

Queensland



**BUILDING AND  
INTEGRATED PLANNING  
AMENDMENT ACT 1998**

**Act No. 13 of 1998**



# Queensland



## BUILDING AND INTEGRATED PLANNING AMENDMENT ACT 1998

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Queensland



**Building and Integrated Planning  
Amendment Act 1998**

**Act No. 13 of 1998**

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**An Act to amend the *Building Act 1975*, the *Integrated Planning Act 1997* and other Acts**

*[Assented to 23 March 1998]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Building and Integrated Planning Amendment Act 1998*.

### **Commencement**

**2.(1)** Part 5 commences immediately before the commencement of the *Environmental and Other Legislation Amendment Act 1997*, section 6.

**(2)** Part 7 commences on the day of assent.

**(3)** The remaining provisions commence on a day to be fixed by proclamation.

## **PART 2—AMENDMENT OF BUILDING ACT 1975**

### **Act amended**

**3.** This part amends the *Building Act 1975*.

### **Amendment of title**

**4.** Title, ‘for local governments’ to ‘structures, and’—

*omit, insert—*

‘about the erection of buildings and other structures, to provide for building certifying, and’.

**Amendment of s 1 (Citation)**

5. Section 1, heading—

*omit, insert—*

‘Short title’.

**Omission of s 2 (Commencement of Act)**

6. Section 2—

*omit.*

**Replacement of s 4**

7. Section 4—

*omit, insert—*

**‘Act binds all persons**

‘4.(1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

‘(2) Nothing in this Act makes the State liable to be prosecuted for an offence.’.

**Omission of s 4A (Use of Crown buildings in emergency)**

8. Section 4A—

*omit.*

**Replacement of s 5 (Interpretation)**

9. Section 5—

*omit, insert—*

**‘Definitions**

**‘5.(1)** In this Act—

**“accrediting auditor”** see section 63K.

**“accrediting body”** means a body authorised under a regulation under section 63C to be an accrediting body for accrediting building certifiers.

**“approved form”** means a form approved under section 64.

**“assessment manager”** has the meaning given by the *Integrated Planning Act 1997*, section 3.1.7.<sup>1</sup>

**“build”** includes—

- (a) starting or continuing to build; and
- (b) doing, or starting or continuing to do, work in the course of or for building; and
- (c) performing structural work or altering or adding to a building; and
- (d) moving a building from 1 position to a different position (whether on the same allotment, another allotment or partly on the same and partly on another allotment).

**“building”** means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

**“building certifier”** means an individual accredited as a building certifier by an accreditation body.

**“Building Code of Australia”** means the edition, current at the relevant time, of the Building Code of Australia (including the Queensland

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<sup>1</sup> Section 3.1.7 (Assessment manager)—

**3.1.7.(1)** The **“assessment manager”**, for an application, is—

- (a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or
  - (b) if paragraph (a) does not apply—
    - (i) the entity prescribed under a regulation; or
    - (ii) if no entity has been prescribed—the entity decided by the Minister.
- (2)** The assessment manager administers the application.

Appendix) published by the body known as the Australian Building Codes Board and includes the edition as amended from time to time by amendments published by the board.

**“building work”** has the meaning given by the *Integrated Planning Act 1997*, section 1.3.5.<sup>2</sup>

**“complaint”** means a complaint about a building certifier made under part 6B.

**“court”** means the Planning and Environment Court.

**“disciplinary finding”** means a finding of professional misconduct.

**“dividing fence”** has the meaning given by the *Dividing Fences Act 1953*.

**“enforcement notice”** see section 50(1).

**“indoor swimming pool”** means a swimming pool—

- (a) wholly enclosed by the walls of a building; or
- (b) on a building.

**“local government”** means the local government for the local government area where the building work or other work is proposed.

**“outdoor swimming pool”** means a swimming pool other than an indoor swimming pool.

**“owner”**, of a building or structure, means—

- (a) if the building or structure is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
  - (i) for a single lot in the building or structure—the registered proprietor; or

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<sup>2</sup> Section 1.3.5 (Definitions for terms used in “development”)—

**“building work”** means—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building; or
- (b) excavating or filling—
  - (i) for, or incidental to, the activities mentioned in paragraph (a); or
  - (ii) that may adversely affect the stability of a building, whether on the land on which the building is situated or on adjoining land; or
- (c) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).

- (ii) for 2 or more lots in the building or structure—the primary thoroughfare body corporate; or
- (b) if the building or structure is subject to the *Mixed Use Development Act 1993*—
  - (i) for a single lot in the building or structure—the registered proprietor; or
  - (ii) for 2 or more lots in the building or structure—the community body corporate; or
- (c) subject to paragraphs (a) and (b), if the building or structure is subject to the *Building Units and Group Titles Act 1980*—
  - (i) for a single lot in the building or structure—the registered proprietor; or
  - (ii) for 2 or more lots in the building or structure—the body corporate; or
- (d) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
  - (i) for a single lot in the building or structure—the registered proprietor; or
  - (ii) for 2 or more lots in the building or structure—the body corporate for the scheme; or
- (e) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
  - (i) for a single lot in the building or structure—the registered proprietor; or
  - (ii) for 2 or more lots in the building or structure—the body corporate for the community titles scheme that is a principal scheme; or
- (f) if the building or structure is part of a time-sharing scheme and the name and address of a person has been notified under the

*Local Government Act 1993*, section 715<sup>3</sup>—the person; or

- (g) if the building or structure is on land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or
- (h) if the building or structure is 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
- (i) if paragraphs (a) to (h) do not apply—the person for the time being entitled to receive the rent for the building or structure or would be entitled to receive the rent for the building or structure if the building or structure were let to a tenant at a rent.

**“portable wading pool”** means a pool that—

- (a) is capable of being filled with water to a depth of no more than 450 mm; and
- (b) has a volume of no more than 2 000 L; and
- (c) has no filtration system.

**“private certifier”** has the meaning given by the *Integrated Planning Act 1997*, section 5.3.3.<sup>4</sup>

**“professional misconduct”** includes conduct (whether by act or omission) when a building certifier—

- (a) seeks, accepts or agrees to accept a benefit (whether for the building certifier’s benefit or another person) as a reward or inducement to act other than under this Act; or
- (b) acts in a way contrary to a duty under this Act; or

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<sup>3</sup> *Local Government Act 1993*, section 715 (Notice of time share scheme to local government)

<sup>4</sup> Section 5.3.3 (What is a private certifier)—  
A **“private certifier”** is an individual who—

- (a) has the qualifications, necessary experience or accreditation prescribed under a regulation under this or another Act for a certifier for a stated code; and
- (b) undertakes work by contractual arrangements with clients, either as an individual or through an entity employing the individual.

- (c) falsely claims the building certifier has the qualifications, necessary experience or accreditation to be engaged as a building certifier; or
- (d) acts outside the scope of the building certifier's powers; or
- (e) contravenes a code of conduct published by an accrediting body; or
- (f) acts negligently or incompetently in relation to the certifier's practice.

**“residential land”** means land on which a class 1 or 2 building, under the Standard Building Regulation, is constructed, or is to be constructed, and includes land—

- (a) adjacent to the land; and
- (b) in the same ownership as the land; and
- (c) used in association with the land.

**“revocation notice”** see section 30S(3).

**“show cause notice”** see section 50A.

**“Standard Building Regulation”** means the regulation made under section 6(1).

**“structure”** includes a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.

**“swimming pool”** means an excavation or structure—

- (a) capable of being filled with water to a depth of 300 mm or more; and
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity; and
- (c) solely or principally used, or designed, manufactured or adapted to be solely or principally used, for the purposes mentioned in paragraph (b) despite its current use;

and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool), but does not include—

- (d) a fish pond or pool solely or principally used, or designed,

manufactured or adapted to be solely or principally used, for ornamental purposes; or

- (e) a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water; or
- (f) a watercourse; or
- (g) a portable wading pool.

**“tourist resort complex”** means a complex that operates as a single integrated facility providing all, or substantially all, the recreational and personal needs of guests resident at the complex and visitors at the complex.

**“tribunal”** means a building and development tribunal established under the *Integrated Planning Act 1997*, section 4.2.1.5

**“watercourse”** means—

- (a) a canal, creek, river or stream in which water flows permanently or intermittently; or
- (b) an ocean, a lake or other collection of water (whether permanent or intermittent).

**“young child”** means a child under the age of 5 years.

(2) In this Act, a reference to building work is a reference to the aspect of building work assessed under the *Integrated Planning Act 1997* against this Act.’.

## **Replacement of pt 2**

**10.** Part 2—

*omit, insert—*

### **‘PART 2—STANDARD BUILDING REGULATION**

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<sup>5</sup> Section 4.2.1 (Establishing building and development tribunals)

**‘Standard Building Regulation**

**‘6.(1)** A regulation (the “**Standard Building Regulation**”) made under this Act may be made about the following—

- (a) building work, the certification of building work and the occupation of buildings;
- (b) matters relating to the accrediting of building certifiers.

**‘(2)** In carrying out building work or in occupying a building a person must comply with the Standard Building Regulation even if a development permit given by an assessment manager is contrary to the Standard Building Regulation.

**‘(3)** In this section—

**“Standard Building Regulation”** includes any variation, exception or exemption to the Standard Building Regulation permitted by this Act.<sup>6</sup>

**‘Variation of how Standard Building Regulation may apply**

**‘7.(1)** This section applies if building work is proposed to be carried out, is being carried out or has been carried out, and the building work will not, or does not, comply in all respects with the Standard Building Regulation.

**‘(2)** A person may apply to the chief executive to vary how the Standard Building Regulation applies to the building work.

**‘(3)** An application may not be made under this section if the Standard Building Regulation permits an assessment manager or private certifier to exercise discretion about the matter for which the variation is sought.

**‘(4)** The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

**‘(5)** If the application is about building work proposed to be carried out and for which a development application has been made under the *Integrated Planning Act 1997*, the IDAS process under that Act—

- (a) stops on the day the application is received by the chief executive; and

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<sup>6</sup> Under the *Acts Interpretation Act 1954*, section 7, reference to the Act includes reference to the Standard Building Regulation.

- (b) starts again the day the chief executive gives the applicant written notice under section 8(5).

**‘Deciding application to vary how Standard Building Regulation will apply**

‘8.(1) If there is an assessment manager or a private certifier for the building work, the chief executive must consult with the assessment manager or the private certifier about the application before deciding it.

‘(2) The chief executive may consult with any other person about the application before deciding it.

‘(3) After considering the application, the chief executive must decide to—

- (a) vary how the Standard Building Regulation applies to the building work; or
- (b) refuse to vary how the Standard Building Regulation applies to the building work.

‘(4) The chief executive must decide the application within 20 business days after the application is made.

‘(5) The chief executive must, within 5 business days after deciding the application, give written notice of the decision to—

- (a) the applicant; and
- (b) if there is an assessment manager or private certifier for the building work—the assessment manager or private certifier.

‘(6) Subsection (1) does not apply to building work carried out by or on behalf of the State.

**‘Fast-track decisions**

‘9.(1) The applicant, may, in the application, ask the chief executive to decide the application within 2 business days after making the application.

‘(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

‘(3) The chief executive may grant or refuse the request.

‘(4) If the chief executive grants the request, the chief executive may, as a condition of granting the request, require the applicant to pay any reasonable additional costs that would be incurred by the chief executive in deciding the application within the 2 business days.

#### **‘Appeal from chief executive’s decision**

‘10.(1) If the applicant is dissatisfied with the chief executive’s decision, the applicant may appeal to a tribunal against the decision under the *Integrated Planning Act 1997*.

‘(2) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

#### **‘Effect of variation of Standard Building Regulation**

‘11.(1) This section applies if the chief executive decides to vary how the Standard Building Regulation applies to the building work.

‘(2) Subject to any appeal against the chief executive’s decision, the Standard Building Regulation, as varied by the decision, applies to the building work.

‘(3) An assessment manager or private certifier must not refuse to approve an application for building work to which the chief executive’s decision relates merely on the ground that the building work does not comply with the Standard Building Regulation.

#### **‘How changes to Standard Building Regulation may affect certain building work to be carried out**

‘12.(1) This section applies to building work if—

- (a) the lawful carrying out of the work starts before the Standard Building Regulation is amended; or
- (b) approval to carry out the work is given before the Standard Building Regulation is amended, but the work does not start before the amendment commences; or
- (c) application to carry out the work is made before the Standard Building Regulation is amended, but the application is not decided

before the Standard Building Regulation is amended; or

- (d) planning for carrying out the work started before the Standard Building Regulation is amended and the person deciding the application is satisfied that to require the work to be replanned to conform with the Standard Building Regulation after the amendment would cause financial hardship to the person for whom the work is to be carried out having regard to the following—
  - (i) the stage the planning has reached;
  - (ii) the nature of the work;
  - (iii) the means and circumstances of the person.

‘(2) For subsection (1)—

- (a) the work is lawfully carried out if the work is carried out in accordance with the Standard Building Regulation in force immediately before the amendment; and
- (b) approval for the work may be given if the approval is given in accordance with the Standard Building Regulation in force immediately before the amendment.

‘(3) For subsections (1) and (2), an amendment of the Standard Building Regulation includes an amendment of the Building Code of Australia.

### **‘Alterations to safe existing work**

‘**13.(1)** If an application for building work is for adding to or altering a building or other structure, the work must comply with the Standard Building Regulation in force at the time the application for the work is approved.

‘(2) However, if the person approving the application is satisfied the general safety and structural standards of the building or structure would not be at risk if the addition or alteration were carried out in accordance with the Standard Building Regulation or a local law in force in a local government area at a particular time before the application was made, the person may approve that the work be carried out in accordance with the Standard Building Regulation or local law in force at that time.

**‘Alterations to unsafe existing work**

‘**14.(1)** This section applies if an application for building work is for adding to or altering a building or other structure and the person approving the application is satisfied the building or structure is unsafe or structurally unsound.

