



Queensland

Building and Other Legislation Amendment Act (No. 2) 2010

Act No. 35 of 2010



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Queensland

Building and Other Legislation Amendment Act (No. 2) 2010

Act No. 35 of 2010

An Act to amend the Ambulance Service Act 1991, the Animal Management (Cats and Dogs) Act 2008, the Building Act 1975, the City of Brisbane Act 2010, the Local Government Act 2009, the Royal National Agricultural and Industrial Association of Queensland Act 1971 and the Sustainable Planning Act 2009 for particular purposes

[Assented to 20 September 2010]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building and Other Legislation Amendment Act (No. 2) 2010*.

2 Commencement

This Act, other than parts 3, 7 and 8, commences on a day to be fixed by proclamation.

Part 2 Amendment of Ambulance Service Act 1991

3 Act amended

This part amends the *Ambulance Service Act 1991*.

4 Insertion of new s 23

Part 2—
insert—

‘23 Requirement to report pool immersion incident

- ‘(1) This section applies if the service is notified of a pool immersion incident.
- ‘(2) The chief executive must ensure that, within 5 business days after notification of the pool immersion incident, the service

gives written notice of the incident to the chief executive (health).

‘(3) The notice must include the following information to the extent the service has it—

- (a) the name and date of birth of the young child to whom the pool immersion incident relates;
- (b) the date the pool immersion incident happened;
- (c) the address of the child’s parents;
- (d) the address where the pool immersion incident happened.

‘(4) In this section—

chief executive (health) means the chief executive of the department in which the *Health Services Act 1991* is administered.

pool immersion incident means an event involving the immersion or partial immersion of a young child under water in a swimming pool, if because of the immersion or partial immersion—

- (a) the child has died; or
- (b) the child has been deprived of air and the health or wellbeing of the child has been adversely affected.

swimming pool means a swimming pool as defined under the *Building Act 1975*, schedule 2.

young child means an individual who is under 5 years.’.

[s 5]

Part 3 Amendment of Animal Management (Cats and Dogs) Act 2008

5 Act amended

This part amends the *Animal Management (Cats and Dogs) Act 2008*.

6 Amendment of s 63 (What is a *restricted dog*)

Section 63—

insert—

‘(3) In this section—

breed, of a dog, does not include a crossbreed of a breed.’.

7 Insertion of new s 63A

Chapter 4, part 1—

insert—

‘63A Provisions for deciding what is a breed of dog

‘(1) Each of the following certificates, for a dog, is evidence the dog is of the breed stated in the certificate—

- (a) a pedigree certificate from the Australian National Kennel Council;
- (b) a pedigree certificate from a member body of the Australian National Kennel Council;
- (c) a pedigree certificate from a national breed council registered with the Australian National Kennel Council;
- (d) a certificate signed by a veterinary surgeon stating, or to the effect, that the dog is of a particular breed.

‘(2) However, if a dog is of the breed American Staffordshire terrier it is not of the breed American pit bull terrier.

‘(3) Also, the breed American pit bull terrier does not include a dog of the breed American Staffordshire terrier.’.

8 Omission of s 202 (Veterinary surgeon certificates)

Section 202—

omit.

9 Insertion of new ch 10, pt 3

After section 222—

insert—

**‘Part 3 Transitional provision for
Building and Other Legislation
Amendment Act (No. 2) 2010**

‘223 Provision about s 63A

‘From the commencement of this section, this Act applies as if section 63A had been in force since 6 April 2010.’.

**Part 4 Amendment of Building Act
1975**

10 Act amended in pt 4 and sch

This part and the schedule amend the *Building Act 1975*.

**11 Replacement of s 28 (Application to build swimming pool
on residential land and must include fencing)**

Section 28—

omit, insert—

[s 12]

‘28 Application to build regulated pool

‘A building development application for the construction of a regulated pool must also be for the construction of barriers, including any fencing, for the pool.’.

12 Amendment of s 231A (Definitions for ch 8)

(1) Section 231A, definition *complying pool*—
omit.

(2) Section 231A—
insert—

‘accommodation agreement—

1 *Accommodation agreement* means any of the following—

- (a) a residential tenancy agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 12;
- (b) a rooming accommodation agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 16;
- (c) a homestay or assisted accommodation agreement;
- (d) an agreement, other than an agreement mentioned in paragraph (a), (b) or (c), under which a person gives to someone else a right to occupy premises in exchange for money or other valuable consideration.

Example for paragraph (d)—

letting a motel or hotel room

2 Paragraph 1(d) applies—

- (a) whether or not the right is a right of exclusive occupation; and
- (b) whether the agreement is—

-
- (i) wholly in writing, wholly oral or wholly implied; or
 - (ii) partly in a form mentioned in subsubparagraph (i) and partly in 1 or both of the other forms.
- 3 The term does not include an agreement between members of a family under which a member of the family gives to another member money or other valuable consideration for a right to occupy that other member's residence.

complying pool means a regulated pool that—

- (a) complies with the pool safety standard; or
- (b) if an exemption is in effect under section 245B for the regulated pool—complies with the pool safety standard to the extent the exemption does not apply.

homestay or assisted accommodation agreement—

1 *Homestay or assisted accommodation agreement* means—

- (a) an agreement under which accommodation is provided at a person's residence to a student who is enrolled to study or train at an educational institution in a State, if—
 - (i) the student pays the person for the accommodation; and
 - (ii) under the agreement, accommodation is also provided to a young child who is a dependant of the student; or
- (b) an agreement under which accommodation is provided to a person, free of charge, by a following entity at premises owned or operated by the entity—
 - (i) a charity registered under the *Collections Act 1966*;
 - (ii) a public sector entity;

[s 12]

- (iii) a local government.
- 2 Paragraph 1 applies whether the agreement is—
- (a) wholly in writing, wholly oral or wholly implied;
or
 - (b) partly in a form mentioned in subparagraph (a) and partly in 1 or both of the other forms.
- 3 The term does not include an agreement between members of a family under which a member of the family gives to another member money or other valuable consideration for a right to occupy that other member's residence.

member, of a person's family, means the person and each of the following—

- (a) the person's spouse;
- (b) the parents of the person or the person's spouse;
- (c) the grandparents of the person or the person's spouse;
- (d) a brother, sister, nephew, niece or first cousin of the person or the person's spouse;
- (e) a child, stepchild or grandchild of the person;
- (f) the spouse of anyone mentioned in paragraph (b), (c), (d) or (e).

pool immersion incident means an event involving the immersion or partial immersion of a young child under water in a swimming pool, if because of the immersion or partial immersion—

- (a) the child has died; or
- (b) the child has been deprived of air and the health or wellbeing of the child has been adversely affected.

pool safety standard application day, for a regulated pool, means—

- (a) for a pool situated on common property or a common property lot under an Act mentioned in schedule 2,

definition *owner*, of a regulated pool, paragraphs (a) to (e) and for use by occupiers of a building subject to that Act—the earliest of the following days to happen—

- (i) if the building, or a part of the building, is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the building or part—the day that is 90 days after the day of settlement;
 - (ii) if an accommodation agreement is entered into for the building, or a part of the building, and a pool safety certificate is not in effect for the pool when the agreement is entered into—the day that is 90 days after the day the agreement is entered into;
 - (iii) the day a pool safety certificate is first in effect for the pool;
 - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (b) for a pool situated on a part of a building mentioned in paragraph (a), other than a shared pool—the earliest of the following days to happen—
- (i) if the part of the building is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the part—the day that is 90 days after the day of settlement;
 - (ii) the day an accommodation agreement is entered into for the part of the building;
 - (iii) the day a pool safety certificate is first in effect for the pool;
 - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (c) for a pool situated on a moveable dwelling or the site in a moveable dwelling park where the dwelling is situated, or on a manufactured home in a residential park or on the site in the park where the manufactured

[s 12]

home is situated—the earliest of the following days to happen—

- (i) if the moveable dwelling or manufactured home is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the moveable dwelling or manufactured home—the day that is 90 days after the day of settlement;
 - (ii) the day an accommodation agreement is entered into for the moveable dwelling or manufactured home;
 - (iii) the day a pool safety certificate is first in effect for the pool;
 - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (d) for a pool situated on a moveable dwelling park (other than on moveable dwelling premises on the park) or on the common areas of a residential park—the earliest of the following days to happen—
- (i) if the moveable dwelling park or residential park is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the moveable dwelling park or residential park—the day that is 90 days after the day of settlement;
 - (ii) if an accommodation agreement is entered into for any moveable dwelling situated on the moveable dwelling park, or any manufactured home situated in the residential park, and a pool safety certificate is not in effect for the pool when the agreement is entered into—the day that is 90 days after the day the agreement is entered into;
 - (iii) the day a pool safety certificate is first in effect for the pool;
 - (iv) the day that is 5 years after the 2010 Act commencement day; or

-
- (e) if paragraphs (a) to (d) do not apply—the earliest of the following days to happen—
- (i) if the building on the regulated land where the pool is situated is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the building—the day that is 90 days after the day of settlement;
 - (ii) the day an accommodation agreement is entered into for the building;
 - (iii) the day a pool safety certificate is first in effect for the pool;
 - (iv) the day that is 5 years after the 2010 Act commencement day.’.
- (3) Section 231A, definition *regulated land*, paragraph 1(b), from ‘under’ to ‘2008’—
omit.
- (4) Section 231A, definition *regulated land*, paragraph 1(c), from ‘under’ to ‘2003’—
omit.
- (5) Section 231A, definition *shared pool*, paragraph 2(b)(i), from ‘dwelling park’ to ‘2008’—
omit, insert—
‘moveable dwelling park’.
- (6) Section 231A, definition *shared pool*, paragraph 2(b)(ii), from ‘under’ to ‘2003’—
omit.

