

Economic Development and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Economic Development and Other Legislation Amendment Bill 2018 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to provide for increased operational efficiency of legislation under the administration of the Minister for State Development, Manufacturing, Infrastructure and Planning. The Bill proposes to:

- amend the *Building Queensland Act 2015* (BQ Act);
- amend the *Economic Development Act 2012* (ED Act) and other Acts consequential to the operation of the ED Act;
- amend the *Planning Act 2016* (Planning Act);
- amend the *Planning and Environment Court Act 2016* (P&E Court Act);
- amend the *Queensland Reconstruction Authority Act 2011* (QRA Act);
- amend the *Sanctuary Cove Resort Act 1985* (SCR Act);
- amend the *South Bank Corporation Act 1989* (SBC Act); and
- repeal the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004* (SMBI Act).

Amendments to the *Building Queensland Act 2015*

The amendments to the BQ Act are primarily to implement the Queensland Government's response to the report "An Administrative Review of Building Queensland's Operating Arrangements" (the BQ Review Response). In order to implement the BQ Review Response, three amendments are proposed: amend the threshold for which business cases are led by Building Queensland (BQ) to remove high cost but low risk road infrastructure proposals; reduce the frequency of publication of the Infrastructure Pipeline Report (IPR) from six-monthly to annual; and allow proxies for government Board members to be nominated for any length of time, including a single meeting.

While it was not a recommendation from the BQ Review Response, a further complementary amendment steps-up the monetary value for the business case thresholds so that they increase by 10 per cent every five years. This will ensure that the monetary values keep pace with the producer price indexes for building roads and bridges in Queensland and for other heavy and civil engineering construction in Australia.

Amendments to the *Economic Development Act 2012* and other Acts

Amendments are proposed to the ED Act and other related Acts to improve its operation through better alignment between the ED Act and Planning Act, more flexibility in the declaration of PDAs and provisional PDAs and their associated instruments, and through more efficient development assessment in PDAs.

The amendments will also improve various administrative matters in relation to consumer disclosure statements under the *Body Corporate and Community Management Act 1997* and public thoroughfare easements under the *Local Government Act 2009*. Other amendments are proposed to the: *Building Act 1975*; *Body Corporate and Community Management Act 1997*; *Environmental Protection Act 1994*; *Housing Act 2003*; *Liquor Act 1992*; *Exhibited Animals Act 2015*; *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*; *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*; *Biosecurity Act 2014*; *Coastal Protection and Management Act 1995*; and the *Land Valuation Act 2010*.

Amendments to the *Planning Act 2016*

A number of matters have arisen in the operation of the planning framework since commencement of the Planning Act on 3 July 2017. The Bill proposes to amend the Planning Act to restore certainty in the operation of the framework with respect to the issue of valid infrastructure charges notices (ICNs) under the repealed *Sustainable Planning Act 2009* (SPA), and certain notification requirements for submitter appellants that have proven burdensome and ineffectual.

Improved accessibility and efficiencies in the operation of the Planning Act are proposed through the Bill that enable service of relevant documents by giving a document that refers to a stated website or other electronic medium where the relevant document can be viewed.

Other minor amendments are also proposed to clarify the policy intent of certain provisions and ensure the effective operation of the transitional arrangements from SPA to the Planning Act.

Amendments to the *Planning and Environment Court Act 2016*

Efficiencies in the P&E Court Act's operations are proposed at the request of the Planning and Environment Court (P&E Court) through amendments in the Bill that provide for referral powers regarding private mediation.

Amendments to the *Queensland Reconstruction Authority Act 2011*

The Queensland Reconstruction Authority (QRA), through the QRA Act, is responsible for coordinating and managing the rebuilding and recovery of communities affected by disaster events. In April 2016, Government endorsed the appointment of QRA as the State's lead agency responsible for disaster recovery, resilience and mitigation policy in Queensland. Consequently, QRA's role has expanded beyond what it was when it was established as a temporary entity. A review of the QRA Act identified amendments required to reflect QRA's revised role. The proposed amendments to the QRA Act will ensure QRA can undertake resilience, mitigation and betterment activities outside of post-disaster events.

Amendments to the *Sanctuary Cove Resort Act 1985*

To further the State's interests in achieving liveable communities with diverse housing options, and to potentially provide for the development of a broader range of residential uses than is currently provided under the SCR Act, the Bill proposes amendments to the SCR Act to include a retirement village and/or residential care facility as a potential use at Sanctuary Cove Resort (the resort). While not providing for the use as-of-right anywhere at the resort now, including this use in the SCR Act will enable the resort to consider this use in the future and potentially bring forward development proposals of this nature for the State's consideration through due process under the SCR Act.

Amendment to the *South Bank Corporation Act 1989*

A minor amendment is proposed to the SBC Act to ensure assessment of development categorised as assessable or accepted development by the Planning Act is not duplicated under the SBC Act.

Repeal of the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*

The Bill proposes to repeal the SMBI Act as the effect of the provisions expired on 30 March 2016 and consequently the Act is considered redundant.

Achievement of policy objectives

Amendments to the *Building Queensland Act 2015*

To achieve its objectives, the Bill makes amendments to the BQ Act to:

- amend the threshold for which business cases are led by Building Queensland (BQ) to remove high cost but low risk road infrastructure proposals, and to step-up all business case monetary thresholds by 10 per cent every five years;
- reduce the frequency of publication of the IPR from six-monthly to annual; and
- allow proxies for government board members to be nominated for any length of time, including a single meeting.

Amendments to the *Economic Development Act 2012* and other Acts

To achieve its objectives for increased operational efficiency of legislation, the Bill will include a series of amendments to the ED Act and related Acts that will:

- optimise consistency between the ED Act and Planning Act in recognition of the need for the community and government to operate effectively in the respective planning systems;
- clarify current provisions to improve certainty and consistency of their application, for example in relation to PDA development applications and approvals;
- refine and enhance current provisions to improve flexibility in identifying and planning for both provisional PDAs and other PDAs in different and changing circumstances, improve implementation of development assessment (including in relation to the application process, enforcement, water infrastructure and other agreements), improve the transition of PDA cessations, and improve administrative matters in relation to consumer disclosure statements under the *Body Corporate and*

Community Management Act 1997 and the application of the *Land Titles Act 1994*, *Local Government Act 2009* and *City of Brisbane Act 2010* to public thoroughfare easements; and

- amend other related Acts to recognise PDA development instruments in the same way as equivalent instruments under the Planning Act.

Amendments to the *Planning Act 2016*

To achieve its objectives, the Bill will make amendments to the Planning Act to:

- validate ICNs issued under the repealed SPA since 4 July 2014, to the extent that the ICN or an accompanying information notice did not state the reasons for the decision as required under SPA;
- correct an oversight in the transition of SPA to the Planning Act by including a provision in section 121(1) that the ICN must also state any other matter prescribed by regulation;
- remove the requirement for a submitter appellant to serve a notice of appeal to all other submitters to the development application;
- validate any appeals that have already been filed where there has been non-compliance with the requirement to notify other submitters of the appeal;
- introduce the option to serve a relevant document via a document containing a stated website or other electronic medium at which a relevant document may be viewed or downloaded; and
- clarify the policy intent of certain provisions and ensure the effective operation of the transitional arrangements of the Planning Act.

Amendments to the *Planning and Environment Court Act 2016*

To achieve its objectives, the Bill will make amendments to the P&E Court Act to allow the P&E Court to refer matters for private mediation, in addition to the referral of matters to the Alternative Dispute Resolution Registrar.

Amendments to the *Queensland Reconstruction Authority Act 2011*

To achieve its objectives, the Bill will amend QRA's functions to reflect and enable its revised role. Broadly, the proposed amendments will ensure that the QRA can undertake its responsibilities for the full range of disaster events, lead the coordination of resilience and recovery policy and facilitate mitigation activities outside of post-disaster events.

The QRA Act currently limits the scope of QRA's reconstruction functions to facilitating 'flood' mitigation, recovery and resilience. With QRA being appointed as lead agency responsible for disaster recovery and resilience policy, as well as coordinating whole of government flood risk management and other mitigation activities, the Bill will ensure the QRA Act reflects QRA's responsibilities for all-natural disaster hazards events rather than for only floods.

The Bill will ensure the QRA can undertake resilience activities in a wide range of settings and not limited to communities affected by a previous disaster event. The proposed amendments will allow resilience activities to be taken pre-emptively across the State before a disaster occurs.

To effectively implement its mitigation and resilience responsibilities the scope of QRA's functions need to capture 'betterment', whereby repairing, rebuilding and/or replacing community infrastructure can occur to a standard likely to result in it being less impacted by future disaster events. The Bill extends QRA's responsibility to facilitate the betterment of affected communities to improve resilience, such that community resilience may be enhanced through the significant improvement during the reinstatement of disaster impacted infrastructure.

The QRA Act includes a function for the authority to coordinate and distribute financial assistance for affected communities—those impacted by a disaster event. The Bill will enable QRA to manage the distribution of funds to facilitate community resilience outside of disaster events or communities impacted by a disaster event.

To provide clarification of key terms, the Bill includes the definition of mitigation, betterment and resilience. Further, the Bill adjusts QRA reporting and board requirements to align with other government agencies, by reducing board meetings from 12 per year to eight, amending reporting requirements from monthly to quarterly and providing an opportunity for more than seven board members, should it be required.

Amendments to the *Sanctuary Cove Resort Act 1985*

To achieve its objectives, the Bill will make amendments to the SCR Act to:

- include retirement facility and residential care facility as uses under the SCR Act; and
- introduce the ability to approve a use on a site by site basis in the resort.

Amendment to the *South Bank Corporation Act 1989*

To achieve its objectives, the Bill will make amendments to the SBC Act to ensure development categorised as assessable or acceptable development under the Planning Act is not assessable development under the SBC Act.

Repeal of the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.

To achieve its objectives, the Bill will repeal the SMBI Act.

Alternative ways of achieving policy objectives

The alternatives to the Bill and proposed framework were considered and are discussed below.

Amendments to the *Building Queensland Act 2015*

Legislative amendments are the only way to achieve the intended policy objectives.

Amendments to the *Economic Development Act 2012* and other Acts

The Bill provides amendments to the ED Act that are required for the government to facilitate economic development in Queensland and enable economic development and development for community purposes to be achieved efficiently and effectively. These amendments can only be implemented through changes to legislation. Alternative options for components of the Bill were considered on an individual basis, including through engagement, analysis and

discussions. Alternative policy options do not have the statutory force to achieve the government's policy objectives.

Amendments to other Acts related to the ED Act are to address their statutory relationship with the ED Act. Consequently, there are no alternative ways of achieving the policy objectives.

Amendments to the *Planning Act 2016*

Legislative amendments are the only way to achieve the intended policy objectives.

Amendments to the *Planning and Environment Court Act 2016*

Legislative amendments are the only way to achieve the intended policy objectives.

Amendments to the *Queensland Reconstruction Authority Act 2011*

Legislative amendments are the only way to achieve the intended policy objectives.

Amendments to the *Sanctuary Cove Resort Act 1985*

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Amendment to the *South Bank Corporation Act 1989*

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Repeal of the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*

Legislative amendments are the only way to achieve the intended policy objectives.

Estimated cost for government implementation

Amendments to the *Building Queensland Act 2015*

It is not expected that costs will be incurred to implement the amended Bill, however if so, these will be met from within existing budget allocations.

Amendments to the *Economic Development Act 2012* and other Acts

There are no significant implementation costs for government associated with the proposed amendments. Where costs do arise, they will be met from existing budget allocations.

Amendments to the *Planning and Environment Court Act 2016*

Should the P&E Court choose to utilise alternative private mediator arrangements, costs would be met within current arrangements and no additional costs to the parties is anticipated at this time.

Amendments to the *Queensland Reconstruction Authority Act 2011*

It is not expected that costs will be incurred to implement the amended Bill, however if so, these will be met within QRA's current budget.

Consistency with fundamental legislative principles

Amendments in the Bill have been drafted with regard to Fundamental Legislative Principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992*. Any FLP issues are identified below.

Amendments to the *Building Queensland Act 2015*

No FLP issues were identified.

Amendments to the *Economic Development Act 2012* and other Acts

Legislation should have sufficient regard to the rights and liberties of individuals by being reasonable and fair

Penalties for offences

The Bill increases the maximum penalties for development offences under the ED Act from 1665 penalty to 4500 penalty units (clauses 79 to 81). The maximum penalties for contravening enforcement orders made by the P&E Court and orders made by the Magistrates Court have also been increased. In the case of contraventions of P&E Court enforcement orders, the maximum penalty has been increased from 3000 penalty units or two year's imprisonment to 4500 penalty units or two year's imprisonment (clause 97). In the case of contraventions of Magistrates Court orders, the maximum penalty has been increased from 1665 penalty units or one year's imprisonment to 4500 penalty units or two year's imprisonment (clause 99).

The increases bring the penalties under the Act into line with equivalent offences under the Planning Act, as well as the *Regional Planning Interests Act 2014* and the *Environmental Protection Act 1994*. The current penalties were introduced under the *Urban Land Development Authority Act 2007* (ULDA Act) and were aligned with the planning legislation in place at the time, the now repealed *Integrated Planning Act 1997* (IPA). They have not been reviewed or contemporised to take into account the increase in market demands, property values and inflation over that period.

The development offences are integral for ensuring compliance with the development assessment regulatory system established under the ED Act and will ultimately uphold the integrity of the planning system established by the ED Act. Accordingly, the maximum penalties must adequately deter potential offenders from causing significant and potentially irreparable damage to the State's economic, social and environmental qualities.

Lapsing notice and compliance notification notice

The ED Act establishes a framework to facilitate economic development, and development for community purposes, in identified discrete areas of the State (primarily areas declared as

PDA) or provisional PDA). Part of this framework includes a streamlined planning and development system in those areas.

The existing process for assessing and deciding development applications set out in the ED Act, chapter 3, part 4, division 3 is clarified and refined in the Bill. However, the underlying features of the process are not changed. There is no change to the mandatory requirement for an applicant to provide the information requested by the Minister for Economic Development Queensland (MEDQ) to assess their application. There is also no change to the fundamental requirement for an application to be complete for the MEDQ to decide the application (i.e. compliance with an information request and with notification requirements for those applications requiring notification). Additionally, there are no changes to the existing restrictions on granting approval set out in section 86 of the ED Act. These restrictions state that approval cannot be granted if the relevant development would be inconsistent with the relevant development instrument for the relevant PDA, unless stated conditions are met.

Rather the amendment of the assessment process in clauses 86 and 88 is included to improve and clarify the operation of the process. The inclusion of a lapsing notice mechanism complements the existing power in section 83(3) for the MEDQ to be able to refuse an application, subject to certain procedural requirements, if the applicant does not comply with the information request made by the MEDQ. The revised approach provides greater clarity and procedural certainty about the potential termination of an application for not responding to an information request. The issuing of a formal lapsing notice by the MEDQ as a first step in the possible termination of a non-compliant application provides applicants with clarity about the status of their application and also an incentive to correct and progress their application. The option to negotiate a longer period to provide an information response also provides flexibility to accommodate the particular circumstances of a proposal without infringing the rights and liberties of individuals involved in the process.

The introduction of a lapsing notice for failure by an applicant to meet stated requirements for notification of an application, also provides greater clarity and procedural certainty about the decision process for all parties. The lapsing notice is given if a compliance statement about notification is not provided by the applicant, or if the notification is not substantially compliant with the stated requirements. Section 85(1) requires, among other things, that the MEDQ cannot decide an application unless satisfied the applicant has complied with the notification requirements set out in section 84. As with the Planning Act, notification is the applicant's responsibility. However, unlike the development assessment rules (section 18(1) under the Planning Act), there is currently no requirement for the applicant to submit to the assessment manager a notice of compliance with the notification requirements, nor for the concept of substantial compliance being acceptable. The issuing of a formal lapsing notice by the MEDQ as a first step in the possible termination of an application if notification has not occurred, or notification has not been substantially compliant, provides applicants with clarity about the status of their application and also an incentive to correct the notification requirements and progress their application. The option to negotiate a longer period to provide a compliance statement also provides flexibility to accommodate the circumstances of a proposal without infringing the rights and liberties of individuals involved in the process.

Enforcement notices

The Bill proposes to incorporate the show cause and enforcement notice mechanism in place under chapter 3, part 5 of the Planning Act (clause 95). The Planning Act mechanism

provides for an enforcement authority (e.g. the assessment manager) to issue an enforcement notice requiring a person to refrain from committing a development offence or to remedy the effect of a development offence in a stated way. Except in stated circumstances, this is required to be preceded by a show cause notice, which is a notice from the enforcement authority notifying a person that the enforcement authority is considering giving an enforcement notice. The show cause notice must also state the reasons for giving the notice and may be given if the enforcement authority reasonably believes the person has committed or is committing a development offence. Offences are committed if a person contravenes an enforcement notice, fixes a notice on the premises in a way it would not normally be seen by a person entering the premises, or withdraws or delays a decision on an application for a development permit made in response to a show cause notice. The enforcement authority may do anything reasonably necessary to ensure compliance with the notice and recover any reasonable costs.

Complementary provisions from part 4 of the Planning Act that deal with offence proceedings in the Magistrates Court have also been incorporated in the Bill, providing for the court to make orders for compensation and investigation expenses in relation to a PDA development offence.

The show cause and enforcement notice mechanism has been in place in the planning legislation of the State since the introduction of the IPA. A number of provisions in this Bill, including those relating to enforcement, have been inserted to achieve, to the extent practicable, equivalence with the Planning Act. The ED Act and Planning Act are comparable planning and development systems. While the ED Act system is intentionally streamlined for the particular purposes of the Act, to the extent provided for, it applies in place of the Planning Act in the declared areas. Accordingly, the enforcement tools available under the Planning Act are as appropriate for the ED Act. The penalties to be imposed for enforcement-related offences under the ED Act are consistent with the updated penalties for development offences and court orders in the Bill (discussed above) and are the same as those under the Planning Act.

Powers for investigation and enforcement of offences

The Bill updates the powers of inspectors in the ED Act by applying the current powers in the Planning Act, chapter 5, parts 6, 7 and 8. New sections 122A and 122B apply (clause 102).

Part 6 deals with the appointment and qualifications of inspectors and requires that an inspector has the necessary expertise or experience for the appointment. Part 7 deals with entry of places by inspectors, including the power to enter, entry with consent, entry with warrant and entry procedure. Part 8 deals with other inspectors' powers and related matters, including stopping or moving vehicles, seizure by inspectors and forfeiture, power to seize, safeguards for a seized thing, disposal orders, other information-obtaining powers, damage and compensation for loss.

Applying the entry powers from the Planning Act to the ED Act is appropriate because of the similarity of the development regimes and issues under the two Acts. The Planning Act provisions are contemporary, appropriate and fit for purpose. The provisions contain the normal powers and the usual accepted safeguards for the exercise of the relevant functions under the Act.

The Bill also retains current section 123 relating to the application of local government entry powers for the MEDQ's functions or powers. The definitions in section 123(6) of *MEDQ agent and MEDQ employee* have been retained but relocated to new section 122A to apply in the part.

Exemption from particular disclosure requirements under the Body Corporate and Community Management Act 1997

The Bill proposes in a new section 19A (clause 18) to provide a limited and specific exemption from the disclosure statement provisions under sections 212B and 213 of the *Body Corporate and Community Management Act 1997* (BCMA).

New section 19A provides a limited and specific exemption from the disclosure statement provisions under sections 212B and 213 of the BCMA in relation to community titles schemes under that Act. The section refers to the sale of lots between MEDQ and a developer that involves certain initial and further contracts about carrying out the development of the scheme land, and an option for the MEDQ to sell unsold lots to the developer.

These disclosure statements are designed for consumer protection purposes. However, the circumstance that applies to the sale of lots is not a normal consumer protection matter and the requirement for a disclosure statement under section 213 of the BCMA is not necessary.

Further, the developer, as the designer and builder of the product and the entity responsible for setting up the scheme, is not a person that requires the protections afforded by the Act.

The amendment inserting new section 19A limits the scope of the exemption to the specifically stated circumstances. This will not weaken the consumer protections available through sections 212B and 213 of the BCMA or result in legislation that is not reasonable and fair or have sufficient regard to the rights and liberties of individuals.

When development instruments take effect when gazette notice is published

A new approach has been adopted in the Bill for determining how and when development instruments take effect (clauses 23, 24, 48 and 51). The current provisions state that a development scheme or development scheme amendment does not take effect until it has been approved under a regulation. This is a legacy of the repealed ULDA Act when functions under the Act were exercised by the former Urban Land Development Authority. Given the powers and functions of the MEDQ are executed within government and not undertaken by a statutory authority, the extra oversight is no longer relevant.

The new approach provides for a gazette notice to state that a new or amended development scheme or provisional land use plan is published on the department's website, and for the instrument to take effect at the beginning of the day the gazette notice is published. This approach will improve the efficiency of making and amending these instruments and allow more time for planning to be undertaken within the interim land use plan (ILUP) expiry period.

Providing for a development instrument to take effect at the beginning of the day the gazette notice is published, creates a small degree of retrospectivity for the instrument's effect. This is because publication of the gazette usually occurs between 8.30am and 9.00am. However,

this slight retrospectivity in the early hours of the morning when business activity is likely to be low, is balanced by removing uncertainty about when an instrument takes effect.

Amendments to the *Planning Act 2016*

The proposed amendment to validate ICNs issued under the repealed SPA to the extent that ICNs did not include reasons, is not considered to have an adverse effect on rights and liberties, or the imposition of obligations, retrospectively. The infrastructure charges framework has been in place for some years and is a known and anticipated aspect of development.

The financial risks and uncertainty for local governments, industry and community are considered too great to not progress the proposed amendment.

The Bill also provides a new transitional provision section 337 (*Existing superseded planning scheme applications*) related to amendments in the Bill to section 29 of the Act, which clarify that a superseded planning scheme application cannot be made for development categorised as prohibited under a regulation or the superseded planning scheme.

Section 337 seeks to address any potential detrimental retrospective effect of the amendments to section 29 by providing an opportunity for the applicant to make a superseded planning scheme application for development that is substantially similar to development the subject of the original application (excepting the prohibited development) within six months of the commencement of the Bill. If it is not practically possible to remove the prohibited development from the original application, there may be an adverse impact on the applicant's rights. However, this is a remote possibility, and it was never the policy intent that a local government could accept an application for development prohibited under a regulation, as this would mean an administrative decision by council overrides the Planning Regulation 2017 and its predecessor.

Amendments to the *Planning and Environment Court Act 2016*

No FLP issues were identified.

Amendments to the *Queensland Reconstruction Authority Act 2011*

Legislation should have sufficient regard to the rights and liberties of individuals by being reasonable and fair

In line with taking an all hazards approach to supporting the recovery of Queensland communities affected by natural disasters, clause 208 of the Bill amends section 43 of the QRA Act to broaden the situations in which an area of the State can be declared to be a reconstruction area beyond flood affected only. In particular, this is to include situations where the declaration is necessary:

- to mitigate against all potential natural disasters for affected communities (previously limited to flood mitigation); or
- to improve the resilience of affected communities for all potential natural disasters.

The definition of reconstruction function in schedule 2 of the QRA Act is being similarly broadened.

However, the underlying features of this process is not changed, as since 2011, the QRA has relied on the ministerial direction powers in the QRA Act to trigger the operation of its role in relation to all disaster affected communities. This is further exemplified by the administration of funding for more than 60 disaster events since this time, including cyclones, severe storms and bushfires.

The effect of these amendments may also broaden the rare circumstances in which the authority may acquire land, for the purposes of carrying out the authority's reconstruction functions as detailed above. In all circumstances, the *Acquisition of Land Act 1967* applies and compensation must be paid, ensuring there are no issues against fundamental legislative principal relating to the to the rights and liberties of individuals.

Further, a declaration regulation for a reconstruction area may declare that land in a part of the area is acquisition land only if the Minister is satisfied the declaration is necessary for the carrying out of the authority's reconstruction function. The Minister must not recommend to Governor in Council, the making of a regulation, unless the Minister is satisfied the part of the State has been directly or indirectly affected by a disaster event, and the declaration is necessary to facilitate mitigation for affected communities, or the protection, rebuilding and recovery of affected communities.

Amendments to the *Sanctuary Cove Resort Act 1985*

No FLP issues were identified.

Amendments to the *South Bank Corporation Act 1989*

No FLP issues were identified.

Amendments to the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*

No FLP issues were identified.

Consultation

Community

Amendments to the *Building Queensland Act 2015*

Key infrastructure stakeholders were consulted with the policy intent of the proposed amendments through an Infrastructure Industry Stakeholders group meeting on 31 July 2018. The stakeholders represented in this group are:

- Infrastructure Association of Queensland
- Engineers Australia
- Queensland Major Contractors Association
- Consult Australia
- Civil Contractors Federations
- Asset Institute
- Cement Concrete and Aggregates Australia
- Property Council of Australia

- Urban Development Institute of Australia
- Construction Skills Queensland.

On 13 August 2018, these stakeholders were also provided with a copy of the amendments as drafted for their comment.

No issues were raised during consultation.

Amendments to the *Economic Development Act 2012* and other Acts

In both April and August 2018, Economic Development Queensland consulted with a range of key stakeholders regarding the proposed amendments to the ED Act. This included consultation with local governments across the State, peak bodies and industry to discuss key policy outcomes.

Overall, there was genuine stakeholder engagement on the key issues and broad support for the proposed amendments, particularly in respect to alignment with the Planning Act and improvements to some plan making and development assessment processes. The development industry representatives, in particular, were supportive of the amendments to the Act, with varied views expressed by local governments and the Local Government Association of Queensland (LGAQ). For example, local governments generally supported the changes to the development assessment process. However, some local governments and the LGAQ expressed a view that consultation and agreement with local government should be legislated prior to declaration of PDAs. In response to the stakeholder engagement, amendments were made to both policy outcomes and specific provisions of the Bill. Further engagement with key stakeholders, including those local governments that are delegates of the MEDQ, during the implementation phase will be critical to achieve the overarching policy objectives sought by the Bill.

Amendments to the *Planning Act 2016*

Consultation on the intent of the amendments to the Planning Act occurred with key stakeholders in the development, legal, environment and local government sectors.

Overall, there was broad support for the policy intent of the Bill.

Amendments to the *Planning and Environment Court Act 2016*

Consultation on the intent of the amendments to the P&E Court Act occurred with key stakeholders in the development, legal, environment and local government sectors.

Overall, there was broad support for the policy intent of the Bill.

Amendments to the *Queensland Reconstruction Authority Act 2011*

Community consultation was undertaken as part of the reviews into various aspects of disaster management, including governance arrangements and agencies' roles, responsibilities and functions. No further community consultation was undertaken for the present review of the QRA Act to accommodate its new roles.

Amendments to the *Sanctuary Cove Resort Act 1985*

Consultation on the intent of the amendments to the SCR Act occurred with the Sanctuary Cove Principal Body Corporate (PBC) and residents of the resort through the PBC.