‘**(2)** The person approving the application may require, as a condition of approving the application, that all or part of the building or structure conform with the Standard Building Regulation in force—

- (a) at the time the application is approved; or
- (b) at a time as will ensure the building or structure is made safe and structurally sound.’.

**Omission of pts 3–4A**

**11.** Parts 3 to 4A—

*omit.*

**Replacement of pt 4B (Swimming pool fencing)**

**12.** Part 4B—

*omit, insert—*

**‘PART 4B—SWIMMING POOL FENCING****‘Local law for fencing of swimming pools**

‘**30G.(1)** This section applies if a local government has a local law requiring—

- (a) the construction of fencing around swimming pools; or
- (b) doors, windows and other openings giving access to swimming pools to comply with the local law.

‘**(2)** The local law has effect only if the local law can reasonably be characterised as being directed to inhibiting young children from accessing swimming pools.

‘**(3)** A local law is of no effect if the local law—

- (a) requires the construction of fencing around swimming pools on land used, or to be used, for a tourist resort complex and the land is specified under a regulation; or
- (b) allows the construction of fencing around outdoor swimming pools on residential land to a standard less effective than the standard required by section 30H.

#### **‘Outdoor swimming pools must be fenced**

**‘30H.(1)** This section applies if an outdoor swimming pool is to be constructed or installed on, or is on, residential land.

**‘(2)** Before the pool is intentionally filled by the owner with water to a depth of 300 mm or more, the owner of the land must construct around the pool, fencing that complies with the design, construction and performance standards (the **“standards”**) prescribed under a regulation.

Maximum penalty—165 penalty units.

**‘(3)** The owner must—

- (a) keep the fencing in good condition; and
- (b) at all times, ensure the fencing complies with the standards applying at the time of construction.

Maximum penalty—165 penalty units.

**‘(4)** If the fencing no longer complies with the standards applying at the time of construction because the owner or occupier of adjoining land has constructed or placed something on the adjoining land, the owner of the land with the pool on it is not required to construct additional fencing or change existing fencing to comply with the standards.

#### **‘Application for exemption from fencing**

**‘30N.(1)** An owner of residential land on which there is an outdoor swimming pool, or on which an outdoor swimming pool is to be constructed or installed, may apply to the local government for exemption from complying with section 30H(2).

**‘(2)** The local government may grant the application only if it is satisfied it is unlikely a young child would gain access to the pool because of—

- (a) the physical nature or location of the land concerned; or
- (b) the design or construction of the pool or fencing; or
- (c) the location of the pool or fencing.

‘(3) The local government may grant the application subject to the conditions the local government considers appropriate to inhibit young children accessing the pool.

‘(4) If an application is made under this section, the local government must decide the application within 5 business days after the application is made.

‘(5) As soon as practicable after making the decision, the local government must give the owner written notice of the decision.

‘(6) The notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*; and
- (c) the appeal must be made with 20 business days after the day the owner receives the notice.

‘(7) The owner of the land must comply with each condition attached to the exemption.

Maximum penalty for subsection (7)—165 penalty units.

### **‘Revocation of decisions or previous variations**

‘30S.(1) This section applies if, in relation to fencing around an outdoor swimming pool on residential land, a local government has previously made a decision or given a variation and the local government is satisfied 1 or more of the following has happened—

- (a) the decision or variation was based on a false or misleading particular given by the owner of the land;
- (b) a significant change has happened so that reasonable provision no longer exists for inhibiting access by young children to the pool;
- (c) if the decision or variation was subject to conditions—the owner has contravened a condition.

‘(2) The local government must give the owner a show cause notice inviting the owner to show cause why the decision or variation should not be revoked.

‘(3) Subsection (2) applies only if the work the owner must do to comply with section 30H(2) is not of a minor nature.

‘(4) After considering any representations made to it under the show cause notice, the local government may, by a further written notice (a “**revocation notice**”) given to the owner, revoke the decision or variation previously given.

‘(5) The revocation notice must specify—

- (a) what the owner must do to comply with section 30H(2); and
- (b) the day by which the work must be done.

‘(6) The owner must comply with the revocation notice.

Maximum penalty for subsection (6)—165 penalty units.

‘(7) If the owner fails to perform the work required to be performed under the revocation notice, the failure is taken to be a failure mentioned in the *Local Government Act 1993*, section 661.

‘(8) In this section—

“**variation**” means a variation given under section 30M as in force immediately before the commencement of the *Building and Integrated Planning Amendment Act 1998*, part 2.<sup>7</sup>

### ‘Advice as to compliance

‘**30U.(1)** The owner of residential land on which there is an outdoor swimming pool may make written application to the local government for written advice as to whether the fencing around the pool complies with section 30H(2).

‘(2) If an application is made under subsection (1), the local government must—

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<sup>7</sup> Section 30M (Variations), was repealed by the *Building and Integrated Planning Amendment Act 1998*.

- (a) decide if the fencing complies with section 30H(2); and
- (b) give the owner written notice of its decision within 10 business days after receiving the application.

‘(3) If the local government decides the fencing does not comply with section 30H(2), the local government must—

- (a) include in the written notice given under subsection (2) the reasons why the fencing does not comply; and
- (b) advise the owner what must be done to make the fencing comply with section 30H(2).

‘(4) The owner must comply with the notice.

Maximum penalty—165 penalty units.

#### **‘Access to outdoor swimming pools must be kept secure**

‘30V. The occupier of residential land on which there is an outdoor swimming pool must 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.

#### **‘Apportionment of cost of constructing dividing fence**

‘30W.(1) The cost of constructing, altering, repairing, replacing and maintaining an outdoor swimming pool 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 30H(2), to be borne—

- (a) by the owner of the residential land on which the pool is constructed or installed; 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 residential land—equally by the owners of the parcels of land where the pools are constructed or installed.

‘(2) Subsection (1) applies despite the *Dividing Fences Act 1953*.

‘(3) A local law mentioned in section 30G(1) does not limit the discretion of a Magistrates Court under the *Dividing Fences Act 1953*.

**‘Appeals about swimming pool fencing**

**‘30X.(1)** An owner of residential land on which there is an outdoor swimming pool who is dissatisfied with a decision, or the lack of a decision within the time stated for the giving of the decision, of the local government or a private certifier about a matter relating to the fencing around the pool may appeal to a tribunal under the *Integrated Planning Act 1997*.

**‘(2)** The appeal must be started within 20 business days after—

- (a) notice of the decision is given to the person; or
- (b) if a decision is not given within the time stated for the giving of the decision—the last day when the decision could have been made.’.

**Omission of pt 5 (Objections and appeals against local governments’ decisions)**

**13.** Part 5—

*omit.*

**Replacement of pt 6 heading (Regulatory powers of local government)**

**14.** Part 6, heading—

*omit, insert—*

**‘PART 6—SHOW CAUSE AND ENFORCEMENT NOTICES’.**

**Replacement of ss 50–54**

**15.** Sections 50 to 54—

*omit, insert—*

**‘Show cause notices**

**‘50A.(1)** A notice (a **“show cause notice”**) inviting the owner of a building or structure to show cause why an enforcement or revocation notice should not be given to the owner must—

- (a) be in writing; and
- (b) outline the facts and circumstances forming the basis for the belief that an enforcement or revocation notice should be given to the owner; and
- (c) state that representations may be made about the show cause notice; and
- (d) state how the representations may be made; and
- (e) state where the representations may be made or sent; and
- (f) state—
  - (i) a day and time for making the representations; or
  - (ii) a period within which the representations must be made.

‘(2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

### ‘Enforcement notices

‘**50.(1)** A local government may give a notice (an “enforcement notice”) to the owner of a building or structure if the local government reasonably believes the building or structure—

- (a) was built before the commencement of this section without, or not in accordance with, the approval of the local government; or
- (b) is dangerous; or
- (c) is in a dilapidated condition; or
- (d) is unfit for use or occupation; or
- (e) is filthy, infected with disease or infested with vermin.

‘(2) A local government may also give an enforcement notice to an owner who does not comply with a particular matter in this Act.

‘(3) A private certifier may also give an enforcement notice under subsection (2) in relation to building work for which the private certifier is engaged to perform the functions of a private certifier.

‘(4) However, before a person gives an enforcement notice under this

Act to an owner, the person proposing to give the enforcement notice must give the owner a show cause notice.

‘(5) Subsection (2) applies only if the matter, about which the person proposing to give the enforcement notice, is not of a dangerous or minor nature.

‘(6) An enforcement notice given under this section is taken to be an enforcement notice given under the *Integrated Planning Act 1997*, section 4.3.11.<sup>8</sup>

### ‘Specific requirements of enforcement notices

‘51.(1) Without limiting specific requirements an enforcement notice may impose, an enforcement notice may require a person to do any of the following—

- (a) to apply for a development permit under the *Integrated Planning Act 1997*;
- (b) to do, or not to do, another act to ensure building work complies with the approval of the local government given before the commencement of this section;
- (c) to repair or rectify the building or structure;
- (d) to secure the building or structure (whether by a system of supports or in another way);
- (e) to fence off the building or structure to protect persons;
- (f) to cleanse, purify and disinfect the building or structure;
- (g) to demolish or remove the building or structure;
- (h) to comply with this Act for a particular matter.

‘(2) However, a person may be required to demolish or remove the building or structure only if the local government reasonably believes it is not possible and practical to take steps to comply with subsection (1)(c) to (f).

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<sup>8</sup> Section 4.3.11 (Giving enforcement notice)

**‘Appeals against enforcement notices**

‘**52.(1)** An owner who is given an enforcement notice under section 50 may appeal to a tribunal as if the appeal were an appeal under the *Integrated Planning Act 1997*.

‘(2) The appeal must be started within—

- (a) if the notice is given in relation to a dangerous building or structure—5 business days; or
- (b) if the notice is given for any other purpose—20 business days after the enforcement notice is given to the person.’.

**Replacement of s 55 (Register of notices given)**

**16.** Section 55—

*omit, insert—*

**‘Register of notices given**

‘**55.(1)** Each local government must keep the register maintained under this section before the commencement of the *Building and Integrated Planning Amendment Act 1998* open to inspection by the public.

‘(2) A local government may remove from the register all entries and details relating to a notice when the requirements of the notice have been complied with.’.

**Omission of ss 56–58**

**17.** Sections 56 to 58—

*omit.*

**Replacement of section 59 (Disposal of building material and recovery of costs by local government)**

**18.** Section 59—

*omit, insert—*

**‘Action local government may take if enforcement notice not complied with**

‘59. If an enforcement notice is given under section 50(1)(b) to (e) or (2) and the owner fails to perform the work required to be performed under the notice, the failure is taken to be a failure mentioned in the *Local Government Act 1993*, section 661.’.

**Replacement of ss 61–63B**

19. Sections 61 to 63B—

*omit, insert—*

**‘PART 6B—ACCREDITING BODIES AND BUILDING CERTIFIERS**

*‘Division 1—Accreditation*

**‘Authorisation of accrediting bodies**

‘63C.(1) A regulation may authorise an incorporated or statutory body to be an accrediting body for accrediting building certifiers.

‘(2) An incorporated or statutory body may not be authorised as an accrediting body unless the accrediting body has identifiable competence and expertise in accrediting building certifiers.

‘(3) More than 1 incorporated or statutory body may be authorised as an accrediting body for accrediting building certifiers.

**‘Function of accrediting bodies**

‘63D.(1) The function of an accrediting body is to accredit individuals as building certifiers.

‘(2) For subsection (1), an accrediting body must—

- (a) maintain a code of conduct by which the performance of building certifiers may be measured and to which building certifiers must comply; and

- (b) maintain standards specifying the levels of accreditation available and the minimum qualifications and experience required for each level; and
- (c) have balanced stakeholder representation, including industry, local government and State government representation, on all its committees; and
- (d) monitor compliance by building certifiers with accreditation requirements and implement disciplinary mechanisms in cases of non-compliance; and
- (e) carry out audits of work by building certifiers; and
- (f) subject to section 63H(4), investigate all written complaints made to the accrediting body about alleged breaches by building certifiers of the code of conduct or this or another Act; and
- (g) review the accreditation of, and if necessary take disciplinary action against, building certifiers for proven unethical or incompetent conduct, non-compliance with accreditation requirements or failure to comply with the duties of a building certifier as prescribed under this or another Act; and
- (h) issue annual practice certificates that will ensure building certifiers have maintained compliance with accreditation requirements including renewal of the professional indemnity insurance cover and continuing professional development required by regulation; and
- (i) give the chief executive and local governments, at least once each year, a list of building certifiers and a summary of any disciplinary action taken; and
- (j) keep available for purchase by members of the public, on payment of a reasonable fee—
  - (i) a list of building certifiers; and
  - (ii) information about the accreditation history and status of each building certifier; and
  - (iii) documented procedures for all accreditation body functions.

‘(3) An accrediting body must not disclose unproved complaints against a building certifier.

**‘Persons must not practice as building certifiers without accreditation**

‘63E. A person must not practice as a building certifier unless the person holds current accreditation as a building certifier.

Maximum penalty—165 penalty units.

**‘Division 2—Jurisdiction****‘Jurisdiction of building certifiers**

‘63F.(1) This section applies only to the building work component of a development application.

‘(2) In assessing or deciding a development application under the *Integrated Planning Act 1997*, section 5.3.5<sup>9</sup>, a building certifier must assess and decide<sup>10</sup> the application against—

- (a) this Act;<sup>11</sup> or
- (b) to the extent a local law is about the construction of fencing around swimming pools and is not inconsistent with this Act—the local law.<sup>12</sup>

‘(3) If a building certifier is required under this Act to inspect work relating to a development application, the building certifier’s inspection of the work must be against this Act.

‘(4) If a building certifier gives a show cause or enforcement notice under the *Integrated Planning Act 1997*, the notice must relate to building work.

‘(5) Nothing in this section prevents a building certifier who has the

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<sup>9</sup> Section 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain work)

<sup>10</sup> Under the *Integrated Planning Act 1997*, section 5.3.4, the application must not be inconsistent with any earlier approval and under the *Integrated Planning Act 1997*, section 5.3.5(4), the application must not be decided until certain other assessments for the application are completed.