13 Amendment of s 231B (What is a *regulated pool*)

Section 231B—

insert—

- ‘(3) Despite subsection (1), a *regulated pool* does not include a swimming pool situated on common property in a building

[s 14]

subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985* if an approved pool safety management plan is in force for the pool.’.

14 Replacement of ch 8, pt 2

Chapter 8, part 2—

omit, insert—

‘Part 2 Compliance with pool safety standard and other matters about pool safety

‘Division 1 Compliance with pool safety standard

‘232 Compliance with pool safety standard—regulated pool

- ‘(1) The owner of a regulated pool must ensure—
- (a) the pool complies with the pool safety standard for the pool; and
 - (b) all barriers for the pool are kept in good condition.

Maximum penalty—165 penalty units.

- ‘(2) However, if the regulated pool is in existence on the 2010 Act commencement day, subsection (1)(a) does not apply to the owner of the pool until the pool safety standard application day for the pool.

Note—

For the application of subsection (1) to particular pools constructed before the 2010 Act commencement day, see section 291.

- ‘(3) Also, if an exemption under division 3 or 4 is in effect for a regulated pool, subsection (1)(a) does not apply to the owner of the pool to the extent the exemption applies.

‘Division 2 Requirements about constructing regulated pool

‘233 Constructing regulated pool—requirement for warning sign

‘(1) This section applies to each relevant person for a regulated pool, other than a portable swimming pool.

‘(2) The relevant person must ensure that, before construction of the pool starts, a warning sign, complying with the requirements for a warning sign prescribed under a regulation, is displayed on the land on which the pool is situated in the way prescribed under a regulation.

Maximum penalty—20 penalty units.

‘(3) The relevant person must ensure the warning sign is displayed until a building certifier has provided a certificate in the approved form stating the pool is a complying pool.

Maximum penalty—20 penalty units.

‘(4) In this section—

portable swimming pool means a swimming pool that is designed to be readily assembled by hand and moved from place to place.

relevant person, for a regulated pool, means—

(a) the person who is or is to become the owner of the pool;
or

(b) the builder of the pool.

‘234 Constructing regulated pool—requirement for compliance with pool safety standard

‘(1) This section applies to a person if—

(a) a regulated pool has been constructed or is being constructed; and

[s 14]

- (b) the pool has not been filled with water to a depth of 300mm or more; and
 - (c) the person—
 - (i) is, or is to become, the owner of the pool; or
 - (ii) has contracted with the owner to carry out the construction of the pool.
- ‘(2) The person must, unless the person has a reasonable excuse, ensure that, before the pool is filled with water to a depth of 300mm or more, a building certifier has provided a certificate in the approved form stating the pool is a complying pool.

Maximum penalty—165 penalty units.

‘Division 3 Exemptions from compliance with pool safety standard—disability

‘Subdivision 1 Applying for exemption and deciding application

‘235 Application for exemption—disability

‘A person may apply to the local government for an exemption under this division from complying with a part of the pool safety standard relating to barriers for a regulated pool if the person is—

- (a) the owner of the pool; or
- (b) if the pool is still to be constructed—the person who is to be the owner of the pool.

‘236 Requirement for further information

‘The local government may require the applicant to give the local government medical evidence to support the application.

‘237 Decision on application

- ‘(1) The local government must consider the application and, within 5 business days after the application is made—
- (a) grant the exemption; or
 - (b) refuse to grant the exemption.
- ‘(2) The local government may grant the exemption only if it is satisfied that—
- (a) a person with a disability is, or is to become, an occupier of land on which the regulated pool is situated; and
 - (b) it would be physically impracticable for the person, because of the person’s disability, to access the pool if it had barriers complying with the pool safety standard.
- ‘(3) The local government may grant the exemption on the reasonable conditions it considers necessary or desirable to prevent a young child accessing the pool.
- ‘(4) If the exemption is granted on conditions, the applicant must comply with each condition of the exemption.
- Maximum penalty for subsection (4)—165 penalty units.
- ‘(5) The local government may only exempt a person from complying with a part of the pool safety standard to the extent reasonably necessary to allow a person mentioned in subsection (2) to access the pool.

‘238 Notice of decision

- ‘(1) If the local government decides to grant the exemption, it must give the applicant written notice of the exemption.
- ‘(2) If the local government decides to refuse to grant the exemption or impose conditions on the exemption, the local government must give the applicant an information notice about the decision.

[s 14]

Note—

There is a right of appeal to a building and development dispute resolution committee against the decision on the application or a failure to decide the application. See the Planning Act, section 532.

‘239 Notice of exemption to be given to chief executive

- ‘(1) The local government must give the chief executive notice of each exemption granted under this division.
- ‘(2) The notice must—
 - (a) be given to the chief executive within 10 business days after the exemption is granted; and
 - (b) state the address, and real property description, of the land on which the regulated pool to which the exemption relates is situated.

‘240 Application of pool safety standard under exemption

‘If the local government grants the exemption, the pool safety standard continues to apply for the regulated pool to the extent the exemption does not apply.

‘Subdivision 2 Ending and revocation of exemptions

‘241 When exemption ends

- ‘The exemption ends if—
- (a) the applicant stops being the owner of the regulated pool; or
 - (b) the person because of whom the exemption was granted is no longer an occupier of the land on which the pool is situated; or
 - (c) it would no longer be physically impracticable for the person because of whom the exemption was granted to

access the pool if it complied with the pool safety standard.

'242 Local government may revoke exemption

- '(1) This section applies if—
- (a) a local government has, under section 237, granted an applicant an exemption; and
 - (b) the local government is satisfied 1 or more of the following applies—
 - (i) the decision on the application for the exemption was based on a false or misleading particular given by the applicant;
 - (ii) the exemption has ended under section 241;
 - (iii) the exemption was subject to conditions and there has been a contravention of a condition.
- '(2) The local government must give the applicant a show cause notice inviting the applicant to show cause why the decision should not be revoked.
- '(3) After considering any representations made to it under the show cause notice, the local government may, by a further notice (a ***revocation notice***) given to the applicant, revoke the decision previously given.
- '(4) The revocation notice must be, or be accompanied by, an information notice about the decision to give the notice and state—
- (a) that the applicant must ensure the pool has, around the pool, barriers complying with the pool safety standard; and
 - (b) the day by which the applicant must comply with the notice.

[s 14]

Note—

There is a right of appeal to a building and development dispute resolution committee against the decision to revoke the decision previously given. See the Planning Act, section 532.

‘(5) The applicant must comply with the revocation notice.

Maximum penalty for subsection (5)—165 penalty units.

‘(6) If the applicant fails to comply with the revocation notice, the failure is taken to be a failure to take action under the *Local Government Act 2009*, section 142.

‘(7) In this section—

show cause notice means a show cause notice under section 247(1).

‘243 Notice of revocation to be given to chief executive

‘(1) If the local government gives a person a revocation notice, the local government must give the chief executive notice of the revocation notice.

‘(2) The notice must—

(a) be given to the chief executive within 10 business days after the revocation notice is given; and

(b) state—

(i) the day the revocation notice was given; and

(ii) the address, and real property description, of the land on which the regulated pool to which the revocation notice relates is situated.

‘Subdivision 3 Miscellaneous

‘244 Keeping copy of exemption

‘(1) The local government must keep a copy of each exemption it grants under this division.

- ‘(2) The local government must—
- (a) keep the copy while the exemption is still in force and for at least 5 years after the exemption is no longer in force; and
 - (b) make the copy available for inspection and purchase as if it were a document that, under the Planning Act, chapter 9, part 6, the local government must make available for inspection and purchase.

‘Division 4 Exemptions from compliance with pool safety standard—impracticality

‘Subdivision 1 Applying for exemption and deciding applications

‘245 Application for exemption—compliance impracticable

- ‘(1) The owner of a regulated pool may apply to the local government for an exemption under this division from complying with a part of the pool safety standard relating to barriers for the regulated pool.
- ‘(2) The application must be accompanied by enough details to—
- (a) identify the part of the pool safety standard for which the owner is seeking the exemption; and
 - (b) show compliance with the part of the pool safety standard is not practicable.

‘245A Requirement for further information

‘The local government may require the owner to give the local government further information to establish that compliance with the part of the pool safety standard is not practicable.

