

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, May 2017*



Queensland

**No.
A BILL for**

An Act to amend the Associations Incorporation Act 1981, the Building Act 1975, the Local Government Electoral Act 2011, the Planning Act 2016, the Planning and Environment Court Act 2016, the Planning (Consequential) and Other Legislation Amendment Act 2016 and the Sustainable Planning Act 2009 for particular purposes



Queensland

Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2017

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2017

A Bill

for

An Act to amend the Associations Incorporation Act 1981, the Building Act 1975, the Local Government Electoral Act 2011, the Planning Act 2016, the Planning and Environment Court Act 2016, the Planning (Consequential) and Other Legislation Amendment Act 2016 and the Sustainable Planning Act 2009 for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017*.

2 Commencement

Part 4, other than sections 25, 26 and 29, commences on a day to be fixed by proclamation.

Part 2 Amendment of Associations Incorporation Act 1981

3 Act amended

This part amends the *Associations Incorporation Act 1981*.

4 Amendment of s 5 (Eligibility for incorporation)

Section 5(1)(e)(iii)—

insert—

Example for subparagraph (iii)—

an association that, as its main purpose, receives and holds gifts within the meaning of the *Local Government Electoral Act 2011*, section 107 for use by a member or person nominated by a member for a purpose relating to an election under that Act

Part 3 Amendment of Building Act 1975

5 Act amended

This part amends the *Building Act 1975*.

6 Replacement of s 6 (What is a *building development application*)

Section 6—

omit, insert—

6 What is a *building development application*

A *building development application* is an application for a development approval under the Planning Act—

- (a) if the local government is the assessment manager for the application—to the extent the application is for building work that, under that Act, must be assessed against the building assessment provisions; and

Note—

For the functions of a local government in relation to building development applications, see section 51.

- (b) if a private certifier is the assessment manager for the application—for building work.

7 Amendment of s 25 (General requirements for supporting documents)

Section 25(2)(a)(ii), ‘concurrency agency assessment’—

omit, insert—

referral agency’s response

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

(1) Section 83(1)(a) and (b) and examples—

omit, insert—

- (a) until, under the Planning Act, all necessary development permits and SPA compliance permits are effective for development, other than building work, that may affect any or all of the following—
 - (i) the form or location of the building work;
 - (ii) the use of the building or other structure;
 - (iii) the assessment of the building development application; and

Example—

A proposal involves building work, a material change of use, reconfiguring a lot and operational work under the Planning Act. The private certifier is engaged to carry out building assessment work and decide the building development application. The private certifier must not grant the building development approval applied for until all necessary development permits and SPA compliance permits are effective for—

- the material change of use, which will affect the use of the building or other structure
 - reconfiguring the lot, which will affect the location of the building work on the reconfigured lot
 - the operational work, other than operational work that does not affect the form or location of the building work or assessment of the building development application, including, for example, landscaping work.
- (b) if the building development application is for a development permit that, under the Planning Act, section 245A, does not authorise the carrying out of a part of the building work unless a relevant preliminary

approval is in effect for the part—until the relevant preliminary approval is in effect for the part; and

Example—

A building development application is made for a development permit for building work that must be assessed against the building assessment provisions and a code in the local government’s planning scheme. The code is not a building assessment provision and is not, under the Planning Act, within the jurisdiction of a referral agency. A private certifier is engaged to assess and decide the application. The private certifier must not grant the development permit until a preliminary approval given by the local government is in effect for the part of the building work that must be assessed against the code.

(2) Section 83(1)(d)—

omit, insert—

(d) if, under the Planning Act, a referral agency has jurisdiction for a matter relating to the building work—until—

(i) the referral agency has given its referral agency’s response to the private certifier or, if the referral agency does not give a response before the end of the referral agency’s response period for the application, until after the response period has ended; and

(ii) if the referral agency is the local government—any security it has required for the carrying out of the building work has been given; and

(3) Section 83—

insert—

(4) In this section—

referral agency’s response period, for a building development application, means the referral

[s 8A]

agency's assessment period for the application under the Planning Act, including any extension of that period.

relevant preliminary approval see the Planning Act, section 245A(7).

8A Amendment of s 88 (Giving approval documents to applicant)

(1) Section 88—

insert—

(2A) Subsection (2B) applies if the application is for building work that is—

- (a) the demolition of a building used only or mainly for residential purposes; and
- (b) assessable development under a local planning instrument.

(2B) The private certifier must not give the applicant any approval documents for the application before the end of 5 business days after the day the private certifier has complied with all requirements under section 86(1).

Maximum penalty—165 penalty units.

(2) Section 88(4) and note—

omit, insert—

(4) The private certifier must give the approval documents to the applicant—

- (a) if the application is mentioned in subsection (2A) and the private certifier receives the acknowledgement before the end of the period mentioned in subsection (2B)—within 5 business days after the end of that period; or

- (b) otherwise—within 5 business days after receiving the acknowledgement.

Note—

See also section 132.

8B Insertion of new ch 11, pt 18A

Chapter 11—

insert—

Part 18A Transitional provision for Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017

344 Building development application approved before commencement

- (1) This section applies to a building development application approved by a private certifier before the commencement.
- (2) Former section 88 continues to apply in relation to the building development application as if the amending Act had not been enacted.
- (3) In this section—

amending Act means the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017*.

former section 88 means section 88 as in force immediately before the commencement.

9 Amendment of sch 2 (Dictionary)

- (1) Schedule 2—

insert—

preliminary approval means a preliminary approval under the Planning Act.

referral agency's response see the Planning Act, schedule 3.

- (2) Schedule 2, definition *building development approval*, 'is for building work'—

omit, insert—

approves a building development application

Part 4 Amendment of Local Government Electoral Act 2011

10 Act amended

This part amends the *Local Government Electoral Act 2011*.