<sup>11</sup> Under the *Acts Interpretation Act 1954*, section 7, reference to this Act includes reference to the Standard Building Regulation.

<sup>12</sup> See also the *Integrated Planning Act 1997*, section 3.5.4 (Code assessment).

qualifications, necessary experience or accreditation for assessing or deciding another aspect of a development application from assessing and deciding the other aspect.

### *‘Division 3—Auditing building certifiers*

#### **‘Accrediting body must audit building certifier’s work**

**‘63G.(1)** For complying with its function under section 63D, an accrediting body must audit the work of a building certifier.

**‘(2)** When an accrediting body takes action under subsection (1)—

- (a) the accrediting body has the same powers it would have if it took action under division 5; and
- (b) the building certifier must comply with the requirements of division 5 as if the requirements were made in relation to an action under division 5.

**‘(3)** If the accrediting body detects professional misconduct while auditing the work of a building certifier, the accrediting body must undertake disciplinary procedures as if a complaint had been received about the professional misconduct.

### *‘Division 4—Complaints*

#### **‘Making a complaint against a building certifier**

**‘63H.(1)** A person may make a complaint to the accrediting body about a building certifier if the person believes the building certifier is guilty of professional misconduct.

**‘(2)** A complaint must—

- (a) be in writing; and
- (b) contain particulars of the allegations on which it is founded; and
- (c) be verified by statutory declaration.

‘(3) The accrediting body may require the complainant to give further particulars of the complaint.

‘(4) The accrediting body may dismiss any complaint without investigation if the further particulars are not given or if the complaint or the further particulars are not verified by statutory declaration.

#### **‘Building certifier must be advised of complaint**

‘63I.(1) After receiving the complaint, the accrediting body must, by written notice—

- (a) inform the building certifier of the nature of the complaint; and
- (b) invite the building certifier to make, within the time stated in the notice, representations to the accrediting body about the complaint.

‘(2) The time stated in the notice must be at least 5 business days after the notice is given.

‘(3) The accrediting body must have regard to the representations when making its decision on the complaint.

#### **‘Accrediting body must investigate complaint**

‘63J.(1) The accrediting body must conduct an investigation into the complaint as soon as practicable.

‘(2) The accrediting body may deal with 1 or more complaints about a building certifier in the same investigation.

‘(3) If during an investigation the accrediting body is satisfied there is matter about which another complaint could have been made against the building certifier, the accrediting body may deal with the matter in its investigation as if a complaint had been made about the matter.

### ***‘Division 5—Investigations***

#### **‘Accrediting body may require documents to be produced**

**‘63K.(1)** For investigating a complaint or conducting an audit, an accrediting body may, by written notice given to a building certifier, require the building certifier to produce a document to the accrediting body, or a person authorised by the accrediting body (an **“accrediting auditor”**).

**‘(2)** The notice may also state—

- (a) a time and place by which the document must be produced; or
- (b) that the document must be verified by statutory declaration.

**‘(3)** The time for compliance stated in the notice must be a reasonable time.

#### **‘Inspection of documents**

**‘63L.** An accrediting auditor may inspect any document produced to the accrediting body and copy it or any part of it.

#### **‘Power to enter and inspect building**

**‘63M.(1)** For investigating a complaint or conducting an audit, an accrediting auditor may enter and inspect a building.

**‘(2)** The entry and inspection must be—

- (a) made with the consent of the person in control of the building; or
- (b) authorised by warrant of a magistrate.

**‘(3)** An accrediting auditor may apply to a magistrate for a warrant under this section for a particular building.

**‘(4)** The application must be sworn and state the grounds on which it is sought.

**‘(5)** If the magistrate requires further information about the grounds on which the warrant is sought, the magistrate must not issue the warrant unless the accrediting auditor or some other person has given the

information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

‘(6) The magistrate may issue the warrant only if the magistrate is satisfied there is a proper reason for entering and inspecting the building.

‘(7) The warrant must state—

- (a) that the accrediting auditor may, with necessary and reasonable help and force, enter and inspect the building; and
- (b) the hours of the day when entry may be made; and
- (c) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

#### **‘Cooperating with investigation or audit**

‘63N.(1) A building certifier who is being investigated or audited by the accrediting body must assist in and cooperate with the investigation or audit.

‘(2) A building certifier is guilty of professional misconduct if the building certifier, without reasonable excuse—

- (a) fails to comply with subsection (1) or section 63K; or
- (b) misleads or obstructs an accrediting body in the exercise of any function under this division.

#### **‘Decision after investigation or audit completed**

‘63O.(1) After investigating a complaint or conducting an audit, the accrediting body must—

- (a) decide whether or not the building certifier is guilty of professional misconduct; and
- (b) give the building certifier and the complainant (if any) written notice of the decision.

‘(2) If the accrediting body decides the building certifier is guilty of professional misconduct, the accrediting body must, by written notice—

- (a) caution or reprimand the building certifier; or

- (b) impose the conditions it considers appropriate on the building certifier's accreditation; or
- (c) direct the building certifier to complete the educational courses stated by the accrediting body; or
- (d) direct the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated by the accrediting body; or
- (e) suspend the building certifier's accreditation for the term the accrediting body considers appropriate; or
- (f) cancel the building certifier's accreditation; or
- (g) if the accrediting body is satisfied the building certifier is generally competent and diligent and that no other material complaints have been made against the building certifier—take no further action.

‘(3) The notice given under subsection (1)(b) must also state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to the chief executive; and
- (c) the appeal must be made with 20 business days after the day the person receives the notice.

### **‘Accrediting body’s decision may be appealed**

‘**63P.(1)** If a building certifier or a complainant is dissatisfied with the accrediting body’s decision, the building certifier or the complainant may appeal to the chief executive against the decision.

‘(2) The appeal must be made with 20 business days after the day the appellant receives notice of the decision.

‘(3) If the building certifier appeals to the chief executive, the building certifier may apply to the court for a stay of the decision.

***‘Division 6—Chief executive and court powers*****‘Chief executive may investigate building certifier**

**‘63Q.(1)** If a person appeals to the chief executive under section 63P, the chief executive may investigate the matter about which the decision was made.

**‘(2)** In investigating the matter the chief executive has the same powers as the accrediting body had to investigate the matter.

**‘Chief executive’s decision**

**‘63R.(1)** After investigating the matter, the chief executive must—

- (a) decide whether or not the building certifier is guilty of professional misconduct; and
- (b) give a copy of the chief executive’s decision to—
  - (i) the building certifier; and
  - (ii) the complainant; and
  - (iii) the accrediting body.

**‘(2)** In deciding the matter, the chief executive may direct the accrediting body to do anything the accrediting body could have done under section 63O.

**‘(3)** The accrediting body must comply with the direction and do anything necessary to give effect to it.

**‘Appeal to the court against the chief executive’s decision**

**‘63S.(1)** If a building certifier, a complainant or the accrediting body is dissatisfied with the chief executive’s decision, the building certifier, complainant or accrediting body may appeal to the court against the decision.

**‘(2)** The appeal must be made with 20 business days after the appellant receives notice of the decision.

‘(3) If the building certifier appeals to the court, the building certifier may also apply to the court for a stay of the decision.

**‘Court may make certain disciplinary findings**

‘63T.(1) If an appeal is made to the court under section 63S, the court must decide whether or not the building certifier is guilty of professional misconduct.

‘(2) The registrar of the court must give a copy of the court’s decision to—

- (a) the building certifier; and
- (b) the complainant; and
- (c) the accrediting body.

‘(3) In deciding the matter, the court may—

- (a) direct the accrediting body to do anything the accrediting body could have done under section 63O; or
- (b) impose a fine, of not more than 1 665 penalty units on the building certifier; or
- (c) order the building certifier to pay to the complainant or another person the amount the court considers appropriate as compensation for—
  - (i) any costs in bringing the complaint; and
  - (ii) any damage suffered by the complainant or the other person as a result of the professional misconduct; or
- (d) make any other order the court considers appropriate.

‘(4) The accrediting body must comply with the direction and do anything necessary to give effect to it.

‘(5) If the court orders that a building certifier’s accreditation be cancelled, the court may also order that the building certifier can not reapply for accreditation by any accrediting body within the period (including the period of the building certifier’s lifetime) stated by the court.’

**Replacement of ss 64–64D**

**20.** Sections 64 to 64D—

*omit, insert—*

**‘Approved forms**

**‘64.** The chief executive may approve forms for use under this Act.

**‘Giving security in certain cases**

**‘64A.(1)** This section applies to approvals to carry out building work relating to—

- (a) the removal of a building or other structure (whether for rebuilding at another site or not); and
- (b) the rebuilding of a building or other structure that is to be removed from another site.

**‘(2)** If the application is made to a local government, the local government may, before approving the application or as a condition of the approval, require the applicant to give the local government security for the amount and in the form the local government decides.

**‘(3)** If the application is made to a private certifier, the private certifier must, before approving the application, ask the local government to advise the amount and the form of the security the local government requires for the building work.

**‘(4)** If a request is made under subsection (3), the local government must, within 5 business days after the request is made, give the owner and the private certifier written notice of the amount and the form of the security the local government requires for the application.

**‘(5)** The owner may appeal to a tribunal under the *Integrated Planning Act 1997* against the decision of the local government about the amount and the form of the security.

**‘(6)** The appeal must be started within 20 business days after notice of the decision is given to the owner.

**‘(7)** If the local government does not comply with subsection (4), the private certifier must decide the application without requiring any security.

‘(8) The amount of the security must not be more than the value of the building work to be carried out in accordance with the Standard Building Regulation.

‘(9) Before approving the application, the private certifier must be satisfied the security has been given to the local government.

‘(10) If an approval mentioned in this section is given and the approval lapses because the building work has not been substantially completed within the time prescribed for that purpose in the Standard Building Regulation, the local government may take the action it considers necessary to have the building work completed in accordance with the approval.

‘(11) In taking action under subsection (10), the local government may use all or part of the security given for the building work.

‘(12) If building work mentioned in this section is approved and security is given for the building work, the local government—

- (a) may at any time, having regard to the progress being made in carrying out the building work, release part of the security to the person who gave it; and
- (b) must, if the building work has been completed in accordance with the approval (other than under subsection (10)), refund the security or, as the case may be, the balance of the security to the person who gave it.

### **‘Information to be supplied by the State**

‘64B. If building work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 2 is carried out by or on behalf of the State, the State must give to the local government the information prescribed under a regulation.’.

### **Amendment of s 64E (Owner liable for offences under Standard Building Law)**

**21.(1)** Section 64E, heading ‘Law’—

*omit, insert—*

‘Regulation’.

(2) Section 64E, ‘Where the Standard Building Law’—

*omit, insert—*

‘If the Standard Building Regulation’.

(3) Section 64E, ‘that Law’—

*omit, insert—*

‘the Standard Building Regulation’.

### **Amendment of s 65 (Prosecution of offences)**

22. Section 65, ‘Law’—

*omit, insert—*

‘Regulation’.

### **Omission of ss 66A and 66B**

23. Sections 66A and 66B—

*omit.*

### **Amendment of s 67 (Regulation making power)**

24.(1) Section 67(2)(a)—

*omit.*

(2) Section 67(2)(d), ‘20’—

*omit, insert—*

‘165’.

### **Insertion of new s 68**

25. In part 7, after section 67—

*insert—*

**‘Day when Standard Building Regulation was made for Statutory Instruments Act 1992**

‘68. For the *Statutory Instruments Act 1992*, part 7<sup>13</sup>, the Standard Building Regulation is taken to have been made on 14 December 1993.’.

**Amendment of s 76 (Swimming pool fencing compliance—hardship)**

26. Section 76(2), ‘(Outdoor swimming pools to be fenced)’—  
*omit.*

**Replacement of s 78 (References to Standard Building By-laws 1991 etc.)**

27. Section 78—  
*omit, insert—*

**‘References to Standard Building Law etc.**

‘78. A reference in an Act or document to the *Standard Building By-laws 1991*, the Standard Building By-laws (however described) or the Standard Building Law is a reference to the Standard Building Regulation.

*Example—*

A reference to the Standard Building By-laws as ‘those by-laws’ is a reference to the Standard Building Regulation.’.

**Insertion of new ss 79–82**

28. After section 78—  
*insert—*

**‘Existing referees**

‘79. A person who, immediately before the commencement of this section, was a referee under this Act is, until the end of the term for which

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<sup>13</sup> *Statutory Instruments Act 1992*, part 7 (Staged automatic expiry of subordinate legislation)

the person was appointed under this Act, taken to be a referee appointed under the *Integrated Planning Act 1997*, section 4.2.36.

#### **‘Existing registrar**

‘80. The person who, immediately before the commencement of this section, was the registrar under this Act is taken to be the registrar appointed under the *Integrated Planning Act 1997*, section 4.2.8.

#### **‘Lawfully constructed buildings and structures protected**

‘81. If a building or structure was lawfully constructed before the commencement of this section, the Standard Building Regulation can not require the building or structure to be altered or removed unless the building or structure is—

- (a) dangerous; or
- (b) in a dilapidated condition and unfit for use or occupation; or
- (c) filthy; or
- (d) is infected with disease; or
- (e) is infested with vermin.

#### **‘Lawfully constructed swimming pool fences protected**

‘82. If a swimming pool fence was lawfully constructed and maintained before the commencement of this section, the Standard Building Regulation can not require the fence to be altered unless the fence is no longer maintained.

#### **‘Numbering and renumbering of Act**

‘83. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

**PART 3—BUILDING AND CONSTRUCTION  
INDUSTRY (PORTABLE LONG SERVICE LEAVE)  
ACT 1991**

**Act amended**

**29.** This part amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

**Omission of s 2 (Commencement)**

**30.** Section 2—  
*omit.*

**Amendment of s 3 (Interpretation)**

**31.(1)** Section 3, heading—  
*omit, insert—*

‘Definitions’.