[s 14]

‘245B Decision on application

- ‘(1) The local government must consider the application and decide to—
- (a) grant the exemption; or
 - (b) refuse to grant the exemption.
- ‘(2) In deciding the application, the local government may consider the following—
- (a) whether compliance with the part of the pool safety standard may require the owner to—
 - (i) move or demolish a building or part of a building; or
 - (ii) change the location or size of the regulated pool; or
 - (iii) remove vegetation protected from removal under an Act or a local law;
 - (b) the cost of the barriers or work required to ensure the pool complies with the part of the pool safety standard, having regard to the nature of any existing barriers for the pool;
 - (c) other matters the local government considers relevant.
- ‘(3) The local government may grant the exemption on the reasonable conditions it considers necessary or desirable to prevent a young child accessing the pool.
- ‘(4) If the exemption is granted on conditions, the owner of the regulated pool must comply with each condition of the exemption.
- Maximum penalty for subsection (4)—165 penalty units.
- ‘(5) The local government may only exempt a person from complying with a part of the pool safety standard to the extent reasonably necessary in the circumstances to overcome the impracticality associated with compliance with the part.
- ‘(6) The local government is taken to have refused to grant the exemption if the local government does not decide the application within the decision period.

‘245C Notice of decision and application of pool safety standard under exemption

- ‘(1) If the local government decides to grant an exemption under this division the local government must give the applicant written notice of the exemption.
- ‘(2) If the local government decides to refuse to grant the exemption or impose conditions on the exemption, or the application is taken to be refused under section 245B(6), the local government must give the applicant an information notice about the decision.

Note—

There is a right of appeal to a building and development dispute resolution committee against the decision on the application or the failure to decide the application. See the Planning Act, section 532.

- ‘(3) If the local government grants an exemption for a regulated pool under this division, the pool safety standard continues to apply for the pool to the extent the exemption does not apply.

‘245D Continuation of exemption

- ‘(1) An exemption for a regulated pool under this division continues to apply to the pool unless the exemption is revoked under subdivision 2.
- ‘(2) If the exemption is granted on conditions, the conditions are binding on the successors in title to the owner of the regulated pool to whom the exemption was granted.

‘Subdivision 2 Revocation of exemptions

‘245E Local government may revoke exemption

- ‘(1) This section applies if—
 - (a) the local government has, under this division, granted an exemption; and

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- (b) the local government is satisfied 1 or more of the following applies—
 - (i) the decision on the application for the exemption was based on a false or misleading particular given in the application;
 - (ii) the exemption was subject to conditions and there has been a contravention of a condition.
- ‘(2) The local government must give the owner of the regulated pool a show cause notice inviting the owner to show cause why the decision should not be revoked.
- ‘(3) After considering any representations made to it under the show cause notice, the local government may, by a further notice (a *revocation notice*) given to the owner, revoke the decision previously given.
- ‘(4) The revocation notice must be, or be accompanied by, an information notice about the decision to give the notice and state—
 - (a) that the owner must ensure the pool has, around the pool, barriers complying with the pool safety standard; and
 - (b) the day by which the owner must comply with the notice.

Note—

There is a right of appeal to a building and development dispute resolution committee against the decision to revoke the decision previously given. See the Planning Act, section 532.

- ‘(5) The owner must comply with the revocation notice.
Maximum penalty for subsection (5)—165 penalty units.

- ‘(6) In this section—

show cause notice means a show cause notice under section 247(1).

‘Subdivision 3 Miscellaneous

‘245F Notice of exemption or revocation to be given to chief executive

- ‘(1) The local government must give the chief executive notice of each exemption granted under this division.
- ‘(2) If the local government gives a person a revocation notice, the local government must give the chief executive notice of the revocation notice.
- ‘(3) A notice under subsection (1) or (2) must—
 - (a) be given to the chief executive within 10 business days after the exemption is granted or revocation notice is given; and
 - (b) state all of the following—
 - (i) the address, and real property description, of the land on which the regulated pool to which the exemption or revocation notice relates is situated;
 - (ii) for a notice about a revocation notice—the day the revocation notice was given.

‘245FA Keeping copy of exemption

- ‘(1) The local government must keep a copy of each exemption it grants under this division.
- ‘(2) The local government must—
 - (a) keep the copy while the exemption is still in force and for at least 5 years after the exemption is no longer in force; and
 - (b) make the copy available for inspection and purchase as if it were a document that, under the Planning Act, chapter 9, part 6, the local government must make available for inspection and purchase.

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‘Division 5 Reporting, and giving notice of, pool immersion incidents

‘245G Requirement to report pool immersion incident

‘(1) A person in charge of a hospital must, under subsection (2), unless the person has a reasonable excuse, notify the chief executive (health) if an examination of a young child by a doctor in the hospital indicates that the child has been involved in a pool immersion incident.

Maximum penalty—20 penalty units.

‘(2) The notice must—

- (a) be given to the chief executive (health) within 5 business days after the examination happened; and
- (b) include the following information to the extent the person has it—
 - (i) the name and date of birth of the young child;
 - (ii) the day the examination happened;
 - (iii) the address of the child’s parents;
 - (iv) the address where the pool immersion incident happened.

‘(3) The notice may include other information about the pool immersion incident the person in charge of the hospital considers relevant.

‘(4) In this section—

person in charge, of a hospital, means—

- (a) for a public sector hospital under the *Health Services Act 1991*—the person responsible for the day to day operation and control of the hospital; or
- (b) for a private health facility under the *Private Health Facilities Act 1999*—the licensee of the private health facility.

‘245H Disclosure of information about pool immersion incident

- ‘(1) This section applies if a health professional reasonably believes that a young child has been involved in a pool immersion incident.
- ‘(2) The health professional may give the chief executive (health) any relevant information about the young child’s condition and the incident.
- ‘(3) The health professional is not liable, civilly, criminally, or under an administrative process, for giving the information under subsection (2).
- ‘(4) Also, merely because the health professional gives the information, the health professional can not be held to have—
 - (a) breached any code of professional etiquette or ethics; or
 - (b) departed from the accepted standards of professional conduct.
- ‘(5) Without limiting subsection (3) or (4), if the health professional would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the health professional—
 - (a) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (b) is not liable to disciplinary action for giving the information.
- ‘(6) In this section—

health professional means—

 - (a) a person who is a health professional under the *Health Services Act 1991*, part 7;
 - (b) an ambulance officer under the *Ambulance Service Act 1991*;
 - (c) another person prescribed under a regulation for this section who, as part of the person’s profession or

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occupation, performs functions relating to the health of others.

'245I Giving notice of pool immersion incidents

- '(1) If the chief executive (health) receives a pool immersion notice, the chief executive (health) must, within 5 business days after receiving it, give notice of the pool immersion incident to which it relates to—
- (a) PSC; and
 - (b) the local government for the area in which the incident happened; and
 - (c) CCYPCG; and
 - (d) the chief executive.
- '(2) However, if the chief executive (health) receives more than 1 pool immersion notice about the same pool immersion incident, the chief executive (health) need only give notice under subsection (1) for the first pool immersion notice received about the incident.
- '(3) The notice given under subsection (1) must state the information included in the pool immersion notice.
- '(4) In this section—
- CCYPCG*** means the Commission for Children and Young People and Child Guardian established under the *Commission for Children and Young People and Child Guardian Act 2000*.
- pool immersion notice*** means notice of a pool immersion incident given to the chief executive (health) under—
- (a) the *Ambulance Service Act 1991*, section 23; or
 - (b) section 245G.

‘Division 6 Pool safety management plans for particular pools

‘Subdivision 1 Preliminary

‘245J Application of div 6

‘This division applies to the owner of a swimming pool situated on common property in a building subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

‘245K Requirement to have pool safety management plan

‘The owner must, by the day that is 6 months after the 2010 Act commencement day, have a plan (a *pool safety management plan*) approved under this division for the swimming pool, unless a pool safety certificate is in effect for the pool.

Maximum penalty—165 penalty units.

‘245L Requirement to comply with approved pool safety management plan

‘If the owner has an approved pool safety management plan for the swimming pool, the owner must comply with the plan.

Maximum penalty—165 penalty units.

‘Subdivision 2 Approval, and duration, of pool safety management plans

‘245M Application for approval

‘(1) The owner must apply to the chief executive for approval of its pool safety management plan for the swimming pool.

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- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) be accompanied by—
 - (i) the proposed pool safety management plan; and
 - (ii) the fee prescribed under a regulation.
- ‘(3) The proposed pool safety management plan must include details of the measures (the *pool safety measures*) the owner intends to implement under the plan to appropriately provide for the safety of young children in and around the pool.

‘245N Requirement for further information

‘The chief executive may, by notice given to the owner, require the owner to give the chief executive further information about the pool safety management plan, including, for example, information about the pool safety measures under the plan.

‘245O Decision on application

- ‘(1) The chief executive must consider the application and, within 20 business days after receiving it, decide to—
 - (a) approve the pool safety management plan; or
 - (b) refuse to approve the plan.
- ‘(2) In deciding the application, the chief executive must have regard to—
 - (a) the pool safety management plan and any information about the plan given to the chief executive under section 245N; and
 - (b) the guidelines, if any, made by the chief executive about preparing a pool safety management plan.
- ‘(3) The chief executive must not approve the pool safety management plan unless satisfied the pool safety measures

under the plan appropriately provide for the safety of young children in and around the pool.