The PBC was generally supportive of the proposed inclusion of retirement village and residential care facility uses in the SCR Act but sought specific reference to the premises that the PBC has identified for these uses. This change has not been made as it is not the intent of the Bill to automatically entitle the development of a retirement village and/or residential care facility at the resort. Due process established under the SCR Act will still be required should a development application for these uses be proposed in the future.

Objections to the proposed amendments were received from a number of residents, on the basis that they believed that the legislation currently afforded them certainty of any future development, a retirement village would not be in keeping with the resort and could impact negatively on property values and the Sanctuary Cove community. Changes have not been made to the Bill as it is not the intent of the Bill to automatically entitle the development of a retirement village and/or residential care facility at the resort. Due process established under the SCR Act will still be required should a development application for these uses be proposed in the future.

Amendment to the *South Bank Corporation Act 1989*

Given the minor and consequential nature of the amendment to the SBC Act, no consultation external to government occurred in relation to this part of the Bill.

Government

Amendments to the *Building Queensland Act 2015*

Consultation with State Government agencies (including Building Queensland) has occurred and there is broad support for the amendments.

In addition, Infrastructure Australia and the Commonwealth Department of Infrastructure, Regional Development and Cities were both consulted about the proposed changes. No issues were raised by either agency.

Amendments to the *Economic Development Act 2012* and other Acts

Economic Development Queensland consulted all State Government agencies likely to be affected by the proposed changes to the ED Act, or other related Acts administered by other agencies. All were supportive of the proposed changes.

Amendments to *Planning Act 2016*

Consultation with State Government agencies has occurred and there is broad support for the amendments.

Consultation on the intent of the amendments to the Planning Act occurred with key local governments.

Amendments to *Planning and Environment Court Act 2016*

Consultation with State Government agencies has occurred and there is broad support for the amendments.

Amendments to the *Queensland Reconstruction Authority Act 2011*

Consultation with State Government agencies has occurred and there is broad support for the amendments.

Amendments to *Sanctuary Cove Resort Act 1985*

Consultation with State Government agencies has occurred and there is broad support for the amendments.

Amendments to *South Bank Corporation Act 1989*

Consultation with State Government agencies has occurred and there is broad support for the amendments.

Amendments to *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*

In October 2015 and from March to May 2016, consultation with Redland City Council (Council) occurred in relation to the expiry of the SMBI Act. Council supports the repeal of the SMBI Act and advised that it had consulted with landowners and that no concerns were raised by these landowners.

Consistency with legislation of other jurisdictions

Amendments to the *Building Queensland Act 2015*

The provisions of the Bill which amend the BQ Act are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another State.

Amendments to the *Economic Development Act 2012* and other Acts

The provisions of the Bill related to the ED Act are specific to the State of Queensland and do not introduce uniform or complementary legislation.

Amendments to *Planning Act 2016*

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Amendments to *Planning and Environment Court Act 2016*

The Bill 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 *Queensland Reconstruction Authority Act 2011*

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Amendments to *Sanctuary Cove Resort Act 1985*

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Amendments to *South Bank Corporation Act 1989*

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Amendments to *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 The short title of the Bill is the *Economic Development and Other Legislation Amendment Bill 2018*.

Clause 2 Commencement

Clause 2 lists the provisions of the Bill that do not commence on assent. The listed provisions commence on a day (or on days) fixed by proclamation.

Part 2 Amendment of Biosecurity Act 2014

Clause 3 Act amended

Clause 3 provides an enabling clause for the amendment in this part of the *Biosecurity Act 2014* (Biosecurity Act).

The Biosecurity Act provides a comprehensive biosecurity framework to manage the impacts of animal and plant diseases and pests in a timely and effective way and ensure the safety and quality of animal feed, fertilisers and other agricultural inputs.

Clause 4 Amendment of s 9 (Relationship with particular Acts)

Clause 4 inserts the *Economic Development Act 2012* (ED Act) as a relevant Act for section 9.

Section 9(4) of the Biosecurity Act includes a provision that makes the doing of certain actions that are authorised or directed under the Biosecurity Act in order to manage emergencies and risks, to not constitute offences against a listed ‘relevant Act’ only because of doing the act or taking the steps. Relevant Act is defined in section 9(6). The *Planning Act 2016* (Planning Act) is listed as a relevant Act.

Including the ED Act in the list of relevant Acts is appropriate because of the similarities between the Planning Act and the ED Act. Both Acts regulate development. The amendment is necessary because of the potential for unintended breaches of the ED Act to occur in taking an authorised or directed action under section 9 of the Biosecurity Act.

Part 3 Amendment of Building Act 1975

Clause 5 Act amended

Clause 5 provides an enabling clause for the amendment in this part of the *Building Act 1975* (Building Act).

The Building Act, among other things, regulates the system of building development approvals in Queensland. A building development application is an application for building work that must be assessed against the building assessment provisions, which are defined in

section 30 of the Building Act and involve technical matters relevant to the erection and maintenance of buildings and other structures, including the Building Code of Australia and the fire safety standards. These are matters that are outside the scope of the development approvals regimes under both the *Planning Act 2016* (Planning Act) and the *Economic Development Act 2012* (ED Act).

Clause 6 Amendment of s 25 (General requirements for supporting documents)

Clause 6 and the other clauses in this part amend the Building Act to insert specific references to the ED Act and the instruments and approvals under this Act. The purpose of the amendments is to further clarify the corresponding relationship that exists between the Building Act and the ED Act in the management of development. The relationship is consistent with that existing between the Building Act and the Planning Act.

The ED Act establishes a streamlined planning and development system to plan, carry out and coordinate activities to facilitate economic and community development in specified areas of the State declared as PDAs. Within these areas, the planning and development system under the ED Act, to the extent provided, replaces the planning and development system established under the Planning Act that applies elsewhere in the State. However, the regulation of building work, as set out in the Building Act, is not replaced by the planning and development system of the ED Act.

The amendment to section 25 inserts ED Act references to complement the existing Planning Act references.

Clause 7 Amendment of s 83 (General restrictions on granting building development approval)

Clause 7 amends section 83 to insert specific references to PDA development permits under the ED Act for the reasons outlined in clause 6. The introductory words of the existing example in section 83(1)(a) are also amended to improve clarity.

Clause 8 Amendment of s 84 (Approval must not be inconsistent with particular earlier approvals or accepted development)

Clause 8 amends section 84 to insert specific references to PDA development approvals and PDA accepted development under the ED Act for the reasons outlined in clause 6.

Clause 9 Insertion of new ch 11, pt 20

Clause 9 inserts a new part 20 (Transitional provision for Economic Development and Other Legislation Amendment Act 2018) and associated section 346 setting out the transitional provision for dealing with applications in progress before the commencement of the amending Act.

Clause 10 Amendment of sch 2 (Dictionary)

Clause 10 is amended in the way set out to insert relevant definitions related to the amendments in this part.

Part 4 Amendment of Building Queensland Act 2015

Clause 11 Act amended

Clause 11 states that this part (Part 4) amends the *Building Queensland Act 2015* (BQ Act).

Clause 12 Amendment of s 14 (Preparation of business cases for infrastructure proposals)

Clause 12 amends section 14 of the BQ Act which specifies when business cases must be led by Building Queensland (BQ) and when BQ has an assist role in the preparation of the business case.

Subclauses (1) and (2) adjust the threshold for when business cases must be led by BQ.

Currently, BQ are required to lead all business cases valued over \$100 million (s.14(1)(b)) and assist in business cases valued between \$50 million and \$100 million (s.14(b)(a)).

The independent expert report, ‘An Administrative Review of Building Queensland’s Operating Arrangements’ (the BQ Review Response) made a number of recommendations about ways in which BQ’s effectiveness could be improved. One of those recommendations was that “a more targeted approach to selecting the major business cases on which BQ will lead the development” be explored. This recommendation was supported in principle in the Queensland Government’s Response to the BQ Review Response and it noted that the capability and capacity of the project owner and the risk and complexity of the project should be the key focus to determine risk and to drive which business cases are led by BQ.

The Department of Transport and Main Roads has been required to prepare detailed business cases for road transport projects for the consideration of the Australian Government for some time, so the capability and capacity of the project owner in preparing their own business cases is high. These projects also have a relatively low risk and complexity in terms of the business case as they usually form part of a larger program of road transport projects (e.g. the Bruce Highway Upgrades).

Consequently, this amendment defines “excluded projects” to be road transport projects valued under \$500 million and which do not include a toll road. These projects would be excluded from the requirements of s.14(1)(b) and will instead be treated as if they are section 14(1)(a) projects (i.e. projects where BQ assists with the business case).

Note that the Minister for BQ (i.e. the Minister for State Development, Manufacturing, Infrastructure and Planning) can still direct that the business case be led by BQ under the section 14(1)(c), regardless of the new “excluded projects” definition.

In addition, section 12 (Assistance in preliminary preparation of infrastructure proposals) and section 19 (Ministerial direction about performance of functions) will still apply to these excluded projects.

The terms “road transport infrastructure” and “toll road” are defined by reference to the *Transport Infrastructure Act 1994*, which defines these terms as:

- **road transport infrastructure** means transport infrastructure relating to roads
- **toll road** means a road, or part of a road, in relation to which a toll has become payable for use of the road or part of the road, under a declaration under section 93 of the *Transport Infrastructure Act 1994*.

Subclause (3) makes a consequential change from subclause (4). Subclause (4) inserts the definitions used for the “excluded projects” described above and also includes new subsections (4) and (5) which will increase the monetary thresholds in this section so that they keep pace with the Producer Price Indexes (PPI) for road and bridge construction in Queensland and for other heavy and civil engineering construction in Australia. The PPI data

is published quarterly by the Australian Bureau of Statistics and varies considerably for each quarter. However, historical analysis of both indexes suggests that an increase of 10 per cent every five years would be in keeping with the overall PPI changes.

Consequently, subsection (4) will increase the monetary thresholds by 10% every five years, starting with 1 July 2021 (i.e. roughly five years after the BQ Act commenced in December 2015). Changing the monetary thresholds at the start of the financial year will align with budgets and operational expenditures for government agencies each year.

The monetary thresholds will be published on BQ's website so that it is clear and transparent what threshold is applying. As of 1 July 2021, subsection (4) will mean that the thresholds will change to:

- BQ assist role – increase from \$50 million to \$55 million
- BQ lead role – increase from \$100 million to \$110 million
- Excluded projects – increase from \$500 million to \$550 million.

Clause 13 Amendment of s 15 (Preparation of infrastructure pipeline document)

Clause 13 amends section 15 of the BQ Act which requires BQ to prepare and maintain the Infrastructure Pipeline Report (IPR). This amendment reduces the frequency of publication of this document from bi-annual to annual.

Section 15(2) of the Act currently requires BQ to give a copy of the IPR or an update to the IPR to the Minister every 6 months after it is first prepared.

Section 17(1)(c) of the Act then requires BQ to publish the IPR and each update to the IPR on its website.

Recommendation 4 of the BQ Review Report recommended that BQ reduce the current publication frequency of the IPR from bi-annual to annual, with a mid-cycle update of material changes. The BQ Review Response supported this recommendation in principle, with legislative amendments to require the annual publication of the update to align with the Queensland State Budget process. Requiring BQ to provide a copy of the IPR to the Minister within six weeks of the State Budget provides sufficient time for BQ to align the IPR with the published budget documents but ensures that it will not be published during the caretaker period in election years (October).

The statutory requirement for a mid-cycle review is to be removed so that the mid-cycle review can be done administratively via BQ's website to just capture changes in status for projects and to capture any new initiatives identified in the Mid-Year Fiscal and Economic Review.

Note that, while this document is published on BQ's website as the Infrastructure Pipeline Report, it is referred to in the Act as the "infrastructure pipeline document".

Clause 14 Amendment of s 25 (Membership of board)

Clause 14 amends section 25 of the BQ Act which provides for the membership of the Building Queensland Board. This amendment allows for proxies for permanent board members to be nominated for any period of time.

The board includes three permanent board members:

- the chief executive of the department in which the *Auditor-General Act 2009* is administered (i.e. the Director General of the Department of the Premier and Cabinet)
- the chief executive of the department in which the *Financial Accountability Act 2009* is administered (i.e. the Under Treasurer who heads up Queensland Treasury)
- the chief executive of the department in which the BQ Act is administered (i.e. the Director General of the Department of State Development, Manufacturing, Infrastructure and Planning).

A permanent board member can also be a senior executive nominated by each of the above chief executives (i.e. a proxy).

This amendment is to clarify that each of the chief executives may nominate a proxy to the board either permanently or temporarily. This will allow Directors-General and the Under Treasurer to appoint a proxy for a single meeting if required. This is similar to section 33(8) of the *Cross River Rail Delivery Authority Act 2016*.

Part 5 Amendment of Coastal Protection and Management Act 1995

Clause 15 Act amended

Clause 15 provides an enabling clause for the amendment in this part of the *Coastal Protection and Management Act 1994*.

Clause 16 Amendment of s 123 (Right to occupy and use land on which particular tidal works were, or are to be, carried out)

Clause 16 amends section 123(4) to also include reference to PDA accepted development under the ED Act. Section 123 addresses the right to occupy and use land if a development permit under the Planning Act or for certain tidal works has been given.

Section 123(4) currently states the section also applies to operational work that is tidal works if the operational work is accepted development under the Planning Act. The amendment inserts a corresponding reference to PDA accepted development under the ED Act. The amendment achieves consistency with the Planning Act.

Note: PDA accepted development is a new category of development introduced into the ED Act under clause 19.

Part 6 Amendment of Economic Development Act 2012

Division 1 Preliminary

Clause 17 Act amended

Clause 17 provides an enabling clause for the amendment in this part of the ED Act.

Division 2

Amendments commencing on assent

Clause 18 Insertion of new s 19A

Clause 18 inserts a new section 19A.

19A Exemption from particular disclosure requirements under Body Corporate and Community Management Act 1997

New section 19A provides a limited and specific exemption from the disclosure statement provisions under sections 212B and 213 of the *Body Corporate and Community Management Act 1997* (BCMA) in relation to community titles schemes under that Act. The section refers to the sale of lots between the Minister for Economic Development Queensland (MEDQ) and a developer that involves certain initial and further contracts about carrying out the development of the scheme land, and an option for the MEDQ to sell unsold lots to the developer.

These disclosure statements are designed for consumer protection purposes. However, the circumstance that applies to the sale of lots is not a normal consumer protection matter and the requirement for a disclosure statement under section 213 of the BCMA is not necessary.

Clause 19 Amendment of s 33 (Development and its types)

Clause 19 amends section 33 to provide for the categorisation of development under the ED Act to align with the categorisation of development under the Planning Act. To achieve this the categories of PDA self-assessable development and PDA exempt development have been deleted and replaced by the new category, PDA accepted development. The Planning Act replaced self-assessable development and exempt development with the new category, accepted development. A new definition of *PDA accepted development* is included.

Clause 19 also amends the definition of *PDA assessable development* in subsection (3) to include development that a regulation provides is PDA assessable development. Similarly, the new definition of *PDA accepted development* in subsection (4) includes development that a regulation provides is PDA accepted development.

Providing for a regulation to categorise development is a new feature for the ED Act. The Planning Act provides for a regulation to categorise development. However, as the ED Act currently does not, each relevant development instrument (e.g. development scheme) for each PDA must be self-contained. There is no ability to affect the categories of assessment unilaterally across PDAs.

The amendment ensures consistency and efficiency in categorising particular development across multiple PDAs, including circumstances where development is appropriately regulated by another State law and does not require assessment under the ED Act or where development is of a significance that should always require assessment under the ED Act.

Clause 20 Amendment of ch 3, pt 2, div 1, hdg (Declaration of provisional priority development areas and provisional land use plans)

Clause 20 inserts a reference in the division heading to draft provisional land use plans (PLUPs), the new development instrument for provisional PDAs (provisional PDAs).

Clause 21 Insertion of new ch 3, pt 2, div 1, sdiv 1, hdg

Clause 21 inserts a new subdivision 1 heading (Making of declaration regulations, draft provisional land use plans and provisional land use plans).

Chapter 3, part 2, division 1 dealing with provisional PDAs (provisional PDAs) is restructured with the insertion of two new subdivisions as follows:

- subdivision 1 deals with making declaration regulations, declaring a provisional PDA and with the required making of the PLUP and an earlier draft PLUP;
- subdivision 2 deals with amendments of PLUPs (see clause 24).

Overview of provisional PDAs and PLUPs

A provisional PDA is short term in nature, ceasing three years after it is declared. While the mechanism has been in the legislation since the ED Act commenced, no provisional PDAs have been declared to date as the current provisions in the ED Act have constrained the MEDQ's ability to make a declaration. Additional criteria apply for the declaration compared with a PDA. In addition to having regard to the Act's main purpose, a declaration may only be made if:

- the type, scale, intensity and location of proposed development for land in the area does not compromise the implementation of any planning instrument applying to the area; and
- there is an overriding economic or community need to start the proposed development quickly.

It is also a current requirement that the PLUP not compromise the implementation of any planning instrument applying to the area (section 35(2)(b)). In addition, all applications for reconfiguring a lot and making a material change of use require public notification. There is currently no notification requirement for the PLUP.

The new approach is designed to remove the additional criteria for provisional PDAs imposed by the ED Act and instead provide for consideration of the views of the local government and public before the PLUP is finalised. This approach provides greater flexibility by providing for development in the provisional PDA that may not have been envisaged by the planning instrument, while ensuring those affected have the opportunity for their input to be considered in determining the final development assessment provisions. This flexibility is intended to facilitate the declaration of smaller-scale areas that offer shorter-term opportunities for economic or community development.

A period of 60 business days is provided after declaration for public consultation, consideration of any submissions and finalisation of the PLUP. The time constraints imposed by this finalisation period, together with the three-year expiry, will necessarily constrain the scale, complexity and type of development proposed in the provisional PDA and differentiate it from a PDA.

To provide further certainty to stakeholders, it is also a requirement that no decision be made on any development application that would not be consistent with the local government planning scheme in effect before declaration of the provisional PDA, until the PLUP is finalised. This ensures that development activity consistent with both the provisional PLUP and the planning scheme can continue, and also maintains the status quo until the PLUP is finalised. See clause 56 amending section 87 (Matters to be considered in making decision).

The new process also allows the removal of the ED Act requirement for compulsory notification of particular development applications and for the PLUP to set these requirements.

Clauses 22 to 24 provide details of the amended and new sections inserted to reform the provisional PDA and associated PLUP mechanism.

Clause 22 Amendment of s 34 (Declaration)

Clause 22 amends section 34 by replacing section 34(2)(b)(iii) to more accurately reflect the interaction with the Planning Act and omitting subsection (3). The matters to be had regard to in making a declaration for a provisional PDA now align with those applying for declaring a PDA. Subsection (3) currently imposes the onerous additional requirements that a declaration may only be made if the type, scale, intensity and location of proposed development for land in the area does not compromise the implementation of any planning instrument applying to the area; and there is an overriding economic or community need to start the proposed development quickly. These additional criteria have proven overly restrictive in declaring provisional PDAs. A new approach involves consultation with the local government and other affected entities, and consideration of public submissions, before a draft provisional PLUP is finalised, rather than ensuring the existing planning instrument is not compromised.

Clause 23 Replacement of ss 35 and 36

Clause 23 replaces sections 35 and 36 with the new sections listed below that deal with the making of the PLUP.

35 Draft provisional land use plan required

Replacement section 35 introduces the concept of a draft PLUP. Subsection (2) states that the declaration regulation for the provisional PDA may be made only if the MEDQ has made a draft PLUP regulating development in the area proposed to be declared. The purpose of the draft PLUP is to apply in the short term (up to 60 business days) to allow the draft to be consulted on before finalisation. As for a PLUP under current section 35(2) (and an interim land use plan under section 38), the draft PLUP may provide for any of the identified matters that a development scheme may provide for in section 57.

36 When draft provisional land use plan has effect

Replacement section 36 provides for the draft PLUP to take effect on the commencement of the declaration regulation and to have effect until the PLUP takes effect under new section 36F. A timeframe and process for achieving the implementation of the PLUP is set out in the sections following.

A point to note is that the new sections 36 to 36G replace the current section 36, which requires the tabling of the PLUP in Parliament under the *Statutory Instruments Act 1992*, section 49. This requirement is not continued. The current requirement is a legacy of the repealed *Urban Land Development Authority Act 2007* (ULDA Act) when the former Urban Land Development Authority (ULDA) exercised functions and powers under the Act. Under the current ED Act, the powers and functions of the MEDQ are executed within government and not undertaken by a statutory authority. Accordingly, the extra oversight of the tabling process is no longer relevant.

36A Notice of draft provisional land use plan

New section 36A requires the MEDQ, as soon as practicable after the draft PLUP takes effect, to do the following:

- publish the draft PLUP on the department's website;
- publish a gazette notice stating the plan has taken effect; and
- publish a notice in a newspaper circulating in the relevant local government's area stating the draft PLUP has taken effect and is published on the department's website.

Additionally, the newspaper notice must invite persons to make submissions on the draft PLUP. A minimum period of 15 business days is provided after the notice is published for submissions to be made.

36B Submissions on draft provisional land use plan

New section 36B provides for persons to make submissions within the submission period.

36C Consideration of submissions and consultation

New section 36C requires the MEDQ to consider any submissions received during the period but also does not prevent the MEDQ from considering a late submission. Subsection (3) requires the MEDQ to consult in the way it considers appropriate with the relevant local government and to make reasonable endeavors to consult with any government entity, government owned corporation (GOC) or other entity the MEDQ considers will likely be affected by the plan.

36D Amendment of draft provisional land use plan

New section 36D provides for the MEDQ to amend the draft PLUP in any way it considers appropriate after considering the submissions and the results of consultation under section 36C.

36E Making of provisional land use plan

New section 36E sets out the requirements for making the PLUP. Having complied with section 36C but not later than 60 business days after the draft PLUP took effect under new section 36, the MEDQ must make a PLUP and do the other things stated, including preparing a report on submissions and publishing the PLUP and report on the department's website. The MEDQ must also publish a gazette notice stating that the PLUP is published on the website.

36F When provisional land use plan takes effect

New section 36F states that the PLUP takes effect on the publication of the gazette notice under section 36E(3)(c).

As discussed under new section 36 above, the tabling requirement under the current section 36 is not continued. While the draft PLUP takes effect on the commencement of the declaration regulation, the regulation does not make the plan, as is the case under the current provisions. A key feature of the new arrangement is the day the relevant instrument takes effect. For the draft PLUP this is the day the declaration regulation commences. For the PLUP it is the day the gazette notice under section 36E(d) is published.

This effective day for the PLUP is consistent with the approach followed for planning instruments under the Planning Act (see section 9) and is introduced for other development

instruments under the ED Act:

- new ILUPs that replace an ILUP —section 40AC;
- development schemes and amendments of development schemes — section 64 and section 68.

36G MEDQ must give notice of provisional land use plan

New section 36G requires the MEDQ, as soon as practicable after the PLUP takes effect, to publish a notice about the PLUP, in a newspaper circulating in the relevant local government's area, stating that it has taken effect and is published on the department's website.

Clause 24 Insertion of new ch 3, pt 2, div 1, sdiv 2

Clause 24 inserts a new subdivision 2 (Amending provisional land use plans) and introduces the new sections listed below that deal with the amendment of a PLUP. The ED Act does not currently provide for amendment of a PLUP. The new provisions take a similar approach to the amendment of development schemes, including providing for a minor administrative amendment, with necessary adjustment of the process that applies for making the original instrument.

36H Minor administrative amendments

New section 36H provides for the MEDQ to make a minor administrative amendment of a PLUP. The dictionary at schedule 1 defines the term *minor administrative amendment* (which is amended in clause 71 and now also refers to a minor administrative amendment of a PLUP or development scheme). Public notification is not required for a minor administrative amendment.

Subsections (2) to (4) set out the requirements for publishing the amendment and the amended PLUP, and state when the amendment takes effect. The requirements are consistent with those applicable for making the PLUP.

36I Other amendments

New section 36I provides for amendments of a PLUP other than minor administrative amendments. The section requires notification, consultation and consideration of submissions in the same way as for the making of the PLUP. New sections 36B to 36F apply, with necessary adjustments for different references.

Clause 25 Amendment of s 37 (Declaration)

Clause 25 amends section 37 dealing with the declaration of PDAs by replacing section 37(2)(b)(iii) to more accurately reflect the interaction with the Planning Act and inserting new subsections (3) to (6). These introduce greater flexibility into the process for making and implementing development instruments in a PDA.

Provision is made for the expiry date of an ILUP to be extended beyond the current 12 months. The amendments introduce the ability for a declaration regulation to state for an ILUP that it may remain in effect for more than the current 12-month period but no longer than 24 months.

The basis for the potential for extension is that while the 12-month period has proven adequate for smaller, single-site PDAs, meeting the time frame for larger and more complex PDAs has proven in some cases to be particularly challenging.

The current 12-month timeframe recognises that a streamlined planning and development framework is a primary means of achieving the Act's purpose. Accordingly, it is important for the planning work, including consultation, required for preparation of the development scheme to be carried out as efficiently as practicable to allow the planned development regime for the PDA to be in place as soon as possible. However, the current timeframe can adversely affect the efficient delivery of development in the larger and more complex PDAs.

The options to provide a longer preparation period are limited and cumbersome under the current Act, requiring under section 39(3) that a regulation make a new ILUP (for 12 months).

Providing the MEDQ with flexibility to stipulate a longer ILUP expiry period at the time of declaration of the PDA will contribute to achieving better planning for the PDA and better development outcomes as a consequence. It is to be noted that the amendment also includes a new section 37(5) stating that the MEDQ may only decide on a longer ILUP expiry period if the MEDQ considers it appropriate for the proper and orderly planning, development and management of the PDA. The expiry period can not be extended after declaration of the PDA.

Subsection (3)(b) also provides for different expiry dates if there is more than one ILUP. New section 38(4) provides for a PDA to comprise more than one ILUP (see clause 26).

Clause 26 Replacement of ss 38–40

Clause 26 replaces sections 38 to 40 with new sections and inserts new sections 40AA, 40AB and 40AC.

38 Interim land use plan required

New section 38 applies if the Minister proposes to recommend to the Governor in Council the making of a regulation declaring a PDA. Before making the recommendation, the MEDQ must make an ILUP for the entire area to be proposed to be declared. Alternatively, more than one ILUP may be made if each plan regulates development in a separate part of the proposed area but the plans together regulate the entire area, and the MEDQ considers the plans will, in an integrated way, promote the proper and orderly planning, development and management of the area. The ILUP may provide for any of the matters a development scheme may provide for.

The purpose of allowing more than one ILUP is to introduce greater flexibility into the processes for making and implementing development instruments in PDAs. The ED Act currently requires a single ILUP and subsequent development scheme for each PDA, including if a PDA is made up of separate unconnected areas of land.