**(2)** Section 3—  
*insert—*

‘ **“assessment manager”** has the meaning given by the *Integrated Planning Act 1997*.<sup>14</sup>

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<sup>14</sup> *Integrated Planning Act 1997*, section 3.1.7—

The **“assessment manager”**, for an application, is—

(a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or

(b) if paragraph (a) does not apply—

(i) the entity prescribed under a regulation; or

(ii) if no entity has been prescribed—the entity decided by the Minister.

Under *Integrated Planning Act 1997*, section 5.3.5(1)(a), a private certifier may, in certain circumstances, act as an assessment manager.

“**private certifier**” has the meaning given by the *Integrated Planning Act 1997*.<sup>15</sup>.

#### **Amendment of s 74 (Liability for levy)**

**32.** Section 74(b),—

*omit, insert—*

‘(b) if paragraph (a) does not apply and under the *Integrated Planning Act 1997* an application is made to the assessment manager for development approval of building work under that Act—the applicant; or’.

#### **Amendment of s 75 (When levy is payable)**

**33.** Section 75(1)(a)—

*omit, insert—*

‘(a) before an application is made under the *Integrated Planning Act 1997* to the assessment manager for development approval of building work under that Act; or’

#### **Amendment of s 77 (Duty of local government to sight approved form)**

**34.(1)** Section 77, heading—

*omit, insert—*

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<sup>15</sup> *Integrated Planning Act 1997*, section 5.3.3—

A “**private certifier**” is an individual who—

- (a) has the qualifications, necessary experience or accreditation prescribed under a regulation under this or another Act for a certifier for a stated code; and
- (b) undertakes work by contractual arrangements with clients, either as an individual or through an entity that employs the individual.

**‘Duty of assessment manager to sight approved form’.**

(2) Section 77(1), ‘A local government’ to ‘the local government’—  
*omit, insert—*

‘The assessment manager may, under the *Integrated Planning Act 1997*, accept a development application for building work under that Act only if the assessment manager’.

(3) Section 77(3), ‘Subsection (1) does’—  
*omit, insert—*

‘Subsections (1) and (3) do’.

(4) Section 77(3)—  
*renumber as section 77(4).*

(5) Section 77—  
*insert—*

‘(3) A private certifier who is acting as an assessment manager must not contravene subsection (1).

Maximum penalty—16 penalty units.’.

## **PART 4—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**

**Act amended**

**35.** This part amends the *Environmental Protection Act 1994*.

**Amendment of s 37 (Duty to notify environment harm)**

**36.** Section 37(2)(e)—  
*omit, insert—*

‘(e) a development condition of a development approval; or

- (f) an emergency direction.’.

### **Replacement of ch 3, pt 4 heading**

**37.** Chapter 3, part 4, heading—

*omit, insert—*

## **‘PART 4—ENVIRONMENTAL AUTHORITIES FOR ENVIRONMENTALLY RELEVANT ACTIVITIES WITHOUT DEVELOPMENT APPROVALS**

### *‘Division 1A—Preliminary*

#### **‘Application of pt 4**

**‘40A.(1)** This part applies to the following environmental authorities—

- (a) an environmental authority in force immediately before the commencement of this section to carry out an environmentally relevant activity;
- (b) an environmental authority issued on or after the commencement on application for an environmental authority made before the commencement, to carry out an environmentally relevant activity;
- (c) an environmental authority issued before the commencement but effective from a date on or after the commencement to carry out an environmentally relevant activity;
- (d) an environmental authority to carry out an environmentally relevant activity for which a development approval is not required;
- (e) an environmental authority to carry out an environmentally relevant activity for which a development approval is in force immediately before the commencement.’.

**Amendment of s 41 (Application for environmental authority)**

**38.** Section 41—

*insert—*

‘(3) A regulation may prescribe a circumstance when the application fee, or part of the fee, is not required to accompany the application.’.

**Amendment of s 45 (Grant of application for environmental authority)**

**39.(1)** Section 45, ‘10 days after making the decision’—

*omit, insert—*

‘the prescribed period’.

**(2)** Section 45—

*insert—*

‘(5) In this section—

**“prescribed period”** means—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application for an environmental authority—within 10 days after the later of—
  - (i) the decision to grant the application is made; or
  - (ii) payment of the application fee or part of the fee; or
- (b) if paragraph (a) does not apply—within 10 days after the decision to grant the application is made.’.

**Amendment of s 49 (Amendment of licence on application of licensee)**

**40.** Section 49(9)—

*omit, insert—*

‘(9) The criteria for deciding an application for an environmental authority mentioned in section 44 apply to the application for the amendment of the licence.’.

**Amendment of s 51 (Procedure for amending licence)**

**41.** Section 51(3)—

*omit, insert—*

‘(3) The amendment of the licence takes effect from—

- (a) the day after the review date; or
- (b) if subsection (1)(a) applies—the earlier date agreed to by the licensee.’

**Insertion of new ch 3, pts 4A and 4B**

**42.** After section 60E—

*insert—*

**‘PART 4A—ENVIRONMENTAL AUTHORITIES FOR  
LEVEL 1 ENVIRONMENTALLY RELEVANT  
ACTIVITIES WITH DEVELOPMENT APPROVALS**

*‘Division 1—Preliminary*

**‘Application of pt 4A**

‘**60F.** This part applies to the carrying out of a level 1 environmentally relevant activity for which a development approval is required.

*‘Division 2—Licences*

*‘Subdivision 1—Applications for, and grant of, licences*

**‘Application for licence**

‘**60G.(1)** An application for a licence to carry out the activity must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to

decide the application; and

- (c) be accompanied by the appropriate application fee.

‘(2) However, a regulation may prescribe a circumstance when the application fee, or part of the fee, is not required to accompany the application.

#### **‘Administering authority to decide application for licence**

‘60H. The administering authority must decide the application within 28 days after the application date.

#### **‘Criteria for deciding application**

‘60I. In deciding whether to grant or refuse the application or what should be the conditions of the licence, the administering authority must consider—

- (a) additional information given in relation to the application; and
- (b) any report about the applicant’s suitability to hold, or continue to hold, a licence; and
- (c) any submission by the applicant for an integrated environmental management system for the activity.

#### **‘Grant of application for licence**

‘60J.(1) If the administering authority decides to grant the application, the authority must, within the prescribed period—

- (a) issue a licence in the approved form; and
- (b) insert it in the appropriate register; and
- (c) give to the applicant—
  - (i) a copy of the licence; and
  - (ii) if the authority has imposed conditions on the licence—a written notice stating that the licensee may apply for a review of, or appeal against, the decision within 14 days after receipt

of the notice.<sup>16</sup>

‘(2) The licence takes effect from the day stated in it, but the day stated must not be a day before the review date.

‘(3) In this section—

“**prescribed period**” means—

- (a) if, under a regulation, the application fee, or part of the fee, is not required to accompany the application for a licence—within 10 days after the later of—
  - (i) the decision to grant the application is made; or
  - (ii) payment of the application fee or part of the fee; or
- (b) if paragraph (a) does not apply—within 10 days after the decision to grant the application is made.

#### ‘**Conditions of licence**

‘**60K.** The administering authority may only impose conditions on the licence—

- (a) about the integrated environmental management system for the activity; or
- (b) requiring a financial assurance under part 9.

#### ‘**Refusal of application for licence**

‘**60L.(1)** In this section—

“**interstate licence**” means a licence, permit or other authority that—

- (a) is issued under an interstate law; and
- (b) is prescribed under a regulation to be a licence for this section.

“**interstate law**” means a law of a State (including a law that has been repealed) prescribed by regulation to be an interstate law for this section.

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<sup>16</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to impose conditions on a licence.

“**this Act**” includes an Act repealed by this Act.

‘(2) If the administering authority decides to refuse an application for a licence, the authority must, within 10 days after making the decision, give written notice to the applicant of the decision.

‘(3) The notice must state—

- (a) the reasons for the refusal; and
- (b) that the person may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>17</sup>

‘(4) Without limiting subsection (2), the administering authority may refuse an application for a licence if it is satisfied the applicant is not a suitable person to hold the authority, including, for example—

- (a) if the applicant has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law; or
- (b) if the applicant is a corporation—an executive officer of the corporation—
  - (i) has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law; or
  - (ii) is or has been an executive officer of another corporation that has been convicted of an offence against this Act or an interstate law, or has held a licence or interstate licence that has been cancelled or suspended under this Act or an interstate law.

***‘Subdivision 2—Suspension and cancellation of licences***

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<sup>17</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for a licence.

**‘Licence may be suspended or cancelled**

‘60M. The administering authority may suspend or cancel a licence issued by it on the following grounds—

- (a) the licensee has been convicted of an offence against this Act;
- (b) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

**‘Procedure for suspension or cancellation**

‘60N.(1) If the administering authority considers a ground exists to suspend or cancel a licence issued by it, (the “**proposed action**”), the authority must give the licensee written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the licence—states the proposed suspension period; and
- (e) invites the licensee to show, within a stated time of at least 30 days, why the proposed action should not be taken.

‘(2) If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the licence for a stated period—suspend the licence for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the licence—either cancel the licence or suspend it for a period.

‘(3) The administering authority must inform the licensee of the decision by written notice.

‘(4) The notice must be given within 10 days after the administering authority makes its decision.

‘(5) If the administering authority decides to suspend or cancel the

licence, the notice must—

- (a) state the reasons for the decision; and
- (b) state that the licensee may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>18</sup>

‘(6) The administering authority must record particulars of the suspension or cancellation on the licence.

‘(7) The decision takes effect on the later of—

- (a) the day the notice is given to the licensee; or
- (b) the day of effect stated in the notice.

‘(8) However, if the licence is suspended or cancelled because of the conviction of the licensee for an offence—

- (a) the suspension or cancellation does not take effect until—
  - (i) the end of the time to appeal against the conviction; and
  - (ii) if the appeal is made against the conviction—the appeal is finally decided; and
- (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

### *‘Division 3—Level 1 approvals*

#### *‘Subdivision 1—Applications for, and grant of, level 1 approvals*

#### **‘Application for level 1 approval**

‘600. An application for a level 1 approval for a level 1 environmentally relevant activity may be made only by a person who—

- (a) has held a licence to carry out the activity for 2 years or more; and
- (b) in the 2 years immediately before the application is made, has not contravened the conditions of the licence or development

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<sup>18</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a licence.

conditions of the development approval for the activity; and

- (c) is not the holder of an environmental management program approval for the activity or subject to an environmental protection order in carrying out the activity.

#### **‘Administering authority to decide application**

**‘60P.** The administering authority must decide the application within 28 days after the application date.

#### **‘Criteria for deciding application**

**‘60Q.** The administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity is insignificant because of—

- (a) any applicable cleaner production techniques used by the licensee; and
- (b) any applicable waste minimisation practices used by the licensee; and
- (c) contingency plans the licensee has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and
- (d) the licensee’s implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by the development conditions of the development approval for the activity; and
- (e) the licensee’s compliance with the general environmental duty.

#### **‘Grant of application**

**‘60R.(1)** If the administering authority decides to grant the application, the authority must, within 10 days after making the decision—

- (a) cancel the applicant’s licence; and
- (b) issue a level 1 approval in the approved form; and
- (c) insert it in the appropriate register; and

(d) give a copy of the licence to the applicant.

‘(2) The approval takes effect from the day stated in it, but the day stated must not be a day before the review date.

### ‘Conditions of approval

‘60S. The administering authority may only impose conditions on the approval about the integrated environmental management system for the activity.

### ‘Refusal of application

‘60T.(1) If the administering authority decides to refuse the application, the authority must, within 10 days after making the decision, give written notice to the applicant of the decision.

‘(2) The notice must state—

- (a) the reasons for the refusal; and
- (b) that the person may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.<sup>19</sup>

### ‘Subdivision 2—Suspension and cancellation of level 1 approvals

#### ‘Level 1 approval may be suspended or cancelled

‘60U. The administering authority may suspend a level 1 approval issued by it, or cancel a level 1 approval issued by it and issue a licence in its place, on the following grounds—

- (a) the administering authority is satisfied the risk of environmental harm from the environmentally relevant activity carried out under the environmental authority is no longer insignificant because the

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<sup>19</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to refuse an application for a level 1 approval.

grounds in section 60Q<sup>20</sup> no longer apply;

- (b) the holder of the approval has been convicted of an offence against this Act;
- (c) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

#### **‘Procedure for suspension or cancellation**

**‘60V.(1)** If the administering authority considers a ground exists to suspend the approval, or cancel the approval and issue a licence in its place, (the **“proposed action”**), the authority must give the holder of the approval written notice that—

- (a) states the proposed action; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) if the proposed action is suspension of the approval—states the proposed suspension period; and
- (e) invites the holder to show, within a stated time of at least 30 days, why the proposed action should not be taken.

**‘(2)** If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may—

- (a) if the proposed action was to suspend the approval for a stated period—suspend the approval for not longer than the proposed suspension period; or
- (b) if the proposed action was to cancel the approval and issue a licence in its place—
  - (i) cancel the approval and issue a licence subject to the conditions the administering authority may impose on a licence under division 2; or

<sup>20</sup> Section 60Q (Criteria for deciding application)

(ii) suspend it for a period.

‘(3) The administering authority must—

- (a) inform the holder of the decision by written notice; and
- (b) if the authority decides to cancel the approval and issue a licence in its place—
  - (i) issue an appropriate licence in the approved form; and
  - (ii) insert it in the appropriate register.

‘(4) The notice must be given within 10 days after the administering authority makes its decision.

‘(5) If the administering authority decides to suspend the approval or cancel the approval and issue a licence in its place, the notice must—

- (a) state the reasons for the decision; and
- (b) state that the holder may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice;<sup>21</sup> and
- (c) for a decision to cancel the approval and issue a licence in its place—be accompanied by a copy of the licence issued to the holder in place of the approval.

‘(6) The administering authority must record particulars of the suspension or cancellation on the approval.

‘(7) The decision takes effect on—

- (a) for a decision to suspend the approval—the later of—
  - (i) the day when the notice is given to the approval holder; or
  - (ii) the day of effect stated in the notice; or
- (b) for a decision to cancel the approval and issue a licence in its place—the day after the review date.