- ‘(4) Within 5 business days after deciding the application, the chief executive must give the owner—
- (a) if the decision is to approve the pool safety management plan—notice of the approval; or
 - (b) if the decision is to refuse to approve the pool safety management plan—an information notice about the decision.

‘245P Duration of plan

‘An approved pool safety management plan has effect for 1 year after the day it is approved, unless it is sooner cancelled under this division.

‘Subdivision 3 Cancellation of approval and amendment of approved pool safety management plan

‘245Q Cancellation or amendment

- ‘(1) This section applies if the chief executive is satisfied the pool safety measures under the owner’s approved pool safety management plan no longer appropriately provide for the safety of young children in and around the pool.
- ‘(2) The chief executive may, by notice given to the owner—
- (a) cancel the approval for the plan; or
 - (b) require the owner to amend the plan in the way stated in the notice.
- ‘(3) However, before acting under subsection (2), the chief executive must—
- (a) give the owner a notice (a *show cause notice*) stating each of the following—

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- (i) the proposed action the chief executive is considering taking under subsection (2);
 - (ii) the grounds for taking the proposed action;
 - (iii) the facts and circumstances forming the basis for the grounds;
 - (iv) if the proposed action is to require the owner to amend the plan—the proposed amendment;
 - (v) that the owner may, within a stated period (the *show cause period*), make submissions to the chief executive about why the proposed action should not be taken; and
- (b) consider any submissions made to the chief executive under paragraph (a)(v).
- ‘(4) The show cause period must end at least 20 business days after the owner is given the show cause notice.
- ‘(5) If, after complying with subsection (3), the chief executive decides not to take the proposed action, the chief executive must give the owner notice of the decision.
- ‘(6) If, after complying with subsection (3), the chief executive decides to take the proposed action, the chief executive must give the owner an information notice about the decision.

‘245R When decision has effect

- ‘(1) A decision to cancel an approved pool safety management plan takes effect when the information notice about the decision is given to the owner.
- ‘(2) If the chief executive decides to require the owner to amend an approved pool safety management plan, the plan is taken to have been amended—
- (a) in the way stated in the notice given under section 245Q(2)(b); and
 - (b) when the information notice about the decision is given.

‘Subdivision 4 Appeals

‘245S Appeals to building and development committee of decisions under div 6

- ‘(1) This section applies if the owner is given under this division an information notice about a decision of the chief executive.
- ‘(2) The owner may, within 20 business days after the information notice is given, appeal the decision to a building and development committee under the Planning Act.

‘Division 7 Miscellaneous

‘245T Access to regulated pool to be kept secure

- ‘(1) A person who opens a gate or door giving access to a regulated pool must, unless the person has a reasonable excuse, ensure the gate or door is securely closed while the gate or door is not in use.

Maximum penalty—165 penalty units.

- ‘(2) The owner of a regulated pool that is a shared pool must, unless the owner has a reasonable excuse, ensure that any gate or door giving access to the pool is kept securely closed at all times when the gate or door is not in use.

Maximum penalty—165 penalty units.

- ‘(3) The occupier of premises on which there is a regulated pool that is not a shared pool must, unless the occupier has a reasonable excuse, ensure that any gate or door giving access to the pool is kept securely closed at all times when the gate or door is not in use.

Maximum penalty—165 penalty units.

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‘245U Apportioning cost of constructing etc. dividing fence

- ‘(1) The cost of constructing, altering, repairing, replacing and maintaining a regulated pool’s fence consisting of the whole or part of a dividing fence is, to the extent it is attributable to work done to comply with section 232(1), to be borne—
 - (a) by the owner of the land on which the pool is situated; or
 - (b) if the work or part of the work is done to comply with this part in relation to more than 1 parcel of land—equally by the owners of the parcels of land where the pools are situated.
- ‘(2) Subsection (1) applies despite the *Dividing Fences Act 1953*.
- ‘(3) A local law about the construction of fencing around swimming pools does not limit the discretion of a Magistrates Court under the *Dividing Fences Act 1953*.
- ‘(4) In this section—
dividing fence see the *Dividing Fences Act 1953*, section 6(1).

‘245UA Chief executive may give local government information about regulated pools

- ‘(1) This section applies if the chief executive reasonably suspects the fencing or other barriers for a regulated pool do not comply with the requirements of this Act for the fencing or barriers.
- ‘(2) The chief executive may, by notice given to the local government, inform the local government of the chief executive’s suspicions.
- ‘(3) The notice must include information about the location of the regulated pool.

‘245V When particular local government exemptions about requirements for pool fencing end

- ‘(1) This section applies to a local government pool fencing exemption in force for a regulated pool immediately before

the day (the *relevant day*) the owner of the pool must, under this Act, ensure the pool complies with the pool safety standard.

- ‘(2) On and from the relevant day for the regulated pool, the local government pool fencing exemption is taken to have no force or effect in relation to the pool.
- ‘(3) Subsection (2) applies despite any other Act or law.
- ‘(4) In this section—

local government pool fencing exemption—

- 1 A *local government pool fencing exemption*, for a regulated pool, means an exemption, whether partial or otherwise, from compliance with any requirements under a local law or a law of the State about fencing of the pool, if the exemption—
 - (a) was lawfully given by a local government; and
 - (b) is in force immediately before the relevant day for the pool.
- 2 However, the term does not include an exemption mentioned in paragraph (1), to the extent the exemption—
 - (a) applies to a particular occupier of land on which a swimming pool is situated; and
 - (b) was given solely on the basis of the occupier’s inability to access the pool because of the occupier’s disability; and
 - (c) is in force immediately before the relevant day for the regulated pool.

‘246 When particular local law has no force or effect for regulated pool

- ‘(1) This section applies to a provision of a local law to the extent it regulates pool safety matters for a regulated pool.

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- ‘(2) On the day the owner of the regulated pool must, under this Act, ensure the pool complies with the pool safety standard, the provision of the local law, to the extent it regulates pool safety matters, is taken to have no force or effect in relation to the pool.
- ‘(3) In this section—
- pool safety matters*, for a regulated pool, means—
- (a) the construction or maintenance of barriers for the pool; or
 - (b) a matter for ensuring the safety of persons using a regulated pool and prescribed under section 231D(1), definition *pool safety standard*, paragraph (b).’.

15 Insertion of new s 246ACA

After section 246AC—

insert—

‘246ACA Special provision for pool inspection in remote areas

- ‘(1) If a pool safety inspector is engaged to inspect a regulated pool situated in a remote area, the pool safety inspector—
- (a) need not carry out an on-site inspection of the pool; and
 - (b) may, for this Act, inspect the pool by using documents or any technology allowing the pool safety inspector to satisfy himself or herself about whether the pool is, or is not, a complying pool.
- ‘(2) In this section—
- prescribed local government* means a local government prescribed under a regulation for this section.
- remote area* means a part of the area of a prescribed local government that the local government—
- (a) is satisfied is a remote area for this section because of its remoteness from the business premises of persons who perform pool safety inspection functions; and

- (b) has by resolution declared to be a remote area for this section.’.

16 Insertion of new s 246ADA

Chapter 8, part 3, division 2—

insert—

‘246ADA Requirement to inspect particular pools

- ‘(1) This section applies if a local government receives for a regulated pool—
- (a) notice of a pool immersion incident under section 245I; or
 - (b) a pool safety complaint notice; or
 - (c) a notice under section 245UA.
- ‘(2) The local government must, as soon as practicable after receiving the notice, inspect the regulated pool for compliance with—
- (a) if under this Act the owner of the pool must ensure the pool complies with the pool safety standard for the pool—the pool safety standard; or
 - (b) otherwise—the fencing standards for the pool.
- ‘(3) However, the local government need not, under subsection (2), inspect a regulated pool for which the local government has received a pool safety complaint notice if the local government reasonably considers the complaint is vexatious.
- ‘(4) The local government must not charge a fee for an inspection under subsection (2) relating to a notice mentioned in subsection (1)(a) or (b).
- ‘(5) If, after the inspection, the local government is satisfied the pool does not comply with the pool safety standard or fencing standards for the pool (the *relevant standards*), the local government must take necessary enforcement action to ensure the pool complies with the relevant standards.
- ‘(6) In this section—

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fencing standards, for a regulated pool, means the fencing standards under section 233 of this Act as in force before the 2010 Act commencement day that applied to the pool immediately before that day.

pool safety complaint notice, for a regulated pool, means any complaint in writing that—

- (a) is given to a local government; and
- (b) concerns a matter about the pool's safety, including the safety of its fencing or other barriers.'.

17 Amendment of s 246AE (Power of local government to inspect regulated pool)

Section 246AE(1)—

omit, insert—

- '(1) This section applies if—
- (a) a pool safety inspector notifies the local government about a regulated pool under section 246AC(4); or
 - (b) the local government must, under section 246ADA, inspect a regulated pool.'.

18 Amendment of s 246AG (Show cause notice procedure and decision)

- (1) Section 246AG(8), 'business'—

omit, insert—

'business days'.