11 Amendment of s 106 (Definitions for pt 6)

- (1) Section 106, heading, 'pt 6'—

omit, insert—

part

- (2) Section 106—

insert—

disclosure date, for a return, means the day prescribed by regulation for the return.

required period, for an election, means 15 weeks after the polling day for the election or, if no poll is conducted, the day a poll would have been conducted if it were required.

12 Amendment of s 114 (Disclosure period for candidates who were previously candidates in a local government election)

Section 114(2)—

omit, insert—

(2) The candidate's disclosure period for the current election is the period—

(a) starting—

(i) on the day prescribed by regulation for this subparagraph; or

(ii) if a day is not prescribed—30 days after the polling day for the most recently held election for which the candidate was also a candidate; and

Example for subparagraph (ii)—

If the polling day for the most recently held election was 15 March, the disclosure period starts at the beginning of 15 April.

(b) ending—

(i) on the day prescribed by regulation for this subparagraph; or

(ii) if a day is not prescribed—30 days after the polling day for the current election.

Example for subparagraph (ii)—

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

13 Amendment of s 115 (Disclosure period—other candidates)

Section 115(2)—

omit, insert—

- (2) The candidate's disclosure period for the election is the period—
- (a) starting on the day the first of the following happens or, if they happen at the same time, when they happen—
 - (i) the person announces the person is to be a candidate in the election;
 - (ii) the person nominates as a candidate in the election; and
 - (b) ending—
 - (i) on the day prescribed by regulation for this subparagraph; or
 - (ii) if a day is not prescribed—30 days after the polling day for the election.

Example for subparagraph (ii)—

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

14 Amendment of s 116 (Disclosure period for groups of candidates)

Section 116(a) and (b)—

omit, insert—

- (a) starting—
 - (i) on the day prescribed by regulation for this subparagraph; or
 - (ii) if a day is not prescribed—30 days after the polling day for the most recently held quadrennial elections; and

Example for subparagraph (ii)—

If the polling day for the most recently held quadrennial election was 15 March, the disclosure period starts at the beginning of 15 April.

(b) ending—

- (i) on the day prescribed by regulation for this subparagraph; or
- (ii) if a day is not prescribed—30 days after the polling day for the current election.

Example for subparagraph (ii)—

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

15 Omission of s 116A (Definition for div 3)

Section 116A—

omit.

16 Amendment of s 117 (Gifts to candidates)

(1) Section 117(1) to (3)—

omit, insert—

- (1) Subsection (2) applies if, during a candidate's disclosure period for an election, the candidate receives a gift of a value equal to or more than \$500.
- (2) The candidate must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
 - (a) be in the approved form; and
 - (b) state the relevant details for the gift.

- (3A) Also, the candidate must, within the required period for the election, give the electoral commission a return in the approved form, stating—
- (a) if the candidate received gifts during the disclosure period—
 - (i) the total value of all gifts received during the disclosure period; and
 - (ii) the number of entities that gave the gifts; or
 - (b) otherwise—that no gifts were received during the disclosure period.
- (3B) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to the candidate by the same entity during the candidate’s disclosure period.
- (3C) A candidate need not comply with this section if the candidate—
- (a) gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states the candidate—
 - (i) does not expect to receive gifts in the candidate’s disclosure period for the election after giving the return; and
 - (ii) will give returns under this section if gifts are received during the candidate’s disclosure period for the election after giving the return; and
 - (b) does not receive gifts during the candidate’s disclosure period for the election after giving the return.

(2) Section 117(4), ‘subsection (1)’—

omit, insert—

subsection (2)

(3) Section 117—

insert—

(5) This section does not apply to a candidate who is a member of a group of candidates.

(4) Section 117(3A) to (5)—

renumber as section 117(4) to (8).

17 Amendment of s 118 (Gifts to groups of candidates)

(1) Section 118(1) to (3)—

omit, insert—

(1) Subsection (2) applies if, during the disclosure period for an election for a group of candidates, a member of the group, or a person acting on behalf of the group, receives a gift of a value equal to or more than \$500.

(2) The group's agent must give the electoral commission a return about the gift on or before the disclosure date for the return.

(3) Each return must—

(a) be in the approved form; and

(b) state—

(i) the names of the candidates forming the group; and

(ii) the name, if any, of the group; and

(iii) the relevant details for the gift.

(3A) Also, the agent must, within the required period for the election, give the electoral commission a return in the approved form, stating—

- (a) if any members of the group, or a person acting on behalf of the group, received gifts during the disclosure period—
 - (i) the total value of all gifts received during the disclosure period; and
 - (ii) the number of entities that gave the gifts; or
- (b) otherwise—that no gifts were received by any member of the group, or a person acting on behalf of the group, during the disclosure period.

(3B) For subsection (1), the value of a gift is taken to include the value of all other gifts previously given to any member of the group, or a person acting on behalf of the group, by the same entity during the group's disclosure period.

(2) Section 118(4), 'subsection (2)'—

omit, insert—

this section

(3) Section 118(3A) to (5)—

renumber as section 118(4) to (7).

18 Amendment of s 119 (Particular gifts not to be received)

(1) Section 119(4)—

omit, insert—

- (4) For this section, the value of a gift is taken to include the value of all other gifts previously received by the candidate, group of candidates or person acting on behalf of the candidate or group, from the same entity during the candidate's or group's disclosure period.