There is the potential for different components of a PDA, especially one consisting of complex, multiple sites, to require different levels of planning and be developed over different time frames. Currently these differences must be accommodated within a single ILUP and subsequent development scheme. The amendments address this limitation by explicitly providing for multiple ILUPs (and subsequent development schemes).

It may also be the case as planning is progressed in the PDA that while it may have been appropriate to prepare separate ILUPs at the time of declaration, it may later be appropriate that one development scheme replace more than one ILUP. Accordingly, there is provision now for this flexibility.

39 When interim land use plan takes effect

New section 39 states that the ILUP takes effect on the commencement of the declaration regulation.

This replaces the requirement under current section 38 that states the declaration regulation must make the ILUP. This has changed. While the ILUP takes effect on the commencement of the declaration regulation, the regulation does not make the plan, as is the case under the current provisions. Consequently, the tabling requirement under the current section 40 is also not continued.

40 Notice of interim land use plan

New section 40 sets out the requirements for publishing notice of an ILUP after it takes effect. These requirements involve the following:

- publishing the ILUP on the department's website;
- publishing a gazette notice stating the ILUP has taken effect and is published on the website;
- publishing a notice in newspaper circulating in the relevant local government's area to the same effect as the gazette notice.

These requirements are similar to and consistent with the notice requirements for a draft PLUP under new section 36A in clause 23.

40AA Period for which interim land use plan has effect

New section 40AA establishes the period for which an ILUP has effect and takes account of whether the ILUP is replaced by a development scheme, expires under section 40B, or is replaced by a new ILUP. For an ILUP replaced by a development scheme, if the ILUP covers the entire PDA it may be replaced by the development scheme, but if there is more than one ILUP the development scheme may replace one or more of them.

40AB Expiry of interim land use plan

New section 40AB replaces current section 39 and establishes the requirements for expiry of an ILUP taking into account that the declaration regulation under section 37(3) may state a period longer than the standard 12 months (but not more than 24 months).

The new section also clarifies calculation of the extended period before an ILUP expires if a caretaker period occurs at any time before an ILUP would otherwise expire. The period is extended by a further period equal to the length of the caretaker period plus 20 business days. The term *caretaker period* does not have the conventional meaning but instead is defined in the ED Act and means the election period for a general election under the *Electoral Act 1992*. For that Act, the election period begins the day after the writ for the election is issued and ends on polling day. Accordingly, if a caretaker period occurs any time during the life of an ILUP, the extended expiry period is equal to the original period plus the caretaker period (as defined) and an additional 20 business days.

40AC Making new interim land use plan

New section 40AC provides for an ILUP (the *current plan*) to be replaced by a new ILUP (the *new plan*). If the PDA has one ILUP, the new ILUP must regulate the entire PDA and if the PDA has more than one ILUP, the new plan may regulate only the part of the PDA that the current plan regulates. If the new plan takes effect before the current plan expires, a gazette notice must state that the new plan is published on the department's website, and that the plan takes effect at the beginning of the day the gazette notice is published. If the new plan takes effect on the expiry of the current plan, a gazette notice must state when the current ILUP expires and when the new plan takes effect. The new plan takes effect the day after the day the current plan expires. For both circumstances, as soon as practicable after a new plan takes effect, a notice must be published in a newspaper circulating in the relevant local government area stating the plan has taken effect and is published on the department's website.

The expiry provisions in sections 40AA and 40AB(1), (3) and (4) apply to the new plan and there is no provision to make the expiry period longer than 12 months.

Clause 27 Amendment of s 40C (Declaration of PDA-associated development)

Clause 27 amends section 40C dealing with the declaration of PDA-associated development by amending section 40C(2)(a) to more accurately reflect the interaction with the Planning Act. Consequential amendments are also made to section 40C(4)(a) to insert the new category of development, PDA accepted development, in place of PDA self-assessable development and PDA exempt development, and to delete paragraph (b) referring to requirements for carrying out PDA self-assessable development. It should be noted that development identified as PDA accepted development in a declaration may be subject to stated requirements, and the declaration may state that if the development does not comply with those requirements it is PDA assessable development.

A note has also been inserted to refer to section 84 for the public notification requirements for a PDA development application for PDA-associated development that is PDA assessable.

Clause 28 Insertion of new ch 3, pt 2, div 2B

Clause 28 amends chapter 3, part 2 to insert new division 2B (Minor boundary changes of priority development areas).

Overview

The amendments seek to provide a streamlined process that will allow an interim land use plan, development scheme or provisional land use plan to deal with circumstances when a minor change to a priority development area¹ boundary is required.

The new mechanism is not intended for circumstances involving large areas of land that significantly extend a PDA or take it in a new or changed direction not intended at the time of declaration. It is intended that additional land be included in the PDA only if it can be accommodated without a change to the relevant development instrument, other than to apply existing provisions to the additional area.

The new mechanism is limited to the following circumstances:

- the minor boundary change corrects an error in a PDA boundary, e.g. to align the PDA boundary with the intended cadastral boundary;

¹ Priority development area includes a provisional priority development area. See *Economic Development Act 2012*, sch 1 Dictionary.

- the minor boundary change promotes the proper and orderly planning, development and management of the additional land or excluded land.

Other key elements of the new mechanism are to:

- allow a minor boundary change to both include land in, and exclude land from, a PDA;
- provide a process for inclusion of the excluded land back into a planning scheme;
- provide the ability for the MEDQ to decide if a planning instrument change is not required if the underlying planning scheme is satisfactory;
- consult with the relevant local government, and affected members of the public and government entities, about the intention to change the boundary to give them the opportunity for input about matters to be considered;
- provide for immediate effect of proposed regulatory instruments to avoid any uncertainty about development assessment jurisdiction.

New sections 40F to 40M

The new mechanism involves the insertion of new sections 40F to 40M that describe how minor PDA boundary changes are initiated and given effect, including the steps that must be taken, changes that must be made to relevant planning instruments, consultation that must be carried out, approvals that must be obtained and notices given of the change instruments.

40F Regulation may make particular boundary changes

New section 40F provides for a regulation (a *boundary change regulation*) to amend an existing declaration regulation that declared a part of the State to be a PDA. The regulation may do either of the following:

- include additional land in the PDA (section 40F(1)(a)); or
- include additional land in the PDA and exclude other land from the PDA (section 40F(1)(b)).

It should be noted that a simple excision of part of a PDA is dealt with as a reduction of a PDA under section 42 (Revocation or reduction of priority development areas).

The boundary change regulation is limited to:

- a minor boundary change that corrects an error in the boundary; or
- if the MEDQ is satisfied the minor boundary change promotes the proper and orderly planning and management of the additional land or the excluded land.

The section includes examples of those circumstances.

40G Recommendation for boundary change regulation

New section 40G provides requirements that must be met for the Minister to recommend the making of a boundary change regulation. Specifically:

- for the addition of land — the MEDQ must have proposed an instrument amending the relevant instrument (e.g. a development scheme), and this has been consulted on under section 40H(1) and made under section 40H(2); and
- for land to be excluded — an instrument amending the local government's planning

instruments providing for the excluded land has been:

- prepared under section 40I; and
- consulted on under section 40J; and
- made or approved under section 40K if that section applies.

Subsections (3) and (4) relate to the exclusion of land from the PDA and provide power for the MEDQ to decide that the local planning instruments do not need changing, but only if satisfied the local government's planning instruments are appropriate for the excluded land. For example, it may be the case that an underlying planning scheme has been appropriately amended under the Planning Act, taking account of a potential boundary amendment and not require further amendment.

40H Consultation about proposed PDA instrument change and making of PDA instrument change

New section 40H applies if a changed development instrument is proposed. Before preparing the proposed instrument, the MEDQ must consult as set out in the section. This includes consulting with the local government and making reasonable endeavours to consult with any government entity, GOC or other entity the MEDQ considers likely to be affected by the proposed change.

40I Preparation of proposed instrument for planning instrument change

New section 40I provides flexibility for the MEDQ to determine which entity prepares the proposed instrument for the planning instrument change for any excluded land. The MEDQ may prepare the proposed instrument or may ask the relevant local government to prepare the instrument. The entity that prepares the instrument is known as the *proposer*. This is similar to the process for a planning instrument change for PDA revocation under section 42A.

40J Consultation about proposed instrument for planning instrument change

New section 40J states that the proposer, before preparing the proposed instrument must, if the proposer is:

- the MEDQ — consult with the local government;
- the local government — consult with the MEDQ.

In both cases, reasonable endeavours must also be made to consult with other entities likely to be affected by the instrument change.

40K Making or approving planning instrument change

New section 40K describes the process for making and approving a proposed instrument for a planning instrument change. The section details the requirements for the different circumstances that may apply having regard to the entity that prepared the instrument, i.e. the MEDQ or the local government. These are based on the requirements applying under current sections 42C and 42J relating to planning instrument changes for PDA revocations.

40L When instruments take effect

New section 40M states that the new instruments take effect on commencement of the boundary change regulation. Also, on giving the notice under section 40K(5), the planning instrument change is, for the Planning Act, taken to have been made by the relevant local government.

Subsections (3) and (4) address superseded planning schemes and the regulation of the content of planning schemes under the Planning Act. These provisions are consistent with amendments for PDA cessation made to section 41 (clause 29) and section 42K (clause 34).

40M Notice of instruments for minor boundary change

New section 40M states requirements for publishing instruments on the department's website, and publishing notices in the gazette and newspaper circulating in the relevant local government's area. This must happen as soon as practicable after the boundary change regulation takes effect. The local government must similarly publish the planning instrument change on its website.

Clause 29 Amendment of s 41 (Cessation of provisional priority development area)

Clause 29 inserts a new provision for a planning instrument change (e.g. an amendment to a local government planning scheme) that is prepared to replace the development instrument for the PDA when a provisional PDA ceases. New subsection (3A) establishes the policy for the planning instrument change with respect to superseded planning schemes and the regulation of the content of planning schemes under the Planning Act.

For superseded planning schemes the planning instrument change does not create a superseded planning scheme and is not an adverse planning change. Accordingly, a request cannot be made to apply the planning scheme that was amended, to a proposed development application or proposed development under section 29 of the Planning Act, nor a claim made for compensation under section 31 of the Planning Act for an adverse planning change.

Also, the content of the planning instrument change is not regulated in the way local planning instruments are regulated under section 16 of the Planning Act, and the regulation does not prevail to the extent of any inconsistency. This provides for the planning instrument change to incorporate any necessary provisions, such as zones, use definitions, guidelines, standards, assessment or endorsement processes, that could potentially be required to effectively implement a PDA development approval that is converted to a Planning Act approval at the time of cessation.

Subsections (3AA) to (5) are renumbered from (4) to (7).

Clause 30 Amendment of s 42 (Revocation or reduction of priority development area)

Clause 30 replaces subsection (1) and includes a new definition of *excluded land* for land that is no longer in the PDA after the PDA is revoked or reduced. The term is used in subsection (2) and new subsection (4).

The current provisions provide for a PDA to be reduced or revoked (the *PDA change*) and for the subject land to be returned to administration under the local government planning scheme. The reduction or revocation is made by a regulation that amends or repeals a declaration regulation. The process requires preparation of an amendment to the planning scheme (the *planning instrument change*) which takes effect at the same time as the PDA change.

Experience indicates that there may be circumstances when the most appropriate action in response to changing circumstances is for a PDA to be replaced by a new more extensive PDA which has a new or extended purpose, and new or revised planning and development

assessment response. This may be the case if it were appropriate to extend a PDA into a new area, or to incorporate an existing PDA into a new PDA.

New subsection (4)(a) provides for this circumstance, and for the timing of the declaration of the new PDA to be the same as the PDA change.

In another circumstance, there is no benefit in proceeding with an amendment to a planning scheme following revocation of a PDA as the planning scheme is not the instrument that will be regulating development in the excluded land. This would be the case if the excluded land were strategic port land, or if the excluded land were within the master planned area for a priority port and a port overlay has effect for the master planned area. New subsection (4)(b) provides for this circumstance.

Experience has also indicated that situations may arise where an underlying planning scheme has been appropriately amended under the Planning Act, taking account of a potential revocation and not require further amendment. In another case, some minor or non-substantive amendments only may be required prior to revocation. In this case, as public consultation for the planning scheme has previously been undertaken, a planning instrument change involving further public consultation could be excluded to avoid any confusion. In such cases it is beneficial to make the return to the planning scheme as streamlined as possible, avoiding unnecessary administrative processes. New subsection (4)(c) provides for the MEDQ to consider and make a decision on whether a planning instrument is required in these circumstances.

New subsection (5), clarifies that subsections (2) and (3) dealing with the requirement for a planning instrument change and for consideration of any PDA-associated development for the PDA, do not apply only because the Minister proposes to make a boundary change regulation.

Clause 31 Amendment of s 42C (Approval of proposed planning instrument change by MEDQ)

Clause 31 amends section 42C(4) to make wording consistent with new sections 40L(6) and 42J(5) with regard to ‘complying with’, rather than ‘include’, conditions imposed by the MEDQ for approval of the planning instrument change.

Clause 32 Amendment of s 42E (Public notification)

Clause 32 amends section 42E(2) and omits section 42E(3). The section deals with the public notification of a proposed instrument for a planning instrument change (e.g. an amendment of a local government planning scheme) to accommodate the proposed revocation or reduction of a PDA.

Section 42E(2) currently requires all of the following to be carried out:

- publish the proposed instrument on the website of the entity that prepared the instrument (the MEDQ or the local government);
- place a notice in the gazette stating that:
 - the proposed instrument may be inspected on the entity’s website; and
 - submissions are invited within the period stated in the notice;
- publish a notice to the same effect as the gazette notice in a newspaper circulating in the

relevant local government area.

The amendment deletes the requirement for the gazette notice and recasts the section accordingly. A gazette notice is no longer considered an effective means of notifying the general public of the opportunity to make submissions. The requirements to publish the proposed instrument on the entity's website, and to publish a newspaper notice inviting submissions, are retained.

It should be noted that the Bill applies this revised approach for public notification requirements to all development instruments under the Act. The new approach is consistent with the current requirements for public notification of planning instruments under the Planning Act.

Clause 33 Amendment of s 42J (Approval of planning instrument change)

Clause 33 amends section 42J(4) and (5) to make wording consistent with new section 40K(6) and amended section 42C(4) with regard to 'complying with', rather than 'including', conditions imposed by the MEDQ for approval of the planning instrument change.

Clause 34 Amendment of s 42K (Effect of planning instrument change)

Clause 34 inserts a new provision for a planning instrument change (e.g. amendment of a local government planning scheme) that is prepared to replace the development instrument for the PDA when a PDA is revoked. The provision establishes the policy for the planning instrument change with respect to superseded planning schemes and the regulation of the content of planning schemes under the Planning Act.

For superseded planning schemes the planning instrument change does not create a superseded planning scheme and is not an adverse planning change. Accordingly, a request cannot be made to apply the planning scheme that was amended, to a proposed development application or proposed development under section 29 of the Planning Act, nor a claim made for compensation under section 31 of the Planning Act for an adverse planning change.

Also, the content of the planning instrument change is not regulated in the way local planning instruments are regulated under section 16 of the Planning Act, and the regulation does not prevail to the extent of any inconsistency. This provides for the planning instrument change to incorporate any necessary provisions, such as zones, use definitions, guidelines, standards, assessment or endorsement processes, that may be required to effectively implement a PDA development approval that is converted to a Planning Act approval at the time of revocation.

Subsections (3A) to (6) are renumbered from (4) to (7).

Clause 35 Amendment of s 42L (Notice of planning instrument change)

Clause 35 is a consequential amendment of the section to achieve consistent wording of provisions related to giving notice in a newspaper about a development instrument. Wording in all relevant sections now refer to a newspaper circulating in the 'area of the relevant local government'.

Clause 36 Amendment of s 42M (Implied and uncommenced rights to use premises protected)

Clause 36 is a consequential amendment of the section flowing from the introduction of the new category of development, PDA accepted development, under clause 19 above. Section

42M(1)(b) is amended to insert PDA accepted development in place of PDA self-assessable development.

Clause 37 Insertion of new s 43A

Clause 37 inserts new section 43A (References to declaration of area as priority development area) which clarifies that a reference in the subdivision (which includes 4 other sections) to the declaration of a PDA, includes a reference to the inclusion, under a boundary change regulation, of an additional area in a PDA. The amendment is a necessary adjustment to deal with the new subdivision 2 dealing with minor boundary changes of PDAs introduced under clause 24.

Clause 38 Amendment of s 47 (Designation of premises for development of infrastructure under Planning Act)

Clause 38 amends section 47(1)(a) to clarify that chapter 2, part 5 of the Planning Act dealing with the designation of premises for development of infrastructure, applies in relation to premises in, or partly in, a PDA.

Clause 39 Replacement of ch 3, pt 2, div 4, sdiv 2 (Effect of cessation of priority development areas)

Clause 39 inserts a new subdivision 2 (Effect of cessation of priority development areas and PDA-associated development) that includes replaced sections 48 to 51 and new sections 51AA to 51AG. The current subdivision 2 includes provisions to address the cessation of a PDA when the roles of the MEDQ and the ED Act in planning and development assessment cease. At cessation of a PDA, land that was included in the declared area returns to the usual administration under the Planning Act, including regulation of development by the relevant local government planning scheme. A PDA may also have certain development (declared by regulation or identified in a development instrument) that is for the PDA but located outside the PDA, i.e. PDA-associated development. Such development may also cease being PDA-associated development for the PDA.

Existing provisions in the subdivision relate to:

- the treatment of PDA development applications and PDA development approvals beyond cessation, including the conversion of PDA approvals to approvals under the Planning Act, and the implications for conditions of approval, appeal rights and enforcement; and
- ensuring rights and responsibilities given under a PDA development approval are preserved in converted approvals.

These provisions have been restructured and complemented by new provisions, in this replacement subdivision 2 and a new subdivision 3, to more comprehensively and clearly deliver on the overarching policy intent. Subdivision 3 includes provisions about converted development approvals. The new provisions address, for example:

- amendment applications and applications to extend a currency period under the ED Act made but not decided at cessation – assessment of the application continues under the ED Act;
- lapsing of a converted approval – the currency period is as stated in the approval or provided for under the ED Act;
- change applications under the Planning Act for a converted approval – identification of the applicable currency period, assessment manager and referral agency for the approval;

- processing of applications for approval of plans of subdivision – if an application is made but not decided before cessation it continues under the ED Act.

The amendments also introduce a new power to make a cessation regulation for each individual PDA. This acknowledges that the ED Act establishes its own planning and development assessment system, and the arrangements established in PDA development approvals (for example, for further assessment and approvals, consideration of State interests, provision and funding of infrastructure within a PDA) may be different from approvals under the Planning Act. PDA development approvals may also be bespoke and complex, and incorporate different aspects for different PDAs. A cessation regulation for each individual PDA will allow for fine-tuned and relevant transitional provisions necessary to provide for the proper and orderly cessation of a PDA, including the preservation of rights and responsibilities established under individual PDA development approvals.

Specific consideration is given to the conversion of PDA development approvals and their relationship with the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) (see clause 40 introducing new division 4A). The SEQ Water Act establishes a regime for water approvals for a connection to water and wastewater services. It applies to the areas serviced by the northern and central distributor-retailers trading as Unitywater and Queensland Urban Utilities and interacts with the development regime under the ED Act to the extent there are PDAs in the service areas of the distributor-retailers.

Replacement and new sections 48 to 51AQ

48 Application of subdivision

Replacement section 48 states when the provisions in the subdivision apply, i.e. when land ceases to be in a PDA or when PDA-associated development for a PDA ceases to be PDA-associated development for the area. Two definitions are established: the *former PDA land* and the *former PDA-associated development*.

Land may cease to be in a PDA, for a provisional PDA, three years after declaration or, for other PDAs, if the PDA is completely or partially revoked. PDA-associated development would cease to be PDA-associated development if the entire PDA ceased, or potentially, if it were revoked by declaration or removed from a development instrument by amendment.

49 References to cessation

Replacement section 49 refers to the timing of cessation – for former PDA land, when the land ceased to be in a PDA, and for former PDA-associated development when the development ceased to be PDA-associated development for the PDA.

50 Existing PDA development approvals

Replacement section 50 generally restates subsections (1) and (2) of current section 48 that provide for PDA development approvals to convert to development approvals under the Planning Act on the cessation of a PDA. A replacement subsection (3) provides that the exception to this conversion applies to the extent the PDA development approval involves a water connection aspect.

The term *water connection aspect* is defined in section 51AR(c) in new division 4A (Relationship with *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*).

This exception recognises that under the SEQ Water Act outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment, and approval for a water connection aspect cannot form part of a development approval under the Planning Act.

A note for the section refers to new division 4A which deals with cessation of PDAs and the relationship with the SEQ Water Act.

Note: existing subsection 48(3) is restated in new sections 51AC and 51AD.

51 Existing PDA development applications

Replacement section 51 generally restates current section 49 that provides for a PDA development application to continue to be decided under the ED Act if the application had been made but not decided when the former PDA or former PDA-associated development ceased. Further, if a PDA development approval is given for the application, immediately after it takes effect, the approval is taken to be a development approval under the Planning Act that took effect at the same time as the development approval.

A new subsection (4) provides that the exception to this conversion applies to the extent the PDA development approval involves a water connection aspect.

The term *water connection aspect* is defined in section 51AR(c) in new division 4A (Relationship with *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*).

This exception recognises that under the SEQ Water Act outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment, and approval for a water connection aspect cannot form part of a development approval under the Planning Act.

A note for the section refers to the new division.

51AA Existing amendment applications

New section 51AA provides for existing amendment applications under section 99 in a similar way to existing PDA development applications. The current cessation provisions do not address these types of applications. If an amendment application has been made but not decided before cessation of the PDA, it continues to be decided under the ED Act as if there had been no cessation. Also, if a changed PDA development approval is given for the application, immediately after it takes effect, the approval is taken to be a development approval under the Planning Act that took effect at the same time as the development approval.

A new subsection (4) provides that the exception to this conversion applies to the extent the changed PDA development approval involves a water connection aspect.

See section 51 above for further details about a water connection aspect.

A note for the section refers to new division 4A which deals with cessation of PDAs and the relationship with the SEQ Water Act.

51AB Existing applications to extend currency period

New section 51AB provides for existing amendment applications under section 101 in a similar way to existing PDA development applications and existing amendment applications. The current cessation provisions do not address these types of applications. If an application to extend the currency period of a PDA development approval (where all or part of the approval converted on PDA cessation to a Planning Act development approval), was made but not decided at cessation, it continues to be decided under the ED Act. Also, if the decision is to grant the extension, it is taken to be a decision under the Planning Act, section 87 to extend the currency period of the development approval. Further, should the extension be refused, the approval lapses according to the provisions of the ED Act (section 102 applies). Subsection (5) also states that despite the Planning Act, section 229 there is no appeal right under the Planning Act against the decision on the application. This is equivalent to current section 50(3) in the ED Act.

51AC Existing appeals to Planning and Environment Court

New section 51AC addresses appeals against a condition of PDA development approval under section 90 that were made to the Planning and Environment Court (P&E Court) but not decided immediately before the relevant PDA ceased. This situation is currently addressed by current section 48(3). The appeals must continue to be dealt with under the ED Act as if the PDA had not ceased. Also, if the decision on the appeal is to give a changed or replacement PDA development approval, it is taken to be a development approval under the Planning Act.

Subsection (4) provides that the exception to this conversion applies to the extent the changed or replacement PDA development approval involves a water connection aspect. See section 51 above for further details about a water connection aspect.

A note for the section refers to new division 4A which deals with cessation of PDAs and the relationship with the SEQ Water Act.

51AD Appeals to Planning and Environment Court after cessation

New section 51AD addresses appeals to the P&E Court that could have been made under section 90 against a condition of PDA development approval (where all or part of the approval converted on cessation to a Planning Act development approval) but had not been made immediately before the relevant PDA ceased. This situation is currently addressed by current section 48(3). An appeal may be made under the ED Act as if the PDA had not ceased. This section also applies to appeals against a condition of a PDA development approval that was given after cessation, under section 51 or 51AA for a PDA development application.

Appeals must be started within the period mentioned in section 90(3) (i.e. 20 business days after the applicant is given notice of the decision). Also, if the decision on the appeal is to give a changed or replacement PDA development approval, it is taken to be a development approval under the Planning Act.

Subsection (6) provides that the exception to this conversion applies to the extent the changed or replacement PDA development approval involves a water connection aspect. See section 51 above for further details about a water connection aspect.

A note for the section refers to new division 4A which deals with cessation of PDAs and the relationship with the SEQ Water Act.

51AE Process for approving plans of subdivision

New section 51AE provides that the process for approving a plan of subdivision under section 104(2) of the ED Act that had started but not ended before PDA cessation, continues to apply as if the PDA had not ceased.

In relation to registering the plan of subdivision under the *Land Title Act 1994* (LTA), the section provides that anything done by the MEDQ under section 104 in relation to the plan of subdivision is taken to have been done by the local government for the local government area to which the plan relates. This is to ensure that the registration requirements under the LTA, section 50 for approval by the *relevant planning body*, (as defined in that section), are met. Note that if the process for approving a plan of subdivision had not started before cessation the provisions of LTA, section 50 will apply and require approval from the relevant local government.

51AF Registering particular plans of subdivision approved before cessation

New section 51AF provides for the registering of plans of subdivision that had been approved under the ED Act, section 104 before the relevant PDA ceased, but had not been registered under the LTA before the cessation. As for section 51AE, anything done by the MEDQ under section 104 in relation to the plan of subdivision is taken to have been done by the local government for the local government area to which the plan relates. This is to ensure that the registration requirements under the LTA, section 50 for approval by the ‘relevant planning body’, as defined in that section, are met.

51AG Lawful use of premises

Section 51AG replaces current sections 51 and 51A. It provides that a use of premises that is or is on the former PDA land or is a consequence of the former PDA-associated development, and that is a lawful use under the ED Act or another Act, is taken to be a lawful use under the Planning Act on and from cessation of the PDA.

Subdivision 3 Dealing with converted PDA development approvals

New subdivision 3 deals with PDA development approvals that have converted to development approvals under the Planning Act.

New sections 51AH to 51AK

51AH Application of subdivision

New section 51AH states that the subdivision applies if all or part of a PDA development approval becomes, under subdivision 2, a development approval under the Planning Act. The term *Planning Act approval* is given to that type of approval. The reference to ‘all or part of a PDA development approval’ recognises that another part of the approval may involve a water connection aspect. See section 51 above for further details about a water connection aspect.

51AI Conditions and enforcement authorities under Planning Act

New section 51AI restates provisions from current sections 50(2) and (5) of the ED Act which establish for converted PDA development approvals that:

- a PDA development condition stated in a PDA development approval is taken to be a development condition of the development approval under the Planning Act, even if the

condition could not be imposed under the Planning Act – this recognises that the imposition of development conditions is not constrained in the same way under the ED Act as it is under the Planning Act, and that development conditions for a PDA development approval may, for example, incorporate conditions about infrastructure charges and establish compliance assessment and certification processes;

- the enforcement authority is the entity that would have been the enforcement authority if there had been no PDA or PDA-associated development, and if the application for the Planning Act approval had been made under the Planning Act, the repealed SPA, or the repealed IPA, as in effect when the application for the PDA development approval was made. A note has been included in the definition of enforcement authority in Schedule 2 of the Planning Act referring to this provision of the ED Act applicable to converted PDA development approvals.