‘(8) However, if the approval is suspended or cancelled because of the conviction of the approval holder for an offence—

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<sup>21</sup> Sections 202 (Procedure for review) and 204 (Who may appeal) provide for a review of, and appeal against, a decision to suspend or cancel a level 1 approval.

- (a) the suspension or cancellation does not take effect until—
  - (i) the end of the time to appeal against the conviction; and
  - (ii) if the appeal is made against the conviction—the appeal is finally decided; and
- (b) the suspension or cancellation has no effect if the conviction is quashed on appeal.

*‘Division 4—Dealings with environmental authorities*

**‘Definition for div 4**

**‘60W.** In this division—

**“environmental authority”** means a licence under division 2 or level 1 approval under division 3 to carry out a level 1 environmentally relevant activity.

**‘Notice of disposal by authority holder**

**‘60X.(1)** This section applies if the holder of an environmental authority proposes to dispose of the holder’s business to someone else (the **“buyer”**).

**‘(2)** Before agreeing to dispose of the business, the holder must give written notice to the buyer that the buyer must make application for a licence under division 2.

Maximum penalty—50 penalty units.

**‘(3)** If the holder does not comply with subsection (2), the buyer may rescind the agreement by written notice given to the holder before the completion of the agreement or possession under the agreement, whichever is the earlier.

**‘(4)** On rescission of the agreement under subsection (3)—

- (a) a person who was paid amounts by the buyer under the agreement must refund the amounts to the buyer; and
- (b) the buyer must return to the holder any documents about the disposal (other than the buyer’s copy of the agreement).

‘(5) Subsections (3) and (4) have effect despite any other Act or anything to the contrary in the agreement.

#### **‘Notice of ceasing to carry out activity under environmental authority**

‘60Y. Within 14 days after ceasing to carry out the environmentally relevant activity to which an environmental authority relates, the holder of the authority must give written notice of the ceasing of the activity to the administering authority.

Maximum penalty—50 penalty units.

## **‘PART 4B—DEVELOPMENT APPROVALS FOR CERTAIN ENVIRONMENTALLY RELEVANT ACTIVITIES**

### *‘Division 1—Preliminary*

#### **‘Application of pt 4B**

‘60Z. This part applies if the administering authority is the assessment manager or a referral agency for an application for a development approval for development prescribed under a regulation under this Act for schedule 8, part 1, section 6 of the Integrated Planning Act for carrying out an environmentally relevant activity.

### *‘Division 2—Assessing development applications*

#### **‘Assessing application**

‘60ZA.(1) The administering authority must assess the development application against the criteria mentioned in section 44 (other than paragraph (b)(iii) and (iv) for deciding an application for an environmental authority as if it were an application for a part 4 environmental authority.

‘(2) However, the stated procedures mentioned in section 44(a)(i) apply only so far as they are not inconsistent with a time allowed or required for doing anything under chapter 3 of the Integrated Planning Act.

‘(3) To remove any doubt it is declared that subsection (1) applies only so far as it relates to the environmentally relevant activity.

‘(4) Subsection (1) does not limit section 3.3.15 or chapter 3, part 5, division 2, of the Integrated Planning Act.<sup>22</sup>

### ‘Conditions of development approval

‘60ZB.(1) In deciding conditions of the development approval, sections 44 and 46 apply, with all necessary changes, as if the application for the approval were an application for a part 4 environmental authority.<sup>23</sup>

‘(2) Subsection (1) has effect subject to section 3.5.30 of the Integrated Planning Act.<sup>24</sup>

### *‘Division 3—Effect of issue of certain development approvals*

#### ‘Application of div 3

‘60ZC. This division applies if the development application to which this part applies is made for development prescribed under a regulation for this division.

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<sup>22</sup> Under section 3.3.15 of the Integrated Planning Act, the administering authority as a referral agency for the application must, among other things, assess the part of the application against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the authority. Similar provision is made under chapter 3, part 5, division 2, of the Integrated Planning Act for assessment of the application by the assessment manager.

<sup>23</sup> Under section 3.3.18 of the Integrated Planning Act, a concurrence agency’s response may, within the limits of its jurisdiction, require conditions be attached to the approval. Further, under section 3.3.19 of the Integrated Planning Act, an advice agency’s response may, within the limits of its jurisdiction, recommend the conditions that should attach to the approval.

<sup>24</sup> Under section 3.5.30 of the Integrated Planning Act, conditions of a development approval must be relevant or reasonable.

**‘Cancellation of pt 4 environmental authority and issue of pt 4A environmental authority**

**‘60ZD.(1)** This section applies if—

- (a) the development application is made by the holder of a part 4 environmental authority (other than an environmental authority issued under section 61) to carry out an environmentally relevant activity; and
- (b) a development approval is issued to the holder for carrying out the activity.

**‘(2)** The administering authority must cancel the part 4 environmental authority.

**‘(3)** The cancellation of the part 4 environmental authority takes effect from immediately before the development approval takes effect.

**‘(4)** If the part 4 environmental authority is a licence or level 1 approval and, on application of the holder, the administering authority issues the holder a part 4A environmental authority for carrying out the activity, the part 4A environmental authority takes effect when the development approval takes effect.

**‘Issue of single environmental authority on issue of development approval**

**‘60ZE.(1)** This section applies if—

- (a) the development application is made by the holder of a part 4 environmental authority issued under section 61 to carry out different environmentally relevant activities or environmentally relevant activities at different places (the **“existing authority”**); and
- (b) a development approval is issued to the holder for carrying out 1 of the activities (the **“development activity”**); and
- (c) the holder applies for a part 4A environmental authority for the development activity.

**‘(2)** If the administering authority grants the application, the authority must—

- (a) cancel the existing authority; and
- (b) issue to the holder a single environmental authority for carrying out the activities.

‘(3) The cancellation of the existing authority takes effect from immediately before the development approval takes effect.

‘(4) For subsection (2)(b), the single environmental authority—

- (a) is issued—
  - (i) under part 4A, for carrying out the development activity; and
  - (ii) under part 4, for carrying out the other activities; and
- (b) takes effect when the development approval takes effect.

#### *‘Division 4—Offences*

##### **‘Offence to contravene development condition**

‘60ZF.(1) A person must not wilfully contravene a development condition of a development approval.

Maximum penalty—2 000 penalty units or 2 years imprisonment.

‘(2) A person must not contravene a development condition of a development approval.

Maximum penalty—1 665 penalty units.

‘(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find the defendant guilty of the offence against subsection (2).’.

##### **Replacement of ch 3, pt 4, div 5 heading**

43. Chapter 3, part 4, division 5, heading—

*omit, insert—*

#### **‘PART 4C—GENERAL PROVISIONS ABOUT ENVIRONMENTALLY RELEVANT ACTIVITIES’.**

**Amendment of s 61 (Single applications and environmental authorities)**

**44.** Section 61(2), ‘grant’—

*omit, insert—*

‘issue’.

**(2)** Section 61(3)—

*renumber* as section 61(4).

**(3)** Section 61—

*insert—*

‘**(3)** To remove any doubt it is declared that the administering authority may issue a single environmental authority in relation to part 4 and part 4A environmental authorities.’.

**Amendment of s 68 (Annual licence fee and return)**

**45.** Section 68(1)(a) and (b)—

*omit, insert—*

‘(a) give to the authority an annual return in the approved form; and

(b) pay to the authority the appropriate annual licence fee other than in a circumstance prescribed under a regulation for this paragraph.’.

**(2)** Section 68(3)(b)—

*omit, insert—*

‘(b) state a day (the “**due day**”) by which the licensee must—

(i) give to the administering authority an annual return in the approved form; and

(ii) if a circumstance mentioned in subsection (1)(b) does not apply to the licensee—pay to the authority the annual licence fee and a late payment fee prescribed under a regulation; and’.

(3) Section 68—

*insert—*

‘(3A) If a circumstance is prescribed for subsection (1)(b), a regulation may provide for the giving of a notice to the licensee requiring payment of the fee, or part of the fee, by a day stated in the notice (also the “**due day**”).

‘(3B) The due day for a notice under this section must be at least 14 days after the giving of the notice.’.

(4) Section 68(4), ‘the reminder notice’—

*omit, insert—*

‘a notice under this section’.

### **Insertion of new s 70A**

46. After section 70—

*insert—*

#### **‘Material change of use for Integrated Planning Act**

‘70A.(1) This section applies if—

- (a) the holder of an environmental authority, or development approval, for an environmentally relevant activity proposes to carry out works for the construction or alteration of premises, or for the installation or alteration of plant or equipment in premises, for carrying out the activity; and
- (b) the construction, alteration or installation will result in an increase of 10% or more in the release of contaminant into the environment under the authority or approval.

‘(2) The increase is a material change of use of the premises for the Integrated Planning Act.’.

### **Amendment of s 72 (When environmental audit required)**

47.(1) Section 72(1)(b)—

*renumber* as section 72(1)(c).

(2) Section 72(1)—

*insert—*

‘(b) a person is not complying with a development condition of a development approval; or’.

**Amendment of s 76 (Administering authority to consider and act on environmental reports)**

**48.(1)** Section 76(2)(c) and (d)—

*renumber* as section 76(2)(d) and (e).

(2) Section 76(2)(b)—

*omit, insert—*

‘(b) if the recipient is a licensee—amend conditions of the recipient’s licence; or

(c) if the recipient is the holder of a development approval—under section 6.1.44 of the Integrated Planning Act<sup>25</sup>, change or cancel a development condition of the approval; or’.

**Amendment of s 82 (Administering authority may require draft program)**

**49.** Section 82(1), ‘licence.’—

*omit, insert—*

‘licence or a development approval for which the administering authority is the assessment manager or a concurrence agency.<sup>26</sup>’.

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<sup>25</sup> Under section 6.1.44 of the Integrated Planning Act, the administering authority as assessment manager or concurrence agency may change or cancel development conditions in the circumstances, and in accordance with the procedures, in the section.

<sup>26</sup> In deciding conditions of a development approval as assessment manager or concurrence agency, the administering authority may, under section 60ZF and section 46(3)(a)(iv) as applied by that section, require the development approval be subject to the condition that the holder prepare and carry out an environmental management program.

**Amendment of s 89 (Criteria for deciding draft program)**

**50.** Section 89—

*insert—*

‘(2) If the draft program is prepared because of a requirement of a development condition of a development approval, the authority may approve the draft program only if it is not inconsistent with other conditions of the approval.’.

**Amendment of s 97 (Effect of compliance with program)**

**51.** Section 97(2)—

*omit, insert—*

‘(2) The holder may do, or not do, the thing under the program despite anything in—

- (a) a licence held by the holder; or
- (b) a development condition of a development approval; or
- (c) an environmental protection policy.’.

**Amendment of s 109 (When order may be issued)**

**52.** Section 109(d)(iii)—

*omit, insert—*

- ‘(iii) a condition of an environmental authority; or
- (iv) a development condition of a development approval.’.

**Amendment of s 119 (Unlawful environmental harm)**

**53.** Section 119(1)(e)—

*omit, insert—*

- ‘(e) a development condition of a development approval; or
- (f) an emergency direction.’.

**Amendment of s 127 (Offence of interfering with monitoring equipment)**

**54.** Section 127, after ‘Act’—

*insert—*

‘or a development condition of a development approval’.

**Amendment of s 135 (Entry of place)**

**55.(1)** Section 135(1)(c), ‘or a place to which an approval relates’—

*omit.*

**(2)** Section 135—

*insert—*

‘**(3)** In this section—

“**licensed place**” includes—

- (a) a place to which an approval relates; and
- (b) a place to which a development approval subject to a development condition relates.’.

**Amendment of s 146 (Power to require production of documents)**

**56.** Section 146(1)—

*omit, insert—*

‘**146.(1)** An authorised person may require a person to produce to the authorised person for inspection a document required to be held or kept under this Act or a development condition of a development approval.’.

**Amendment of s 162 (Failure to help authorised person—emergency)**

**57.** Section 162(3), after ‘Act’—

*insert—*

‘or a development condition of a development approval’.

**Amendment of s 163 (Failure to help authorised person—other cases)**

**58.** Section 163(3), after ‘Act’—

*insert—*

‘or a development condition of a development approval’.

**Insertion of new s 193A**

**59.** Before section 194, in chapter 5, part 4—

*insert—*

**‘Application of pt 4**

‘**193A.** This part does not apply to a development offence.<sup>27</sup>’.

**Insertion of new pt 4A**

**60.** After section 195—

*insert—*

**‘PART 4A—ENFORCEMENT ORDERS****‘Proceeding for orders**

‘**195A.(1)** A person may bring a proceeding in the Court—

- (a) for an order to remedy or restrain the commission of a development offence (an “**enforcement order**”); or
- (b) if the person has brought a proceeding under paragraph (a) and the Court has not decided the proceeding—for an order under section 195C (an “**interim enforcement order**”); or
- (c) to cancel or change an enforcement order or interim enforcement order.

‘**(2)** The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.’

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<sup>27</sup> Part 4A (Enforcement orders) applies to development offences.

**‘Proceeding brought in a representative capacity**

**‘195B.(1)** The proceeding may be brought by the person on their own behalf or in a representative capacity.

**‘(2)** However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;
- (b) if the proceeding is brought on behalf of an individual—the individual.

**‘Making interim enforcement order**

**‘195C.(1)** The Court may make an interim enforcement order pending a decision of the proceeding if the Court is satisfied it would be appropriate to make the order.

**‘(2)** The Court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent if the proceeding is unsuccessful.

**‘Making enforcement order**

**‘195D.(1)** The Court may make an enforcement order if the Court is satisfied the offence—

- (a) has been committed; or
- (b) will be committed unless restrained.

**‘(2)** If the Court is satisfied the offence has been committed, the Court may make an enforcement order whether or not there has been a prosecution for the offence.