(2) Section 119(5), definition *prescribed gift*, '\$200'—

omit, insert—

\$500

19 Replacement of s 120 (Loans to candidates or groups of candidates)

Section 120—

omit, insert—

120 Loans to candidates or groups of candidates

- (1) Subsection (2) applies if, during a candidate's disclosure period for an election, the candidate receives a loan equal to or more than \$500.
- (2) The candidate must give the electoral commission a return about the loan on or before the disclosure date for the return.
- (3) Subsection (4) applies if, during the disclosure period for a group of candidates for an election, the group receives a loan equal to or more than \$500.
- (4) The agent for the group must give the electoral commission a return about the loan on or before the disclosure date for the return.
- (5) However, subsections (1) and (3) do not apply to a loan from a financial institution.
- (6) Each return given under subsection (2) or (4) must—
 - (a) be in the approved form; and
 - (b) state—
 - (i) the value of the loan; and
 - (ii) the date on which the loan was made; and
 - (iii) the terms of the loan; and
 - (c) if the loan was made by the members of an unincorporated association, include—

- (i) the association's name; and
 - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee, however described, of the association; and
 - (d) if the loan was purportedly made out of a trust fund or out of the funds of a foundation, include—
 - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation; and
 - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the person; and
 - (e) if neither paragraph (c) nor (d) apply—the name and residential or business address of the person who made the loan.
- (7) Also, the candidate or agent must, within the required period for the election, give the electoral commission a return in the approved form, stating—
- (a) if the candidate or group received loans during the disclosure period—
 - (i) the total value of all loans received during the disclosure period; and
 - (ii) the number of entities who made the loans; or

(b) otherwise—that no loans were received by the candidate or group during the disclosure period.

(8) For subsections (1) and (3), the amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

20 Amendment of s 121 (Particular loans not to be received)

(1) Section 121(1) and (2), ‘\$200’—

omit, insert—

\$500

(2) Section 121—

insert—

(5) For subsections (1) and (2), the amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

21 Amendment of s 122 (Electoral commission to give reminder notice to candidates)

(1) Section 122(1)(a), ‘section 117(1)’—

omit, insert—

section 117(4) or 120(7)

(2) Section 122(1)(b), ‘section 118(1)’—

omit, insert—

section 118(4) or 120(7)

(3) Section 122(2)(a)—

omit, insert—

- (a) the candidate or agent is required to give the return under section 117, 118 or 120; and
- (4) Section 122(3)(a), ‘section 117(3)’—
omit, insert—
section 117(6)
- (5) Section 122(3)(b), ‘section 118(3)’—
omit, insert—
section 118(6)

22 Amendment of s 123 (Definitions for div 4)

- (1) Section 123, heading—
omit, insert—
123 Definition for division
- (2) Section 123, definition *required period*—
omit.

23 Amendment of s 124 (Third party expenditure for political activity)

- (1) Section 124(1)(b)—
omit, insert—
 - (b) the amount of the expenditure is \$500 or more.
- (2) Section 124(2) to (5)—
omit, insert—
 - (2) The third party must, for each amount of expenditure incurred during the disclosure period, give the electoral commission a return on or before the disclosure date for the return.
 - (3) Each return must—
 - (a) be in the approved form; and

- (b) state—
 - (i) the total value of the expenditure to which the return relates; and
 - (ii) when the expenditure was incurred; and
 - (iii) the particular purpose of the expenditure.
- (4) For subsection (1)—
 - (a) each amount of expenditure incurred by the third party is taken to include any amounts previously incurred by the third party for a political activity relating to the election during the disclosure period for the election; and
 - (b) an amount of expenditure incurred by the third party for a political activity relating to 2 or more elections is taken to have been incurred by the third party for each of the elections.
- (5) In this section—

disclosure period, for an election, means the period—

 - (a) starting—
 - (i) on the day prescribed by regulation for this subparagraph; or
 - (ii) if a day is not prescribed—on the day after the day the returning officer publishes notice of the election in a newspaper under section 25; and
 - (b) ending—
 - (i) on the day prescribed by regulation for this subparagraph; or

- (ii) if a day is not prescribed—at 6p.m. on the polling day for the election.

24 Amendment of s 125 (Gifts received by third parties to enable expenditure for political activity)

- (1) Section 125(1)(a)(ii), ‘\$1000’—

omit, insert—

\$500

- (2) Section 125(2) to (5)—

omit, insert—

- (2) The third party who receives the gift must give the electoral commission a return about the gift on or before the disclosure date for the return.
- (3) Each return must—
 - (a) be in the approved form; and
 - (b) state the relevant details for the gift.
- (4) For subsection (1)(a)(ii), the value of the gift is taken to include the value of all other gifts previously given to the third party by the same entity during the disclosure period.
- (5) In this section—

disclosure period, for an election (the ***current election***), means the period—

 - (a) starting—
 - (i) on the day prescribed by regulation for this subparagraph; or
 - (ii) if a day is not prescribed—30 days after the polling day for the most recently held quadrennial elections; and

Example for subparagraph (ii)—

If the polling day for the most recently held quadrennial election was 15 March, the disclosure period starts at the beginning of 15 April.

- (b) ending—
- (i) on the day prescribed by regulation for this subparagraph; or
 - (ii) if a day is not prescribed—ending 30 days after the polling day for the current election.

Example for subparagraph (ii)—

If the polling day for the current election was 31 March, the disclosure period ends at the end of 30 April.

25 **Amendment of s 126 (Requirement for candidate to operate dedicated account)**

- (1) Section 126(5), after ‘must not’—

insert—

, during the candidate’s disclosure period for the election,

- (2) Section 126—

insert—

- (5A) If an amount remains in the account at the end of the disclosure period, the amount or part of the amount may—
- (a) be kept in the account for the conduct of another election campaign by the candidate; or
 - (b) if the candidate was a member of a political party during the disclosure period—be paid to the political party; or

(c) be paid to a charity nominated by the candidate.

(5B) An amount mentioned in subsection (6) must not be dealt with other than under that subsection.

(3) Section 126(6), ‘subsections (2) to (5)’—

omit, insert—

subsections (2) to (7)

(4) Section 126(6), penalty, ‘subsection (6)’—

omit, insert—

subsection (8)

(5) Section 126(5A) to (7)—

renumber as section 125(6) to (9).