51AJ Proceedings about Planning Act approvals

New section 51AJ provides that despite the Planning Act, section 229 there is no appeal right under the Planning Act in relation to the Planning Act approval (i.e. the converted PDA development approval) or its conditions, or a decision under the ED Act in relation to the Planning Act approval or its conditions. This is equivalent to current section 50(3) in the ED Act.

Subsection (2) goes on to clarify that subsection (1) does not otherwise limit or affect:

- appeals under sections 51AC(1)(a) or 51AD – existing appeals and appeals against a PDA development approval given after cessation;
- rights to appeal under the Planning Act, section 299 against a decision on a change or extension application in relation to the Planning Act approval (i.e. the converted PDA development approval).

Subsections (3) and (4) deal with a declaration under the *Planning and Environment Court Act 2016* (P&E Court Act), section 11 in relation to the development approval or its conditions, or a decision under the ED Act in relation to the development approval or its conditions. The proceeding may only be brought by the entity that is the enforcement authority for the approval under section 51AI(2) (in general terms, the entity that would have been the authority if the PDA had not been declared and if a development application had been made when the PDA development application was made). A note has been included in the P & E Court Act, section 11 referring to this provision of the ED Act applicable to converted PDA development approvals.

51AK Lapsing of Planning Act approvals

New section 51AK provides for the currency period for an approval under the ED Act, section 100(2) to (5) to continue to apply to the Planning Act approval (i.e. the converted PDA development approval). Subsection (1) provides for the interpretation of different terminology used in the ED Act, section 100 and equivalent section 85 of the Planning Act, and also for any extension of the currency period under section 51AB(4), the ED Act or the Planning Act.

A note has been included in the Planning Act, section 85 referring to this provision of the ED Act applicable to converted PDA development approvals.

Subsections (2) and (3) provide for a plan for reconfiguration that had not been given to the MEDQ for a PDA approval for reconfiguring a lot before the approval became a Planning Act approval, to be given to the local government and processed under the Planning Act, section 102(2)(b).

51AL Extension applications under Planning Act for Planning Act approvals

New section 51AL relates to extension applications under the Planning Act for Planning Act approvals (i.e. converted development approvals) and provides for the currency period for an extension application to be the period applying for the approval under the ED Act, section 100, as applied under 51AK and including any extension. Provisions also address the interpretation of references, such as assessment manager and referral agency, in the relevant provisions for extension applications under the Planning Act.

The relevant provisions of the Planning Act are:

- section 86 (Extension applications) and 87 (assessing and deciding extension applications);
- chapter 3 (Development assessment), part 6 (Minister's powers);
- section 229 (Appeals to tribunal or P&E Court);
- schedule 1 (Appeals), section 1 (Appeal rights and parties to appeals), table 1 (Appeals to the P&E Court and, for certain matters, to a tribunal), item 3 (Extension applications); and
- the development assessment rules.

Notes have been included in the Planning Act, sections 86 and 87 referring to this provision of the ED Act applicable to converted PDA development approvals.

51AM Changes to Planning Act approvals that are minor changes for Planning Act

New section 51AM establishes criteria for determining a minor change application under the Planning Act in relation to a Planning Act approval (i.e. the converted PDA development approval). Different criteria are needed to account for differences between a converted PDA development approval and other Planning Act development approvals. Despite Planning Act, schedule 2, definition *minor change*, the change to the development approval is a minor change unless:

- the change results in something substantially different; or
- the development, including the development as changed, is prohibited development under the Planning Act; or
- public notification of the application would not have been required for the development under the Planning Act, SPA or IPA at the time the PDA development application was made, but public notification would be required under the Planning Act for the development, including the change, at the time of the change application.

Notes have been included in the Planning Act, section 78 and in the definition of *minor change* in schedule 2 referring to this provision of the ED Act applicable to converted PDA development approvals.

51AN Responsible entities for change applications under Planning Act for Planning Act approvals

New section 51AN establishes the responsible entity for a change application made under the Planning Act to change the Planning Act approval (i.e. the converted PDA development approval). A nominated assessing authority, or an entity prescribed by regulation, are identified in certain circumstances, and otherwise the entity that would be the assessment manager for the development the subject of the approval (including the change), at the time the change application is made. Notes have been included in the Planning Act, sections 78 and 78A referring to this provision of the ED Act applicable to converted PDA development approvals.

51AO Change applications under Planning Act for Planning Act approvals

New section 51AO establishes how references in the relevant provisions of the Planning Act in relation to change applications are to be interpreted for Planning Act approvals (i.e. converted PDA development approvals).

The relevant provisions of the Planning Act are:

- chapter 3 (Development assessment), part 5 (Development approvals), division 2 (Changing development approvals), subdivision 2 (Changes after appeal period), other than section 78A(1) or 82;
- chapter 3 (Development assessment), part 5 (Development approvals), division 2 (Changing development approvals), subdivision 3 (Notice of decision);
- chapter 3 (Development assessment), part 6 (Minister's powers);
- section 229 (Appeals to tribunal or P&E Court);
- schedule 1 (Appeals), section 1 (Appeal rights and parties to appeals), table 1 (Appeals to the P&E Court and, for certain matters, to a tribunal), item 2 (Change applications); and
- the development assessment rules.

The references interpreted in the section are references to the Planning Act, section 78(2) or (3) or 78A(1), assessment manager, a referral agency, the original development application, and the consideration of matters mentioned in the Planning Act, section 81(2) (d). A note has been included in the Planning Act, section 78 referring to this provision of the ED Act applicable to converted PDA development approvals.

A matter to note is that subsection (1)(c)(ii) provides for a regulation to prescribe a referral agency. The power to use a regulation to prescribe the referral agency recognises that for some PDA development approvals to be converted to a Planning Act approval it may be necessary to tailor the interpretation of the approvals to individual PDA development approvals for the PDA.

51AP Cancellation applications under Planning Act for Planning Act approvals

New section 51AP establishes how references in the Planning Act in relation to cancellation applications are to be interpreted for Planning Act approvals (i.e. converted PDA development approvals). The relevant provisions of the Planning Act are:

- section 84 (Cancellation applications);

- chapter 3 (Development assessment), part 6 (Minister's powers)
- the development assessment rules.

The references interpreted in the section are assessment manager and a referral agency.

A note has been included in the Planning Act, section 84 referring to this provision of the ED Act applicable to converted PDA development approvals.

51AQ Other matters about Planning Act approvals

New section 51AQ (1) and (2) addresses infrastructure charges notices (ICNs) for Planning Act approvals (i.e. converted PDA development approvals). The relevant local government may only give an ICN if the notice relates to a change to, or extension of, the approval, and not if it relates to the original PDA development approval converted to a Planning Act approval. This recognises that PDA development approvals have fully addressed infrastructure charges for the approved development.

A note has been included in the Planning Act, section 119 referring to this provision of the ED Act applicable to converted PDA development approvals.

Subsection (3) states that a conversion application can not be made in relation to a condition that was a PDA development condition. This recognises that PDA development approvals already deal with offsets for trunk infrastructure and refunds. A note has been included in the Planning Act, section 139 referring to this provision of the ED Act applicable to converted PDA development approvals.

Subsection (4) establishes a new power to make a regulation to:

- provide that development is accepted development under the Planning Act if the Planning Act approval implied that the development is to be carried out and the development would have been PDA accepted development if it were not for the PDA cessation, and the development complies with any requirements for the development stated in the regulation – this recognises special purpose planning tools, such as plans of development, in PDA development approvals that in conjunction with development instruments provide for development to be PDA accepted development;
- state the entity for the giving or approving of a document or thing in a condition of approval in place of the MEDQ – this recognises that with different levies and arrangements for charging, funding, monetary security and the like, the conversion from PDA development approval to Planning Act approval may need to be tailored to an individual approval;
- make provision about another matter necessary or convenient to give effect to the transition from PDA development approval to Planning Act approval for which the ED Act does not make provision or sufficient provision – this recognises the individual aspects of some PDA development approvals and the importance of providing for the proper and orderly cessation of a PDA, including the preservation of rights and responsibilities established under individual PDA development approvals.

Clause 40 Insertion of new ch 3, pt 2, div 4A

Clause 40 inserts a new division 4A (Relationship with South-East Queensland Water (Distribution and Retail Restructuring) Act 2009) and deals with the relationship of PDA

development approvals with the SEQ Water Act.

The SEQ Water Act establishes a regime for water approvals for a connection to water and wastewater services. It applies to the areas serviced by the northern and central distributor-retailers trading as Unitywater and Queensland Urban Utilities and interacts with the development regime under the ED Act to the extent there are PDAs in the service areas of the distributor-retailers. This division recognises that under the SEQ Water Act, outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment and approval for a water connection aspect cannot form part of a development approval under the Planning Act. This is not the case within a PDA or on PDA-associated land. Accordingly, when a PDA ceases, a PDA development approval may have a part that involves a water connection aspect. That aspect of the approval and the related conditions are recognised in a similar way to the component that is converted to a Planning Act approval.

New sections 51AR to 51AU

51AR Application of division

New section 51AQ states when new division 4A applies, i.e. when land ceases to be in a PDA or when PDA-associated development for a PDA ceases to be PDA-associated development for the area, and further, if a PDA development approval involves a water connection aspect. The approval may have been given immediately before cessation, or after cessation under division 4. Three definitions are established, the *former PDA*, the *former PDA-associated development* and *water connection aspect*.

Land ceases to be in a provisional PDA three years after declaration, and for other PDAs, if the PDA is completely or partially revoked. PDA-associated development would cease to be PDA-associated development if the entire PDA ceased, or potentially, if it were revoked by declaration or removed from a development instrument by amendment.

The term *water connection aspect* has two meanings: an aspect of the PDA development approval that is in relation to a connection under the SEQ Water Act for which a water approval is required under that Act; and, for a PDA development approval prescribed by regulation and in effect immediately before the cessation, an aspect of the approval prescribed by a regulation that commences on or before the cessation. This second meaning provides for a regulation to clarify the water connection for an individual approval.

51AS References to cessation

New section 51AS refers to the timing of cessation in relation to the former PDA land and the former PDA-associated land – when the land ceases to be in a PDA, and when the development ceases to be PDA-associated development for the PDA, respectively.

51AT Conversion of water connection aspects of PDA development approvals

New section 51AT provides for the conversion of the water connection aspects of PDA development approvals. If a water approval is already in effect for the land to which the PDA development approval relates, the water connection aspect of the PDA development approval becomes a part of that water approval. If a water approval is not already in effect, the water connection aspect of the PDA development approval continues as a PDA development approval, and if still in effect, converts to being part of a water approval if a water approval is given later for the land. Subsection (5) clarifies that this section does not limit or otherwise affect a requirement under the SEQ Water Act for obtaining a water approval for a connection under that Act.

51AU Provisions about water connections aspects that are taken to be part of water approvals

New section 51AU states in subsection (1) that the section applies if the water connection aspect of the approval is taken to be part of a water approval under section 51AT(2) or (4).

Subsection (2) provides that a PDA development condition of the water connection aspect is taken to be a water approval condition of the water approval, even if the condition could not be imposed under the SEQ water Act.

Subsection (3) provides that despite the SEQ Water Act there is no review or repeal under that Act in relation to the part of the water approval that was the water connection aspect, or a decision about that part of the approval under the ED Act. Subsection (4) goes on to clarify that subsection (3) does not limit or otherwise affect:

- an existing appeal, or an appeal after cessation, to the Planning and Environment Court under sections 51AC or 51AD; or
- a review or repeal under the SEQ Water Act in relation to a decision under section 99BRAK of that Act about a request to amend a water approval condition.

Subsections (5) and (6) address ICNs. A distributor-retailer may only give an ICN if the notice relates to an amendment of the part of the water approval that was the water connection aspect, not if it relates to the original approval that was converted. This recognises that PDA development approvals have fully addressed infrastructure charges for the approved development. A note has been included in the SEQ Water Act, section 99BRCI referring to this provision of the ED Act applicable to converted PDA development approvals.

Subsection (7) states that a conversion application can not be made under the SEQ Water Act in relation to a condition that was a condition of the water approval that was a PDA development condition. This recognises that PDA development approvals already deal with offsets for trunk infrastructure and refunds. A note has been included in the SEQ Water Act, section 99BRDE referring to this provision of the ED Act applicable to converted PDA development approvals.

Subsection (8), similar to section 51AQ(4)(b) and (c), provides for a regulation to state; in relation to the water connection aspect, the entity for the giving or approving of a document or thing in place of the MEDQ, and to make provision about another matter necessary or convenient to give effect to the transition from the water aspect of the PDA development approval to the water approval for which the ED Act does not make provision or sufficient provision.

Clause 41 Amendment of s 53 (Relationship with the City of Brisbane Act 2010 or the Local Government Act 2009)

Clause 41 inserts new subsection (2A), for the purpose of subsection (1), to provide for declaration of an area as a PDA to include the inclusion, under a boundary change regulation, of an additional area in a PDA.

Clause 42 Amendment of s 54 (By-laws)

Clause 42 amends the section to state a by-law prescribed by regulation is taken, for the *Environmental Protection Act 1994* (Environmental Protection Act), schedule 1, section 3(a)

and (b), to be a local law. Under those provisions environmental nuisance caused by an act or omission that is a contravention of a local law is excluded from sections 440 and 440Q and the offences created under those sections.

The amendment achieves parity between by-laws under this Act and local laws created under the *Local Government Act 2009*.

See also clauses 110 and 111 that deal with the amendment of schedule 1, part 1, section 3(f) in the Environmental Protection Act to also exclude development carried out under a PDA development approval or PDA exemption certificate that authorises the environmental nuisance.

Clause 43 Replacement of s 56 (Development scheme required)

Clause 43 replaces section 56 to provide flexibility for the MEDQ to make a development scheme for a PDA that replaces one or more, or all, ILUPs. This provides for development schemes for a PDA to be prepared progressively if ILUPs have different expiry periods, and also for a development scheme to replace more than one ILUP if that should be appropriate.

Clause 44 Amendment of s 57 (Content of development scheme)

Clause 44 amends section 57 that deals with the content of development schemes. A minor amendment to subsections (1) and (2) inserts the word ‘relevant’ before ‘area’ (recognising that a development scheme may apply to all or part of a PDA), and consequential amendments to subsections (3)(b) and (3A)(a) replace PDA self-assessable development with the new development category, PDA accepted development, and delete subsection (3A)(b) referring to requirements for carrying out PDA self-assessable development. It should be noted that PDA accepted development identified in a development scheme may be subject to stated requirements, and the development scheme may state that if the development does not comply with those requirements it is PDA assessable development.

Subsections (3)(c) and (3A) are also amended to replace ‘area’ with ‘priority development area’ to more precisely reference PDA-associated development.

A new subsection (3AA) is inserted to include provisions about PDA-associated development to ensure consistency in the considerations for including PDA-associated development in a development scheme with the considerations under sections 40C(2) and (3) for declaring development to be PDA-associated development.

Current subsection (5) is omitted to be relocated in section 58 dealing with the preparation of proposed development schemes, and a new subsection (5) provides a definition of *relevant area* recognising that a development scheme may cover all or part of a PDA.

Subsections (3AA) to (5) are renumbered from (4) to (7).

Clause 45 Amendment of s 58 (Preparation of proposed development scheme)

Clause 45 amends section 58 that deals with the preparation of a proposed development scheme. Subsection (1) is amended to recognise that a development scheme may apply to all or part of a PDA.

A new subsection (3) inserts the requirement for relevant State interests to be considered in the preparation of proposed development schemes in the same way as they are considered in

development assessment in deciding PDA development applications (section 87) and applications for PDA exemption certificates (new section 71A).

Current section 57(5) dealing with other considerations in the preparation of development schemes (relevant planning instruments and assessment benchmarks) have also been relocated to new subsection (3).

The definition of *State interests* has been relocated from section 87 to the dictionary in schedule 1.

Clause 46 Amendment of s 59 (Public notification)

Clause 46 amends section 59 to delete the requirement for the placing of a gazette notice as one of the actions to carry out public notification of a proposed development scheme. A gazette notice is no longer considered an effective means of notifying the general public of the opportunity to make submissions about a planning matter. The requirements to publish the proposed instrument on the department's website, and to publish a newspaper notice inviting submissions, are retained. The minimum period (30 business days) during which submissions may be made is stated in amended paragraph (b), allowing current paragraph (c) to be deleted.

It should be noted that this revised approach for submissions using only the newspaper to call for submissions has been carried out across all development instruments under the Act. The new approach is consistent with the current requirements for public notification of planning instruments under the Planning Act.

Clause 47 Amendment of s 63 (Making of scheme)

Clause 47 deals with the MEDQ making a development scheme.

A new subsection (3) is added to require a gazette notice stating that the development scheme is published on the department's website. The beginning of the day the gazette notice is published is used as the reference for the day the development scheme takes effect under section 64.

This new approach will improve the efficiency of making and amending development instruments. In association with these amendments, the provisions related to tabling and inspection of the planning documents adopted or approved by regulation, will no longer be required.

The current provisions, which provide that a development scheme or development scheme amendment does not take effect until it has been approved under a regulation, are a legacy of the repealed ULDA Act when functions under the Act were exercised by the former ULDA. Given the powers and functions of the MEDQ are executed within government and not undertaken by a statutory authority, the extra oversight is no longer relevant.

The day the development scheme takes effect is the day the gazette notice is published. This is consistent with the approach followed for planning instruments under the Planning Act (see section 9) with further clarification that the day starts at the beginning of the day. This arrangement is introduced for other development instruments under the ED Act:

- PLUPs —section 36F;

- new ILUPs that replace an ILUP —section 40AC.

Clause 48 Replacement of s 64 (When proposed scheme takes effect)

Clause 48 renames section 64 as When development scheme takes effect. The section establishes that the development scheme takes effect at the beginning of the day the gazette notice under section 63(3)(b) is published. See further details about this new approach in the discussion for clause 47.

Clause 49 Amendment of s 65 (Notice of development scheme)

Clause 49 recasts section 65 to reflect the changes made to the process for making and publishing the development scheme. Paragraph (a) dealing with publishing the scheme on the department's website has been omitted and relocated to section 63(3)(a) (Making of scheme). The reference in paragraph (b) to the newspaper has been changed to a newspaper circulating in the relevant local government area rather than in the relevant PDA, for consistency with other current and amended provisions

Clause 50 Amendment of s 67 (Power to amend to change land use plan)

Clause 50 amends a reference to amended section 59 and inserts a definition of *change* for the section. The current provisions for amending a development scheme provide for changing the land use plan. There is no description of, or limitation on, the form a change may take. Considering the potential life of a development scheme (the first took effect in 2009), there are also circumstances when appropriate changes could be so substantial that the land use plan is essentially a new plan. The new definition clarifies the situation by stating that changing a land use plan may include replacing it with a new land use plan.

Clause 51 Replacement of ss 68 and 69

Clause 51 inserts new replacement sections 68 (When amendment takes effect) and 69 (Notice of amendment).

New section 68 provides for the amendment of a development scheme to take effect in the same way the development scheme takes effect, i.e. at the beginning of the day when the gazette notice under section 63(3)(b), as applied under section 67(2), is published. As with the process for development schemes, the current requirement for the amendment to take effect on the approval of a regulation is discontinued for the reasons outlined in clause 47. The notification requirements set out in new section 69 are amended only to the extent that paragraph (a) dealing with publishing the amended development scheme on the department's website has been relocated to section 63(3) (consistent with the changes made to the process), and the reference to the newspaper has been changed to one circulating in the relevant local government area rather than relevant PDA, for consistency with other current and amended provisions.

Clause 52 Omission of s 70 (Tabling and inspection requirement)

Clause 52 omits section 70. This is a consequential amendment arising from a new approach in the Bill for how development instruments take effect. The current provisions provide that a development scheme or development scheme amendment does not take effect until it has been approved under a regulation. This is a legacy of the repealed ULDA Act when functions under the Act were exercised by the former ULDA. Given the powers and functions of the MEDQ are executed within government and not undertaken by a statutory authority, the extra oversight is no longer relevant. In association with this new approach, the provisions related to tabling and inspection of the planning documents adopted or approved

by regulation, are no longer required.

Clause 53 Amendment of s 71 (Development scheme prevails over particular instruments)

Clause 53 renames the section to Development instruments prevail and further amends the section to identify all planning instruments created for a priority development area as prevailing over the Planning Act planning instruments and assessment benchmarks described in the section, to the extent of any inconsistency. The amendment recognises that all types of PDA development instruments need to be accommodated to ensure the integrity of the ED Act planning system is maintained.

Clause 54 Omission of s 74 (Compliance with requirements for carrying out PDA self-assessable development)

Clause 54 omits the offence as a consequence of the amendment of section 33 under clause 19 that has introduced the new development category of PDA accepted development in place of the existing categories of PDA self-assessable development and PDA exempt development.

Note that PDA accepted development identified in a development scheme may be subject to stated requirements, and the development scheme may state that if the development does not comply with those requirements it is PDA assessable development. In those circumstances, proceeding with the development without a PDA development approval would be an offence under section 73.

New section 226 deals with the transitional arrangements for the omission of the development categories for PDA self-assessable development and PDA exempt development and their replacement with the new development category, PDA accepted development.

New section 232 deals with the transitional arrangements for the omission of the offence under former section 74 for carrying out PDA self-assessable development that does not comply with the requirements about carrying out the development. Under the new section, if a person is alleged to have committed an offence before the commencement, a proceeding for the offence may be continued or started as if the part 6, division 2 had not commenced (clause 70).

Clause 55 Amendment of s 85 (Deciding application generally)

Clause 55 amends section 85(1) to insert a new paragraph (d). Subsection (1) describes the matters that the MEDQ must be satisfied have been complied with before a PDA development application may be decided. The amendment complements the amendments made in relation to provisional PDAs in clause 23, by ensuring a decision is not made on a development application that would not be consistent with the relevant local government planning scheme, until the PLUP is finalised. This ensures that development activity consistent with the both the draft PLUP and the planning scheme can continue, and maintains the status quo until the new regulatory instrument is finalised. Development consistent with the planning scheme is defined by the provisions to be development that is categorised as accepted development under the relevant local planning instrument, or development that is categorised as assessable development requiring code assessment and complies with all applicable assessment benchmarks.

Clause 56 Amendment of s 87 (Matters to be considered in making decision)

Clause 56 amends section 87 by replacing subsection (1)(d) to introduce consideration of the new development instrument for provisional PDAs, the draft PLUP, and omitting subsection (4), which currently contains a definition of *State interest*. The definition has been relocated to schedule 1, dictionary to apply for the whole Act.

New subsections (3A) and (3B) have also been inserted to ensure, in the case of multiple interim land use plans or development schemes for a PDA, that the instrument considered by the MEDQ in development assessment is the one relevant to the area where the development is proposed.

Subsections (2A) to (4) have been renumbered from (3) to (6).

Clause 57 Amendment of s 88 (PDA development conditions)

Clause 57 inserts a new example of a PDA development condition that may be imposed by the MEDQ that requires compliance with an infrastructure agreement.

The Planning Act (and its predecessors) have made provision for the enforcement of an infrastructure agreement through the planning enforcement regime by providing for a condition to be imposed on a development approval that requires compliance with an infrastructure agreement (Planning Act, section 65(2)(c)). This is not currently stated explicitly in the ED Act as an example of what PDA development conditions may address. Including a specific provision ensures clarity in this regard.

Paragraphs (ba) to (d) have been renumbered from (c) to (e).

Clause 58 Amendment of s 99 (Application to change PDA development approval)

Clause 58 corrects a drafting error in section 99(4), which states that section 84 (Notice of application) does not apply for an application to change a PDA development approval. Section 99(4) was previously amended in section 110 of the *Queen's Wharf Brisbane Act 2016*.

Prior to this amendment taking effect, section 84(1) of the ED Act contained two paragraphs, (a) and (b). Paragraph (a) referred to public notification requirements under the relevant development instrument, and paragraph (b) referred to the MEDQ authority to require notification after an application has been made. Section 99 stated that section 84(1)(a) did not apply to an application to change an existing approval. This provided for section 84(1)(b) (now renumbered section 84(1)(c)) to continue to apply, allowing the MEDQ to require public notification of such an application if considered appropriate. It was intended that the discretion for the MEDQ to require notification be retained.

The amendment corrects the error and reintroduces the previous discretion for the MEDQ to require public notification.

Clause 59 Amendment of s 108 (Effect of enforcement order)

Clause 59 amends section 108(5) to insert new definitions to replace the current definition of "clearing" in the subsection. The new definitions of *root zone* and *vegetation* align with those in the current *Economic Development (Vegetation Management) By-law 2013*.

Clause 60 Amendment of s 116E (Making and levying of charge by superseding public sector entity)

Clause 60 amends the wording to apply to infrastructure on land that ceases to be in a PDA, regardless of whether cessation of the PDA was complete or partial, or the result of revocation or expiry of the three-year life for a provisional PDA. The wording in section 116E(3)(a) is also amended to address potential issues that may arise under the current wording if the relevant infrastructure is not located within the charge area. The changed wording clarifies that the infrastructure recoupment charge is taken to have been ‘made and levied ...for infrastructure’ instead of the current wording ‘for the relevant land’. The change is consistent with the recast definition of *superseding public sector entity* inserted in schedule 1 (clause 71).

Clause 61 Amendment of s 119 (Exercise of discretion unaffected by infrastructure agreements)

Clause 61 amends section 119 to insert the words, ‘draft provisional land use plan or’, into paragraph (a). This new development instrument has been introduced as part of the changes made in clause 23 in relation to provisional PDAs.

Clause 62 Replacement of s 120 (Infrastructure agreements prevail if inconsistent with PDA development approval)

Clause 62 renames section 120 to When infrastructure agreements under Planning Act apply instead of particular approvals, and inserts new section 120A (When water infrastructure agreements apply instead of particular approvals)

120 When infrastructure agreements under Planning Act apply instead of particular approvals

Replacement section 120 in subsection (1) states the section applies if the infrastructure agreement is made under the Planning Act. This change reflects the amendment to the definition of *infrastructure agreement* (clause 71) to also include a water infrastructure agreement (separately defined as a water infrastructure agreement under the SEQ Water Act). The current definition refers only to an infrastructure agreement under the Planning Act. New section 120A deals separately with water infrastructure agreements.

Subsection (2) recasts current section 120 stating that the infrastructure agreement applies instead of a PDA development approval to the extent of any inconsistency

New subsections (3) to (6) preserve the existing relationship of a Planning Act infrastructure agreement to part of a PDA development approval that becomes a Planning Act approval or part of a water approval, when the relevant land ceases to be in, or to be PDA-associated development land for, a PDA. The Planning Act, section 157 has a corresponding amendment under clause 168 to provide that it is subject to section 120(4) of the ED Act.