**‘Effect of orders**

**‘195E.(1)** An enforcement order or an interim enforcement order may direct the respondent—

- (a) to stop an activity that constitutes, or will constitute, a

development offence; or

- (b) not to start an activity that will constitute a development offence; or
- (c) to do anything required to stop committing a development offence.

‘(2) Without limiting the Court’s powers, the Court may make an order—

- (a) restraining the use of plant or equipment or a place; or
- (b) requiring the repairing, demolition or removal of plant or equipment, a structure or other thing; or
- (c) requiring the rehabilitation or restoration of the environment.

‘(3) An enforcement order or interim enforcement order—

- (a) may be in terms the Court considers appropriate to secure compliance with this Act; and
- (b) must state the time by which the order is to be complied with.

‘(4) A person who contravenes an enforcement order or interim enforcement commits an offence against this Act.

Maximum penalty for subsection (4)—3 000 penalty units or 2 years imprisonment.

### ‘Court’s powers about orders

‘195F.(1) The Court’s power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of the kind; or
- (c) there is danger of substantial damage to the environment if the person engages, or continues to engage, in the activity.

‘(2) The Court’s power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

- (a) it appears to the Court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of the kind; or
- (c) there is danger of substantial damage to the environment if the person fails, or continues to fail, to do the thing.

‘(3) The Court may cancel or change an enforcement order or interim enforcement order.

‘(4) The Court’s power under this section is in addition to its other powers.

#### **‘Costs involved in bringing proceeding**

‘195G. If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.’.

#### **Amendment of s 196 (Devolution of powers)**

**61.** Section 196(1A)—

*omit, insert—*

‘(1A) The administration and enforcement of this Act for an environmentally relevant activity carried out in an area below the high or low-watermark forming the boundary of a local government’s area may be devolved to the local government.’.

#### **Amendment of s 213 (Register)**

**62.(1)** Section 213(1)(d), after ‘Act’—

*insert—*

‘or a development condition of a development approval’.

**(2)** Section 213(1)(c) to (h)—

*renumber* as section 213(1)(d) to (i).

**(3) Section 213—***insert—*

- ‘(c) development approvals for environmentally relevant activities; and’.

**Amendment of s 220 (Regulation-making power)****63. Section 220—***insert—*

‘**(3A)** Also, without limiting subsection (2)(a), a regulation may prescribe fees payable to the administering authority in relation to its functions under the Integrated Planning Act, as assessment manager or concurrence agency, including, for example—

- (a) application fees for development applications; and
- (b) fees for monitoring compliance with development conditions on a development approval.’.

**Amendment of sch 1 (Original decisions)****64. Schedule 1—***insert—*

‘60K	Imposition of conditions of a licence
60L	Refusal of an application for a licence
60M	Suspension or cancellation of a licence
60S	Imposition of conditions of a level 1 approval
60T	Refusal of an application for a level 1 approval
60U	Suspension or cancellation of a level 1 approval’.

**Amendment of sch 4 (Dictionary)****65.(1) Schedule 4, definition “licence”, after ‘part 4’—***insert—*

‘or 4A’.

(2) Schedule 4—

*insert—*

‘ **“advice agency”**, for a development application, has the meaning given by the Integrated Planning Act.<sup>28</sup>

**“approval”** means an approval under chapter 3, part 4 or 4A to carry out a level 1 or level 2 environmentally relevant activity.

**“assessment manager”** has the meaning given by 3.1.7 of the Integrated Planning Act.<sup>29</sup>

**“concurrence agency”**, for a development application, has the meaning given by the Integrated Planning Act.<sup>30</sup>

**“development”** has the meaning given by section 1.3.2 of the Integrated Planning Act.<sup>31</sup>

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<sup>28</sup> Under the Integrated Planning Act, the advice agency for a development application is the entity prescribed under a regulation under that Act as an advice agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

<sup>29</sup> Under section 3.1.7 (Assessment manager) of the Integrated Planning Act, the “assessment manager”, for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act.

<sup>30</sup> Under the Integrated Planning Act, the concurrence agency for a development application is the entity prescribed under a regulation under that Act as a concurrence agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

<sup>31</sup> Section 1.3.2 (Meaning of “development”)—  
**1.3.2. “Development”** is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.

Chapter 1, part 3, division 3 of the Integrated Planning Act contains supporting definitions and explanations for the term “development”.

**“development approval”** means a development approval under the Integrated Planning Act.<sup>32</sup>

**“development application”** means an application for a development approval.

**“development condition”**, of a development approval, means a condition of the approval imposed by, or imposed because of a requirement of, the administering authority as assessment manager or concurrence agency for the application for the approval.

**“development offence”** means an offence against section 60ZF.<sup>33</sup>

**“enforcement order”** see section 195A.

**“integrated environmental management system”**, for an environmentally relevant activity, means a system for the management of the environmental impacts of the carrying out of the activity.

**“Integrated Planning Act”** means the *Integrated Planning Act 1997*

**“interim enforcement order”** see section 195A.

**“level 1 approval”** means an approval under chapter 3, part 4 or 4A to carry out a level 1 environmentally relevant activity.

**“part 4 environmental authority”** means an environmental authority issued under part 4, and includes a single environmental authority issued under section 61 to the extent that it relates to the carrying out of an environmentally relevant activity under part 4.

**“part 4A environmental authority”** means an environmental authority issued under part 4A, and includes a single environmental authority issued under section 61 to the extent that it relates to the carrying out of an environmentally relevant activity under part 4A.

**“referral agency”** means an advice agency or concurrence agency.’.

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<sup>32</sup> Under the Integrated Planning Act, a development approval is required for certain development. A development approval may be in the form of a preliminary approval, a development permit or a combination of both of them.

<sup>33</sup> Section 60ZF (Offence to contravene development condition)

## **PART 5—AMENDMENT OF ENVIRONMENTAL AND OTHER LEGISLATION AMENDMENT ACT 1997**

### **Act amended**

**66.** This part amends the *Environmental and Other Legislation Amendment Act 1997*.

### **Amendment of 39 (Amendment of sch 4 (Dictionary))**

**67.** Section 39(2), proposed definitions “approval” and “level 1 approval”—

*omit.*

## **PART 6—AMENDMENT OF INTEGRATED PLANNING ACT 1997**

### **Act amended**

**68.** This part amends the *Integrated Planning Act 1997*.

### **Amendment of s 1.3.5 (Definitions for terms used in “development”)**

**69.(1)** Section 1.3.5, definition “material change of use”, paragraph (c), ‘character,’—

*omit.*

**(2)** Section 1.3.5, definition “building work”, after ‘a building’—

*insert—*

‘or other structure’.

**(3)** Section 1.3.5, definition “building work”, after ‘the building’—

*insert—*

‘ or other structure’.

**Amendment of s 2.2.18 (Local government’s actions after receiving reviewer’s report)**

70. Section 2.2.18(4), ‘2(a)’—

*omit, insert—*

‘2(2)(a)’.

**Amendment of s 2.2.22 (Reviewers not liable for performing functions under review)**

71. Section 2.2.22, ‘or in good faith purportedly done’—

*omit, insert—*

‘in good faith or purportedly done in good faith’.

**Amendment of s 2.4.1 (Meaning of “State planning policy”)**

72. Section 2.4.1(2), ‘local planning instrument’—

*omit, insert—*

‘State planning policy’.

**Amendment of s 2.6.18 (Repealing designations)**

73. Section 2.6.18(4)(d), ‘Minister’s’—

*omit.*

**Amendment of s 2.6.19 (Request to acquire designated land under hardship)**

74. Section 2.6.19—

*insert—*

‘(4) In this section—

“an interest in designated land” includes—

- (a) if the interest is part of a lot—all of the lot; and
- (b) if the interest is part of a lot (the “**first lot**”) and the first lot

adjoins 1 or more lots used by the owner in conjunction with the first lot—all of the lots.’.

**Amendment of s 2.6.23 (If the designator does not act under the notice)**

**75.(1)** Section 2.6.23(1), ‘25’—

*omit, insert—*

‘40’.

**(2)** Section 2.6.23(1)(a)—

*omit, insert—*

‘(a) signed an agreement with the owner to buy the interest or to take the interest under the *Acquisition of Land Act 1967*, section 15; or’.

**(3)** Section 2.6.23(1)(b), ‘a written’—

*omit, insert—*

‘an’.

**(4)** Section 2.6.23(2)—

*omit, insert—*

‘**(2)** The designator must, within 5 business days after the end of the period mentioned in subsection (1), give the owner a notice of intention to resume the interest.

‘**(3)** The notice given under subsection (2) is taken to be a notice of intention to resume given under the *Acquisition of Land Act 1967*, section 7.

‘**(4)** However, the *Acquisition of Land Act 1967*, sections 13 and 41, do not apply to the resumption.’.

**Amendment of s 3.1.2 (Development under this Act)**

**76.** Section 3.1.2(2) and (3)—

*omit, insert—*

‘**(2)** Schedule 8 may identify exempt development that a planning

scheme can not make assessable or self-assessable development.

‘(3) To the extent a planning scheme is inconsistent with schedule 8, the planning scheme is of no effect.

‘(4) However, to the extent a planning scheme is inconsistent with schedule 8 because the planning scheme states development is self-assessable, but schedule 8 states the development is assessable—

- (a) codes in the planning scheme for the development are not applicable codes; but
- (b) the codes must be complied with.’.

### **Amendment of s 3.1.3 (Code and impact assessment for assessable development)**

77. Section 3.1.3(4) and (5)—

*omit, insert—*

‘(4) A regulation under this or another Act may also identify a code, or a part of a code, as a code, or a part of a code, that can not be changed under a local planning instrument or a local law.

‘(5) To the extent a local planning instrument or a local law is inconsistent with the scope of a code, or the part of a code, identified in the regulation, the local planning instrument or local law is of no effect.’.

### **Amendment of s 3.1.4 (When is a development permit necessary)**

78. Section 3.1.4(3)(a), ‘codes applying to the development’—

*omit, insert—*

‘applicable codes’.

### **Amendment of s 3.1.6 (Preliminary approval may override local planning instrument)**

79. Section 3.1.6(5) and (6)—

*omit, insert—*

‘(5) To the extent a preliminary approval is inconsistent with schedule 8, the preliminary approval is of no effect.

‘(6) However, to the extent a preliminary approval is inconsistent with schedule 8 because the preliminary approval states development is self-assessable, but schedule 8 states the development is assessable—

- (a) codes in the preliminary approval for the development are not applicable codes; but
- (b) the codes must be complied with.’.

### **Amendment of s 3.1.7 (Assessment manager)**

**80.** Section 3.1.7(2)—

*omit, insert—*

‘(2) However, instead of making a decision under subsection (1)(b)(ii), the Minister may decide that the application, for which a decision under subsection (1)(b)(ii) would normally be made, be split into 2 or more applications.

‘(3) The assessment manager administers applications.’.

### **Amendment of s 3.2.1 (Applying for development approval)**

**81.** Sections 3.2.1(4)(c), after ‘regulation’—

*insert—*

‘under this or another Act’.

### **Amendment of s 3.2.2 (Approved material change of use required for certain developments)**

**82.** Section 3.2.2, first sentence—

*number* as ‘3.2.2.(1)’.

**Amendment of s 3.2.3 (Acknowledgment notices generally)**

**83.** Section 3.2.3(2)(c), ‘apply’—

*omit, insert—*

‘be applicable codes’.

**Amendment of s 3.2.6 (Acknowledgment notices if there are referral agencies or referral coordination is required)**

**84.** Sections 3.2.6(2)(c), after ‘regulation’—

*insert—*

‘under this or another Act’.

**Amendment of s 3.2.10 (Notification stage does not apply to some changed applications)**

**85.** Section 3.2.10(c)—

*omit, insert—*

‘(c) the assessment manager is satisfied the change to the application, if the notification stage were to apply to the change, would not be likely to attract a submission objecting to the thing comprising the change.’.

**Amendment of s 3.2.11 (Withdrawing an application)**

**86.** Section 3.2.11(2)—

*omit, insert—*

‘(2) If the applicant withdraws the application the assessment manager must give all referral agencies written notice of the withdrawal.

‘(3) If within 1 year of withdrawing the application, the applicant makes a later application that is not substantially different in its proposals from the withdrawn application, any properly made submission about the withdrawn application is taken to be a properly made submission about the later application.’.

**Amendment of s 3.2.12 (Applications lapse in certain circumstances)**

**87.** Section 3.2.12(2)(c), ‘if the next action is complying with’—  
*omit, insert—*  
‘for taking the actions mentioned in’.

**Amendment of s 3.2.14 (Service provider notice for reconfiguring a lot)**

**88.** Section 3.2.14(1), after ‘local’—  
*insert—*  
‘government’s’.

**Amendment of s 3.3.3 (Applicant gives material to referral agency)**

**89.** Sections 3.3.3(1)(c), after ‘regulation’—  
*insert—*  
‘under this or another Act’.

**Amendment of s 3.3.6 (Information requests to applicant (generally))**

**90.(1)** Section 3.3.6(6), ‘(5)’—  
*omit, insert—*  
‘(6)’.

**(2)** Section 3.3.6(5) to (8)—  
*renumber* as 3.3.6(6) to (9).

**(3)** Section 3.3.6—  
*insert—*

‘**(5)** If an information request is made by a concurrence agency, the concurrence agency must—

- (a) give the assessment manager a copy of the request; and
- (b) advise the assessment manager of the day the request was made.’.

**Replacement of s 3.3.7 (Information requests to applicant (referral coordination))**

**91.** Section 3.3.7—

*omit, insert—*

**‘Information requests to applicant (referral coordination)**

**‘3.3.7.(1)** This section applies if the application requires referral coordination.

**‘(2)** The chief executive may, within 20 business days after the chief executive receives the notice mentioned in section 3.3.5(2)(d) and after consulting the assessment manager and each referral agency—

- (a) by written request (also an **“information request”**) ask the applicant to give further information needed to assess the application; or
- (b) by written notice advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

**‘(3)** The chief executive may, by written notice given to the applicant and without the applicant’s agreement, extend the information request period by not more than 10 business days.