26 Amendment of s 127 (Requirement for group of candidates to operate dedicated account)

(1) Section 127(5), after ‘must not’—

insert—

, during the group’s disclosure period for the election,

(2) Section 127—

insert—

(5A) If an amount remains in the account at the end of the group’s disclosure period for the election, the amount or part of the amount may—

- (a) be kept in the account for the conduct of another election campaign by the group; or
- (b) if each member of the group was a member of a political party during the disclosure period—be paid to the political party; or
- (c) be paid to a charity nominated by the group.

- (5B) An amount mentioned in subsection (6) must not be dealt with other than under that subsection.
- (3) Section 127(6), ‘subsections (2) to (5)’—
omit, insert—
subsections (2) to (7)
- (4) Section 127(6), penalty, ‘subsection (6)’—
omit, insert—
subsection (8)
- (5) Section 127(5A) to (6)—
renumber as section 127(6) to (8).

27 Insertion of new s 132A

After section 132—

insert—

132A Electronic lodgement of returns

- (1) The electoral commission may make procedures about how a return under this part may be lodged electronically.
- (2) The procedures—
- (a) do not take effect until approved by a regulation; and
 - (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
 - (c) must be published on the commission’s website.
- (3) If a return under this part is lodged as provided for under the procedures, the return is taken to have been given to the electoral commission.

28 Amendment of s 195 (Offences about returns)

Section 195(3), ‘section 118(2) or 120(2)’—

omit, insert—

section 118 or 120

29 Amendment of s 202 (Local governments responsible for expenditure for conducting local government elections)

(1) Section 202, heading, ‘for conducting local government elections’—

omit, insert—

incurred by electoral commission

(2) Section 202—

insert—

(3) Also, a local government must pay the costs incurred by the electoral commission in carrying out functions relating to conducting elections generally, including, for example—

(a) the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission; and

(b) the costs of making appropriate administrative arrangements for the conduct of elections.

30 Amendment of schedule (Dictionary)

(1) Schedule, definition *required period*—

omit.

(2) Schedule—

insert—

disclosure date, for a return, see section 106.

required period, for part 6, see section 106.

- (ii) between the high water mark and the middle of the river, stream or artificial waterway; and
- (b) to the extent the boundary of the area or land is, or is seaward of, the high water mark and outside a river, stream or artificial waterway—tidal water that is seaward and within 50m of the high water mark.

tidal water see the Coastal Act, schedule.

32A Amendment of s 30 (When this division applies)

Section 30(4)—

insert—

- (g) is made under section 276(1)(c) to identify all or part of a local government area as a party house restriction area.

32B Amendment of s 36 (Criteria for making or amending designations)

Section 36(7)—

insert—

- (ca) if the premises are in a priority development area under the *Economic Development Act 2012*—any development scheme for the priority development area under that Act; and

33 Amendment of s 48 (Who is the *assessment manager*)

(1) Section 48—

insert—

- (2A) Without limiting subsection (2), a regulation may prescribe that a person is the assessment manager

for a development application that is for part of a particular type of development.

Example—

For building work that must be assessed against the building assessment provisions and is assessable development under a local government's planning scheme, a regulation may prescribe that—

- (a) a private certifier is the assessment manager for a development application for the part of the building work that must be assessed against the building assessment provisions; and
- (b) the local government is the assessment manager for a development application for the part of the building work that is assessable development under the planning scheme.

(2B) Subsection (3) applies to a development application that—

- (a) is for development that requires code assessment only; and
- (b) does not include a variation request.

(2) Section 48(3), 'However, if—'—

omit, insert—

If—

(3) Section 48(3)(a), from 'a development application'—

omit, insert—

the development application; and

(4) Section 48(3)(b), from 'a particular type'—

omit, insert—

the development the subject of the application;
and

(5) Section 48(3)(e)—

omit, insert—

- (e) a person on the entity's list enters into an agreement with another person to accept the development application;
- (6) Section 48(6), from 'may'—
 - omit, insert—*
 - may—
 - (a) decide who is the assessment manager; or
 - (b) require the application to be split into 2 or more applications.
- (7) Section 48(9), after 'that is'—
 - insert—*
 - prescribed

34 Amendment of s 49 (What is a *development approval, preliminary approval or development permit*)

Section 49(6), definition *decision notice*, paragraph (c)—
omit, insert—

- (c) a negotiated decision notice, other than a negotiated decision notice for a change application.

35 Amendment of s 64 (Deemed approval of applications)

(1) Section 64(8)(c), from 'standard'—

omit, insert—

conditions (the *standard conditions*) stated in an instrument made by the Minister for this section.

(2) Section 64—

insert—

- (9) Before making or amending the instrument mentioned in subsection (8)(c), the Minister must

consult with the persons the Minister considers appropriate.

- (10) The Minister must notify the making or amendment of the instrument mentioned in subsection (8)(c) in the gazette.

36 Amendment of s 68 (Development assessment rules)

- (1) Section 68(2)(e)—

omit.

- (2) Section 68(2)(f) and (g)—

renumber as section 68(2)(e) and (f).

37 Insertion of new s 73A

Chapter 3, part 5, division 1—

insert—

73A Development permits for building work given by private certifiers

- (1) This section applies to a development application for a development permit that—
- (a) is for building work; and
 - (b) is made to a private certifier as assessment manager.
- (2) Subsection (3) applies to the development application if any part of the building work requires impact assessment.
- (3) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring impact assessment, unless a relevant preliminary approval is in effect for the part.
- (4) Subsection (5) applies to the development application if—

[s 38]

- (a) any part of the building work must be assessed against, or having regard to, a matter that is not a building assessment provision; and
 - (b) none of the referral agencies are required to assess the application against, or having regard to, the matter.
- (5) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring assessment against, or having regard to, the matter, unless a relevant preliminary approval is in effect for the part.
- (6) In this section—
- relevant preliminary approval* means a preliminary approval given under the old Act by an entity other than a private certifier.