The term *water approval* is a new definition inserted in schedule 1 (clause 71) and means a water approval under the SEQ Water Act. The provisions recognise that when a PDA ceases, if a water approval is already in effect for the land to which the PDA development approval relates, the water connection aspect of the PDA development approval becomes a part of that water approval. If a water approval is not already in effect, the water connection aspect of the PDA development approval continues as a PDA development approval, and if still in effect, converts to being part of a water approval if a water approval is given later for the land.

The need for two types of approvals after PDA cessation arises because under the SEQ Water Act outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment, and approval for a water connection aspect cannot form part of a development approval under the Planning Act.

New division 4A in chapter 3, part 2 deals with the cessation of PDAs and the relationship with the SEQ Water Act.

A note for subsection (3) refers to SEQ Water Act, section 99BRDO for when a water infrastructure agreement under that Act prevails over a water approval.

Subsection (4) states that despite the Planning Act, section 157(2), the infrastructure agreement applies instead of the Planning Act approval under section 157(1) of the Planning Act, even if the chief executive of the department administering the Planning Act has not approved the agreement. The MEDQ is a State infrastructure provider and under section 157(2), an infrastructure agreement that a State infrastructure provider is a party to requires chief executive approval for the agreement to apply instead of a development approval. However, such approval of the chief executive is not necessary in the case of Planning Act infrastructure agreements that prevail over PDA development approvals given by the MEDQ under the ED Act. Subsection (4) provides for the existing relationship with the infrastructure agreement to be preserved for a PDA development approval that converts to a development approval under the Planning Act at cessation of the PDA.

Subsection (5) provides that if the Planning Act infrastructure agreement was made before the cessation, the agreement prevails instead of the part of the water approval to extent of any inconsistency. This preserves the relationship of the infrastructure agreement to the water aspect of a PDA development approval that was established before cessation.

Subsection (6), clarifies that subsections (4) and (5) apply whether or not the infrastructure agreement is amended before or after the cessation. Any new infrastructure agreement made after cessation would be subject to the normal application of Planning Act, section 157.

120A When water infrastructure agreements apply instead of particular approvals

New section 120A states in subsection (1) that the section applies if the infrastructure agreement is a water infrastructure agreement. This new provision reflects the amendment to the definition of *infrastructure agreement* in clause 71 to also include a water infrastructure agreement (separately defined as a water infrastructure agreement under the SEQ Water Act). The current definition refers only to an infrastructure agreement under the Planning Act. Section 120 deals separately with infrastructure agreements under the Planning Act.

Subsection (2) states that if the water infrastructure agreement is made on or after commencement, the agreement applies instead of a PDA development approval to the extent of any inconsistency.

Subsections (3) and (4) establish the relationship of a water infrastructure agreement to part of a PDA development approval that becomes part of a water approval, when the relevant land ceases to be in, or to be PDA-associated development land, for a PDA. If the water infrastructure agreement is made on or after commencement, the water infrastructure agreement prevails over the part of the water approval to the extent of any inconsistency, despite SEQ Water Act, section 99BRDO (Water infrastructure agreement prevails over

water approval and infrastructure charges notice). The SEQ Water Act, section 99BRDO has a corresponding amendment under clause 229 to provide that it is subject to section 120A(4) of the ED Act. The amendment to section 99BRDO also inserts a note referring to section 120(5) of the ED Act which provides for infrastructure agreements under the Planning Act to also prevail over water approvals in some situations.

See the discussion above for section 120 for further details about water approvals.

Clause 63 Amendment of s 121 (Infrastructure agreement continues beyond cessation of priority development area)

Clause 63 amends the wording of section 121(1)(b) to recognise that infrastructure for a PDA which is the subject of an infrastructure agreement, may not necessarily be located within the PDA or within PDA-associated land. Accordingly, the provision has been amended to refer to ‘an infrastructure agreement in relation to the land’.

Current subsection (2) has been recast into two separate subsections. New subsection (2) addresses the matter of a superseding public sector entity becoming a party to an infrastructure agreement after PDA cessation, and has been changed to more accurately refer to the entity for the infrastructure rather than the entity for the land.

The change is consistent with the recast definition of *superseding public sector entity* inserted in schedule 1 (clause 71).

Current subsection (3) is amended to include a reference to new subsection 120A (When water infrastructure agreements apply instead of particular approvals).

Subsections (2A) and (3) are renumbered (3) and (4).

Clause 64 Amendment of s 122 (Consultation with public sector entities before entering into particular infrastructure agreements)

Clause 64 amends the wording of subsection (1) to replace the words ‘apply to’ with ‘apply in relation to’. This recognises that infrastructure for a PDA which is the subject of an infrastructure agreement, may not necessarily be located within the PDA or within PDA-associated land.

Subsection (2) is also amended to introduce the words ‘for infrastructure the subject of the agreement’ instead of ‘for the land’.

The changes are consistent with the recast definition of *superseding public sector entity* inserted in schedule 1 (clause 71).

Clause 65 Omission of ch 4, pt 2 (Commonwealth Games Infrastructure Authority)

Clause 65 amends the chapter to remove part 2 relating to the establishment and functions of the Commonwealth Games Infrastructure Authority (CGIA). The CGIA was established to facilitate, for the purpose of the Commonwealth Games and this Act, the planning and development of the Commonwealth Games village and other venues.

The CGIA is no longer required and it is appropriate to remove the provisions of the part.

Clause 66 Amendment of s 164 (Liability of executive officer for particular offences committed by corporation)

Clause 66 is an administrative amendment to delete the reference to the deleted section 74 (Compliance with requirements for carrying out PDA self-assessable development) (see clause 54) and to delete the note to subsection (5) as the descriptions of the included section references are now redundant with the listed sections all hyperlinked in the online version of the Act.

Clause 67 Insertion of new ch 5, pt 3A

Clause 67 inserts a new part 3A (Service of documents) that establishes arrangements for the electronic service of documents. The provisions are based on those in section 279 of the Planning Act, as amended under clauses 174 and 175.

The provisions apply if a person is required or permitted under the Act to serve a document on another person and provide for how that may be done electronically. The provisions do not limit the *Acts Interpretation Act 1954*, section 39 or the *Electronic Transactions (Queensland) Act 2001*.

The facilitation of the electronic service of documents, particularly in the development assessment process, has significant implications for the efficient and secure handling, storage and retrieval of documents.

Clause 68 Amendment of s 172 (Registers)

Clause 68 amends the list of items and instruments the MEDQ is required to keep in a register. The new items to be included in a register are each draft provisional land use plan created under section 35 and reports on draft provisional land use plans under section 36E. The current reference to provisional land use plans has been amended, for consistency, to include the words 'that have taken effect', and the requirement to keep a register of each amendment of a provisional land use plan has been added to reflect the changes made in clause 23. The current reference to interim land use plans has been amended for consistency and accuracy (there is no process to amend an interim land use plan).

Subsections (1)(ba) to (k) are renumbered (c) to (p).

Clause 69 Amendment of s 176 (Regulation-making power)

Clause 69 inserts a new paragraph into section 176 to provide for a regulation to identify PDA assessable and PDA accepted development in one or more PDAs.

The Planning Act, section 43 provides for a regulation or local categorising instrument to categorise development as prohibited, assessable or accepted development. Section 43(4) states that a regulation applies instead of a local categorising instrument, to the extent of any inconsistency.

Unlike the Planning Act, the ED Act does not provide for a regulation to specify a category for development. As a consequence, the relevant development instrument for each PDA must be self-contained. There is no ability to affect the categories of assessment unilaterally across PDAs.

There is a need for consistency in categorising particular development, this includes circumstances when development is appropriately regulated by another State law and does

not require assessment under the Act or when development is of a significance that should always require assessment under the Act.

There may also be new circumstances that arise that require a universal approach. This may include new technologies or initiatives that have not been appropriately addressed in the drafting of the PDA development instruments.

Given the number of PDA development instruments, it is not considered feasible to amend each instrument to account for these circumstances. Accordingly, a regulation is an appropriate and efficient tool for categorising development that requires a consistent approach.

Subsections (2)(aa) to (b) are renumbered (a) to (c).

Clause 70 Insertion of new ch 7, pt 3

Clause 70 inserts relevant transitional provisions in two divisions, division 1 (Preliminary) and division 2 (Provisions for amendments commencing on assent) in new part 3 (Transitional provisions for Economic Development and Other Legislation Amendment Act 2018) in chapter 7 (Other transitional provisions). The following new sections are inserted in divisions 1 and 2 as follows:

- New section 225 (Definitions for part) inserts three definitions for part 3. A definition of *amendment Act* is inserted and means *the Economic Development and other Legislation Amendment Act 2018*. The second definition of *former* is inserted to clarify that when used in relation to a provision of this Act, it means ‘as in force from time to time before the commencement of the provision which the term appears’. The third definition of *new*, in relation to a provision of this Act, means as amended or inserted by the amendment Act.
- New section 226 (References to PDA self-assessable development and PDA exempt development) deals with the transitional arrangements for the omission of the development categories for PDA self-assessable development and PDA exempt development and their replacement with the new development category, PDA accepted development. Note that if development referred to as PDA self-assessable development does not comply with the requirements for carrying out the development under the relevant instrument, the development is taken to be PDA assessable development.
- New section 227 (Provisional land use plan made under declaration regulation) deals with the transitional arrangements for a provisional land use plan made under a declaration regulation under section 35 in effect immediately before the commencement. The provision states that the provisional land use plan made is taken to have been made under new section 36E(1) and notified under a gazette notice published under new section 36E(3)(c) on the day the declaration regulation commenced.
- New section 228 (Interim land use plan under declaration regulation) deals with the transitional arrangements for an interim land use plan made under a declaration regulation under section 38 in effect immediately before the commencement. The provision states that the interim land use plan is taken to have been made under new section 38.
- New section 229 (Application of former s 42M to particular material change of use) deals with the transitional arrangement for a material change of use that was taken to be a lawful use under section 42M (Implied and uncommenced rights to use premises protected). The provision states that section 42M continues to apply as if the amendment

Act, part 6, division 2 had not commenced.

- New section 230 (Development scheme approved under regulation) deals with the transitional arrangements for a development scheme approved under a regulation under former section 64 in effect immediately before the commencement. The provision states that the development scheme is taken to have been notified under a gazette notice published under new section 63(3)(b) on the day the regulation commenced.
- New section 231 (Amendment of development scheme approved under regulation) deals with the transitional arrangements for an amendment of a development scheme approved by a regulation made under former section 68 in effect immediately before the commencement. The provision states that the amendment is taken to have been notified under a gazette notice published under new section 63(3)(b), as applied under section 67(2) on the day the regulation commenced.
- New section 232 (Proceedings for offence against former s 74 or former s 164) deals with the transitional provisions for the omission of the following offences: against former section 74 for carrying out PDA self-assessable development that does not comply with the requirements about carrying out the development (see clause 54), or against former section 164(1) in relation to an offence against an executive liability provision mentioned in former section 164(5) (see clause 65). Under the new section, if a person is alleged to have committed an offence before the commencement, a proceeding for the offence may be started or continued, and the person may be punished for the offence, as if the *Economic Development and other Legislation Amendment Act 2018*, part 6, division 2 had not commenced. The provision applies despite the Criminal Code, section 11.
- New section 233 (Existing PDA development applications) provides that the Act immediately in force before commencement continues to apply for a PDA development application made, but not decided before the commencement.
- New section 234 (Dissolution of Commonwealth Games Infrastructure Authority) provides for the dissolution of the Commonwealth Games Infrastructure Authority under section 144, and for the authority members under section 146 to go out of office. No compensation is payable to a former member because of the dissolution.

Clause 71 Amendment of sch 1 (Dictionary)

Clause 71 deletes now redundant definitions, inserts new definitions and amends existing definitions to support the provisions in this part. Some definitions are explained by reference to other clauses where relevant.

The amendments to schedule 1 are as follows:

Omitted definitions

The definition for *PDA exempt development* has been omitted as it is now redundant following the introduction of the new definition of PDA accepted development.

The definition for *PDA self-assessable development* has been omitted as it is now redundant following the introduction of the definition of PDA accepted development.

New definitions

The new definition for *additional land* relates to clause 28 that introduces a new process for a minor amendment to the boundary of a priority development area. The definition provides

for when additional land is being included in a PDA.

The new definition for *amendment application* refers to current section 99 of the Act regarding an application to change a PDA development approval.

The new definition for *boundary change regulation* relates to clause 28 and a regulation made under new section 40F(1) in relation to a minor change to a PDA boundary.

The new definition for *communication* relates to clause 67 and the servicing of documents.

The new definition for *distributor-retailer* refers to a distributor-retailer under the SEQ Water Act, which is mentioned in the definition of *public sector entity* and in chapter 3, part 2, division 4A dealing with cessation of PDAs.

The new definition for *draft provisional land use plan* relates to clause 23 that introduces a new development instrument for a provisional PDA that takes effect at declaration of the area until a provisional land use plan is in effect.

The new definition for *excluded land* refers to clause 28 that introduces a new process for a minor amendment to the boundary of a priority development area. The definition provides for when land is being excluded from a PDA.

The new definition for *former PDA-associated development* refers to clauses 39 and 40 that address the cessation of PDAs under chapter 3, part 2, division 4, subdivisions 2 and 3, and chapter 3, part 2, division 4A.

The new definition for *former PDA land* refers to clauses 39 and 40 that address the cessation of PDAs under chapter 3, part 2, division 4, subdivisions 2 and 3, and chapter 3, part 2, division 4A.

The new definition for *minor boundary change* refers to clause 28 that introduces a new process for a minor amendment to the boundary of a PDA.

The new definition for *PDA accepted development* relates to clause 19 that introduces the new category of development that replaces PDA exempt development and PDA self-assessable development.

The new definition for *PDA instrument change* relates to clause 28 that introduces a new process for a minor amendment to the boundary of a PDA. The definition provides for the change to the relevant development instrument when additional land is being included in a PDA.

The new definition for *Planning Act approval* relates to clause 39. A definition for this term is needed because when a PDA ceases, a PDA development approval may have a part that converts to a Planning Act approval and another part that converts to part of a water approval, to the extent the PDA development approval involves a water connection aspect. The need for two types of approvals after PDA cessation arises because under the SEQ Water Act outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment, and approval for a water connection aspect cannot form part of a development approval under the Planning Act.

The new definition for *prescribed assessment manager* relates to clause 39 that addresses the cessation of PDAs.

The new definition for *proposer* relates to clause 28 and current section 42A, and refers to the entity that proposes to prepare the proposed instrument for the planning instrument change, for a minor boundary amendment to a PDA or when land ceases to be in a PDA after cessation. MEDQ may decide to prepare the instrument or ask the relevant local government to prepare it.

The new definition for *receiver* relates to clause 67 and the servicing of documents.

The new definition for *relevant document* relates to clause 67 and the servicing of documents.

The new definition for *sending time* relates to clause 67 and the servicing of documents.

The new definition for *water approval* relates to clause 40. A definition for this term is needed because when a PDA ceases, a PDA development approval may have a part that converts to a Planning Act approval and another part that converts to part of a water approval, to the extent the PDA development approval involves a water connection aspect. The need for two types of approvals after PDA cessation arises because under the SEQ Water Act outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment, and approval for a water connection aspect cannot form part of a development approval under the Planning Act.

The new definition for *water connection aspect* refers to new section 51AR(c) and relates to clauses 39 and 40. The definition of this term recognises that outside a PDA or PDA-associated land, assessment of a water connection is a complete assessment under the SEQ Water Act, and approval for a water connection aspect cannot form part of a development approval under the Planning Act. When a PDA ceases, a PDA development approval may have a part that converts to a Planning Act approval and another part that converts to part of a water approval, to the extent the PDA development approval involves a water connection aspect.

The new definition for *water infrastructure agreement* relates to the amended definition of *infrastructure agreement* and means a water infrastructure agreement under the SEQ Water Act.

Amended, replaced or relocated definitions

The amendment of the definition of *close relative* to omit the reference to ‘or authority member’. This term related to a member of the Commonwealth Games Infrastructure Authority. The provisions related to the authority have been omitted in clause 65.

The amendment to the definition of *development scheme* relates to clause 43 that provides for more than one development scheme in a PDA.

The replacement definition of *infrastructure agreement* provides for an agreement to include a water infrastructure agreement under the SEQ Water Act. Currently the definition refers only to an infrastructure agreement under the Planning Act.

The amendment of the definition of *interim land use plan* relates to clause 26 that provides

for more than one interim land use plan in a PDA.

The replacement definition of *minor administrative amendment* expands the scope of what is considered a minor administrative amendment. It will now also apply where an amendment of the development instrument is made merely to reflect a part of an instrument made under an Act other than the Planning Act (a relevant instrument under the Planning Act is already mentioned). It will also apply if an amendment of the development instrument is made to merely reflect a PDA development approval, and if an amendment is to correct a typographical error. For current paragraph (c)(iv), an example of a ‘factual matter incorrectly stated’ is added referring to the categorisation of development under a regulation. This relates to amendments in clause 19.

The amendment of the definition of *PDA-associated land* to refer more accurately to development that ‘has been carried out or is proposed to be carried out’ on the land rather than development that ‘is located or proposed to be located on the land.

The replacement definition of *planning instrument change* separately identifies the different parts of the Act that apply the term and includes a reference to new provisions in chapter 3, part 2, division 2B that refers to a planning instrument change when making a minor amendment to the boundary of a PDA.

The replacement definition of *provisional land use plan* relates to clause 23 that provides for both a draft provisional land use plan and a provisional land use plan and differentiates the two development instruments.

The amended definition of *public sector entity* recognises the inclusion of a new definition for *distributor-retailer*.

The amended definition of *relevant development instrument* recognises the new draft provisional land use plan under clause 23 as a relevant development instrument.

The relocation of the definition of *State interest* from section 87 (Matters to be considered in making a decision) recognises the extended application of the term in the preparation of development instruments (section 68) and the consideration of PDA exemption certificates (new sections 71A to 71D).

The definition of *submission period* has been amended to refer to the new draft provisional land use plans for provisional PDAs (clause 23) and new provisions providing for a proposed amendment of a provisional land use plan (clause 24).

The definition of *superseding public sector entity* has been amended to refer more accurately to the entity for the infrastructure rather than for the land. This reflects similar amendments to sections 116E, 121 and 122 (see clauses 60, 63 and 64)

Division 3 Amendments commencing by proclamation

Clause 72 Amendment of s 30 (Issue of identity card for particular employees and agents)

Clause 72 inserts a note referring to new provisions that also deal with identity cards in

relation to entry powers for investigation and enforcement. Clause 100 inserts new sections 122A and 122B that apply the powers under the Planning Act, chapter 5, parts 6, 7 and 8 (as adjusted for the ED Act) for the investigation and enforcement of PDA development offences.

Clause 73 Amendment of s 31 (Production or display of identity card)

Clause 73 amends section 31 to replace the words ‘another person’ to ‘a person in the person’s presence’ to be consistent with current legislative practice.

Clause 74 Amendment of s 32 (Return of identity card)

Clause 74 amends section 32 to replace the current period of 20 business days for return of an identity card to 21 days to be consistent with the equivalent provision in the Planning Act that will apply to PDA development offences under new section 122B (see clause 100).

Clause 75 Insertion of new s 50A

Clause 75 inserts new section 50A (Existing PDA exemption certificates) dealing with PDA exemption certificates issued by the MEDQ under new section 71A (clause 78) following the cessation of a PDA. The section deals with the transition of the certificates into the Planning Act regime.

Clause 76 Insertion of new ch 3, pt 2, div 4B

Clause 76 inserts a new division 4B (Public thoroughfare easements) that inserts new sections 51AV (Registration of public thoroughfare easement under *Land Title Act 1994*) and 51AW (Non-application of particular provisions to land subject to particular public thoroughfare easements).

Section 63 of the *Local Government Regulation 2012* (LGR) and section 63 *City of Brisbane Regulation 2012* (CBR) both state that if a public thoroughfare easement is created in favour of the local government, whether on freehold land or otherwise, the local government has control of the land and is responsible for construction on and the maintenance of the land. Additionally, the owner is not required, and cannot be required, to maintain, or to contribute to the maintenance of, any part of the land. This is despite any willingness on the part of an owner to take on or contribute to the maintenance and improvement of such an easement.

Section 89(4) of the *Land Titles Act 1994* (LTA) states that a public thoroughfare easement is taken not to be registered under the LTA to the extent it is inconsistent with the relevant provisions for the easement.

New sections 51AAV and 51AW provide for provisions about land subject to a public thoroughfare easement in the LTA and in the *City of Brisbane Act 2010* or the *Local Government Act 2009* (which include the relevant regulations) to not apply. This allows for public thoroughfare easements to be wholly or partly constructed and maintained by the grantor of the easement under the terms agreed with the local government as the grantee. Section 83(1)(B)(v) of the LTA provides that an instrument of easement for a public utility easement may only be registered if it is signed by the public utility (in this case, the local government).

Clause 77 Amendment of s 53 (Relationship with the City of Brisbane Act 2010 or the Local Government Act 2009)

Clause 77 amends section 53(3) to insert the additional reference of new section 51AW introduced under clause 76 dealing with matters about public thoroughfare easements.

Section 53(1) states that the declaration of an area as a PDA does not affect: (a) the operation of the *City of Brisbane Act 2010* or the *Local Government Act 2009*; or (b) the area of the relevant local government; or (c) the jurisdiction, under the Acts, of the relevant local government. Section 53(3) goes on to qualify this statement by stating that section 53(1) is subject to section 54 (By-laws made by MEDQ) and with the inclusion of the new reference, also subject to section 51AW about the non-application of particular provisions to public thoroughfare easements.

Clause 78 Insertion of new ch 3, pt 4, div 1AA

Clause 78 amends chapter 3, part 4 to insert new division 1AA (PDA exemption certificates) before division 1. New sections 71A (MEDQ may give PDA exemption certificate for particular PDA assessable development), 71B (Notice of PDA exemption certificate), 71C (Duration of PDA exemption certificate) and 71D (PDA exemption certificate attaches to land) are inserted in the new division.

Similar to section 46 of the Planning Act, the new section 71A provides for the MEDQ to give a PDA exemption certificate for PDA assessable development in certain circumstances. These circumstances are equivalent to those for an exemption certificate under section 46(3)(b) of the Planning Act. However, the provisions do not apply if the development is categorized as PDA assessable development by a regulation. The MEDQ must consider any State interests, and the certificate may be given subject to stated requirements, including state a period in which development must start or be completed.

The Environmental Protection Act, schedule 1, part 1, section 3(f) has also been amended in clause 111 to insert a new reference to PDA exemption certificates (as well as PDA development approvals and exemption certificates under the Planning Act in clause 110) that authorise environmental nuisance. A requirement of the PDA exemption certificate may, for example, authorise an environmental nuisance if development is carried out in accordance with a noise management plan.

Relevant provisions of the Planning Act are adapted for the ED Act in relation to the requirements for the MEDQ to give notice of the certificate and publish it on the department's website (new section 71B), and the duration of the certificate (new section 71C).

New section 71D establishes that the certificate attaches to the land and benefits the owner, the occupier and any successors in title.

The amended section 73 (clause 79) means it is not an offence to carry out PDA assessable development without a PDA development permit if a PDA exemption certificate has been given for the development.

Clause 79 Amendment of s 73 (Carrying out PDA assessable development without PDA development permit)

Clause 79 amends section 73(1) to increase the maximum penalty for the offence from 1,665 penalty units to 4,500 penalty units. The increase brings the maximum penalty into line with the equivalent development offence under the Planning Act (section 163).

The current penalties were first introduced under the now repealed ULDA Act and were aligned with the planning legislation in place at the time (the now repealed *Integrated Planning Act 1997*). The penalties have not been reviewed or contemporised since then to take into account the increase in market demands, property values and inflation over that period. The Planning Act penalties were increased to their current values when the new Act was introduced in 2016. This matter is also dealt with under the discussion of consistency with fundamental legislative principles at the beginning of these notes.

Subsection (1A) has been inserted to state that an offence is not committed if PDA assessable development is carried out under a PDA exemption certificate for the development. This is consistent with the approach to exemption certificates under the Planning Act.

The introduction of PDA exemption certificates is dealt with under clause 78.

Clause 80 Amendment of s 75 (Compliance with PDA development approval)

Clause 80 amends section 75 to increase the maximum penalty for the offence from 1,665 penalty units to 4,500 penalty units. The increase brings the maximum penalty into line with equivalent development offence under the Planning Act (section 164).

The Planning Act penalties were increased to their current values when the new Act was introduced in 2016. This matter is also dealt with under the discussion of consistency with fundamental legislative principles at the beginning of these notes.

Clause 81 Amendment of s 76 (Offence about use of premises)

Clause 81 amends section 76 to increase the maximum penalty for the offence from 1,665 penalty units to 4,500 penalty units. The increase brings the maximum penalty into line with equivalent development offence under the Planning Act (section 165).

The Planning Act penalties were increased to their current values when the new Act was introduced in 2016. This matter is also dealt with under the discussion of consistency with fundamental legislative principles at the beginning of these notes.

Clause 82 Amendment of s 82 (How to make application)

Clause 82 amends section 82 by recasting subsection (1)(b) to refer only to the requirement for the application to contain, or be accompanied by, the owner's consent, and inserting new subsection (1A) that provides that subsection (1)(b) does not apply to the extent the application is for operational work, other than operational work below the high-water mark and outside the boundaries of a canal. This means owner's consent is required for making a PDA development application for operational work below the high-water mark and outside the boundaries of a canal. This is consistent with the requirements under section 51 of the Planning Act.

New definitions for *canal* and *high-water mark* are inserted and subsections (1A) to (3) are renumbered (2) to (4).

Under section 123 of the *Coastal Protection and Management Act 1995* (Coastal Protection and management Act), there are implied rights to occupy and use land that flow from a PDA development permit. Amending section 82 of the ED Act to align with the Planning Act will achieve consistency with the Planning Act and address any issues associated with section 123 of the Coastal Protection and Management Act.

*Overview of amendments to chapter 3, part 4, division 3 (PDA development applications)
Clauses 82 to 89*

The ED Act currently provides for a streamlined development assessment system. The amendments set out in clauses 82 to 89 seek to refine and clarify the application process by addressing the following:

- if no action has been taken by the applicant to respond to an information request or to notify an application over a prolonged period;
- if there are fundamental flaws with the responses provided by applicants to information requests, or with the way applicants have carried out public notification of their applications and the applicant has not resolved these flaws within a reasonable time period;
- if there is a minor non-compliance with the requirements for notice of application, and the MEDQ cannot decide the application because of this non-compliance.

