintain health and safety outcomes, as well as ensure that the standard of work continues to be high. For example, under new section 87B the PIC will be able to assist local governments by providing them with the information collected from licensees for ongoing investigation and enforcement.

Specifically, the section provides that a local government may be given details of the owner or occupier of the premises where the work was completed, and the person who performed the work so that it may conduct investigations and take action where necessary.

Clause 83 - Amendment of s 90 (Standard Plumbing and Drainage Regulation may prescribe additional requirements and actions)

Clause 84 provides clarity as to the matters that may be prescribed in a regulation for notifiable work.

The amendment to section 90(b) provides that a regulation can stipulate actions that a local government may, or must, take when inspecting notifiable work. This could include requiring the local government to undertake an inspection within a limited time.

New section 90(c) provides a head of power to require a local government to undertake inspections of notifiable work that is performed in its area. The provision makes it clear that a regulation can require local governments to inspect notifiable work. This power is unaffected by the discretion provided in section 87(8) as that section specifically provides for the possibility that other provisions of an Act or regulation may require a local government to undertake inspections of notifiable work.

This amendment has the potential to address a concern regarding the operation of section 29A of the SPDR. Under that provision a licensee can request an inspection of notifiable work by a local government for the purposes of determining whether the work complies with the SPDR. However, the inspection can not occur unless the local government and the occupier both agree to the inspection.

The amendment addresses this concern by providing a head of power to require a local government to undertake an inspection of notifiable work. If such a regulation is made a local government will be able to charge a cost recovery fee to inspect the notifiable work.

Clause 84 - Amendment of s 114 (Functions and powers of inspectors and relationship to the Local Government Act 2009)
Clause 84 amends the section to insert references to the *City of Brisbane Act 2010*. The effect is that authorised persons under the *City of Brisbane Act 2010* will now use the powers given to them directly under that Act. Previously the powers, such as entry to land, given under the *Local Government Act 1993* were also utilised by the Brisbane City Council. With the introduction of the *Local Government Act 2009*, these powers are now provided under the *City of Brisbane Act 2010* and section 114 has been amended accordingly.

The clause also removes the redundant reference to 'on-site sewerage work' in section 114(2).

Clause 85 - Amendment of s116 (Enforcement Notice)
Clause 85 removes the redundant references to 'on-site sewerage work' and 'on-site sewerage facility' from the body of section 116.

Clause 86 - Amendment of s 121 (Exemptions for ss 119 and 120)
Clause 86 removes the redundant reference to 'on-site sewerage work' from the body of section 121.

Clause 87 - Amendment of s 128B (Owner's obligation to ensure compliance with conditions of compliance certificate)
Clause 87 removes the redundant reference to 'on-site sewerage work' from the body of section 128B. The amendment is not intended to affect the requirement that an owner of premises must ensure that a condition issued under a compliance certificate for a grey water facility and or an on-site sewerage facility is complied with.

Clause 88 - Amendment of s 128G (Owner's obligation to maintain plumbing and drainage)
Clause 88 removes the redundant references to 'on-site sewerage facility' from the heading and body of section 128G.

Clause 89 - Amendment of s 138 (Offences under Act are summary)
Clause 89 amends the timeframes in which proceedings for an offence can be commenced. Section 138 currently states that a proceeding must start within the later of either one year after the alleged date of the commission of the offence or six months after the offence comes to the complainant's knowledge, whichever happens later.

Under the notifiable work scheme, it is more likely that defective work will not be discovered until more than two years after the work has been completed. For example,

defective drainage work that has been covered will only be discovered after a fault, such as subsidence, becomes apparent.

Clause 90 - Amendment of s 144 (Chief Executive may publish information)
Clause 90 removes the redundant reference to 'on-site sewerage work' from the body of section 144.

Clause 91 - Amendment of s 145 (Regulation making power)
Clause 91 removes the redundant reference to 'on-site sewerage work' from the body of section 145.

Clause 92 – Validation provision for Housing and Other Legislation Amendment Act 2012
The clause inserts new pt 10, div 10 as a validation provision for the *Housing and Other Legislation Amendment Act 2012*.

New section 190 complements the amendments to section 114(3) in this Bill. Section 114(3) of the *Plumbing and Drainage Act 2002* provides that for performing an inspector's functions, the inspector has the powers of an authorised person under the *Local Government Act 2009*. The new section is intended to put beyond doubt that any reliance on the powers contained in the *City of Brisbane Act 2010* will be held valid should it be questioned as the powers are mirrored in both Acts. This does not reflect a change in policy and recognises that with the introduction of the *Local Government Act 2009*, these powers are now more appropriately provided under the *City of Brisbane Act 2010*.

Clause 93 – Amendment of schedule
Clause 93 amends the following schedule definitions:

'drainage' is amended to clarify that an on-site sewerage facility is within the definition of drainage.

'drainage work' is amended so it includes on-site sewerage work as a subset of drainage work.

'local government' to clarify the definition.

'operate' to exclude an on-site sewerage facility, which is now covered by the expanded definition of drainage.

Part 5 Minor and consequential amendments

Clause 94 - Acts amended
The schedule contains minor amendments to the BA and the PDA, required to correct grammatical and typographical errors identified by the Department of Housing and Public Works and the Office of the Queensland Parliamentary Counsel.