38 Amendment of s 74 (What this subdivision is about)

Section 74—

insert—

- (2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.
- (3) For subsection (2), sections 75 and 76 apply—
 - (a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and
 - (b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and

- (c) as if a reference in section 76 to a development application were a reference to a change application; and
- (d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and
- (e) with any other necessary changes.

39 Amendment of s 75 (Making change representations)

- (1) Section 75(1), ‘the approval’—

omit, insert—

the development approval

- (2) Section 75(1)(b)—

omit, insert—

- (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).

40 Amendment of s 76 (Deciding change representations)

Section 76(2), note—

omit.

40A Amendment of s 78 (Making change application)

- (1) Section 78(3)—

insert—

- (ba) for a change application to change a condition imposed by the Minister under section 95—the Minister; or

[s 41]

(bb) for a change application to change a development approval given by the Minister under part 6, division 3—the Minister; or

(2) Section 78—

insert—

(5) If a change application is made to the Minister and the Minister is satisfied the change does not affect a State interest, the Minister may refer the change application to the assessment manager.

(6) If the Minister refers the change application to the assessment manager, the assessment manager is taken to be the responsible entity for the change application.

41 Amendment of s 79 (Requirements for change applications)

Section 79(1)(a)—

omit, insert—

(a) made in the approved form; and

41A Amendment of s 80 (Notifying affected entities of minor change application)

Section 80(2)(c), after ‘the P&E Court’—

insert—

or the Minister

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

(1) Section 81(2)(b)—

omit, insert—

(b) if the responsible entity is the assessment manager—any properly made submissions

about the development application or another change application that was approved; and

(2) Section 81(2)(d)—

omit, insert—

(d) if the responsible entity is, under section 78(3)(ba) or (bb), the Minister—all matters the Minister would or may assess against or have regard to, if the change application were a development application called in by the Minister; and

(da) if paragraph (d) does not apply—all matters the responsible entity would or may assess against or have regard to, if the change application were a development application; and

(3) Section 81(3), ‘subsection (2)(d)’—

omit, insert—

subsection (2)(d) and (da)

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

(1) Section 82(3)—

insert—

(c) if the responsible entity is, under section 78(3)(ba) or (bb), the Minister—

(i) part 2, division 2 and part 3, other than sections 51, 63 and 64(8)(c), and the development assessment rules apply to the change application only if, and to the extent, those provisions would apply to a development application called in by the Minister; and

(ii) section 105(5) and (6) applies for assessing and deciding the change application.

(2) Section 82—

insert—

(5) If a change application is made within 1 year after the development approval was given, any properly made submission for the application for the development approval is taken to be a properly made submission for the change application.

44 Amendment of s 83 (Notice of decision)

(1) Section 83(1)—

insert—

(h) another person prescribed by regulation.

(2) Section 83—

insert—

(1A) Also, if a negotiated decision notice is not given in relation to the decision, the responsible entity, other than the P&E Court, must give a decision notice about the decision to each principal submitter within 5 business days after the first of the following events happens—

(a) the applicant gives the responsible entity a written notice stating that the applicant does not intend to make change representations under section 75;

(b) the applicant gives the responsible entity notice of the applicant's appeal;

(c) the applicant's appeal period for the change application ends.

(3) Section 83(6), 'subsection (5)'—

omit, insert—

subsection (6)

(4) Section 83(1A) to (8)—

renumber as section 83(2) to (9).

45 Amendment of s 103 (Call in notice)

Section 103(3)(b)(i), after ‘decide’—

insert—

, or reassess and re-decide,

46 Amendment of s 104 (Effect of call in notice)

Section 104(1)(a) and (b), after ‘decision-maker’—

insert—

for the application

47 Amendment of s 105 (Deciding called in application)

(1) Section 105(1)(a), after ‘decide’—

insert—

, or reassess and re-decide,

(2) Section 105(8), ‘83(2) and (3),’—

omit, insert—

83(3) and (4)

(3) Section 105(9)(b)(i), after ‘decide’—

insert—

, or reassess and re-decide,

48 Amendment of s 112 (Regulation prescribing charges)

Section 112(2)—

omit, insert—

- (2) A ***maximum adopted charge***, for a financial year, for trunk infrastructure, is—
- (a) for the 2017–2018 financial year—the prescribed amount for an adopted charge for the infrastructure; or
- (b) otherwise—the sum of—
- (i) the prescribed amount for an adopted charge for the infrastructure in force at the start of the financial year; and
- (ii) an amount equal to the amount mentioned in subparagraph (i) multiplied by the sum of the percentage increases for each financial quarter since the amount was last prescribed or amended.

49 Amendment of s 115 (Provisions for participating local governments and distributor-retailers)

Section 115—

insert—

- (8) Each party to a breakup agreement must publish a copy of the agreement on the party’s website.

49A Amendment of s 139 (Application to convert infrastructure to trunk infrastructure)

- (1) Section 139(1), after ‘may apply’—

insert—

(a ***conversion application***)

- (2) Section 139(2)—

omit, insert—

- (2) The application must be made—

- (a) to the local government in writing; and
- (b) within 1 year after the development approval starts to have effect.

50 Amendment of s 230 (Notice of appeal)

- (1) Section 230(3), ‘the registrar must,’—

omit, insert—

the registrar, must,

- (2) Section 230—

insert—

- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department’s website for this purpose.

51 Amendment of s 231 (Other appeals)

Section 231(4), definition *non-appealable*, paragraphs (b) and (c), ‘a tribunal’—

omit, insert—

any tribunal

52 Amendment of s 249 (Conduct of tribunal proceedings)

Section 249(2), ‘if the parties agree’—

omit.

52A Amendment of s 277 (Assessment and decision rules for particular State heritage places)

Section 277(3) and (4), ‘prudent or’—

omit, insert—

prudent and

53 Amendment of s 287 (Statutory instruments)

Section 287—

insert—

(7) In this section—

statutory instrument includes a designation of land for community infrastructure within the meaning of the old Act.