**‘(4)** Only 1 notice may be given under subsection (3) and it must be given before the information request period ends.

**‘(5)** The information request period may be further extended if the applicant, at any time, gives written agreement to the extension.

**‘(6)** If the chief executive extends the information request period, the chief executive must advise the assessment manager and each concurrence agency of the extension.

**‘(7)** If the chief executive does not give the applicant an information request under this section and has not given a notice under subsection (1)(b), the chief executive must advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.’.

**Amendment of s 3.3.15 (Referral agency assesses application)**

**92.** Section 3.3.15(2)(b), ‘Standard Building Law’—

*omit, insert—*

‘Standard Building Regulation’.

**Amendment of s 3.3.16 (Referral agency’s response)**

**93.(1)** Section 3.3.16(1), ‘give its response’—

*omit, insert—*

‘give its response (a “**referral agency’s response**”)’.

**(2)** Section 3.3.16(2), ‘give its response’—

*omit, insert—*

‘give its response (also a “**referral agency’s response**”)’.

**Amendment of s 3.3.20 (When does information and referral stage end)**

**94.** Section 3.3.20(2)(b), ‘under’—

*omit, insert—*

‘mentioned in’.

**Amendment of s 3.4.4 (Public notice of applications to be given)**

**95.(1)** Section 3.4.4(4), definition “owner” paragraph (b), ‘*Mixed Use Development Act 1987*’—

*omit, insert—*

‘*Mixed Use Development Act 1993*’.

**(2)** Section 3.4.4(4)—

*renumber* as (5).

**(3)** Section 3.4.4—

*insert—*

‘(4) For subsection (1)(c), roads, land below high-water mark and the beds and banks of rivers are to be taken not to be adjoining land.’.

#### **Amendment of s 3.4.9 (Making submissions)**

**96.(1)** Section 3.4.9(3), after ‘accept a’—

*insert—*

‘written’.

**(2)** Section 3.4.9(4), after ‘may’—

*insert—*

‘, by written notice’.

#### **Amendment of s 3.5.4 (Code assessment)**

**97.(1)** Section 3.5.4(4), ‘3.2.5(1)(a)’—

*omit, insert—*

‘3.2.5(3)(a)’.

**(2)** Section 3.5.4(4)(b), ‘current’—

*omit, insert—*

‘existing’.

#### **Amendment of s 3.5.5 (Impact assessment)**

**98.(1)** Section 3.5.5(3)(e)—

*omit, insert—*

‘(e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;’.

**(2)** Section 3.5.5(4), ‘3.2.5(1)(a)’—

*omit, insert—*

‘3.2.5(3)(a)’.

(3) Section 3.5.5(4)(b), ‘current’—  
*omit, insert*—  
‘existing’.

**Amendment of s 3.5.11 (Decision generally)**

99. Section 3.5.11(3)(b), ‘applied for’—  
*omit, insert*—  
‘sought’.

**Amendment of s 3.5.13 (Decision if application requires code assessment)**

100.(1) Section 3.5.13(3)—  
*renumber* as (4).

(2) Section 3.5.13(2)—  
*omit, insert*—

‘(2) The assessment manager’s decision may conflict with an applicable code if there are sufficient grounds to justify the decision, having regard to the purpose of the code.

‘(3) However—

- (a) if the application is for building work—the assessment manager’s decision must not conflict with the *Building Act 1975*; and
- (b) for assessment against a code in a planning scheme—the assessment manager’s decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.’.

(3) Section 3.5.13—  
*insert*—

‘(5) Subsection (3)(b) applies only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.’.

**Amendment of s 3.5.14 (Decision if application requires impact assessment)**

**101.** Section 3.5.14—

*insert—*

‘(4) Subsections (2)(a) and (3) apply only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.’.

**Amendment of s 3.5.15 (Decision notice)**

**102.(1)** Section 3.5.15(1), after ‘the decision’—

*insert—*

‘in the approved form’.

**(2)** Section 3.5.15—

*insert—*

‘(5) When the assessment manager gives a decision notice to the applicant (or if the assessment manager is not the local government and the development is in a local government area, the local government), the assessment manager must also give a copy of any plans and specifications approved by the assessment manager in relation to the decision notice.’.

**Amendment of s 3.5.17 (Changing conditions during the applicant’s appeal period)**

**103.** Section 3.5.17—

*insert—*

‘(6) Before the assessment manager agrees to a change under this section, the assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.’.

**Amendment of s 3.5.18 (Applicant may suspend applicant's appeal period)**

**104.** Section 3.5.18(5)—

*omit.*

**Amendment s 3.5.19 (When approval takes effect)**

**105.** Section 3.5.19(c)—

*omit, insert—*

‘(c) if an appeal is made to the court or a tribunal—subject to the decision of the court or tribunal, when the decision is made.’.

**Replacement of s 3.5.20 (When development may start)**

**106.** Section 3.5.20—

*omit, insert—*

**‘When development may start**

**‘3.5.20.** The development may start before the applicant's appeal period ends if—

- (a) there are no submitters; or
- (b) if there are submitters—the submitter's appeal period has ended.<sup>34</sup>’.

**Amendment of s 3.5.21 (When approval lapses)**

**107.(1)** Section 3.5.21(1)(b)—

*omit, insert—*

‘(b) for a development permit that is reconfiguring a lot—the plan mentioned in section 3.7.2 for the reconfiguration of the lot is given to the local government for its approval before the end of the currency period; or

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<sup>34</sup> However, see section 4.1.47 (Lodging appeal stops certain actions).

- (c) for development not mentioned in paragraphs (a) and (b)—development under the approval substantially starts before the end of the currency period.’.

(2) Section 3.5.21(4)(b), ‘time.’—

*omit, insert—*

‘time;’.

(3) Section 3.5.21(6)—

*renumber as 3.5.21(7).*

(4) Section 3.5.21—

*insert—*

‘(6) Despite subsections (2) to (5), to the extent the approval is for development that is reconfiguring a lot and the reconfiguration requires operational works, the “**currency period**” is—

- (a) the 4 years starting the day the approval takes effect; or
- (b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.’.

### **Amendment of s 3.5.22 (Request to extend currency period)**

**108.** Section 3.5.22(4)(b)—

*omit, insert—*

‘(b) a copy of each notice given under subsection (1)(a).’.

### **Amendment of s 3.5.26 (Request to cancel development approval)**

**109.(1)** Section 3.5.26(2) to (4)—

*renumber as (4) to (6).*

(2) Section 3.5.26—

*insert—*

‘(2) However, if there is a written arrangement between the owner and another person under which the other person proposes to buy the land, the

owner must not ask the assessment manager to cancel the development approval unless the other person also gives written consent to the cancellation.

‘(3) Subsections (1) and (2) apply only if the request is made before development under the development approval starts.’.

### **Amendment of s 3.5.32 (Conditions that cannot be imposed)**

**110.(1)** Section 3.5.32(2)(a), ‘safety and efficiency’—

*omit, insert—*

‘safety or efficiency’.

**(2)** Section 3.5.32, ‘State owned’—

*omit, insert—*

‘State owned or State controlled’.

**(3)** Section 3.5.32(3), ‘is owned’—

*omit, insert—*

‘is owned or controlled’.

### **Amendment of s 3.6.2 (Notice of direction)**

**111.** Section 3.6.2(1), ‘taken’—

*omit, insert—*

‘take’.

### **Amendment of s 3.7.2 (Plan for reconfiguring under development permit)**

**112.(1)** Section 3.7.2(1) and (2)—

*omit, insert—*

‘**3.7.2.(1)** This section applies if the reconfiguration proposed to be effected by the plan is authorised by a development permit.’.

‘(2) The plan must be given to the local government for its approval before the end of the currency period for the permit.’.

(2) Section 3.7.2(3)(b)—

*omit, insert—*

‘(b) for a reconfiguration that requires operational works—the conditions of the development permit for the operational works have been complied with; and’.

(3) Section 3.7.2(4), ‘must’—

*omit, insert—*

‘may’.

### **Insertion of new s 3.7.8**

**113.** After section 3.7.7—

*insert—*

#### **‘Application of pt 7 to acquisitions for public purposes**

**3.7.8.(1)** This part does not apply to a plan (however called) for the reconfiguration of a lot if the reconfiguration is in relation to the acquisition of land for a purpose set out in the *Acquisition of Land Act 1967*, schedule 2.

‘(2) If, under subsection (1), this part does not apply to a plan the *Land Title Act 1994*, section 50(g), does not apply to the registration of the plan.’.

### **Amendment of s 4.1.21 (Court may make declarations)**

**114.** Section 4.1.21(1)(a)—

*omit, insert—*

‘(a) a matter done, to be done or that should have been done under this Act; and’.

**Amendment of s 4.1.23 (Costs)****115.(1)** Section 4.1.23(3)—

*omit, insert—*

‘(3) If a person brings a proceeding in the court for a declaration against an owner who sought the cancellation of a development approval without the consent of the other person mentioned in section 3.5.26, and the court makes the order, the court must award costs against the owner.’

**(2)** Section 4.1.23(5)—

*omit, insert—*

‘(5) If a person brings a proceeding in the court for a declaration requiring a designator to give, under section 2.6.23,<sup>35</sup> a notice of intention to resume an interest in land under the *Acquisition of Land Act 1967* and the court makes an order about the declaration, the court must award costs against the designator.’

**(3)** Section 4.1.23—

*insert—*

‘(10) An order made under this section may be made an order of the District Court and enforced in the District Court.’

**Amendment of s 4.1.33 (Stay of operation of enforcement notice)****116.** Section 4.1.33(2)(b)—

*omit, insert—*

‘(b) carrying out development that is the demolition of a work.’

**Omission of s 4.1.36 (Appeals against disqualification as a private certifier)****117.** Section 4.1.36—

*omit.*

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<sup>35</sup> Section 2.6.23 (If the designator does not act under the notice)

**Amendment of s 4.2.1 (Establishing building and development tribunals)**

**118.(1)** Section 4.2.1(2), ‘5 referees’—

*omit, insert—*

‘5 general referees’.

**(2)** Section 4.2.1—

*insert—*

‘**(4)** However, if a tribunal is being established only to hear an appeal against a local government’s decision about the amenity and aesthetics assessment of a building under the Standard Building Regulation, the tribunal may be established by the appointment of 3 aesthetic referees as the members constituting the tribunal.

‘**(5)** The aesthetic referees appointed under subsection (4) must be—

- (a) 1 individual who is an architect (who is the chairperson of the tribunal); and
- (b) 1 individual who is not a member of, nor employed by the local government whose decision is being appealed and whose appointment has been discussed with the Local Government Association of Queensland; and
- (c) 1 individual whose appointment has been discussed with the Queensland Master Builders’ Association and the Housing Industry Association.’.

**Amendment of s 4.2.2 (Consultation about multiple members tribunals)**

**119.** Section 4.2.2—

*insert—*

‘**(2)** Subsection (1) does not apply to a tribunal established under section 4.2.1(4).’.

**Amendment of s 4.2.4 (Referee with conflict of interest not to be member of tribunal)**

**120.** Section 4.2.4(1)(a)(ii), ‘referee is’—  
*omit, insert—*  
‘referee was, is’.

**Amendment of s 4.2.7 (Jurisdiction of tribunals)**

**121.** Section 4.2.7(2)(a)—  
*omit, insert—*  
‘(a) the part of a development application assessed against the *Building Act 1975*; or’.

**Amendment of s 4.2.10 (Appeal by advice agency)**

**122.(1)** Section 4.2.10(1), from ‘, and’—  
*omit, insert—*  
‘for the aspect of building work to be assessed against the *Building Act 1975*.’.

**(2)** Section 4.2.10(2), ‘Queensland’ to ‘as an’—  
*omit.*

**Amendment of s 4.2.14 (Stay of operation of enforcement notice)**

**123.** Section 4.2.14(2)(b)—  
*omit, insert—*  
‘(b) carrying out development that is the demolition of a work.’.

**Replacement of s 4.2.33 (Matters the tribunal may consider in making a decision)**

**124.** Section 4.2.33—  
*omit, insert—*

**‘Matters the tribunal may consider in making a decision**

‘**4.2.33.** If the appeal is about a development application (including about a development approval given for a development application), the tribunal must decide the appeal based on the laws and policies applying when the application was made, but may give the weight to any new laws and policies the tribunal considers appropriate.’.

**Amendment of s 4.2.34 (Appeal decision)**

**125.** Section 4.2.34(2)—

*insert—*

- ‘(e) if the application is for building work—with the consent of the appellant, vary the application so that the tribunal is satisfied—
- (i) the building, when erected, will not have an extremely adverse affect on the amenity or likely amenity of the building’s neighbourhood; and
  - (ii) the aesthetics of the building, when erected, will not be in extreme conflict with the character of the building’s neighbourhood.’.

**Insertion of new s 4.2.35A**

**126.** After section 4.2.35—

*insert—*

**‘Notice of compliance**

‘**4.2.35A.** If the tribunal orders or directs the assessment manager, including a private certifier acting as an assessment manager, to do something, the assessment manager must, after doing the thing, give the registrar written notice of doing the thing.’.

**Amendment of s 4.2.36 (Appointment of referees)**

**127.(1)** Section 4.2.36(1), ‘referees’—

*omit, insert—*

‘general referees’.

**(2)** Section 4.2.36(2) and (3)—

*renumber* as 4.2.36(3) and (4).

**(3)** Section 4.2.36—

*insert—*

‘**(2)** The chief executive may, by written notice, appoint persons to be aesthetics referees for a tribunal established under section 4.2.1(4).’.

**Amendment of s 4.2.37 (Qualification of referees)**

**128.(1)** Section 4.2.37, heading—

*omit, insert—*

‘**Qualifications of general referees**’.

**(2)** Section 4.2.37, ‘referee’—

*omit, insert—*

‘general referee’.