To improve the operation of the PDA development application process without compromising its streamlined nature, the amendments provide for the following:

- an application to lapse if no action is taken by the applicant to respond to an information request or notify an application within a stated period, or a longer negotiated period;
- the MEDQ to refuse an application if the requirements for notifying the application are not complied with within a stated period, or a longer negotiated period;
- the MEDQ to determine that there has been substantial compliance with notification requirements despite a minor non-compliance, allowing the application to be decided.

For clarity and consistency with the Planning Act, the provisions for public notification of an application are also amended to require notification if any part of the application requires notification (Planning Act, section 53(1)).

Clause 83 Insertion of new s 82A

Clause 83 inserts a new section 82A (Notice of properly made application). The new section introduces a requirement for a notice to be given to the applicant for a PDA development approval if the application is properly made. The main purpose of the notice is to establish a date (the *properly made date*) for the counting of days for carrying out subsequent actions, such as the giving of an information request, which in turn links to the application lapsing arrangements. This provides clarity about the statutory timeframes for all parties involved.

Clause 84 Insertion of new s 82B

Clause 84 inserts new section 82B (Application of subdivision) that explains the subdivision applies to properly made PDA development applications. This provision has been omitted from current section 82(3) and incorporated into a new section for greater clarity.

Clause 85 Amendment of s 83 (Information requests to applicant)

Clause 85 amends section 83 to insert a new subsection (2A) requiring a notice to be included in an information request advising the applicant that the application will lapse if the applicant fails to give the MEDQ any of the stated information within a stated period of at least 6 months after the request is made. Current subsection (1) specifies a minimum response period of 20 business days for the applicant to respond to any request.

This means that if an information request is made and a period of 20 business days is specified for the applicant to respond to the request, the notice about the lapsing of the application included in the request, must state a period of at least six months.

If the application and the information requested are more complex and a period longer than six months is specified for complying with the request, it is to be expected that the notice about when the application will lapse in the information request will be at least the period specified for complying with the information request.

It is to be noted that the wording of new subsection (1A) refers to the application lapsing ‘if the applicant does not give MEDQ any of the stated information within a stated period of at least 6 months...etc.’ In other words, the lapsing provision is intended for dealing with applications for which no response is received to an information request.

The existing power under subsection (3) (to be renumbered as subsection (4)) to refuse the application if the applicant does not comply with the information request within the stated period, or longer agreed period, is retained. This provides an option for the MEDQ to finally resolve an application if there is ongoing or repeated non-compliance with the information request. New subsection (5) has been included to make clear that the notice about lapsing in the information request does not prevent the MEDQ refusing the application under subsection (4).

The amendment to subsection (2) clarifies that the period for making an information request is not more than 20 business days after the properly made date defined in new section 82A.

Subsections (2A) to (5) have been renumbered (3) to (6).

Clause 86 Insertion of new ss 83A and 83B

Clause 86 inserts new section 83A (Lapsing of application–failure to give any requested information) and section 83B (Notice of compliance with information request).

New section 83A provides for an application to lapse if the applicant does not give the MEDQ any of the stated information in the information request within the stated period. This matter was discussed in clause 85.

New section 83B requires the MEDQ to give the applicant a notice stating the applicant has complied with the information request if satisfied there has been compliance within the stated or agreed longer period. Compliance with the information request is a pre-condition for notifying the application under section 84(2) and deciding the application under section 85. Giving the notice establishes certainty in this regard.

Clause 87 Amendment of s 84 (Notice of application)

Clause 87 amends section 84(1)(a) to clarify that public notification of an application is required if any part of the application requires notification. This clarifies the issue and brings the public notification process for PDA development applications into line with a long-standing feature of the process under the Planning Act and its predecessors. Subsection (1) to refer to the ‘properly made date’ for the application, consistent with term defined in new section 82A, and (3) has been replaced to refer to the notice under section 83B which is given to the applicant if the information request has been complied with.

Clause 88 Insertion of new ss 84A–84F

Clause 88 inserts the following new sections 84A to 84F.

84A MEDQ must give notice of requirement to give compliance statement and 84C MEDQ decide whether applicant has complied with s 84

New sections 84A and 84C introduce requirements for giving notices to provide greater clarity and certainty to the assessment process, ensuring that both the MEDQ and applicant know when actions are required to be taken, by whom, and the time frame for taking the action. The notice given by MEDQ in section 84A states the time period (at least 40 business days) for lapsing of an application if the applicant does not give MEDQ a compliance statement about notification and the notice in section 84C states that the applicant has not substantially complied with the notification requirements.

84B Lapsing of application—failure to give compliance statement

New section 84B, for an application requiring public notification, provides for the lapsing of the application if the applicant does not give the MEDQ a compliance statement within the period stated in the notice given under section 84(2). Under section 85(1)(b), the MEDQ can not decide the application unless the MEDQ has decided under section 84C that the applicant has substantially complied with the public notification requirements. The inclusion of the lapsing provisions resolves an uncertainty in the current process regarding compliance with notification requirements and provides clarity about the status of an application if a compliance statement about public notification is not provided to MEDQ. The option is available to extend the period if agreed between the applicant and MEDQ.

84C MEDQ must decide whether applicant has complied with s 84

New section 84C introduces another mechanism to resolve a possible process impasse. If the applicant has provided a compliance statement about public notification but the MEDQ decides the applicant has not substantially complied with the requirements, the MEDQ must give a notice to the applicant. This notice must state there has not been substantial compliance with section 84, as well as the particulars of noncompliance and that the application may be refused if the applicant does not comply with the requirements and give a further compliance statement within a stated period of at least 40 business days. Subsection (3)(d) also requires the notice to state that for deciding whether there has been substantial compliance for a further round of notification, all previous notification actions are taken not to have happened. Accordingly, for a further round of notification, it is necessary to undertake all notification requirements under section 84, including any that were complied with previously. An example is provided.

84D MEDQ must decide whether applicant given a s 84C(3) notice has complied with s 84

New section 84D provides for MEDQ to decide whether a further round of notification undertaken by the applicant, and described in a further compliance statement, complies with

the requirements under section 84. Consistent with the statement to be included in the notice about non-compliance given under new section 84C, subsection (3) provides that any previous notification actions are taken not to have happened for the purpose of determining whether a further round of notification is compliant.

84E MEDQ may refuse application—failure to give further compliance statement or comply with s 84

New section 84E provides a power, equivalent to the power under current section 83(3) (renumbered to be 83(4)), for the MEDQ to refuse the application if no further compliance statement is given within the relevant period, or after considering a further compliance statement, the MEDQ decides that the applicant has again not substantially complied. A longer period for providing the compliance statement may be agreed. Similar to section 83(4), refusal is subject to the proviso that the MEDQ has given the applicant at least 10 business days notice of its intentions to do so.

The relevant period for the applicant to give a further compliance statement is defined for the section, and means the period stated in the notice given under section 84C(3), or a longer agreed period.

It is important to note that the PDA development decision making process is based on the requirement that the application is complete before it may be decided. This means all information requested has been supplied and is compliant, and public notification, if required, has been carried out as required and the period for public submissions has ended. This has not changed. Rather the amendments seek to resolve certain process impasses that can arise when an application is incomplete and can not be decided, and must effectively be held in abeyance indefinitely.

84F Notice of refusal of application

New section 84F introduces a notice of refusal for applications refused under section 83(4) or new section 84E(2) that have been discussed above.

Clause 89 Amendment of s 85 (Deciding application generally)

Clause 89 amends section 85 to make changes to the wording and to section references to reflect the changes introduced under clauses 85 and 87 above. The amendments to subsections (1)(a) and (1)(b) reflect the requirements for notices to be given under section 83B for compliance with an information request, and under section 84C(2) or 84D(2) for substantial compliance with the notification requirements under section 84. Subsection (2) is updated the references providing for the MEDQ to refuse an application under current section 83 and new section 84E.

Clause 90 Amendment of s 93 (Withdrawing application)

Clause 90 amends section 93 to omit subsection (2), which currently deals with the refunding of all or part of the PDA development application fee. This power has been transferred to a new section 129A that establishes a general power dealing with refunding and waiving of fees (see clause 104). The amendment also includes a note referring to section 129A.

Clause 91 Amendment of s 98 (Cancellation)

Clause 91 amends section 98 to remove subsection (3), which currently deals with the refunding of all or part of the PDA development application fee. This power has been transferred to a new section 129A that establishes a general power dealing with refunding and

waiving of fees (see clause 104). The amendment also includes a note referring to section 129A.

Clause 92 Amendment of s 99 (Application to change PDA development approval)

Clause 92 amends section 99 to remove subsection (5) requiring the owner's consent for making the change application. This is not to dispense with the relevance of owner's consent for applications. Rather it is to recognise that subsection (3) already states that division 3 applies for an application to change a PDA development approval, i.e. division 3 in part 4 of chapter 3 dealing with PDA development applications, including the making and processing of applications.

The first section in division 3 is section 82. The section sets out the requirements for making a PDA development application, including the requirements for owner's consent. As section 82 also applies for making an application to change a PDA development approval there is no need to retain the owner's consent provision in section 99(5).

It is also to be noted that section 82(2)(b) provides discretion for the MEDQ to accept the application as properly made despite noncompliance with the stated application requirements (including requirements for owner's consent).

An instance where consideration of noncompliance with owner's consent may be relevant could be in relation to an application to change an approval to subdivide land. If the approval has proceeded in stages and one or more stages are completed and the lots sold, an application to change the approval in relation to the balance area may have no material effect on the developed area. However, ownership of the land the subject of the PDA development approval now also includes the owners of the developed lots in the subdivision. The MEDQ may, after considering the matter, exercise its discretion under section 82(2)(b) to accept the application to change the approval without the consent of the owners of the developed lots.

Clause 93 Replacement of s 103 (Restriction on particular land covenants)

Clause 93 inserts a new section 103 (Use or preservation covenants) to replace the current section.

Current section 103 addresses certain covenants under the *Land Title Act 1994* and under the *Land Act 1994*, and states that such a covenant is of no effect to the extent it is inconsistent with the relevant development instrument for the area. However, although a development instrument establishes the requirements for proposed PDA self-assessable development, for PDA assessable development the requirements for a specific proposal are established through the PDA development approval given for the development. Accordingly, there is a gap in the application of the restriction in the context of PDA development approvals.

Under the Planning Act, restrictions on covenants exist in relation to both planning schemes and development approvals. However, in the Planning Act, section 107 the provisions have been changed so that a covenant refers specifically to one entered into in connection with a development application and is of no effect unless it is required under a development condition or an infrastructure agreement. The covenants are referred to as a 'use or preservation covenant'. The Planning Act provisions also introduce new requirements to register the releasing of a covenant under the relevant Acts, and to register an amended covenant arising from a change in a condition of the approval or infrastructure agreement that

affects rights or responsibilities under the covenant. These provisions have been reflected in replacement section 103.

As PDA development approvals transition to development approvals under the Planning Act when a PDA ceases and infrastructure agreements are the same under both the ED Act and Planning Act, consistent covenant provisions under the respective Acts are beneficial.

Clause 94 Replacement of ch 3, pt 5, hdg (Court orders for PDA development offences etc.)

Clause 94 replaces the current heading with the new heading (Enforcement notices, enforcement orders and other court orders) to reflect the introduction of the enforcement notice mechanism under the Planning Act to complement the current enforcement order and orders of the Magistrates Court.

Clause 95 Insertion of new ch 3, pt 5, div 1AA

Clause 95 inserts a new division 1AA (Enforcement notices) including new section 104A (Application of Planning Act provisions for enforcement notices).

Section 97 of the Act provides for a nominated assessing authority for a PDA development condition to exercise the same powers under the Planning Act to give show cause notices and enforcement notices for development offences in relation to development conditions, as it would have if the land were not in a PDA.

However, unlike a nominated assessing authority under section 97 and assessment managers under the Planning Act, the MEDQ does not currently have powers to give show cause notices and enforcement notices for development offences, i.e. take direct action itself. Rather, the MEDQ may only apply to the Planning and Environment Court or make a complaint to the Magistrates Court in response to a development offence. This limitation is a constraint on the MEDQ's ability to efficiently enforce compliance with PDA development approvals.

The amendment gives the MEDQ the same powers to give show cause notices and enforcement notices in relation to PDA development offences that apply under the Planning Act, chapter 5, part 3.

New section 104A(1) applies the Planning Act powers with necessary referential changes as outlined in the section to translate the powers to the ED Act.

The inclusion of the enforcement notice power under the Planning Act has required the inclusion in the ED Act of a right of appeal against the decision. Subsection (2) deals with this by stating that a person given an enforcement notice under the Planning Act, chapter 5, part 3 as applied under subsection (1) of section 104A may appeal against the decision, and section 229 of the Planning Act applies as if the enforcement notice had been given under the Planning Act.

Subsection (3) is a provision to remove doubt and clarifies that this section, which specifically deals with enforcement notices, does not limit or affect the MEDQ's ability to apply for an enforcement order or to take any other action under the ED Act relating to a PDA development offence.

Clause 96 Amendment of s 108 (Effect of enforcement order)

Clause 96 amends section 108 to recast subsection (4) by omitting subsection (4)(b). Currently, subsection (4)(a) provides that an enforcement order may be in terms the court considers appropriate to secure compliance with this Act, and, under paragraph (b) may state that contravention of the order is a public nuisance. Paragraph (b) has been removed from the section to be consistent with the approach for contravention of an enforcement notice under the Planning Act, section 180.

Clause 97 Amendment of s 110 (Offence to contravene enforcement order)

Clause 97 amends section 110 to increase the maximum penalty for the offence from 3000 penalty units to 4,500 penalty units. The alternative penalty of two years imprisonment is not changed. The increase brings the maximum penalty into line with the equivalent development offence under the Planning Act (section 180).

The current penalties were first introduced under the now repealed ULDA Act and were aligned with the planning legislation in place at the time (the now repealed *Integrated Planning Act 1997*). The penalties have not been reviewed or contemporised since then to take into account the increase in market demands, property values and inflation over that period. The Planning Act penalties were increased to their current values when the new Act was introduced in 2016. This matter is also dealt with under the discussion of compliance with fundamental legislative principles at the beginning of these notes.

Clause 98 Amendment of s 111 (Orders Magistrates Court may make in PDA offence proceeding)

Clause 98 amends section 111 in terms similar to the amendment of section 108 (clause 96) in that it removes subsection (5) with its reference to the contravention of an order being a public nuisance. This is to provide general consistency between the enforcement powers under the Planning Act, section 176 and the ED Act.

Clause 99 Amendment of s 112 (Offence to contravene Magistrates Court order)

Clause 99 amends section 110 to increase the maximum penalty for the offence from 1,665 penalty units or one year imprisonment to 4,500 penalty units or two years imprisonment. The increase brings the maximum penalty into line with the equivalent development offence under the *Planning Act 2016* (section 176).

The current penalties were first introduced under the now repealed ULDA Act and were aligned with the planning legislation in place at the time (the now repealed *Integrated Planning Act 1997*). The penalties have not been reviewed or contemporised since then to take into account the increase in market demands, property values and inflation over that period. The Planning Act penalties were increased to their current values when the new Act was introduced in 2016. This matter is also dealt with under the discussion of compliance with fundamental legislative principles at the beginning of these notes.

Clause 100 Insertion of new ss 112A and 112B

Clause 100 inserts new sections 112A (Order for compensation) and 112B (Order for investigation expenses) into chapter 3, part 5, division 2 (Magistrates Court orders).

The sections provide for the Magistrates Court to order a defendant convicted of a PDA development offence in the stated circumstances:

- for new section 112A (Order for compensation) — to pay a person compensation for the loss of income, reduction in value of or damage to property, or for the expenses incurred; or
- for section 112B (Order for investigation expenses) — to pay a reasonable amount for the expenses to the MEDQ if the court considers it would be just to do so in the circumstances.

These sections reflect equivalent existing powers under the Planning Act, sections 177 and 178.

Clause 101 Replacement of s 113 (MEDQ’s power to remedy stated public nuisance)

Clause 101 replaces the current section with an updated section 113 (MEDQ may remedy noncompliance with particular orders). The current section applies only if an enforcement order or an order under section 111 (Orders Magistrates Court may make in PDA offence proceeding) states that the contravention of the order is a public nuisance.

The revised wording is based on the power under the Planning Act, section 176 and 180 for an enforcement authority to remedy noncompliance with an enforcement order made by the Magistrates Court or the P&E Court. Amended subsection (2) provides that for an enforcement order or an order under section 111 (Orders Magistrates Court may make in PDA offence proceeding), the MEDQ may take the action required under the order if there has not been compliance in the stated period and recover the reasonable costs of taking the action.

Clause 102 Insertion of new ss 122A and 122B

Clause 102 inserts new sections 122A (Definitions for part) and 122B (Powers for investigation and enforcement of PDA development offences and related matters) into chapter 3, part 8.

The powers of inspectors in the ED Act are updated in new section 122B by applying the current powers in the Planning Act chapter 5, parts 6, 7 and 8, with necessary adjustments for terminology. Part 6 deals with the appointment of inspectors and the issuing and returning of identity cards. Part 7 deals with entry of places by inspectors, including power to enter, entry with consent, entry with warrant and entry procedure. Part 8 deals with other inspectors’ powers and related matters, including stopping or moving vehicles, seizure by inspectors and forfeiture, power to seize, safeguards for seized thing, disposal orders, other information-obtaining powers, damage and compensation for loss.

The applied powers from the Planning Act are appropriate due to the similarity of the development regimes and issues under the two Acts. The Planning Act provisions are contemporary, appropriate and fit for purpose. They contain the normal powers and the usual accepted safeguards for the exercise of the relevant functions under the ED Act.

The definitions in current section 123(6) of *MEDQ agent* and *MEDQ employee* have been retained but relocated to new section 122A to also apply to other sections in the part.

Clause 103 Amendment of s 123 (Application of local government entry powers for MEDQ's functions or powers)

Clause 103 amends section 123 by omitting the definitions of *MEDQ agent* and *MEDQ employee* in subsection (6) and relocating them to new section 122A in order to also apply the terms to other sections in the part.

Clause 104 Insertion of new s 129A

Clause 104 inserts new section 129A (Refunding and waiving fees) into chapter 3, part 9 (Fees) to provide a single, general power for the MEDQ to deal with the refund and waiving of fees rather than having separate sections dealing with these matters, e.g. section 93 (Withdrawing application) and section 98 (Application to change PDA development approval). Sections 93 and 98 have been amended in clauses 90 and 91 to remove the relevant provisions.

Clause 105 Replacement of s 166 (Proceedings for offences)

Clause 105 replaces section 166 to delete subsection (1) and to recast the section to reflect current drafting practice.

Under the current wording of the section, one type of offence (contravening an enforcement order made by the Planning and Environment Court) is designated a misdemeanour, and any action must proceed on indictment. All other offences under the Act are designated simple offences that are heard and decided summarily. Under the Planning Act, no such distinction is made, with all offences being simple (i.e. summary) offences. New paragraph (a) is consistent with section 44(2)(a) of the *Acts Interpretation Act 1954*, which describes the proceeding for the offence, rather than the offence itself.

Clause 106 Amendment of s 172 (Registers)

Clause 106 amends the list of items and instruments the MEDQ is required to keep in a register. The new item to be included is a register of PDA exemption certificates issued under new section 71A (see clause 78).

Clause 107 Insertion of new ch 7, pt 3, div 3

Clause 107 inserts relevant transitional provisions in new division 3 (Provisions for amendments commencing by proclamation) of new part 3 (Transitional provisions for Economic Development and Other Legislation Amendment Act 2018) in chapter 7 (Other transitional provisions). The terms *amendment Act*, and *former* and *new*, in relation to a provision of the Act, are defined in new section 225 (clause 70). The following new sections are inserted in division 3:

- Section 235 (Existing PDA development applications) provides that a PDA development application made on or after the commencement of part 6 (Amendments of Economic Development Act 2012), division 2 (Amendments commencing on assent) of the amendment Act, but not decided before the commencement of this section, continues to be dealt with as if those provisions of the amendment Act has not commenced.

An earlier transitional provision, section 232, commences on assent and provides for applications made, but not decided, before the commencement of part 6, division 2. of the amendment Act. Section 234 is included because it is possible that applications made before part 6, division 2 commenced, may still not be decided before part 6, division 3 commences. This will ensure that those applications are not caught by this section.

- Section 236 (Application of new s 103(1)) provides that new section 103(1) applies only to a use or preservation covenant entered into on or after commencement.
- Section 237 (Application of new s 113) provides that new section 113 (MEDQ may remedy noncompliance with particular orders) applies only in relation to an enforcement order, or order under section 111 (Orders Magistrates Court may make in PDA offence proceeding) made on or after commencement. Also, former section 113 continues to apply in relation to an enforcement order, or order under section 111, made before the commencement as if the amendment Act, part 6, division 3 had not commenced.

Clause 108 Amendment of sch 1 (Dictionary)

Clause 108 inserts new definitions to support the provisions in this part. Some definitions are explained by reference to other clauses where relevant. The amendments to schedule 1 are as follows:

The new definition for *compliance statement* relates to clause 86 that introduces a new requirement for a compliance statement from the applicant about notification of a PDA development application.

The new definition of *freehold land* relates to clause 76 that introduces new provisions about public thoroughfare easements.

The definition of *MEDQ agent* relates to clause 102 and the relocation of this term.

The definition of *MEDQ employee* relates to clause 102 and the relocation of this term.

The new definition for *PDA exemption certificate* relates to clause 78 that introduces a new PDA exemption certificate process.

The new definition for *properly made application* relates to clause 83 that introduces the defined term for PDA development applications.

The new definition for *properly made date* relates to clause 83 that introduces a new requirement for the MEDQ to issue a notice to an applicant that states the date the PDA development application was properly made.

Part 7 Amendment of Environmental Protection Act 1994

Division 1 Preliminary

Clause 109 Act amended

Clause 109 provides an enabling clause for the amendment of the *Environmental Protection Act 1994* (Environmental Protection Act).

Division 2 Amendments commencing on assent

Clause 110 Amendment of sch 1 (Exclusions relating to environmental nuisance or environmental harm)

Clause 110 amends schedule 1, section 3(f) to insert new references to a PDA development approval and an exemption certificate under the *Planning Act 2016* (Planning Act) that authorise environmental nuisance. Clause 111 (which commences by proclamation) inserts a reference to a PDA exemption certificate under the *Economic Development Act 2012* (ED Act). Sections 440 and 440Q under the Environmental Protection Act establish offences for causing environmental nuisance (s 440) and for contravening a noise standard (s 440Q). The sections go on to provide exemptions from the offences for environmental nuisances caused by any of the listed matters in schedule 1.

Schedule 1, part 1, section 3(f) currently provides an exemption for environmental nuisance caused by development carried out under an approval under the Planning Act that authorises the environmental nuisance. The ED Act is an equivalent development approval regime to the Planning Act in the areas within which the ED Act applies. The amendment accordingly achieves consistency with the Planning Act and the development regime under that Act.

Exemption certificates are a new addition to the planning framework introduced under the Planning Act in 2016. Planning Act, section 46 provides for a local government or the chief executive of the department administering the Planning Act to give an exemption certificate in certain circumstances for assessable development. If an exemption certificate is given a development approval is not required. The stated circumstances are limited – the effects of the development would be minor or inconsequential, or the development was categorized as assessable development only because of circumstances that no longer apply or because of an error. Similar to section 46 of the Planning Act, new section 71A of the ED Act (clause 78) provides for the MEDQ to give a PDA exemption certificate for PDA assessable development in equivalent circumstances. As the respective certificates under the Planning Act and ED Act provide for development described in the certificates to be carried out lawfully, it is appropriate that the certificates also be recognized in schedule 1 of the Environmental Protection Act as having the scope to authorise environmental nuisance.

See also clause 42, which amends section 54 (By-laws) in the ED Act to state a by-law prescribed by regulation is taken to be a local law for sections 440 and 440Q. Under schedule 1, part 1, item 3(a), environmental nuisance caused by an act or omission that is a contravention of a local law is excluded sections 440 and 440Q and the offences created under the sections.

Division 3 Amendments commencing by proclamation

Clause 111 Amendment of sch 1 (Exclusions relating to environmental nuisance or environmental harm)

Clause 111 amends schedule 1, section 3(f) to insert a new reference to a PDA exemption certificate under the ED Act that authorises environmental nuisance. See the discussion in clause 110 above for further details.

Part 8 Amendment of Exhibited Animals Act 2015

Clause 112 Act amended

Clause 112 provides an enabling clause for the amendment of the *Exhibited Animals Act 2015* (Exhibited Animals Act).

Clause 113 Amendment of s 58 (General criteria for decision)

Clause 113 amends section 58 of the Exhibited Animals Act to include reference to PDA-related development, PDA assessable development and PDA development approval. Section 58 sets out the criteria for deciding applications to exhibit animals or for the grant of an interstate exhibitors permit (section 49). Section 58 currently requires, among other things, that if an application relates to an activity that is also assessable development (as defined in the section), a development approval must have been given for the development before the exhibition application may be approved.

As the section currently limits the meaning of assessable development and development approval to their meanings under the Planning Act it is appropriate to amend the section to also include reference to the equivalent terms under the ED Act. A definition of PDA-related development is inserted in subsection (3).

Clause 114 Amendment of ch 9, hdg (Transitional provisions)

Clause 114 amends the chapter heading to accommodate the inclusion of a new chapter 10 as set out in the next clause.

Clause 115 Insertion of new ch 10

Clause 115 inserts a new chapter (Transitional provision for Economic Development and Other Legislation Amendment Act 2018) and associated section 274 (Particular existing applications) setting out the transitional provision for dealing with applications in progress before the commencement of this clause.

Part 9 Amendment of Housing Act 2003

Clause 116 Act amended

Clause 116 provides an enabling clause for the amendment of the *Housing Act 2003* (Housing Act).

Clause 117 Amendment of s 94F (Definitions for div 2B)

Clause 117 amends section 94F to insert a reference to the *Economic Development Act 2012* (ED Act) in the definition of *applicable laws*. Current section 94G provides that development of public housing carried out by the State or a statutory body representing the State, is taken to have been carried out in accordance with all applicable laws.

Development is defined in section 94F and refers to development as defined in the Planning Act as amended from time to time. The types of development defined in the ED Act have the same meaning as under the Planning Act. However, while the current definition of *applicable laws* refers to ‘any Act, including any of the following Acts...’, to avoid any doubt, the ED Act has been added to the list. The amendment ensures consistency with the Planning Act and the treatment of development for public housing premises.

Clause 118 Amendment of s 94H (Transfer of public housing premises)

Clause 118 amends section 94H to insert a reference to the ED Act in subsection (1). The section provides that the transfer of public housing does not result in a material change of use of the premises if the transferor is an entity that uses the premises to provide relevant public housing or a housing service. The current provision refers only to the Planning Act. The amendment provides that the section also applies in relation to development to which the ED Act applies.

Part 10 Amendment of Land Valuation Act 2010

Clause 119 Act amended

Clause 119 provides an enabling clause for the amendment of the *Land Valuation Act 2010* (LVA).