54 Amendment of s 289 (References to the old Act or provisions of the old Act)

(1) Section 289, heading—

omit, insert—

**289 References to the old Act and the repealed
Integrated Planning Act 1997**

(2) Section 289(2)(a) and (b), after ‘old Act’—

insert—

or the repealed *Integrated Planning Act 1997*

(3) Section 289, table, column 1, entry for ‘a code, or other matter, against which assessable development must be assessed’, after ‘development’—

insert—

, or development requiring compliance assessment,

55 Amendment of s 297 (Categorising development under designations)

Section 297(1)(a)—

omit, insert—

-
- (a) either—
- (i) a designation of land for community infrastructure under the old Act is in force when the old Act is repealed; or
 - (ii) a designation of land for community infrastructure is made under the old Act after the commencement; and

56 Insertion of new s 307A

After section 307—

insert—

307A Application to convert infrastructure to trunk infrastructure

- (1) This section applies in relation to a development approval that is in force when the old Act is repealed.
- (2) Section 139(2)(b) does not apply to a conversion application made by the applicant for the development approval.

56A Amendment of s 319 (Compliance assessment of documents or works)

Section 319(1)(b), ‘works.’—

omit, insert—

works, other than a subdivision plan.

57 Amendment of sch 1 (Appeals)

- (1) Schedule 1, section 1(2)(g) and (h)—

omit, insert—

- (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must be

decided by the Queensland Building and
Construction Commission; or

- (h) a decision to give an enforcement notice—
 - (i) in relation to a matter under paragraphs
(a) to (g); or
 - (ii) under the Plumbing and Drainage Act;
or

(2) Schedule 1, section 1(2)(i), ‘a decision to give’—
omit.

(3) Schedule 1, section 1(2)(k)—
omit.

(4) Schedule 1, section 1—
insert—

(8) In this section—

storey see the Building Code, part A1.1.

(5) Schedule 1, table 1, item 1, ‘An appeal’—
omit, insert—

For a development application other than a
development application called in by the
Minister, an appeal

(6) Schedule 1, table 1, item 2, from ‘An appeal’ to ‘change
application.’—
omit, insert—

For a change application other than a change
application made to the P&E Court or called in by
the Minister, an appeal may be made against—

- (a) the responsible entity’s decision on the
change application; or
- (b) a deemed refusal of the change application.

(7) Schedule 1, table 1, item 3, from ‘An appeal’ to ‘extension
application.’—

omit, insert—

For an extension application other than an extension application called in by the Minister, an appeal may be made against—

- (a) the assessment manager’s decision on the extension application; or
- (b) a deemed refusal of the extension application.

- (8) Schedule 1, table 1, item 4, paragraph (d)—

omit, insert—

- (d) for an appeal to the P&E Court—the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.

- (9) Schedule 1, table 2, item 2, from ‘An appeal’ to ‘variation request.’—

omit, insert—

For a development application or change application other than an application decided by the P&E Court or called in by the Minister, an appeal may be made against the decision to approve the application, to the extent the decision relates to—

- (a) any part of the development application or change application that required impact assessment; or
- (b) a variation request.

- (10) Schedule 1, table 2, item 3, from ‘An appeal’ to ‘variation request.’—

omit, insert—

For a development application or change application other than an application decided by the P&E Court or called in by the Minister, an

[s 58]

appeal may be made against a provision of the development approval, or a failure to include a provision in the development approval, to the extent the matter relates to—

- (a) any part of the development application or change application that required impact assessment; or
- (b) a variation request.

(11) Schedule 1, table 3, item 3—

omit, insert—

3. Certain decisions under the Building Act and the Plumbing and Drainage Act			
An appeal may be made against—			
(a) a decision under the Building Act, other than a decision made by the Queensland Building and Construction Commission, if an information notice about the decision was given or required to be given under that Act; or			
(b) a decision under the Plumbing and Drainage Act, part 4 or 5, if an information notice about the decision was given or required to be given under that Act.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, an information notice about the decision	The person who made the decision	—	—

58 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *required fee, standard conditions* and *storey*—

omit.

(2) Schedule 2—

insert—

prescribed tidal works means tidal works of a

type prescribed under the Coastal Act, section 167(5)(d).

Queensland Building and Construction Commission means the Queensland Building and Construction Commission established under the *Queensland Building and Construction Commission Act 1991*, section 5.

required fee means—

- (a) for an application or referral to a local government—the fee fixed by resolution of the local government for the application or referral; or
- (b) for an application or appeal to the P&E Court—the fee prescribed under the *Supreme Court of Queensland Act 1991*, section 92(2)(a) for the application or appeal; or
- (c) for an application or appeal to a tribunal—the fee prescribed by regulation for the application or appeal; or
- (d) for an application or referral to another public sector entity or the Minister—the fee prescribed by regulation for the application or referral; or
- (e) for an application to a chosen assessment manager—the fee negotiated between the applicant and the chosen assessment manager for the application.

standard conditions, of a deemed approval, see section 64(8)(c).

- (3) Schedule 2, definition *building work*, paragraph (d)—
omit.
- (4) Schedule 2, definition *conversion application*, ‘section 139(2)’—

Part 7 **Amendment of Planning (Consequential) and Other Legislation Amendment Act 2016**

62 **Act amended**

This part amends the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

Editor's note—

Legislation ultimately amended—

- *Building Act 1975*
- *Coastal Protection and Management Act 1995*

63 **Replacement of s 39 (Replacement of s 6 (What is a *building development application*))**

Section 39—

omit, insert—

39 Replacement of s 6 (What is a *building development application*)

Section 6—

omit, insert—

6 What is a *building development application*

(1) A *building development application* is—

- (a) a development application for a development approval—
 - (i) if the local government is the assessment manager for the application—to the extent the application is for building work that, under the Planning Act, must

be assessed against the building assessment provisions; and

Note—

For the functions of a local government in relation to building development applications, see section 51.