- (2) Section 246AG—

insert—

- '(9) If the owner appeals the decision to cancel the pool safety certificate, the decision is stayed until—
- (a) the appeal is withdrawn; or
 - (b) the appeal is dismissed.'.

19 Insertion of new ss 246AIA and 246AIB

Chapter 8, part 3, division 2—

insert—

‘246AIA Keeping records of particular notices

- ‘(1) If a local government receives a notice mentioned in section 246ADA(1) for a regulated pool, the local government must, for at least 5 years after its receipt, keep a record of—
- (a) the notice; and
 - (b) the results of any inspection of the regulated pool that was carried out by the local government under section 246ADA.
- ‘(2) The record may be kept in the way the local government decides.

‘246AIB Local government to give information to chief executive

- ‘(1) The chief executive may, by notice given to the local government, ask the local government to give the chief executive information contained in a record kept by the local government under section 246AIA(1)(b).
- ‘(2) The local government must comply with the request.’

20 Amendment of s 246AO (Appeals to building and development committee of decisions under pt 3)

- (1) Section 246AO(1), ‘, or is entitled to be given,’—
omit.
- (2) Section 246AO(3), definition *appeal period*, ‘or taken to be given’—
omit.

21 Insertion of new ch 8, pt 4, divs 3–5

Chapter 8, part 4—

[s 21]

insert—

‘Division 3 Functions of private certifiers—regulated pools

‘246ATA Application of div 3

‘This division applies to a private certifier (class A) if, in carrying out private certifying functions in relation to a regulated pool, the private certifier is satisfied—

- (a) the pool does not comply with the pool safety standard; and
- (b) the owner of the pool has not taken, or is not taking, appropriate action to ensure the pool complies with the pool safety standard.

‘246ATB Private certifier to take enforcement action

- ‘(1) The private certifier must take appropriate enforcement action against the owner of the regulated pool to ensure it complies with the pool safety standard.
- ‘(2) For taking the enforcement action—
 - (a) a reference in section 248 to a local government includes a reference to a private certifier (class A) taking action under subsection (1); and
 - (b) a reference in the Planning Act, chapter 7, part 3, divisions 2 and 3 to an assessing authority includes a reference to a private certifier (class A) taking action under subsection (1).
- ‘(3) However, in taking the enforcement action, the private certifier need not first give a show cause notice for the matter the subject of the enforcement action.
- ‘(4) Subsection (3) applies despite section 248(3) and the Planning Act, section 588(2).

- ‘(5) To remove any doubt, it is declared that this section does not limit the local government’s functions or powers under this Act or the Planning Act, chapter 7, part 3, divisions 2 and 3.
- ‘(6) If—
- (a) under this section a private certifier (class A) gives a person an enforcement notice; and
 - (b) the person does not comply with the notice;
- the certifier must as soon as practicable give the local government notice of the noncompliance.

‘Division 4 **Obligation to give information to particular regulated pool owners**

‘246ATC **Local government’s obligation to give information about particular regulated pools**

- ‘(1) A local government must, at least once every 4 years, give the swimming pool safety advisory information to each owner of a non-certificate regulated pool in its local government area.
- ‘(2) The local government may comply with subsection (1) in the way it considers appropriate.

Example—

a local government may include the swimming pool safety advisory information in a document given to all ratepayers in its area

- ‘(3) In this section—

non-certificate regulated pool means a regulated pool included on the regulated pools register, if a pool safety certificate has not been in effect for the pool for at least 4 years.

swimming pool safety advisory information means information prescribed under a regulation about matters relating to ensuring barriers for swimming pools are safe and reduce the risk of children drowning.

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Examples of information—

- information promoting the importance of having pools inspected for compliance with the pool safety standard
- information about obligations to comply with the pool safety standard

‘Division 5 Provisions about dealings involving regulated pools

‘Subdivision 1 Preliminary

‘246ATD Definitions for div 5

‘In this division—

regulated premises means a building, or part of a building (other than a part that is not a class 1, 2, 3 or 4 building), on regulated land, if a regulated pool is situated on the land.

relevant regulated pool, for regulated premises, means—

- (a) if the premises are a building that is subject to an Act mentioned in schedule 2, definition *owner*, of a regulated pool, paragraphs (a) to (e)—a regulated pool situated on common property or a common property lot under that Act; or
- (b) if the premises are part of a building mentioned in paragraph (a)—a regulated pool situated on that part or on common property or a common property lot under the Act mentioned in paragraph (a) to which the building is subject; or
- (c) if the premises is a moveable dwelling situated on a moveable dwelling park—a regulated pool situated on the dwelling, the site in the moveable dwelling park where the dwelling is situated or on other land, other than moveable dwelling premises, in the moveable dwelling park; or

-
- (d) if the premises is a manufactured home in a residential park—a regulated pool situated on the manufactured home, the site in the residential park where the manufactured home is situated or on the common areas of the residential park; or
 - (e) if paragraphs (a) to (d) do not apply—a regulated pool situated on the regulated land where the premises are located.

‘246ATE When pool safety certificate taken to be in effect for div 5

- ‘(1) This section applies for each provision of this division and any proceeding relating to a purported contravention of the provision.
- ‘(2) A pool safety certificate is taken to be in effect for a relevant regulated pool at a particular time if information included on the regulated pools register at that time shows that a pool safety certificate is in effect for the pool.
- ‘(3) However, subsection (2) does not apply in relation to the owner of a relevant regulated pool if the owner knew, or ought reasonably to have known, that a pool safety certificate was not in effect for the pool.

‘Subdivision 2 Offences and other requirements

‘246ATF Offence about sale of regulated premises

‘An owner of regulated premises who is proposing to sell the premises must, before settlement under a contract of sale for the premises—

- (a) if a pool safety certificate is in effect for a relevant regulated pool for the premises—give to the purchaser of the premises under the contract a copy of the pool safety certificate; and

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- (b) if a pool safety certificate is not in effect for a relevant regulated pool that is not a shared pool—give a notice in the approved form to each of the following—
 - (i) the purchaser;
 - (ii) the chief executive; and
- (c) if a pool safety certificate is not in effect for a relevant regulated pool that is a shared pool—give a notice in the approved form to each of the following—
 - (i) the purchaser;
 - (ii) the owner of the shared pool;
 - (iii) the chief executive.

Maximum penalty—165 penalty units.

‘246ATG Offence about entering into accommodation agreement—regulated pool that is not a shared pool

‘The owner of regulated premises must not enter into an accommodation agreement for the premises unless a pool safety certificate is in effect for each relevant regulated pool for the premises that is not a shared pool.

Maximum penalty—165 penalty units.

‘246ATH Offences about displaying and giving copies of pool safety certificates for shared pools

- ‘(1) Subsection (2) applies to the owner of a relevant regulated pool for regulated premises if—
 - (a) the pool is a shared pool; and
 - (b) a pool safety certificate is in effect for the pool.
- ‘(2) The owner must, as soon as practicable after the pool safety certificate is in effect for the pool and while it is in effect, ensure a copy of the certificate is conspicuously displayed as near as practicable to—
 - (a) the main entrance of the regulated premises; or

(b) a gate or door giving access to the pool.

Maximum penalty—165 penalty units.

‘(3) Subsection (4) applies to the owner of regulated premises if a pool safety certificate is in effect for a relevant regulated pool for the premises that—

(a) is a shared pool; and

(b) is not situated on land or in a building at which short-term accommodation is provided.

Examples of buildings at which short-term accommodation is provided—

motel, hotel and backpacker’s hostel

‘(4) The owner must, before entering into an accommodation agreement for the premises, give to the person who will be the occupier of the premises under the agreement a copy of the pool safety certificate.

Maximum penalty—165 penalty units.

‘246ATI Offence about entering into accommodation agreement—pool safety certificate not in effect for shared pool

‘(1) This section applies to the owner of regulated premises if a pool safety certificate is not in effect for a relevant regulated pool for the premises that is a shared pool.

‘(2) The owner must, before entering into an accommodation agreement for the premises, give a notice in the approved form to each of the following—

(a) if the shared pool is not situated on land or in a building at which short-term accommodation is provided—the person who will be the occupier of the premises under the accommodation agreement;

(b) the owner of the shared pool;

(c) the chief executive.

Maximum penalty—165 penalty units.

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‘246ATJ Requirement to obtain pool safety certificate for regulated pool that is not a shared pool

- ‘(1) This section applies to a person who purchases regulated premises if, at settlement under the contract of sale for the premises, a pool safety certificate is not in effect for a relevant regulated pool for the premises that is not a shared pool.
- ‘(2) The person must ensure there is a pool safety certificate in effect for the pool within 90 days after the day of settlement.
Maximum penalty—165 penalty units.
- ‘(3) This section applies despite a contravention of section 246ATF(b) or (c) in relation to the sale of the regulated premises.