Clause 120 Amendment of s 10 (Zoned rural land)

Clause 120 amends the existing note to the section by adding the words ‘under the Planning Act’. This reflects the change made for section 10 to the definition of *planning scheme* in the dictionary to include the relevant development instrument under the ED Act for land that is in a PDA, or otherwise, a planning scheme under the Planning Act (see clause 122).

Zoning and use measures placed on land under planning and development legislation such as the Planning Act are relevant factors in determining land valuations. Accordingly, it is appropriate to ensure relevant references are also included to the ED Act.

Clause 121 Amendment of s 33 (Land subject to particular rights)

Clause 121 amends section 33(1)(f) to replace the reference to a local planning instrument with separate references to a *planning scheme* and a *temporary local planning instrument or planning scheme policy under the Planning Act*. This change recognises the amendment to the definition of *planning scheme* in the dictionary for section 33 to include the relevant development instrument under the ED Act for land that is in, or is PDA-associated land for, a PDA, or a planning scheme under the Planning Act (see clause 122).

Clause 122 Amendment of schedule (Dictionary)

Clause 122 amends the dictionary to include a PDA development approval under the ED Act within the meaning of *development approval*.

The definition of *planning scheme* has been amended to include the relevant instrument under the ED Act. The definition has a particular meaning for sections 8 and 10, and a slightly different meaning for sections 33 and 96. For sections 8 and 10, a *planning scheme* means a development instrument under the ED Act for land that is in a PDA, or otherwise, a planning scheme under the Planning Act for land outside a PDA. This definition reflects that within a PDA the development instrument establishes zoning, and outside a PDA, a planning scheme establishes zoning. Both instruments do not establish zoning at the same time.

For sections 33 and 96, a development instrument under the ED Act or a planning scheme under the Planning Act, may be relevant considerations for deciding the value of land with respect to a heritage restriction. Circumstances may arise where one or both instruments are applicable. The definition has been crafted to capture these circumstances.

Part 11 Amendment of Liquor Act 1992

Clause 123 Act amended

Clause 123 provides that Part 11 amends the *Liquor Act 1992* (Liquor Act).

Clause 124 Amendment of s 4 (Definitions)

Clause 124 amends section 4 to omit the existing definition of *development approval*, and replace it with a definition that refers to both a development approval under the Planning Act and a PDA development approval under the ED Act. It also inserts and amends a number of definitions to incorporate relevant concepts from the ED Act into the Liquor Act.

Clause 125 Amendment of s 105B (Application for adult entertainment permit requires local government consent)

Clause 125 amends the definition of *consent* in section 105B(5), which provides that a development approval does not constitute the consent required from local government for an application for an adult entertainment permit. As per the new definition of *development approval*, this will include a development approval under the Planning Act and a PDA development approval under the ED Act.

This amendment ensures an applicant cannot contend that local government has consented to the application for an adult entertainment permit simply because a development approval has been granted under the Planning Act or ED Act. It is noted the section has not been amended to allow the MEDQ to provide consent for an application for an adult entertainment permit in a PDA, as this falls outside the scope of the MEDQ's functions, and the local government remains the relevant entity to provide this consent.

Clause 126 Amendment of s 117 (Advice about application etc.)

Clause 126 amends section 117 to provide that, as soon as practicable after the Commissioner for Liquor and Gaming receives a relevant application relating to premises that are in a priority development area, or that are on PDA-associated land or are PDA-associated land, the Commissioner must tell the MEDQ about the application. The clause also amends section 117 to provide that the MEDQ may comment on, or object to, the grant of the relevant application if the comment or objection is in relation to the MEDQ's functions under the ED Act. Minor amendments are also made to clarify the operation of the section, and to undertake renumbering.

Clause 127 Amendment of s 117A (Comments about particular applications)

Clause 127 amends section 117A to provide that, as soon as practicable after the Commissioner receives an application relating to a restricted area that is in or includes a priority development area, or is or includes PDA-associated land, the Commissioner may ask the MEDQ to provide comment on the application. The clause also amends section 117A to provide that the MEDQ may give the Commissioner comments about the application only if the comments are in relation to the MEDQ's functions under the ED Act. Minor amendments are also made to renumber the section, and update the note in subsection 117A(2).

Clause 128 Amendment of s 121 (Matters the commissioner must have regard to)

Clause 128 amends section 121(1)(h) to provide that the Commissioner must have regard to any relevant conditions imposed on a development approval in deciding whether to grant an application. As per the new definition of *development approval*, this includes a development approval under the Planning Act and a PDA development approval under the ED Act.

The clause also makes amendments to section 121(1) to clarify the operation of this section, given the changes made to sections 117 and 117A, and to reduce duplication with other sections of the Liquor Act. It also omits section 121(2), which is no longer required due to the amendments made to section 121(1).

Clause 129 Amendment of s 123 (Commissioner may grant provisional licence)

Clause 129 amends section 123(1)(b) to provide that section 123 applies if, among other things, a development approval has been given for the use of land on which the proposed premises will be situated for licensed premises. As per the new definition of *development approval*, this includes a development approval under the Planning Act and a PDA development approval under the ED Act.

Clause 130 Insertion of new pt 12, div 20

Clause 130 inserts a new division 20 (Transitional provision for Economic Development and Other Legislation Amendment Act 2018) which contains transitional section 353 (Particular existing applications). New section 353 provides that, where an application mentioned under section 105 was made but not decided before the commencement of the amending Act, a number of provisions continue to apply to the application as if the amending Act had not been enacted. The relevant provisions are former sections 105B, 117, 117A and 121.

Part 12 Amendment of Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

Clause 131 Act amended

Clause 131 provides an enabling clause for the amendment of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* (ND Act).

Clause 132 Amendment of s 67 (Scope of order to override other laws)

Clause 132 amends section 67 to insert a new definition for the section to expand the meaning of *local law* to also include a by-law under the *Economic Development Act 2012* (ED Act).

Clause 133 Amendment of ch 5, hdg (Transitional provisions)

Clause 133 amends the chapter heading to accommodate the inclusion of a new part as set out in the next clause.

Clause 134 Insertion of new ch 7

Clause 134 inserts a new chapter 7 (Transitional provisions for Economic Development and Other Legislation Amendment Act 2018) and associated sections 100 to 103 setting out the transitional provisions for dealing with notices about the removal of overhanging branches (section 57) and applications and orders about trees dealt with by QCAT (section 62 and chapter 3, part 5, division 3) that existed before the commencement of the amending Act (defined in section 100).

Clause 135 Amendment of schedule (Dictionary)

Clause 135 amends the definition of *development approval* to include a PDA development under the ED Act. The current definition is limited to a development approval under the Planning Act 2016 (Planning Act), and as a consequence, there is no express consideration of

a PDA development approval under the Act. A PDA development approval is given under the ED Act for development in priority development areas and is equivalent to a development approval under the Planning Act.

Part 13 Amendment of Planning Act 2016

Clause 136 Act amended

Clause 136 states that this part of the Bill amends the Planning Act and inserts a note about schedule 1, which also amends the Planning Act.

Clause 137 Amendment of s 16 (Contents of local planning instruments)

Clause 137 inserts a note about how this section applies to a planning instrument change under the ED Act.

Clause 138 Amendment of s 26 (Power of Minister to direct action be taken)

Clause 138 clarifies that the notice given to the local government under section 26(2) will state the reasonable period, within which the local government can make a submission.

Clause 139 Amendment of s 29 (Request to apply superseded planning scheme)

Clause 139 inserts a note about how this section applies to a planning instrument change under the ED Act.

The clause also amends section 29(9)(b) to clarify that if a local government agrees to the superseded planning scheme request, despite section 45(6) to (8), the development application must be assessed as if the superseded planning scheme was in effect, instead of the planning scheme and a planning scheme policy for the local government area. Section 29(11) is also omitted as this provision has been consolidated in amended section 29(9).

Clause 140 Insertion of new s 29A

Clause 140 provides for circumstances where a local government agrees or is taken to have agreed to accept, assess and decide a superseded planning scheme application under a superseded planning scheme and the application is for development that is categorised as prohibited development under the planning scheme.

The clause clarifies that a superseded planning scheme application may be made if it does not include development categorised as prohibited development under the superseded planning scheme or a categorising instrument other than the planning scheme.

Clause 141 Amendment of s 30 (When this division applies)

Clause 141 inserts a note about how this section applies to a planning instrument change under the ED Act.

The clause also amends section 30(4)(e) to clarify that a planning change is not an adverse planning change if it is made in accordance with the provisions of the Minister's rules that that apply to this section.

Clause 142 Amendment of s 37 (Process for making or amending designation)

Clause 142 clarifies that a requirement of a designation may also be amended under this process and that the notice the Minister gives to affected persons under section 37(2) must include the requirements for a properly made submission.

Clause 143 Insertion of new s 42A

Clause 143 inserts a new section 42A (Amending and repealing designations made under old Act) to make it clear that the Minister can amend or repeal a designation made by another Minister under the repealed SPA.

Clause 144 Amendment of s 45 (Categories of assessment)

Clause 144 restructures existing subsection (6) and (7) and clarifies that the assessment manager may, in the assessment of a development application, give weight to a new statutory instrument or document that comes into effect after the application was properly made.

Clause 145 Amendment of s 48 (Who is the assessment manager)

Clause 145 clarifies that the assessment manager for a development application is prescribed in the Planning Regulation or is the assessment manager under amended section 48(3).

The clause also amends section 48(3) to clarify that if an alternative assessment manager accepts a development application, the alternative assessment manager is the assessment manager not the prescribed assessment manager.

Clause 146 Amendment of s 54 (Copy of application to referral agency)

Clause 146 inserts a new note under section 54(2) to refer to new section 82A for additional referral agencies for change applications, other than change applications for a minor change to a development approval.

Clause 147 Amendment of s 55 (Referral agency's assessment)

Clause 147 clarifies that the referral agency may, in the assessment of a development application, give weight to a new statutory instrument or document that comes into effect after the application was properly made. The note at section 55(2) is also amended to reference new section 82A, additional referral agencies for change applications other than for minor changes.

Clause 148 Amendment of s 60 (Deciding development applications)

Clause 148 amends section 60(1) to refer to the Planning Act dictionary term 'properly made application' and clarifies that the note under section 60(2)(d) provides an example of a development condition for section 60(2).

Clause 149 Amendment of s 63 (Notice of decision)

Clause 149 amends a note to include that the giving of a development permit is subject to section 77(2) of the *Building and Construction Industry (Portable Long Service Leave Act)1991*.

Clause 150 Amendment of s 65 (Permitted development conditions)

Clause 150 amends section 65(2)(c) to clarify that a development condition may only require compliance with an infrastructure agreement if the infrastructure agreement attaches to the premises under section 155(3).

Clause 151 Amendment of s 66 (Prohibited development conditions)

Clause 151 clarifies when a later development condition may be inconsistent with a development condition of an earlier development approval, and when written consent from the owner of the premises is required for the later development condition to apply.

Clause 152 Amendment of s 71 (When development approval has effect)

Clause 152 clarifies that the notice which is the subject of section 71(3) means the notice that the submitter for the development application gives the assessment manager stating that the submitter will not be appealing the decision on the application.

Clause 153 Amendment of s 78 (Making change application)

Clause 153 inserts a note about the sections of the ED Act that also apply to a change application.

The clause also clarifies that the change application must be made to the responsible entity for the application and removes section 78(3) to (6), which is provided in new section 78A to improve readability of the section.

Clause 154 Insertion of new s 78A

Clause 154 inserts a new section 78A (Responsible entity for change applications) which clarifies the entity responsible for administering, assessing and deciding an application to change a development approval (responsible entity).

Generally, the assessment manager is the responsible entity for an application to change a development approval (change application). However, there are some exceptions, as follows:

- if the change application is for a minor change to a development condition stated in a referral agency's response for the development application or another change application for the approval, the referral agency is the responsible entity;
- if the change application is for a minor change to a development approval, and the development approval was given or changed by the P&E Court, and there was a submission made about the development application or another change application approved for the development approval, the P&E Court is the responsible entity; and
- if the change application is for either a change to a development condition imposed by the Minister under section 95 or a condition of the development approval given by the Minister under a call-in provision, the Minister is the responsible entity.

Section 78A(4) confirms that when the P&E Court is the responsible entity for a change application, it must assess and decide the change application under Subdivision 2 (Changes after appeal period), but it is not otherwise bound by the processes or requirements established in the subdivision. Sections 78A(5) and (6) are carried over from former section 78(5) and (6).

Clause 155 Amendment of s 80 (Notifying affected entities of minor change application)

Clause 155 amends the heading of section 80 to 'Notifying affected entities of change applications for minor changes'.

Section 80 is restructured and provisions clarify that when a person makes a minor change application, the person must give a notice about the proposal and details of the change to the following:

- if the assessment manager would be the responsible entity for the change application, the notice must be given to a referral agency other than the chief executive;
- if the referral agency would be the responsible entity for the change application, the notice must be given to the assessment manager and another referral agency other than the chief executive;
- if the P&E Court would be the responsible entity for the change application, the notice must be given to the assessment manager and a referral agency for the development approval, including the chief executive;
- if the Minister would be the responsible entity for the change application, the notice must be given to the assessment manager and a referral agency for the development approval other than the chief executive;
- any other person prescribed by the regulation.

Amendments to section 80(3) and (4) make minor changes to clarify that affected entity is in relation to the change application, and to renumber the section.

Clause 156 Amendment of s 81 (Assessing and deciding application for minor changes)

Clause 156 amends the heading of section 81 to ‘Assessing change applications for minor changes’. The clause restructures section 81(3) to (7) and clarifies the matters the responsible entity must and may give weight to when assessing and deciding a change application for a minor change. This includes that the responsible entity may give weight to a statutory instrument or document as in effect when the change application was made, or a statutory instrument or document that is amended, replaced or comes into effect after the change application is made but before it is decided.

Clause 157 Insertion of new ss 81A and 81B

Clause 157 inserts a new section 81A (Deciding change applications for minor changes) which was formerly provided for at section 81(4) to (7). This includes the process and timeframes the responsible entity must follow when deciding a change application for a minor change.

Clause 157 also inserts a new section 81B (Withdrawing change applications for minor changes). This is a new section which clarifies that an applicant can withdraw their change application for a minor change to a development approval at any time before the change application is decided.

Clause 158 Amendment of s 82 (Assessing and deciding application for other changes)

Clause 158 amends the heading of section 82 to ‘Assessing and deciding change applications’. The clause makes a number of changes to how various sections are referenced and amendments to subsection 82(4)(c) and (d) clarify the matters the assessment must be carried out having regard to, if change application relates to code assessable or impact assessable development.

Clause 159 Insertion of new s 82A

Clause 159 inserts new section 82A (Additional referral agencies for change applications other than for minor changes) which provides that the Planning Regulation can establish an additional referral agency for a change application, and the processes for assessing and deciding the application. This may apply, for example, where a development approval under the ED Act has been transitioned to the Planning Act and a change application is made whereby Economic Development Queensland should be the referral agency.

Clause 160 Amendment of s 84 (Cancellation applications)

Clause 160 inserts a note referring to the sections of the ED Act that are also relevant to making a cancellation application.

Clause 161 Amendment of s 85 (Lapsing of approval at end of currency period)

Clause 161 inserts a note referring to the sections of the ED Act that are also relevant to the lapsing of a PDA development approval.

Clause 162 Amendment of s 86 (Extension applications)

Clause 162 inserts a note referring to the sections of the ED Act that are also relevant to making an extension application.

Clause 163 Amendment of s 87 (Assessing and deciding extension applications)

Clause 163 inserts a note referring to the sections of the ED Act that are relevant to assessing and deciding an extension application.

Clause 164 Amendment of s 119 (When charge may be levied and recovered)

Clause 164 inserts a note that about the giving of an ICN in relation to a PDA development approval under the ED Act.

Clause 165 Amendment of s 121 (Requirements for infrastructure charges notice)

Clause 165 provides that an infrastructure charges notice must state the date of the notice, the appeal rights the recipient has in relation to the notice and include or be accompanied by any information as required by the Planning Regulation.

Clause 166 Amendment of s 139 (Application to convert infrastructure to trunk infrastructure)

Clause 166 inserts a note that about the making of conversion application in relation to a PDA development approval under the ED Act.

Clause 167 Amendment of s 140 (Deciding conversion application)

Clause 167 clarifies that the applicant and the local government can agree to a longer period than the period stated in the information notice, so long as the agreement is reached prior to the end of the period stated in the notice.

Clause 168 Amendment of s 157 (Infrastructure agreement applies instead of approval and charges notice)

Clause 168 inserts new subsection (5) stating that section 157 is subject to section 120(4) of the ED Act (see clause 62), which provides for an infrastructure agreement entered into prior to the cessation of a PDA to prevail over a PDA development approval that becomes a Planning Act approval, even if the chief executive of the department that administers the Planning Act has not approved the agreement.

Approval of the chief executive is not necessary in the case of Planning Act infrastructure agreements that prevail over PDA development approvals given by the MEDQ under the ED Act. Section 120(4) of the ED Act provides for the existing relationship with the infrastructure agreement to be preserved for a PDA development approval that converts to a Planning Act approval at cessation of the PDA.

Clause 169 Amendment of ch 5, pt 4, hdg (Offence proceedings in Magistrates Court)
Clause 169 amends the heading of the chapter to ‘Proceedings for offences’.

Clause 170 Insertion of new s 173A

Clause 170 amends section 174, creating a new section 173A (Limitation on time for starting proceedings) to align with modern drafting conventions.

Clause 171 Amendment of s 174 (Proceedings for offences)

Clause 171 clarifies when a person may bring an offence proceeding in the Magistrates Court.

Clause 172 Amendment of s 230 (Notice of appeal)

Clause 172 amends section 230(3) to remove a requirement for a submitter who appeals a decision (submitter appellant) to give all other eligible submitters to the development application a copy of the notice of appeal.

Section 230(6) is amended to clarify the timeframe within which a person can elect to be a co-respondent to an appeal. If a person is given a copy of the notice of appeal, they have 10 business days to file a notice of election in the approved form. In all other circumstances, a person has 15 business days after the notice of appeal is lodged with the registrar of the tribunal of the P&E Court.

Clause 173 Amendment of s 231, hdg (Other appeals)

Clause 173 amends the title of section 231 to ‘Non-appealable decisions and matters’.

Clause 174 Insertion of new ch 7, pt 4A

Clause 174 inserts new part 4A (Service of documents) about the service of documents under the Planning Act, which replaces former section 279 of the Planning Act.

Section 275A (Application of part) clarifies that this section applies if a person is required or permitted (e.g. assessment manager or applicant) to give or serve a document to another person.

Section 275B (Service of documents) is intended to facilitate the use of electronic forms of communication in planning and development assessment by enabling any person to serve a document via a communication (e.g. letter) which states the website or other electronic medium, where the document can be viewed or downloaded. However, the recipient of the communication may request a hard copy or electronic copy of the document at any time, and the person must provide a copy as soon as practicable after the request is made.

If the person has already received a document from the recipient which includes an electronic address for service (e.g. email) the person may serve the document electronically or via a message which states where the relevant documents can be viewed and downloaded.

The section also provides that the receiver is taken to have been given or served the document only if the document was able to be viewed by accessing the website or electronic medium stated in the communication at the time the communication was sent or transmitted, and for a reasonable period afterwards. The receiver is taken to have been given the document whether or not the website or other medium was viewed or opened. The document must also be available for viewing or downloading on the website or other medium for a reasonable period, which is relative to the circumstances and the receiver's functions for the document.

Section 275C (Certificate of service) provides that a certificate of service in relation to a communication may be used in any civil or criminal proceeding as evidence of the sending time and the ability to view the relevant document at the sending time and for a stated period after that time.

Clause 175 Omission of s 279 (Electronic service)

Clause 175 removes former section 279 from the Planning Act as this content has been amended and consolidated at new Chapter 7, Part 4A.

Clause 176 Amendment of s 280 (References in Act to particular terms)

Clause 176 clarifies the referential arrangements for a referral agency.

Clause 177 Amendment of ch 8, hdg (Repeal and transitional provisions)

Clause 177 amends the title of chapter 8 to 'Repeal, transitional and validation provisions' to clarify the purpose of the chapter.

Clause 178 Amendment of s 288 (Applications generally)

Clause 178 amends section 288(4) to update a cross reference as a consequential amendment to the insertion of new chapter 7, part 4A.

Clause 179 Amendment of s 299 (Development approvals and compliance permits)

Clause 179 amends section 299(2)(a) to insert a note referring to the section of the Planning Act that is relevant to the transition of development approvals and compliance permits given under the SPA.

Clause 180 Amendment of s 311 (Proceedings generally)

Clause 180 amends section 311(1)(c) to insert a note referring to the sections of the Planning Act that are also relevant to the transition of proceedings in relation to a matter under the SPA.

Clause 181 Amendment of s 312 (Particular proceedings)

Clause 181 amends a cross reference so that table 1, column 1 correctly refers to section 288 and provides that this is taken to have always been the correct reference.

Clause 182 Insertion of new ch 8, pt 5

Clause 182 inserts new Part 5 'Transitional and validation provisions for Economic Development and Other Legislation Amendment Act 2018' into Chapter 8 Repeal, transitional and validation provisions.

Section 335 (Definitions for part) provides new definitions for *amending Act* and *former* for this part.

Section 336 (Particular existing decisions about superseded planning scheme requests) clarifies how the former section 29 and the amended section 29 of the Planning Act operate in the circumstances where a decision has been made to accept, assess and decide a superseded planning scheme application.

Section 337 (Existing superseded planning scheme applications) clarifies how the former Chapter 2, part 4, division 1 applies in relation to a superseded planning scheme made under former section 29, but not decided before the commencement of the *Economic Development and Other Legislation Amendment Act 2018*.

Section 338 (Particular planning changes) clarifies the circumstances in which a planning change is taken to be, and to have always been, an adverse planning change.

Section 339 (Particular existing applications) clarifies that former section 48 (who is the assessment manager) continues to apply in relation to a development made, but not decided before the commencement of the *Economic Development and Other Legislation Amendment Act 2018*. The provision also clarifies that for a change application made, but not decided before commencement, the former sections that apply and do not apply to the change application.

Section 340 (Particular representations dealt with before commencement) clarifies the validity of certain notices given by an assessment manager to an applicant in relation to representations, whether these notices were given under certain provisions of the repealed *Sustainable Planning Act 2009* or the Planning Act, which commenced on 3 July.

Section 341 (Conditions of existing development approvals) clarifies how the former section 65(2)(c) and former section 66(2) and (3) apply in relation to certain development condition of a development approval that is in effect immediately before the commencement of the *Economic Development and Other Legislation Amendment Bill 2018*.

Section 342 (Lapsing of particular development approvals under old Act) applies to a development approval under the repealed SPA, whether given before or after 3 July 2017, that is in effect immediately before the commencement. The provisions clarify the sections under the SPA and Planning Act which apply, or do not apply, to certain preliminary approvals and also clarifies what is meant by 'related approval' in certain circumstances.

Section 343 (Validation provision for particular development approvals) is a transitional provision to clarify the validity of development approvals in effect immediately before the commencement of the *Economic Development and Other Legislation Amendment Act 2018* as a result of clarification amendments to section 45.

Section 344 (Validation provision for particular infrastructure charges notices under old Act) validates infrastructure charges notices issued under the repealed SPA since 4 July 2014, to the extent that they did not comply with the requirement to state reasons for the decision as required under the repealed SPA.

This provision also validates any actions that have occurred or will occur in relation to the recovery of the levied charge under the ICN or payment of the levied charge under these particular ICNs.

Section 345 (Particular existing appeals) clarifies how former section 230(6) applies in relation to an appeal to the P&E Court Act or a tribunal started, but not decided, before the commencement of the *Economic Development and Other Legislation Amendment Act 2018*. The provisions clarify that the particular requirements about giving a copy of the notice of appeal to another eligible applicant are taken to never have applied to the particular person.

Section 346 (Declaratory proceedings in the P&E Court for particular matters under the old Act) clarifies the right for a person to bring a proceeding under the P&E Court Act in various circumstances that may have arisen in the transition from the repealed SPA to the Planning Act.

Section 347 (Appeals about particular decisions under old Act) clarifies that where a person had a right to start an appeal under the repealed SPA, and if the person started the appeal during the appeal period before commencement of the *Economic Development and Other Legislation Amendment Act 2018*, the person is taken to have always had the right to start the appeal.

Clause 183 Amendment of sch 2 (Dictionary)

Clause 183 amends Schedule 2 'Dictionary' to replace new definitions for: affected entity, assessment manager, chosen assessment manager, communication, PDA development, approval, pre-request response notice, prescribed assessment manager, receiver, relevant document, response notice and sending time.

New definitions are included for *communication*, *receiver*, *relevant document* and *sending time*. Amended definitions are provided for *enforcement authority*, *excluded application* and *minor change* and *responsible entity*. The definition of Judicial Review Act is removed as it is unnecessary.

Part 14 Amendment of Planning and Environment Court Act 2016

Division 1 Preliminary

Clause 184 Act amended

Clause 184 states that this part of the Bill amends the P&E Court Act.

Division 2 Amendments commencing on assent

Clause 185 Amendment of s 11 (General declaratory jurisdiction)

Clause 185 inserts a note about how this section applies to a development approval that was a PDA development approval under the ED Act.

Clause 186 Amendment of pt 10, hdg (Savings and transitional provisions)

Clause 186 removes the heading Part 10 (Savings and transitional provisions), and corresponding note.

Clause 187 Insertion of new pt 10, div 1, hdg

Clause 187 inserts a new Division 1 (Savings and transitional provisions for Act No. 26 of 2016), replacing the former Part 10 (Savings and transitional provisions).

Clause 188 Amendment of s 74 (Definitions for part)

Clause 188 changes references to ‘part’ to ‘division’.

Clause 189 Amendment of s 76 (Proceedings)

Clause 189 replaces an example with a note about bringing proceedings under the repealed SPA and about applying other particular provisions of this Act to certain proceedings.

Clause 190 Insertion of new pt 10, div 2

Clause 190 inserts a new Division 2 (Transitional provisions for *Economic Development and Other Legislation Amendment Act 2018*).

New section 79 (Application of division) establishes the P&E Court proceedings that this division applies to.

New section 80 (Definitions for division) defines what is meant by the repealed SPA.

New section 81 (Applying s 37 and pt 6 to proceedings) clarifies how section 37 (discretion to deal with noncompliance) applies to the proceedings identified in new section 79. This section 81 also clarifies how Part 6 (Costs) applies to the proceedings identified in new section 79.

New section 82 (Appeals about particular applications under repealed SPA) clarifies how part 5, division 1 applies to proceedings that are started after the commencement of the section and is an appeal mentioned in section 79(c).

Division 3 Amendments commencing on proclamation

Clause 191 Amendment of s 16 (ADR process)

Clause 191 amends section 16 to provide for a mediator in the Alternative Dispute Resolution process.

Clause 192 Amendment of s 18 (Resolution agreement)

Clause 192 amends section 18 to provide for an agreement to be written down and signed by a mediator.