- (ii) if a private certifier is the assessment manager for the application—for building work; or
- (b) a change application, other than a minor change application, to change a development approval—
 - (i) if the development approval approves building work—in relation to the building work; or
 - (ii) otherwise—to approve building work.
- (2) However, if a local government is the responsible entity for a change application, the application is a building development application only to the extent the building work mentioned in subsection (1)(b)(i) or (ii) must, under the Planning Act, be assessed against the building assessment provisions.
- (3) In this section—

minor change application means a change application for a minor change to a development approval, as defined in the Planning Act.

64 Amendment of s 49 (Amendment of s 25 (General requirements for supporting documents))

Section 49(2)—

omit.

64A Amendment of s 64 (Amendment of s 48 (Functions of private certifier (class A)))

Section 64(1)—

omit, insert—

(1) Section 48(1)(b)—

omit, insert—

(b) decide the building development application, and give a decision notice for the application; and

65 Replacement of s 75 (Amendment of s 83 (General restrictions on granting building development approval))

Section 75—

omit, insert—

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

(1) Section 83(1)(a) and example, ‘and SPA compliance permits’—

omit.

(2) Section 83(1)(b) and example—

omit, insert—

(b) if the building development application is for a development permit that, under the Planning Act, section 73A, does not authorise the carrying out of a part of the building work unless a relevant preliminary approval is in effect for the part—

(i) until the relevant preliminary approval is in effect for the part;
or

(ii) until a development permit given by an entity other than a private

certifier is in effect for the part;
and

Example—

A building development application is made for a development permit for building work that must be assessed against the building assessment provisions and a code in the local government's planning scheme. The code is not a building assessment provision and none of the referral agencies for the application are required, under the Planning Act, to assess the application against, or having regard to, the code. A private certifier is engaged to assess and decide the building development application. The private certifier must not grant the development permit until either of the following is in effect for the part of the building work that must be assessed against the code—

a preliminary approval given by the local government under the repealed *Sustainable Planning Act 2009*; or

a development permit given by the local government.

- (3) Section 83(1)(d), from 'has jurisdiction' to 'the building work—'—

omit, insert—

must assess the building work against, or having regard to, a matter relating to the building work—

- (4) Section 83(2) to (4)—

omit, insert—

- (2) Subsection (3) applies if the private certifier receives the application before a following application or request is decided—

- (a) if subsection (1)(a) applies to the application—a development

-
- application for each development permit mentioned in the subsection;
- (b) if subsection (1)(b) applies to the application—a development application for a preliminary approval or development permit mentioned in the subsection;
- (c) if subsection (1)(e) applies to the application—a request under the *Plumbing and Drainage Act 2002* for a compliance permit mentioned in the subsection.
- (3) For the development assessment process under the Planning Act, the building development application is taken not to have been received by the private certifier until the day the last or only application or request mentioned in subsection (2)(a), (b) or (c) to be decided is decided.
- (4) This section does not limit part 4.
- (5) In this section—
- referral agency's response period*, for a building development application, means the period stated in the development assessment rules under the Planning Act for complying with section 56(4) of that Act for the application, including any extension of that period under the rules.
- relevant preliminary approval* see the Planning Act, section 73A(6).

66 Amendment of s 113 (Amendment of sch 2 (Dictionary))

Section 113—

insert—

- (6) Schedule 2, definition *referral agency's response*,
'schedule 3'—

omit, insert—

section 56(4)

**67 Amendment of s 153 (Amendment of s 167
(Regulation-making power))**

Section 153(5)—

omit, insert—

- (5) Section 167(6)—

omit, insert—

- (5) A regulation may prescribe—

- (a) assessment benchmarks for the Planning Act for the assessment of assessable development under that Act, other than an assessment carried out by the planning chief executive; and
- (b) the requirements that operational work that is tidal works, or work in a coastal management district, must comply with to be categorised as accepted development under that Act; and
- (c) for section 19(1)(b) of that Act, the extent to which a local government may apply a planning scheme as a categorising instrument under that Act in relation to tidal works in the tidal area for its local government area, as defined under that Act; and
- (d) for schedule 2 of that Act, definition *prescribed tidal works*, the type of tidal works that are prescribed tidal works.

Part 8 Amendment of Sustainable Planning Act 2009

68 Act amended

This part amends the *Sustainable Planning Act 2009*.

69 Amendment of s 120 (When planning scheme, temporary local planning instrument and amendments have effect)

Section 120—

insert—

(1A) Subsection (1B) applies if—

(a) a local government resolves at a public meeting—

(i) to give a temporary local planning instrument to the Minister; and

(ii) to ask the Minister to approve the instrument taking effect on and from the day the resolution was made; and

(b) the Minister, by notice to the local government, approves the request.

(1B) The temporary local planning instrument has effect on and from the day the local government resolution was made.

70 Amendment of s 241 (Preliminary approvals)

Section 241(2), note—

omit, insert—

Note—

See also section 245A.

71 Amendment of s 243 (Development permits)

Section 243—

insert—

Note—

See also section 245A.

72 Insertion of new s 245A

Chapter 6, part 1, division 3, subdivision 4—

insert—

245A Development permits for building work given by private certifiers

- (1) This section applies to a development application for a development permit that—
 - (a) is for building work; and
 - (b) is made to a private certifier as assessment manager.
- (2) Subsection (3) applies to the development application if any part of the building work requires impact assessment.
- (3) A development permit given by the private certifier for the building work does not authorise the carrying out of the part requiring impact assessment, unless a relevant preliminary approval is in effect for the part.
- (4) Subsection (5) applies to the development application if—
 - (a) any part of the building work must be assessed against a matter that is not a building assessment provision; and
 - (b) the matter is not within the jurisdiction of a referral agency.
- (5) A development permit given by the private

certifier for the building work does not authorise the carrying out of the part requiring assessment against the matter, unless a relevant preliminary approval is in effect for the part.