‘246ATK Requirement to obtain pool safety certificate for regulated pool that is a shared pool

- ‘(1) Subsection (2) applies to the owner of a shared pool on regulated premises if the owner is given a notice under section 246ATF(c) relating to the sale of the premises.
- ‘(2) The owner must ensure there is a pool safety certificate in effect for the pool within 90 days after the day of settlement under the contract of sale for the premises.
Maximum penalty—165 penalty units.
- ‘(3) Subsection (4) applies to the owner of a shared pool on regulated premises if the owner is given a notice under section 246ATI relating to an accommodation agreement for the premises.
- ‘(4) The owner must ensure there is a pool safety certificate in effect for the pool within 90 days after the day the accommodation agreement is entered into.
Maximum penalty—165 penalty units.

Note—

For the application of this provision to particular regulated pools constructed before the 2010 Act commencement day, see section 300.

‘246ATL Licensee not to ask for, or receive, reward in particular circumstances

- ‘(1) Subsection (2) applies if, immediately before an accommodation agreement is entered into for regulated premises, a pool safety certificate is not in effect for a relevant regulated pool for the premises that is not a shared pool.
- ‘(2) A licensee must not, for any activities carried out by the licensee for the entering into of the accommodation agreement, ask for, or receive, a reward for the performance of the licensee’s activities.
- ‘(3) A contravention of subsection (2) is not an offence.
- ‘(4) However, a failure of a licensee to comply with subsection (2) is, for the *Property Agents and Motor Dealers Act 2000*, section 496, a ground for starting disciplinary proceedings against the licensee.
- ‘(5) In this section—

licensee means a person in whose name a property agents and motor dealers licence is issued and in force under the *Property Agents and Motor Dealers Act 2000*.

reward includes remuneration of any kind including, for example, any fee, commission or gain.

‘Subdivision 3 Miscellaneous

‘246ATM Prescribed notification requirements

- ‘(1) This section applies in relation to the proposed sale of regulated premises.
- ‘(2) A regulation may prescribe notification requirements for the owner of the premises to inform a prospective purchaser of the premises, before any contract for the sale of the premises is entered into, if there is no pool safety certificate in effect for a relevant regulated pool for the premises.
- ‘(3) The prescribed notification requirements may only require the owner to inform the purchaser—

[s 22]

- (a) that there is no pool safety certificate in effect for a relevant regulated pool for the premises; and
- (b) about matters relating to the purchaser's potential obligations under the Act if the premises are sold and there is no pool safety certificate in effect for the pool'.

22 Amendment of s 246AU (Person must not perform pool safety inspection functions without licence)

Section 246AU, from 'unless—' to 'complying pool.'—

omit, insert—

'unless the function is carrying out minor repairs mentioned in section 231C(b).'

22A Amendment of s 246BH (Who may apply)

Section 246BH, from 'An individual' to 'individual—'—

omit, insert—

- '(1) A building certifier may apply to PSC for a licence.
- '(2) An individual who is not a building certifier may apply to PSC for a licence only if the individual—'.

22B Amendment of s 246BI (Requirements for application)

- (1) Section 246BI(1)(c)(iv), 'a copy'—

omit, insert—

'if the applicant is not a building certifier—a copy'.

- (2) Section 246BI(1)(c)(v), 'if'—

omit, insert—

'if the applicant is not a building certifier and'.

23 Amendment of s 246CK (Making a complaint against a pool safety inspector)

- (1) Section 246CK(2)(c)—
omit.
- (2) Section 246CK(4) and (5)—
renumber as section 246CK(5) and (6).
- (3) Section 246CK—
insert—
- ‘(4) PSC may require a complaint or the further particulars to be verified by statutory declaration.’.
- (4) Section 246CK(5), as renumbered under this section, from ‘division’—
omit, insert—
‘division if—
 - (a) the further particulars are not given; or
 - (b) the complaint or further particulars are not verified by statutory declaration in compliance with subsection (4).’.

24 Amendment of s 246DI (Decision on application and steps after making decision)

Section 246DI—

insert—

- ‘(8) In considering if an eligible course provider is a suitable entity to conduct the training course, PSC must consider each of the following—
 - (a) whether the entity, or an executive officer of the entity, has been convicted of a relevant offence;
 - (b) whether the entity has been refused an approval for a training course under this part, or has had an approval cancelled;

[s 26]

(c) any other matter PSC considers relevant.

‘(9) In this section—

executive officer, of an eligible course provider, means a person who is concerned with or takes part in the eligible course provider’s management, whether or not the person’s position is given the name of executive officer.’.

26 Insertion of new s 246FK

Chapter 8, part 9, division 6—

insert—

‘246FK Privacy

‘(1) This section applies to a person who—

- (a) is, or has been, a member of PSC or a person appointed under section 246FA(4); and
- (b) obtains in the course of, or because of, the performance of a function of PSC, personal information that is not publicly available.

‘(2) The person must not—

- (a) make a record of the information; or
- (b) divulge or communicate the information to anyone else, whether directly or indirectly; or
- (c) use the information to benefit any person.

Maximum penalty—100 penalty units.

‘(3) However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used—

- (a) for, or as part of, a function of PSC; or
- (b) with the consent of the person to whom the information relates; or
- (c) as required by law.’.

27 Amendment of s 256 (Prosecution of offences)

- (1) Section 256(2)(c), (d) and (e)—
renumber as section 256(2)(h), (i) and (j).
- (2) Section 256(2)—
insert—
- ‘(c) for an offence against section 245G(1)—the chief executive, a local government or the chief executive (health); or
 - (d) for an offence against section 245K, 245L or 246AR(2)—the chief executive or a local government; or
 - (e) for an offence against section 246AD(2) or 246AJ(4)—PSC or a local government; or
 - (f) for an offence against section 246AP(2)—the chief executive, a local government or the general manager of BSA; or
 - (g) for an offence against chapter 8, part 4, division 5, subdivision 2, other than section 246ATH(2)—the chief executive, a local government or a person authorised by a local government; or’.
- (3) Section 256(2)(i), as renumbered under this section, ‘part 6 or 7’—
omit, insert—
part 6, 7 or 8, or section 246FF(1) or 246FK(2)

28 Insertion of new s 257A

After section 257—

insert—

‘257A Disclosure of particular information

- ‘(1) A relevant person is authorised to disclose pool immersion information if the chief executive—

[s 28]

- (a) believes on reasonable grounds the disclosure is in the public interest; and
 - (b) has, in writing, authorised the disclosure.
- ‘(2) Also, a relevant person is authorised to disclose pool safety information to PSC if the chief executive—
- (a) believes on reasonable grounds the disclosure is in the public interest; and
 - (b) has, in writing, authorised the disclosure.
- ‘(3) In addition, a relevant person is authorised to disclose pool immersion information if—
- (a) the disclosure is to the Commonwealth, another State, or an entity of the Commonwealth or another State and the disclosure is required or allowed under an agreement—
 - (i) between Queensland and the Commonwealth, State or entity; and
 - (ii) prescribed under a regulation; or
 - (b) the disclosure is to an entity of the State and the disclosure is required or allowed under an agreement—
 - (i) between the chief executive and the entity; and
 - (ii) prescribed under a regulation; or
 - (c) the disclosure is to a person who requires the information to perform a function under the *Coroners Act 2003*, other than the preparation of an annual report.
- ‘(4) The department’s annual report for a financial year under the *Financial Accountability Act 2009* must include details of—
- (a) the nature of any information disclosed under subsection (1) or (2) during the financial year; and
 - (b) the purpose for which the information was disclosed.
- ‘(5) However, the details mentioned in subsection (4)(a) must not identify, directly or indirectly, any person to whom the information relates.

‘(6) Despite the *Public Service Act 2008*, section 103, the chief executive may not delegate the chief executive’s power under subsection (1) or (2).

‘(7) In this section—

entity, of the Commonwealth or a State, includes a department and an entity established under an Act for a public purpose.

pool safety information means information about matters relating to swimming pool safety obtained by the chief executive in the administration of, or exercise of a function under, chapter 8.

pool immersion information means information given to the chief executive under section 245I.

relevant person means—

- (a) the chief executive; or
- (b) an officer or employee of the department.’

29 Amendment of s 258 (Guidelines)

(1) Section 258(2)(b)—

renumber as section 258(2)(d).

(2) Section 258(2)—

insert—

- ‘(b) a guideline about the content of a pool safety management plan;
- (c) a guideline to help local governments declare an area to be a remote area for section 246ACA;’.

30 Amendment of s 273 (Swimming pool fences for existing tourist resort complexes exempted)

Section 273(2)—

insert—

[s 31]

Note—

A pool for which a local law is of no effect under this section is subject to chapter 8.’

31 Insertion of new ch 11, pt 10

Chapter 11—

insert—

‘Part 10 Transitional provisions for Building and Other Legislation Amendment Act (No. 2) 2010

‘290 Definitions for pt 10

‘In this part—

amending Act means the *Building and Other Legislation Amendment Act (No. 2) 2010*.

fencing standards, for a swimming pool, see previous section 233.

previous, for a provision of this Act, means the provision as in force immediately before the 2010 Act commencement day.

unamended Act means this Act as in force before the 2010 Act commencement day.