Clause 193 Amendment of s 19 (Documents to be filed)

Clause 193 amends section 19 to provide for a mediator to file a certificate about the ADR process in the approved form.

Clause 194 Amendment of s 20 (Orders giving effect to resolution agreement)

Clause 194 amends section 20 to provide for a mediator to file a certificate under section 19(1).

Clause 195 Amendment of s 21 (Preservation of confidentiality)

Clause 195 amends section 21 to state that a mediator must not disclose to anyone information acquired by the ADR registrar during an ADR process, other than under subsection (2).

Clause 196 Amendment of s 44 (Privileges, protection and immunity)

Clause 196 amends section 44 to state that a mediator has the same privileges, protection or immunity as a District Court judge performing a judicial function.

Clause 197 Amendment of sch 1 (Dictionary)

Clause 197 amends the Dictionary to include the meaning of ‘mediator’ and ‘referring order’.

Part 15 Amendment of Queensland Reconstruction Authority Act 2011

Clause 198 Act amended

Clause 198 states that this part amends the *Queensland Reconstruction Authority Act 2011*.

Clause 199 Amendment of long title

Clause 199, if enacted, amends the long title to include ‘Queensland communities to recover from disaster and improve resilience for potential disasters’.

Clause 200 Amendment of s 2 (Main purpose of Act)

Clause 200 provides if enacted, amends ‘disaster events’ to ‘disasters’.

Clause 201 Amendment of s 3 (How main purpose is primarily achieved)

Clause 201 if enacted, amends the provision to include resilience and betterment for affected communities in providing for the declaration of, and the making of development schemes.

Clause 202 Omission of s 6 (Meaning of *disaster event*)

Clause 202 if enacted, removes the meaning of disaster event (Section 6). In replacement, disaster is defined in clause 214 as defined in section 13(1) of the *Disaster Management Act 2003*.

Clause 203 Amendment of s 10 (Authority’s functions)

Clause 203 states the main functions of the authority are to coordinate the development and implement whole-of-government policies to manage flood risks, ensure Queensland communities effectively and efficiently recover from the impacts of disasters, and have improved resilience through, for example, the betterment of communities.

Further, Clause 203 includes new section to facilitate mitigating against potential disasters, including facilitating the development of a best practice network of flood warning gauges.

Also, Clause 203 covers to plan for, coordinate and put in place measures to improve the resilience of communities for potential disasters through, for example, the betterment of the Communities.

Clause 203 expands the role of, if asked by the Minister, giving advice about putting into effect recommendations made following any formal inquiry or inquest, relating to mitigating against, recovering from or improving resilience for disasters. Previously, section 10(1)(h) specifically related to the commission of inquiry issued by the Governor in Council under the *Commissions of Inquiry Order (No. 1) 2011*.

Clause 204 Amendment of s 30 (Membership of board)

Clause 204 states that membership of the board can be at least 7 persons.

Clause 205 Amendment of s 35 (Time and place of meetings)

Clause 205 amends section 35(2) from reporting occurring per month to per quarter. Further, Section 41(3) is amended to ensure the QRA keeps a copy of each report under subsection (1) or (2) on its website, rather than the department's website.

Clause 206 Amendment of s 41 (Reporting by the board and chairperson)

Clause 206 amends section 41(1) from meetings occurring once each month to 8 times a year. Reducing the number of meetings will provide flexibility to stagger meetings that may conflict with disaster response periods and be more consistent with other Queensland Government statutory authorities, which meet less regularly.

Clause 207 Amendment of s 42 (Declaration of declared project)

Clause 207 if enacted, amends section 42(1)(a) from 'disaster events' to 'disasters'.

Under Clause 207, section 42(1)(b) which states 'the declaration is necessary to facilitate flood mitigation for affected communities, or the protection, rebuilding and recovery of affected communities' is replaced with 'the declaration is necessary to facilitate—

- the protection, rebuilding and recovery of an affected community; or
- mitigating against potential disasters for an affected community; or
- improving the resilience of an affected community for potential disasters through, for example, the betterment of the community.

Clause 208 Amendment of s 43 (Declaration of reconstruction area)

Clause 208 if enacted, amends section 43(2)(a) from 'disaster events' to 'disasters'.

In line with taking an all hazards approach to supporting the recovery of Queensland communities affected by natural disasters, clause 207 of the Bill amends section 43(2)(b) to broaden the situations in which an area of the State can be declared to be a reconstruction area. In particular, section 43(2)(b) stating 'the declaration is necessary to facilitate flood mitigation for affected communities, or the protection, rebuilding and recovery of affected communities' is replaced with 'the declaration is necessary to facilitate:

- the protection, rebuilding and recovery of an affected community; or
- mitigating against potential disasters for an affected community; or

- improving the resilience of an affected community for potential disasters through, for example, the betterment of the community.

Clause 209 Amendment of s 51 (Step-in notice)

Clause 209 if enacted, amends section 51(2) from ‘facilitate’, to ‘facilitate a matter mentioned in section 42(1)(b).’

Clause 210 Amendment of s 63 (Content of development scheme)

Clause 210 amends section 63(2)(c) from ‘the reconstruction function’, to ‘each reconstruction function’.

Clause 211 Amendment of s 92 (Minister’s power to amend development approval)

Clause 211 amends section 92(1) from ‘the authorities reconstruction function’, to ‘a reconstruction function of the authority’.

Clause 212 Amendment of s 96 (Direction for authority to undertake works)

Clause 212 amends section 96(1) from ‘the authority’s reconstruction function’, to ‘a reconstruction function of the authority’.

Clause 213 Amendment of s 98 (Application of State Development Act for works on foreshore or under waters)

Clause 213 amends section 98 from ‘the authority’s reconstruction function’, to ‘a reconstruction function of the authority’.

Clause 214 Amendment of s 99 (Authority’s power to take land)

Clause 214 amends section 99(1)(c) from ‘the authority’s reconstruction function’, to ‘a reconstruction function of the authority’.

Clause 215 Amendment of sch (Dictionary)

Clause 215 amends the definitions of disaster event and reconstruction function, and includes definitions of betterment, mitigating and resilience.

The review of QRA’s roles and responsibilities in coordinating recovery, resilience and mitigation has identified that the QRA Act would benefit from defining these terms. The amendments also provide clarity to QRA’s roles and responsibilities as listed in Clause 203.

Definitions are as listed below:

- *betterment*, of a community, includes improving the community’s infrastructure so that the infrastructure is less likely to be damaged or otherwise affected by the impacts of a disaster. disaster see the Disaster Management Act 2003, section 13(1).
- *mitigating*, against a potential disaster, means reducing or eliminating—
 - (a) the risk of the disaster happening; or
 - (b) the potential impacts of the disaster.
- *reconstruction function*, of the authority, means any of the following functions of the authority—
 - (a) the function mentioned in section 10(1)(g); and
 - (b) the function mentioned in section 10(1)(h) to the extent it relates to an affected community; and
 - (c) the function mentioned in section 10(1)(i) to the extent it relates to an affected community.

- *resilience*, of a community, means the community's ability—
 - (a) to recover from a disaster, including, for example, its ability to restore essential infrastructure and community functions; and
 - (b) to accommodate or adapt to the impacts of a disaster.

Part 16 Amendment of Sanctuary Cove Resort Act 1985

Clause 216 Act amended

Clause 216 states that this part of the Bill amends the *Sanctuary Cove Resort Act 1985* (SRC Act).

Clause 217 Amendment of s 4A (Meaning of *approved use* for a zone)

Clause 217 amends section 4A to provide that the approved use for part of a zone is prescribed under a regulation.

This clause reflects possible circumstances in the planning and development of Sanctuary Cove Resort whereby a particular use may only be appropriate for certain parts of a zone, rather than the entire zone.

Clause 218 Amendment of s 9 (Town planning provisions)

Clause 218 amends section 9 to establish that if a use is an approved use for a zone or part of the zone of the site under the SRC Act, it is taken to be a lawful use under the Planning Act.

Clause 219 Amendment of s 12E (Town planning provisions)

Clause 219 amends section 9 to establish that if a use is an approved use for part of the zone (including all parts of the zone) of the site under the SCR Act, it is taken to be a lawful use under the Planning Act.

Clause 220 Amendment of s 12I (Amendment applications)

Clause 220 clarifies that a primary thoroughfare body corporate may apply to the Minister for changing an approved use for a zone or part of a zone.

Clause 221 Amendment of s 12O (Approval of change of use for zone)

Clause 221 provides that if Governor in Council approves an amendment to change an approved use for part of a zone, the amendment does not take effect until it has been approved under a regulation.

Clause 222 Amendment of sch 1 (Names of and uses for zones)

Clause 222 includes two new uses, a residential care facility and retirement facility.

A definition of residential care facility and retirement facility is also provided for in Part 3, Schedule 1.

Clause 223 Amendment of sch 9 (Dictionary)

Clause 223 amends the definition of an approved use to reflect that an approved use may also apply to part of a zone.

Part 17 Amendment of South Bank Corporation Act 1989

Clause 224 Act amended

Clause 224 states that this part of the Bill amends the *South Bank Corporation Act 1989* (SBC Act).

Clause 225 Amendment of s 4 (Meaning of assessable development)

Clause 225 amends section 4(b) to provide that development that is accepted development under section 44(6)(b)(ii) of the Planning Act is also not assessable development under the SBC Act.

Part 18 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Clause 226 Act amended

Clause 226 provides an enabling clause for the amendment of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act).

The creation in 2014 of the water approval regime under chapter 4C of the SEQ Water Act that applies to the areas serviced by the northern and central distributor-retailers trading as Unitywater and Queensland Urban Utilities, interacts with the development regime under the ED Act to the extent there are priority development areas (PDAs) in the service areas of the distributor-retailers.

Clause 227 Amendment of s 99BRCI (When charge may be levied and recovered)

Clause 227 inserts a note into the section that refers to section 51AU(5) and (6) of the ED Act that sets out provisions for converted PDA development approvals after cessation of a PDA in relation to any water connection aspects of those approvals.

Clause 228 Amendment of s 99BRDE (Application to convert infrastructure to trunk infrastructure)

Clause 228 inserts a note into the section that refers to section 51AU(7) of the ED Act that sets out provisions for converted PDA development approvals after cessation of a PDA in relation to any water connection aspects of those approvals.

Clause 229 Amendment of s 99BRDO (Water infrastructure agreement prevails over water approval and infrastructure charges notice)

Clause 229 amends the section to provide that it is subject to section 120A(4) of the ED Act, and to include a note referring to section 120(5) of the ED Act.

The definition of *infrastructure agreement* under the ED Act has been amended in clause 71 to include an infrastructure agreement under the Planning Act or a water infrastructure agreement under the SEQ Water Act.

Section 120A sets out that a water infrastructure agreement prevails over a PDA development approval under the ED Act if the agreement is made on or after commencement (see clause 62). Section 120A(4) relates to cessation of a PDA and provides that a water infrastructure agreement made on or after commencement prevails over the part of the water approval that

was a PDA development approval before cessation, despite the SEQ Water Act, section 99BRDO.

Section 120(5) of the ED Act also relates to cessation of a PDA and provides that an infrastructure agreement under the Planning Act applies instead of the part of the water approval that was a PDA development approval before cessation, to the extent of any inconsistency.

Part 19 Repeal

Clause 230 Repeal

Clause 230 repeals the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.

Part 20 Minor and consequential amendments

Clause 231 Legislation amended

Clause 231 inserts a Schedule 1 which includes minor and consequential amendments to the various legislation being amended by the amending Act.

Schedule 1 Legislation amended

Part 1 Amendments commencing on assent

Coastal Protection Management Act 1995

Clause 1 Section 110(c)(i) and (ii), after ‘for the application’ -

Clause 1 amends section 110(c)(i) and (ii) to clarify that this section applies to an application under the Planning Act.

Clause 2 Section 206(3), ‘section 78(3)’-

Clause 2 updates a cross-reference to new section 78A as a result of the amendments.

Clause 3 Schedule, definition *referral agency*—

Clause 3 removes the definition of referral agency.

Economic Development Act 2012

Clause 1 Section 4

Clause 1 replaces section references in a note to section 40A (Application of division). The division deals with the declaration of PDA-associated development by MEDQ.

Clause 2 Section 42H(2)

Clause 2 makes a consequential amendment to section 42H(2) related to the omission of

references to an ‘authority member’ with respect to the Commonwealth Games Infrastructure Authority. The provisions related to the authority have been omitted in clause 65.

Clause 3 Section 129(3)(b)

Clause 3 replaces the reference to a type of application under the Act and refers to it by its name, ‘an amendment application’.

Clauses 4 to 13

Clauses 4 to 13 make consequential amendments to a number of sections related to the omission of references to an ‘authority member’ with respect to the Commonwealth Games Infrastructure Authority. The provisions related to the authority have been omitted in clause 65.

Economic Development Regulation 2013

Clause 1 Section 4—

Clause 1 omits section 4 (Making of interim land use plan). This section has been removed as it is no longer required. The new method of making an interim land use plan, see clause 26, does not involve the instrument being made under a declaration regulation. New transitional section 228 deals with the transitional arrangements for an interim land use plan made under a declaration regulation under section 38 in effect immediately before the commencement. The provision states that the interim land use plan is taken to have been made under new section 38.

Clause 2 Section 5(2) —

Clause 2 omits section 5(2). The section states that for section 64 of the Act, each development scheme mentioned is approved for the transitioned UDA mentioned in that schedule. New transitional section 230 deals with the transitional arrangements for a development scheme approved under a regulation under former section 64 in effect immediately before the commencement. The provision states that the development scheme is taken to have been notified under a gazette notice published under new section 63(3)(b) on the day the regulation commenced. The section is no longer needed.

Clause 3 Section 5(3) —

Clause 3 rennumbers section 5(3) to section 5(2).

Clause 4 Sections 5A and 5B—

Clause 4 omits sections 5A (Development schemes for priority development areas) and 5B (Approval of amendment of development scheme). New transitional sections 230 and 231 deal with these matters.

Section 230 deals with the transitional arrangements for a development scheme approved a regulation under former section 64 in effect immediately before the commencement. The provision states that the development scheme is taken to have been notified under a gazette notice published under new section 63(3)(b) on the day the regulation commenced. The section is no longer needed. Section 231 deals with amendments of development schemes in essentially the same way. Sections 5A and 5B are no longer needed.

Clause 5 Schedule 2—

Clause 5 omits schedule 2. This schedule lists the interim land use plans made by declaration regulation that have not expired. Clause 1 above refers. The omission of section 4, which establishes the need for schedule 2, justifies the omission of the schedule. New transitional section 228 states that the interim land use plan is taken to have been made under new section 38. All current interim land use plans are published on the department's website.

Clause 6 Schedule 3, part 3—

Clause 6 omits schedule 3, part 3. Clause 2 above refers. The omission of section 5(2) which establishes the need for schedule 3, part 3, justifies the omission of this schedule. New transitional section 230 deals with the transitional arrangements for a development scheme approved under a regulation under former section 64 in effect immediately before the commencement. All development schemes are published on the department's website.

Clause 7 Schedules 4 and 5—

Clause 7 omits schedules 4 and 5. Clause 4 above refers. The omission of sections 5A and 5B, means that there is no need for schedules 4 and 5. Section 230 deals with the transitional arrangements for a development scheme approved under a regulation under former section 64 in effect immediately before the commencement. The provision states that the development scheme is taken to have been notified under a gazette notice published under new section 63(3)(b) on the day the regulation commenced. Section 231 deals with amendments of development schemes in essentially the same way. All development schemes and amendments of schemes are published on the department's website.

Environmental Offsets Act 2014

Clause 1 Section 5(2)(a), 'under the Planning Act' —

Clause 1 omits a reference to the Planning Act.

Clause 2 Schedule 2, definition *assessment manager* —

Clause 2 replaces a cross reference to the Planning Act which is consequential to the amendment to section 48 of that Act.

Clause 3 Schedule 2, definition *referral agency* —

Clause 3 replaces the definition of referral agency to mean a referral agency under the Planning Act, which is consequential to the amendment to the Planning Act, new section 82A.

Environmental Protection Act 1994

Clause 1 Schedule 1, section 3, note —

Clause 1 inserts two notes into section 3 of schedule 1. Note 1 refers to the ED Act, section 54(7) in relation to by-laws made under the Act that are taken to be local laws for sections 440 and 440Q. Note 2 is the reinsertion of the note referencing the *Major Events Act 2014*, section 79.

Clause 2 Schedule 4, definition *referral agency*—

Clause 2 amends the definition of referral agency which is consequential to the insertion of new section 82A of the Planning Act.

Fisheries Act 1994

Clause 1 Schedule, definition *assessment manager*—

Clause 1 replaces a cross reference to the Planning Act which is consequential to the amendment to section 48 of that Act.

Fisheries Regulation 2008

Clause 1 Schedule 11, part 2, definition *referral agency*—

Clause 1 omits the definition of referral agency, as it is not required.

Planning Act 2016

Clause 1 Section 20(3), 22(2) and 23(5), ‘rules’—

Clause 1 clarifies that the reference to the ‘rules’ in these sections refers to the ‘Ministers rules’.

Clause 2 Section 46(2)(a), ‘assessment manager’—

Clause 2 clarifies that the reference to the ‘assessment manager’ in this section refers to the ‘prescribed assessment manager’.

Clause 3 Section 59(1), ‘development’—

Clause 3 omits the word ‘development’, consistent with the defined term ‘properly made application’ under the Planning Act.

Clause 4 Section 61(1), ‘properly made development application’—

Clause 4 omits the word ‘development’, consistent with the defined term ‘properly made application’ under the Planning Act.

Clause 5 Section 69, heading ‘rules’—

Clause 5 renames the section heading to ‘Amending the development assessment rules’, consistent with the content of this section.

Clause 6 Section 70, heading ‘rules’—

Clause 6 renames the section heading to ‘Access to and evidence of the development assessment rules’, consistent with the content of this section.

Clause 7 Section 70(2), ‘to the rules’—

Clause 7 clarifies that reference ‘to the rules’ means the development assessment rules.

Clause 8 Section 70(3), ‘rules’—

Clause 8 clarifies that reference ‘to the rules’ means the development assessment rules.

Clause 9 Section 105(4)(a), ‘sections 45(3) to (7)’ —

Clause 9 updates cross referencing to reflect amendments and new subsection (8).

Clause 10 Section 105(4)(c), ‘section 81’—

Clause 10 updates cross referencing to reflect sections 81 and new section 81A.

Clause 11 Section 107(4), definition *use or preservation covenant* ‘section 373A(4)’ —
Clause 11 corrects a cross referencing error to the *Land Act 1994*.

Clause 12 Section 127(2), note ‘sections 81(4)(a)’ —
Clause 12 updates the note to refer to restructured content at section 81A(2)(a).

Clause 13 Section 228(1), ‘in offence proceedings’ —
Clause 13 clarifies that this means ‘in a proceeding for an offence against this Act.’

Planning and Environment Court Act 2016

Clause 1 Section 13(5), note —
Clause 1 omits the note which is redundant.

Clause 2 Section 46(2)(b), ‘subsection (7)’ —
Clause 2 updates cross referencing to reflect amendments and subsection (8) which is consequential to the amendment to the Planning Act, section 45.

Clause 3 Section 60(2), definition *referral agency*—
Clause 3 replaces the definition of referral agency to mean a referral agency under the Planning Act, which is consequential to the amendment to the Planning Act, new section 82A.

Planning Regulation 2017

Clause 1 Section 21(1), ‘section 48(2)’ —
Clause 1 corrects a cross reference to the Planning Act about the assessment manager for a development application.

Queensland Building and Construction Commission Act 1991

Clause 1 Schedule 2, definition *assessment manager*—
Clause 1 replaces a cross reference to the Planning Act which is consequential to the amendment to section 48 of that Act.

Queensland Reconstruction Authority Act 2011

Clause 1 Section 17(2) —
Clause 1 omits section 17(2).

Clause 2 Part 3, division 1, heading—
Clause 2 omits Part 3 division 1, heading.

Clause 3 Part 3, division 1, subdivision 1, heading—
Clause 3 omits Part 3 division 1, subdivision 1, heading, and inserts ‘Division 1 – Establishment and functions’.

Clause 4 Part 3, division 1, subdivision 2, heading—
Clause 4 omits Part 3 division 1, subdivision 1, heading, and inserts ‘Division 2 – Members’.

Clause 5 Section 31(1), ‘this subdivision’—

Clause 5 omits Section 31(1), ‘this subdivision’, and inserts ‘this division’.

Clause 6 Section 31(2) —

Clause 6 omits section 31(2).

Clause 7 Part 3, division 1, subdivision 3, heading—

Clause 7 omits Part 3 division 1, subdivision 3, heading, and inserts ‘Division 3 – Chairperson’.

Clause 8 Part 3, division 1, subdivision 4, heading—

Clause 8 omits Part 3 division 1, subdivision 3, heading, and inserts ‘Division 4 – Proceedings of the board’.

Clause 9 Section 38(1), ‘this subdivision’—

Clause 9 omits Section 38(1), ‘this subdivision’, and inserts ‘this division’.

Clause 10 Part 3, division 1, subdivision 5, heading—

Clause 10 omits Part 3 division 1, subdivision 3, heading, and inserts ‘Division 5 – Disclosure of conflict of interest and reporting requirements’.

Clause 11 Section 81(3), ‘sections 81 and 82’—

Clause 11 omits ‘sections 81 and 82’— and inserts sections 81, 81A and 82.

Clause 12 Part 10, division 2—

Clause 12 omits Part 10 division 2.

Clause 13 Schedule, definition *assessment manager*—

Clause 13 omits the definition of assessment manager and inserts ‘assessment manager means an assessment manager under the Planning Act.’

Clause 14 Schedule, *referral agency*—

Clause 14 omits the definition of referral agency and inserts ‘referral agency means a referral agency under the Planning Act’.

Sanctuary Cove Resort Act 1985

Clause 1 Section 60(5A)(a) and (b), after ‘;’ —

Clause 1 inserts the word ‘and’ after section 60(5)(a) and (b) to clarify that the application must be accompanied by the matters identified in subsection 5(a), (b) and (c).

South Bank Corporation Act 1989

Clause 1 Section 106, ‘section 255’—

Clause 1 amends section 106 to remove a comma.

Clause 2 Section 127, ‘part 9’—

Clause 2 amends section 127 to remove a comma.

South-East Queensland Water (Distribution and Retail Restructuring Act 2009)

Clause 1 Section 59(3), definition *referral agency* —

Clause 1 replaces the definition of referral agency to mean a referral agency under the Planning Act, which is consequential to the amendment to the Planning Act, new section 82A.

State Development and Public Works Organisation Act 1971

Clause 1 Schedule 2, definition *referral agency* —

Clause 1 replaces the definition of referral agency to mean a referral agency under the Planning Act, which is consequential to the amendment to the Planning Act, new section 82A.

Sustainable Ports Development Act 2015

Clause 1 Section 19(4)(a), ‘, PDA self-assessable development or PDA exempt development’—

Clause 1 updates terminology to ‘PDA accepted development’

Clause 2 Section 30(7), ‘section 60, 61, 81 or 82’—

Clause 2 amends section 30(7) which is consequential to the insertion of new section 81A of the Planning Act.

Transport Infrastructure Act 1994

Clause 1 Section 49A(4), ‘sections 55, 81 and 82’—

Clause 1 updates cross referencing to include new section 81A of the Planning Act.

Clause 2 Section 67(9), definition *response period*, paragraph (c), ‘section 81(5) or (6)’ —

Clause 2 amends section 67(9) which is consequential to the insertion of new section 81A of the Planning Act.

Clause 3 Section 67(9), definition *response period*, paragraph (c), ‘section 81(7)’ —

Clause 3 amends section 67(9) which is consequential to the insertion of new section 81A of the Planning Act.

Clause 4 Section 258(4), ‘sections 55, 81 and 82’—

Clause 4 which is consequential to the insertion of new section 81A of the Planning Act.

Clause 5 Section 287A(4), ‘sections 55, 81 and 82’—

Clause 5 amends section 287A(4) which is consequential to the insertion of new section 81A of the Planning Act.

Clause 6 **Schedule 6, definition *referral agency* —**

Clause 6 replaces the definition of referral agency to mean a referral agency under the Planning Act, which is consequential to the amendment to the Planning Act, new section 82A.

Clause 7 **Schedule 6, definition *responsible entity*, first and second occurring—**

Clause 7 amends the definition of responsible entity which is consequential to the insertion of new section 78A of the Planning Act.

Transport Planning and Coordination Act 1994

Clause 1 **Section 8B(3), ‘sections 55, 81 and 82’—**

Clause 1 amends section 8B(3) which is consequential to the insertion of new section 81A of the Planning Act.

Vegetation Management Act 1999

Clause 1 **Schedule, definition *assessment manager* —**

Clause 1 omits the definition of assessment manager, as it is not required.

Part 2 Amendments commencing by proclamation

City of Brisbane Regulation 2012

Clause 1 **Section 63—**

Clause 1 inserts a note referring to the non-application of section 63 (Public thoroughfare easements) to particular public thoroughfare easements in accordance with the ED Act, section 51AW (Non-application of particular provisions to land subject to particular public thoroughfare easements).

Dispute Resolution Centres Act 1990

Clause 1 **Section 2(1), definition *referring order*—**

Clause 1 amends section 2 definition of referring order to include orders referring a dispute for mediation made by the P&E Court.

Economic Development Act 2012

Clause 1 **Section 167, heading ‘summary’—**

Clause 1 omits the word ‘summary’ from the heading of the section 167. The current heading is ‘Limitation on time for starting proceeding for summary offence’. The term ‘summary offence’ is no longer used and is omitted.

Clause 2 **Section 167, ‘a summary offence’—**

Clause 2 omits the words ‘a summary offence’ from the first line of section 167 and replaces them with ‘an offence’. The term ‘summary offence’ is no longer used.

Land Title Act 1994

Clause 1 Section 89—

Clause 1 inserts a note referring to the non-application of section 89 (Easements for public utility providers) to particular public thoroughfare easements in accordance with the ED Act, section 51AV (Registration of public thoroughfare easement under *Land Title Act 1994*) (clause 76 relates), and the *Queen's Wharf Brisbane Act 2016*, section 58 (Registration of public thoroughfare easements).

Local Government Regulation 2012

Clause 1 Section 63—

Clause 1 inserts a note referring to the non-application of section 63 (Public thoroughfare easements) to particular public thoroughfare easements in accordance with the ED Act, section 51AW (Non-application of particular provisions to land subject to particular public thoroughfare easements).

Neighbourhood Disputes (Dividing Fences and Trees) Act 2011

Clause 1 Section 37(4), 'subsection (4)' —

Clause 1 changes the reference from subsection (4) to subsection (3).

Clause 2 Chapter 6, heading, from 'and amendment'—

Clause 2 amends the heading.

Clause 3 Chapter 6, part 1 heading—

Clause 3 omits the heading.