(6) This section applies despite sections 241(2) and 243.

(7) In this section—

relevant preliminary approval means a preliminary approval given by an entity other than a private certifier.

73 Amendment of s 456 (Court may make declarations and orders)

Section 456—

insert—

- (10) Despite any other Act or rules of court to the contrary, notice of a proceeding under this section may be given to the chief executive by emailing the notice to the chief executive at the email address stated on the department's website for this purpose.

74 Replacement of s 457 (Costs)

Section 457—

omit, insert—

457 Costs generally

- (1) Subject to sections 457A and 457B, each party to a proceeding must bear the party's own costs for the proceeding.
- (2) If the court makes an order for costs under section 457A or 457B, the amount of the costs is to be decided under the appropriate procedure and scale of costs for proceedings in the District Court.

- (3) An order for costs may be enforced as if the order were an order of the District Court.

457A Orders for costs in particular circumstances

The court may make an order for costs as the court considers appropriate if a party has incurred costs in 1 or more of the following circumstances—

- (a) the court considers the proceeding was started or conducted primarily for an improper purpose, including, for example, to delay or obstruct;

Example—

A party (the *first party*) with similar commercial interests to another party started a proceeding. The court considers the proceeding was started primarily to advance the first party's commercial interests by delaying or obstructing the other party's development approval from taking effect.

- (b) the court considers the proceeding to be frivolous or vexatious;

Example—

The court considers a proceeding was started or conducted without reasonable prospects of success.

- (c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;
- (d) a party is required to apply for an adjournment because of the conduct of another party;
- (e) without limiting paragraph (d), a party has introduced, or sought to introduce, new material;
- (f) a party has defaulted in the court's procedural requirements;

- (g) the court considers an applicant for a development application did not give all the information reasonably required to assess the development application;
- (h) the court considers an assessment manager, referral agency or local government should have taken an active part in a proceeding and did not do so;
- (i) an applicant, submitter, assessment manager, referral agency or local government does not properly discharge its responsibilities in the proceeding.

457B Orders for costs for particular proceedings

- (1) If the court makes an enforcement order or interim enforcement order against a person, the court may award costs against the person.
- (2) If the court declares that an owner wrongly sought the cancellation of a development approval in contravention of a requirement to obtain the consent of another person or entity to the cancellation, the court must award costs against the owner.
- (3) If the court allows an assessment manager to withdraw from an appeal, the court must not award costs against the assessment manager.

75 Amendment of s 482 (Notice of appeal to other parties—development applications and approvals)

Section 482—

insert—

- (4) Despite any other Act or rules of court to the contrary, the notice may be given to the chief executive by emailing the notice to the chief executive at the email address stated on the

department's website for this purpose.

76 Amendment of s 491B (Power of ADR registrar)

Section 491B(3), 'section 457(1), (4) and (9) to (14)'—

omit, insert—

sections 457A and 457B

77 Amendment of s 575 (Carrying out development without compliance permit)

Section 575(1), penalty, '1665 penalty units'—

omit, insert—

4500 penalty units

78 Amendment of s 578 (Carrying out assessable development without permit)

(1) Section 578(1), penalty, '1665 penalty units'—

omit, insert—

4500 penalty units

(2) Section 578—

insert—

(4) Subsection (5) applies to a development permit for assessable development that is building work if, under section 245A(3) or (5), the permit does not authorise the carrying out of a part of the building work.

(5) For subsection (1), the development permit is not an effective development permit for the part.

79 Amendment of s 580 (Compliance with development approval)

Section 580(1), penalty, '1665 penalty units'—

omit, insert—

4500 penalty units

80 Amendment of s 581 (Offence to carry out prohibited development)

Section 581(1), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

81 Amendment of s 582 (Offences about the use of premises)

Section 582, penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

82 Amendment of s 585 (Coastal emergency exemption for operational work that is tidal works)

Section 585(5), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

83 Amendment of s 586 (Exemption for building work on Queensland heritage place or local heritage place)

Section 586(5), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

84 Amendment of s 587 (False or misleading document or declaration)

Section 587(1), (2) and (3), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

85 Amendment of s 594 (Offences relating to enforcement notices)

Section 594(1) and (2), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

86 Amendment of s 595 (Processing application or request required by enforcement notice or show cause notice)

Section 595, penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

87 Amendment of s 599 (Magistrates Court may make orders)

Section 599(5), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

88 Amendment of s 921 (Compliance with master plans)

Section 921(4) and (5), penalty, ‘1665 penalty units’—

omit, insert—

4500 penalty units

89 Insertion of new ch 10, pt 15

Chapter 10—

insert—

Part 15 **Transitional provision
for Local Government
Electoral
(Transparency and
Accountability in Local
Government) and Other
Legislation
Amendment Act 2017**

999 Costs for existing court proceedings

- (1) This section applies to—
 - (a) a proceeding in the court (an *originating proceeding*) that has been brought before the commencement; or
 - (b) an interlocutory proceeding relating to an originating proceeding that is brought after the commencement.
- (2) Section 457 as in force immediately before the commencement continues to apply to the proceeding.
- (3) Sections 457A and 457B do not apply to the proceeding.

90 Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

costs, for chapter 7, part 1, division 7—

- (a) for a proceeding of the following type, includes a party's costs to investigate, or gather evidence for, the proceeding that the court decides the party reasonably incurred—

- (i) a declaratory proceeding about the lawfulness of land use or development, including any order made by the court about the declaration;
 - (ii) an appeal against the giving of an enforcement notice;
 - (iii) a proceeding for an enforcement order or interim enforcement order; and
- (b) for an appeal against the giving of an enforcement notice, includes costs relating to investigations or gathering of evidence for the giving of the enforcement notice.

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