‘291 When s 232 applies to particular regulated pools

‘(1) Subsection (2) applies to a regulated pool that—

- (a) is a shared pool; and
- (b) was constructed before the 2010 Act commencement day; and
- (c) is situated on land or in a building at which only short-term accommodation is provided.

Examples for paragraph (c)—

motel, hotel and backpacker's hostel

- '(2) If the pool safety standard application day for the pool happens more than 90 days before the day that is 6 months after the 2010 Act commencement day (the *postponed day*), section 232(1) applies to the owner of the regulated pool on and from the postponed day, unless a pool safety certificate is in effect for the pool before that day.
- '(3) Subsection (4) applies to a regulated pool that—
 - (a) is a shared pool, other than a shared pool mentioned in subsection (1)(a); and
 - (b) was constructed before the 2010 Act commencement day.
- '(4) If the pool safety standard application day for the pool happens more than 90 days before the day that is 2 years after the 2010 Act commencement day (also the *postponed day*), section 232(1) applies to the owner of the regulated pool on and from the postponed day, unless a pool safety certificate is in effect for the pool before that day.
- '(5) This section applies despite section 232.

'292 Term of pool safety certificate for particular regulated pools

- '(1) This section applies—
 - (a) to a shared pool to which section 291 applies; and
 - (b) despite section 246AL.
- '(2) If a pool safety certificate is given for the pool before the day that is 3 months after the 2010 Act commencement day, the certificate expires at the end of 2 years after the day it is given, unless it is sooner cancelled under section 246AF.
- '(3) This section applies to a pool safety certificate whether it was given before or after the 2010 Act commencement day.

[s 31]

‘293 Continuing application of particular provisions—requirements about fencing pool

- ‘(1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day.
- ‘(2) Previous sections 235 and 237 continue to apply to the pool until—
 - (a) for a pool to which section 291 applies—the later of the following—
 - (i) the day that is 6 months after the 2010 Act commencement day;
 - (ii) the pool safety standard application day for the pool; or
 - (b) for another pool—the pool safety standard application day for the pool.
- ‘(3) For subsection (2), previous sections 232 to 234 continue to apply as if the unamended Act had not been amended by the amending Act.

‘294 Continuing application of particular provisions—resuscitation sign

- ‘(1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day if—
 - (a) under section 293, previous section 235 applies to the pool; and
 - (b) previous section 236 applied to the pool owner of the pool immediately before the 2010 Act commencement day.
- ‘(2) Previous section 236 continues to apply to the pool owner of the pool while previous section 235 applies to it.
- ‘(3) For subsection (2)—

- (a) previous section 236(2) continues to apply to the pool owner as if a reference in the previous subsection to a regulation were a reference to a regulation in force immediately before the 2010 Act commencement day; and
- (b) previous sections 232 and 234 continue to apply as if the unamended Act had not been amended by the amending Act.

‘295 Application of s 233

- ‘(1) This section applies to a regulated pool being constructed on the 2010 Act commencement day.
- ‘(2) Section 233(2) applies to the relevant person for the regulated pool as if the reference in the subsection to before construction of the pool starts were a reference to on the 2010 Act commencement day.
- ‘(3) In this section—
relevant person, for a regulated pool, see section 233(4).

‘296 Continuing application of previous s 237

- ‘(1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day if, under section 293, previous section 235 applies to the pool.
- ‘(2) Previous section 237 continues to apply to the pool owner of the pool while previous section 235 applies to it.
- ‘(3) For subsection (2), previous sections 232 and 234 continue to apply as if the unamended Act had not been amended by the amending Act.

‘297 Application for exemption under previous s 240

- ‘(1) This section applies to an application under previous section 240 for an exemption from compliance with the fencing

[s 31]

standards made to a local government but not decided before the 2010 Act commencement day.

- ‘(2) The local government may, under previous section 240—
 - (a) continue to decide the application; and
 - (b) grant or refuse to grant the exemption.
- ‘(3) Previous section 241(1) continues to apply for a decision mentioned in subsection (2) as if the unamended Act had not been amended by the amending Act.

‘298 Continuing effect of particular exemptions

- ‘(1) This section applies to an exemption, for a regulated pool, from compliance with the fencing standards granted by a local government under previous section 240, if the exemption is in effect on the 2010 Act commencement day.
- ‘(2) The exemption is taken to be an exemption granted under chapter 8, part 2, division 3.
- ‘(3) If the exemption was subject to a condition immediately before the 2010 Act commencement day, the exemption continues to be subject to the condition.

‘299 Keeping copy of exemption

- ‘(1) This section applies to an exemption granted by a local government under previous section 240.
- ‘(2) Section 244 applies to the local government in relation to the exemption as if the exemption were granted under chapter 8, part 2, division 3.

‘300 When s 246ATK applies to particular regulated pools

- ‘(1) Subsection (2) applies to a regulated pool that—
 - (a) is a shared pool; and
 - (b) was constructed before the 2010 Act commencement day; and

- (c) is situated on land or in a building at which only short-term accommodation is provided.

Examples for paragraph (c)—

motel, hotel and backpacker's hostel

- ‘(2) If the owner of the regulated pool is given a relevant notice more than 90 days before the day that is 6 months after the 2010 Act commencement day (the *postponed day*), section 246ATK applies to the owner of the pool—
- (a) as if the reference in section 246ATK(2) to within 90 days after the day of settlement under the contract of sale for the premises were a reference to by the postponed day; and
- (b) as if the reference in section 246ATK(4) to within 90 days after the day the accommodation agreement is entered into were a reference to by the postponed day.
- ‘(3) Subsection (4) applies to a regulated pool that—
- (a) is a shared pool, other than a shared pool mentioned in subsection (1); and
- (b) was constructed before the 2010 Act commencement day.
- ‘(4) If the owner of the regulated pool is given a relevant notice more than 90 days before the day that is 2 years after the 2010 Act commencement day (also the *postponed day*), section 246ATK applies to the owner of the regulated pool—
- (a) as if the reference in section 246ATK(2) to within 90 days after the day of settlement under the contract of sale for the premises were a reference to by the postponed day; and
- (b) as if the reference in section 246ATK(4) to within 90 days after the day the accommodation agreement is entered into were a reference to by the postponed day.
- ‘(5) This section applies despite section 246ATK.
- ‘(6) In this section—

[s 32]

relevant notice means a notice under section 246ATF(c) or 246ATI.’.

32 Amendment of sch 2 (Dictionary)

(1) Schedule, definitions *construct*, *fencing standards*, *indoor swimming pool*, *pool owner* and *revocation notice*—
omit.

(2) Schedule 2—
insert—

‘2010 Act commencement day means the day the *Building and Other Legislation Amendment Act (No. 2) 2010*, part 4, commences.

accommodation agreement, for chapter 8, see section 231A.

amending Act, for chapter 11, part 10, see section 290.

approved pool safety management plan means a pool safety management plan approved and in effect under chapter 8, part 2, division 6.

chief executive (health) means the chief executive of the department in which the *Health Services Act 1991* is administered.

common areas, for a residential park, see the *Manufactured Homes (Residential Parks) Act 2003*, schedule.

construct, for a regulated pool, includes install or place the pool on land, including within a building.

Examples—

- 1 A person constructs a regulated pool if the person installs the pool above ground level on land or in a building.
- 2 A person constructs a regulated pool if the pool is portable and the person places it, ready to be filled with water, on land or in a building.

fencing standards, for chapter 11, part 10, see section 290.

homestay or assisted accommodation agreement, for chapter 8, see section 231A.

indoor swimming pool means—

- (a) a swimming pool completely enclosed by the walls of a building; or
- (b) a swimming pool on a deck or roof top of a building if the pool is, under the usual ways of entering or leaving the building, only accessible from the inside of the building.

manufactured home see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

member, of a person's family, for chapter 8, see section 231A.

moveable dwelling see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

moveable dwelling park see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

moveable dwelling premises see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

owner, of a regulated pool, means—

- (a) for a regulated pool on land or in a building or structure that is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
 - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
 - (ii) if the pool is situated on common property under the Act—the primary thoroughfare body corporate for the common property; or
- (b) for a regulated pool on land or in a building or structure that is subject to the *Mixed Use Development Act 1993*—
 - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
 - (ii) if the pool is situated on a community property lot under the Act—the community body corporate for the lot; or

[s 32]

- (c) subject to paragraphs (a) and (b), for a regulated pool on land or in a building or structure that is subject to the *Building Units and Group Titles Act 1980*—
 - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
 - (ii) if the pool is situated on common property under the Act—the body corporate for the common property; or
- (d) for a regulated pool on land or in a building or structure that is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
 - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
 - (ii) if the pool is situated on common property under the Act for the community titles scheme—the body corporate for the scheme; or
- (e) for a regulated pool on land or in a building or structure that is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
 - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
 - (ii) if the pool is situated on common property under the Act for a community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or
- (f) for a regulated pool on land, or in a building or structure on land, granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or
- (g) for a regulated pool situated on a moveable dwelling or the site in a moveable dwelling park where the dwelling is situated—
 - (i) generally—the owner of the moveable dwelling; or

-
- (ii) if the occupier of the moveable dwelling is the owner of the pool but not the owner of the dwelling—the occupier; or
 - (h) for a regulated pool on a moveable dwelling park, other than on moveable dwelling premises in the park—the owner of the park; or
 - (i) for a regulated pool on a manufactured home in a residential park, or on the site in the park where the home is situated—
 - (i) generally—the owner of the manufactured home; or
 - (ii) if the occupier of the manufactured home is the owner of the pool but not the owner of the home—the occupier; or
 - (j) for a regulated pool on the common areas of a residential park—the owner of the residential park; or
 - (k) if paragraphs (a) to (j) do not apply—
 - (i) generally—the owner of the land, building or structure on which the pool is situated; or
 - (ii) if the occupier of the land, building or structure, or that part of any land, building or structure, on which the pool is situated is the owner of the pool but not the owner of the land, building or structure—the occupier.

pool immersion incident, for chapter 8, see section 231A.

pool safety management plan see section 245K.

pool safety measures see section 245M(3).

pool safety standard application day, see section 231A.

previous, for chapter 11, part 10, see section 290.

regulated premises, for chapter 8, part 4, division 5, see section 246ATD.

relevant regulated pool, for chapter 8, part 4, division 5, see section 246ATD.

-
- (a) the construction or maintenance of barriers for a regulated pool; or
 - (b) a matter for ensuring the safety of persons using a regulated pool and prescribed under the Building Act, section 231D(1), definition *pool safety standard*, paragraph (b).
- ‘(2) If a local law that is in force before the commencement of this section contains a provision that regulates a matter mentioned in subsection (1), the council—
- (a) must not amend the provision after the commencement; and
 - (b) must repeal the provision by 1 January 2017.
- ‘(3) A local law, to the extent that it is contrary to this section, has no effect.
- ‘(4) In this section—
- barriers*, for a regulated pool, includes any of the following—
- (a) the fencing for the pool;
 - (b) the walls of a building enclosing the pool;
 - (c) another form of barrier mentioned or provided for in the pool safety standard under the Building Act.’.

35 Insertion of new s 123A

After section 123—

insert—

‘123A Entry by authorised person, at reasonable times, to inspect regulated pools

- ‘(1) At all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a regulated pool, and barriers or fencing for the pool, for compliance with—

[s 36]

- (a) if, under the Building Act, the owner of the pool must ensure the pool complies with the pool safety standard or a part of the standard—the pool safety standard or part; or
 - (b) if paragraph (a) does not apply—a provision of a law that regulates—
 - (i) the construction or maintenance of barriers or fencing for the pool; or
 - (ii) another matter relating to the safety of persons using the pool.
- ‘(2) However, the authorised person must, as soon as the authorised person enters the property—
- (a) inform any occupier of the property—
 - (i) of the reason for entering the property; and
 - (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and
 - (b) produce his or her identity card for the occupier of the property to inspect.
- ‘(3) In this section—
pool safety standard see the Building Act, section 231D.’

36 Amendment of s 124 (General powers after entering a property)

Section 124(1)(b), ‘or 122’—

omit, insert—

‘, 122 or 123A’.

37 Amendment of schedule (Dictionary)

Schedule—

[s 40]

‘(4) In this section—

barriers, for a regulated pool, includes any of the following—

- (a) the fencing for the pool;
- (b) the walls of a building enclosing the pool;
- (c) another form of barrier mentioned or provided for in the pool safety standard under the Building Act.’.

40 Insertion of new s 134A

After section 134—

insert—

‘134A Entry by authorised person, at reasonable times, to inspect regulated pools

‘(1) At all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a regulated pool, and barriers or fencing for the pool, for compliance with—

- (a) if, under the Building Act, the owner of the pool must ensure the pool complies with the pool safety standard or a part of the standard—the pool safety standard or part; or
- (b) if paragraph (a) does not apply—a provision of a law that regulates—
 - (i) the construction or maintenance of barriers or fencing for the pool; or
 - (ii) another matter relating to the safety of persons using the pool.

‘(2) However, the authorised person must, as soon as the authorised person enters the property—

- (a) inform any occupier of the property—
 - (i) of the reason for entering the property; and

- (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and
 - (b) produce his or her identity card for the occupier of the property to inspect.
- ‘(3) In this section—
pool safety standard see the Building Act, section 231D.’.

41 Amendment of s 135 (General powers after entering a property)

Section 135(1)(b), ‘or 133’—

omit, insert—

‘, 133 or 134A’.

42 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

‘*regulated pool* see the Building Act, section 231B.’.

‘17E Dealing with prescribed land

- ‘(1) The Association may not grant or agree to grant a mortgage, charge or lien over prescribed land other than to Queensland Treasury Corporation.
- ‘(2) A mortgage, charge or lien granted by the Association over land after the land becomes prescribed land, other than to Queensland Treasury Corporation, is void.
- ‘(3) No writ of execution may be registered in the freehold land register in relation to prescribed land.
- ‘(4) In this section—
grant includes create.
writ of execution see the *Land Title Act 1994*, schedule 2.

‘17F Insolvency events

- ‘(1) For this section, an *insolvency event* happens if—
 - (a) the Association is insolvent or states that it is insolvent; or
 - (b) the Association takes a step to obtain, or is granted, protection under a law from a creditor; or
 - (c) the Association’s members pass a special resolution to wind up the Association; or
 - (d) an event or circumstances mentioned in the *Associations Incorporation Act 1981*, section 90(1)(a) to (e) happen; or
 - (e) under the *Associations Incorporation Act 1981*, section 93, the incorporation of the Association is cancelled by the chief executive of the department in which that Act is administered; or
 - (f) a receiver, or receiver and manager, is appointed to the Association or any of its assets; or
 - (g) a mortgagee takes possession of any of the Association’s assets or undertakings; or

- (h) anything else happens that corresponds, or has a substantially similar effect, to an event or circumstances mentioned in paragraphs (a) to (g).
- ‘(2) If an insolvency event happens, all prescribed land is divested from the Association and vests for an estate in fee simple in the State subject to any mortgages, charges, encumbrances, liens, leases, easements, agreements, licences, and other transactions affecting the land at the time of the insolvency event.
- ‘(3) No compensation is payable by the State to the Association or any other person because of the operation of subsection (2).
- ‘(4) The chief executive may give to the registrar—
 - (a) a certificate stating that an insolvency event has happened; and
 - (b) a request to record the vesting of the prescribed land in the State under subsection (2).
- ‘(5) On receiving the certificate and request, the registrar must record the vesting of the prescribed land in the freehold land register in the appropriate way.
- ‘(6) However, subsection (5) applies subject to any declaration by a court that the insolvency event has not happened.
- ‘(7) To remove any doubt, it is declared that, if under this section prescribed land is divested from the Association and vested for an estate in fee simple in the State, nothing in this Act limits how the State may use or deal with the land.

‘17G Notice in freehold land register

- ‘(1) As soon as practicable after land is prescribed under section 17D, the chief executive must ask the registrar to record that this part applies to the prescribed land.
- ‘(2) On receiving the request, the registrar must make a record in a way that a search of the freehold land register relating to prescribed land will show that this part applies to the land.

- ‘(3) If land stops being prescribed land, the chief executive must ask the registrar to cancel a record made under subsection (2).
- ‘(4) The registrar must comply with a request from the chief executive to cancel a record made under subsection (2).’.

Part 8 **Amendment of Sustainable Planning Act 2009**

47 **Act amended**

This part amends the *Sustainable Planning Act 2009*.

48 **Amendment of s 736 (Publishing particular information about development application)**

- (1) Section 736(2) and (3)—
renumber as section 736(3) and (5).
- (2) Section 736—
insert—
- ‘(2) A local government may publish on its website the information and documents that—
- (a) are prescribed under a regulation; and
- (b) relate to each development application made to the local government as assessment manager.

Examples of information—

- the names of the referral agencies for the development application
- the day the development application was decided, and whether it was approved, approved subject to conditions or refused

Examples of documents—

- the approved form in which the development application was made

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- the acknowledgement notice
 - a technical report’.
- (3) Section 736(3), as renumbered under this section, after ‘information’—
- insert—*
- ‘mentioned in subsection (1)’.
- (4) Section 736—
- insert—*
- ‘(4) The local government may continue to publish on its website the information mentioned in subsection (1) after the period for which it is required to be published under subsection (3) ends.’.
- (5) Section 736(5), as renumbered under this section, from ‘Subsection (1)’ to ‘subsection’—
- omit, insert—*
- ‘Subsections (1) and (2) do not apply to information or documents mentioned in the subsections’.
- (6) Section 736—
- insert—*
- ‘(6) In subsection (2)—
- development application*** includes a development application made under repealed IPA.’.

Schedule **Minor amendments of Building
Act 1975**

section 10

- 1** **Chapter 6, part 3, division 2, heading, ‘license’—**
omit, insert—
‘licence’.

- 2** **Schedule 2, definition *show cause notice*, paragraphs (b),
(c) and (d), ‘for’—**
omit.

- 3** **Schedule 2, definition *show cause period*, paragraphs (c)
and (d), ‘for’—**
omit.

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