**Replacement of section 4.2.38 (Term of referee’s appointment)**

**129.** Section 4.2.38—

*omit, insert—*

‘**Term of referee’s appointment**

‘**4.2.38.(1)** A person may be appointed—

- (a) as a general referee—for the term the Minister considers appropriate, but the term must not be longer than 3 years; and
- (b) as an aesthetics referee—for hearing 1 or more decisions, about the amenity and aesthetics of a building, that have been appealed.

‘(2) The term of appointment of a general referee must be stated in the notice of appointment.

‘(3) A referee may be reappointed.

‘(4) A referee may at any time resign the referee’s appointment by writing under the referee’s hand given to—

(a) if the referee is a general referee—the Minister; or

(b) if the referee is an aesthetics referee—the chief executive.

‘(5) The Minister may cancel a general referee’s appointment at any time.

‘(6) The chief executive may cancel an aesthetics referee’s appointment at any time.’.

#### **Amendment of s 4.2.39 (Referee to make declaration)**

**130.(1)** Section 4.2.39, heading—

*omit, insert—*

**‘General referee to make declaration’.**

**(2)** Section 4.2.39(1), ‘referee’—

*omit, insert—*

‘general referee’.

#### **Insertion of new s 4.3.2A**

**131.** After section 4.3.2—

*insert—*

**‘Certain assessable development must comply with codes**

**‘4.3.2A.** A person must comply with codes mentioned in section 3.1.2(4) when carrying out assessable development.

Maximum penalty—165 penalty units.’.

**Amendment of s 4.3.3 (Compliance with development approval)**

**132.** Section 4.3.3—

*insert—*

‘(3) Also, subsection (1) does not apply to a contravention of a condition of a development approval imposed, or required to be imposed, by the administering authority under the *Environmental Protection Act 1994* as the assessment manager or a concurrence agency for the application for the approval.<sup>36</sup>’.

**Amendment of s 4.3.5 (Carrying on unlawful use of premises)**

**133.** Section 4.3.5, section number ‘4.3.5.’—

*omit, insert—*

‘4.3.5.(1)’.

**Amendment of s 4.3.8 (Application of div 2)**

**134.** Section 4.3.8(c)—

*omit, insert—*

- ‘(c) carrying out development that is the demolition of a work; or
- (d) ceasing building work.’.

**Amendment of s 4.3.11 (Giving enforcement notice)**

**135.** Section 4.3.11—

*insert—*

‘(3) If a private certifier is engaged for an aspect of a development, the assessing authority must not give an enforcement notice in relation to the aspect until the assessing authority has consulted with the private certifier about the giving of the notice.

‘(4) Subsection (3) does not apply if the assessing authority reasonably

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<sup>36</sup> The *Environmental Protection Act 1994*, section 60ZF, creates offences for contravening a condition mentioned in subsection (3).

believes the work, in relation to which the enforcement notice is to be given, is dangerous.

‘(5) The assessing authority may not delegate its power to give an enforcement notice about the demolition of a building.

‘(6) An enforcement notice requiring a person to stop carrying out building work may be given by fixing the notice to the premises, or the building or structure on the premises, in a way that a person entering the premises would normally see the notice.

‘(7) If, in relation to a development offence involving premises, the person who committed the offence is not the owner of the premises, a local government may also give an enforcement notice to the owner requiring the owner to remedy the commission of the offence in the way stated in the notice.’.

#### **Amendment of s 4.3.18 (Proceedings for offences)**

**136.(1)** Section 4.3.18(3), ‘Standard Building Law’—

*omit, insert—*

‘Standard Building Regulation’.

**(2)** Section 4.3.18(3), ‘an assessing’—

*omit, insert—*

‘the assessing’.

#### **Amendment of s 4.3.22 (Proceedings for orders)**

**137.(1)** Section 4.3.22(2), ‘Standard Building Law’—

*omit, insert—*

‘Standard Building Regulation’.

**(2)** Section 4.3.22(2), ‘having enforcement jurisdiction for the matter’—

*omit.*

**Amendment of s 4.4.7 (Application of div 3)**

**138.** Section 4.4.7, after ‘under’—

*insert—*

‘or in relation to’.

**Amendment of s 5.1.17 (Local government to consider all submission)**

**139.** Section 5.1.17, heading ‘submission’—

*omit, insert—*

‘**submissions**’.

**Amendment of s 5.2.2 (Agreements may be entered into about infrastructure)**

**140.** Section 5.2.2(1)(b) to (d)—

*omit, insert—*

- ‘(b) supplying a development infrastructure item to a different standard than the standard stated for the item in an infrastructure charges plan; or
- (c) supplying a development infrastructure item not identified in an infrastructure charges plan (whether or not an infrastructure charges plan has been prepared for the planning scheme); or
- (d) supplying infrastructure other than development infrastructure items for a development proposal.’.

**Amendment of s 5.3.3 (What is a private certifier)**

**141.** Section 5.3.3(1)—

*omit, insert—*

‘**5.3.3.(1)** A “**private certifier**” is an individual who—

- (a) has the qualifications, necessary experience or accreditation prescribed under a regulation under this or another Act for a certifier for a stated code; and

- (b) undertakes work by contractual arrangements with clients, either as an individual or through an entity employing the individual.’.

**Amendment of s 5.3.4 (Application must not be inconsistent with earlier approval)**

**142.** Section 5.3.4, ‘must be’—

*omit, insert—*

‘must’.

**Replacement of ss 5.3.5–5.3.7**

**143.(1)** Sections 5.3.5 to 5.3.7—

*omit, insert—*

**‘Private certifier may decide certain development applications and inspect and certify certain works**

‘**5.3.5.(1)** For the types of development or works for which a private certifier has the qualifications, necessary experience or accreditation, the private certifier may receive, assess and decide development applications as if the private certifier were the assessment manager.

‘**(2)** If a private certifier is engaged to assess and decide the application and this or another Act requires that the work be inspected, the private certifier must also be engaged to—

- (a) inspect that the work complies with the development permit authorising the work, any conditions of the permit and the code against which the work must be assessed; and
- (b) issue any certificate required by this or the other Act.

‘**(3)** The private certifier must, when issuing the decision notice, include in the notice details of any other code the applicant may need to comply with in relation to the work to which the application relates.

‘**(4)** However, the private certifier must not decide the application until all other assessments for the application (other than assessments against the Standard Sewerage Law or Standard Water Supply Law for premises

within sewerage areas declared under the Standard Sewerage Law) are completed.

‘(5) If the private certifier receives the application before all other assessments are completed—

- (a) the certifier may start processing the application; and
- (b) for timings under IDAS, the application is taken not to have been received until the day all other assessments are completed.

‘(6) If the private certifier approves the application, the private certifier must, within 5 business days after approving the application, give to the assessment manager a copy of—

- (a) the application; and
- (b) the decision notice, or the negotiated decision notice; and
- (c) any other documents prescribed under a regulation under this or another Act.

‘(7) If the private certifier issues any certificate required by this or another Act, the private certifier must, within 5 business days after issuing the certificate, give a copy of the certificate to the assessment manager.

‘(8) In this section—

“**other assessments**”, for development, means assessment functions outside the private certifier’s powers.

### **‘Private certifier may act as assessing authority in certain circumstances**

‘5.3.6.(1) For chapter 4, part 3, divisions 2 and 3, a private certifier is taken to be an assessing authority in relation to the types of development or works for which the private certifier—

- (a) is qualified, has the necessary experience or is accredited; and
- (b) has been engaged to perform the functions of a private certifier under this part.

‘(2) If a person fails to comply with an enforcement notice given by a private certifier under subsection (1), the private certifier must give the assessment manager written notice of the failure.

**‘Entities (including local governments) may undertake private certification**

**‘5.3.7.(1)** An entity, including a local government, may undertake the work of a private certifier.

**‘(2)** Subsection (1) applies only if the work is undertaken by an employee (who is a private certifier) of the entity.’.

**Omission of s 5.3.14 (Minister or accrediting body may disqualify a private certifier)**

**144.** Section 5.3.14—

*omit.*

**Amendment of s 5.4.5 (Compensation for erroneous planning and development certificates)**

**145.** Section 5.4.5, heading ‘erronous’—

*omit, insert—*

**‘erroneous’.**

**Amendment of s 5.7.1 (Meaning of “available for inspection and purchase”)**

**146.(1)** Section 5.7.1(1)(d), ‘department’—

*omit, insert—*

**‘chief executive’.**

**(2)** Section 5.7.1(1)(e)—

*omit.*

**Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase**

**147.** Section 5.7.2(p) and (q)—

*omit, insert—*

- ‘(p) each show cause notice and enforcement notice given by the local government under this Act or the *Building Act 1975*;
- (q) each show cause notice and enforcement notice a copy of which was given to the local government under this Act or the *Building Act 1975* by an assessing authority or private certifier;
- (r) each enforcement order made by the court on the application of the local government.

‘(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.’.

**Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)**

**148.(1)** Section 5.7.4(b) to (p)—

*renumber* as 5.7.4(c) to (g).

**(2)** Section 5.7.4—

*insert*—

- ‘(b) each decision notice and negotiated decision notice a copy of which was given to the assessment manager by a private certifier;’.

**(3)** Section 5.7.4—

*insert*—

‘(2) The documents mentioned in subsection (1) may be contained in hard copy or electronic form in 1 or more registers kept for the purpose.’.

**Amendment of s 5.7.5 (Documents assessment manager must keep available for inspection only)**

**149.(1)** Section 5.7.5(1)(b)—

*omit, insert*—

- ‘(b) a register of all development applications—
  - (i) made to the assessment manager; and

- (ii) copies of which were given to the assessment manager by a private certifier.’.

(2) Section 5.7.5—

*insert—*

‘(4) The register may be in hard copy or electronic form.’.

### **Amendment of s 5.7.6 (Documents department must keep available for inspection and purchase)**

**150.(1)** Section 5.7.6, heading, ‘department’—

*omit, insert—*

‘**chief executive**’.

(2) Section 5.7.6, ‘department’—

*omit, insert—*

‘**chief executive**’.

(3) Section 5.7.6(a) to (d)—

*omit.*

(4) Section 5.7.6(e) to (l)—

*renumber* as 5.7.6(a) to (h).

(5) Section 5.7.6—

*insert—*

‘(i) each report prepared by the Minister under section 3.6.9(1).’.

### **Replacement of s 5.7.7 (Documents department must keep available for inspection only)**

**151.** Section 5.7.7—

*omit, insert—*

**‘Documents chief executive must keep available for inspection only**

**‘5.7.7.** The chief executive must keep the following available for inspection only—

- (a) an official copy of this Act and every regulation made under this Act and in force;
- (b) all current local government planning schemes (including all consolidated planning schemes);
- (c) all amendments of the planning schemes;
- (d) all current local government planning scheme policies;
- (e) any current temporary local planning instrument.’.

**Amendment of s 5.8.3 (Application of State Development and Public Works Organization Act 1971)**

**152.** Section 5.8.3, ‘Coordinator General’—

*omit, insert—*

‘Coordinator-General’.

**Amendment of s 6.1.1 (Definitions for pt 1)**

**153.(1)** Section 6.1.1, definition “applicable codes”—

*omit, insert—*

‘ **“applicable codes”**, for self-assessable development, means—

- (a) for development other than building work—the standards or requirements under a transitional planning scheme or interim development control provision applying to self-assessable development; or
- (b) for building work—the standards and requirements mentioned in paragraph (a) and the Standard Building Regulation.’.

**(2)** Section 6.1.1, definition “assessable development”—

*omit, insert—*

‘ **“assessable development”** means—

- (a) development specified in schedule 8, part 1<sup>37</sup> as assessable development; or
- (b) to the extent the following development is not inconsistent with schedule 8, part 1—development that, before the commencement of this section, would have required an application to be made—
  - (i) for a continuing approval; or
  - (ii) under section 4.3(1)<sup>38</sup> of the repealed Act.’.

(3) Section 6.1.1, definition “former planning scheme”—

*omit, insert—*

‘ **“former planning scheme”** means a planning scheme under the repealed Act and each town planning by-law and subdivision of land by-law mentioned in section 8.10(6) of the repealed Act in force immediately before the commencement of this section.’.

(4) Section 6.1.1, definition “self-assessable development”—

*omit, insert—*

‘ **“self-assessable development”** means—

- (a) development specified in schedule 8, part 2<sup>39</sup> as self-assessable development; and
- (b) to the extent the development is not inconsistent with schedule 8, part 2—development that, before the commencement of this section, would not have required an application to be made but would have required the development to comply with applicable codes.’.

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<sup>37</sup> Schedule 8 (Assessable, self-assessable and exempt development), part 1 (Assessable development)

<sup>38</sup> Section 4.3 (Amendment of a planning scheme etc. by an applicant)

<sup>39</sup> Schedule 8 (Assessable, self-assessable and exempt development), part 2 (Self-assessable development)

**Amendment of s 6.1.2 (Continuing effect of former planning scheme)**

**154.** Section 6.1.2(2), ‘prevails.’—

*omit, insert—*

‘prevails, unless this chapter states otherwise.’.

**Amendment of s 6.1.3 (What are transitional planning schemes)**

**155.** Section 6.1.3(1) and (2), ‘area.’—

*omit, insert—*

‘area, unless this chapter states otherwise.’.

**Amendment s 6.1.4 (Transitional planning schemes for local government areas)**

**156.** Section 6.1.4—

*insert—*

‘(2) Subsection (1) has effect even though the transitional planning scheme may not—

- (a) advance the purpose of this Act; or
- (b) comply with section 2.1.3.’.

**Amendment of s 6.1.10 (Preparation of amendments to planning schemes under repealed Act may continue)**

**157.(1)** Section 6.1.10(1), after ‘local government’—

*insert—*

‘or the Minister’.

**(2)** Section 6.1.10(1)(b), ‘continue’—

*omit, insert—*

‘if the amendment was being prepared to enable the planning scheme to be converted to an IPA planning scheme—continue’.

**(3)** Section 6.1.10(5)—

*omit, insert—*

**(5)** For subsection (1)—

- (a) a local government is taken to have been preparing an amendment of a planning scheme if the local government had made a resolution to amend the planning scheme; or
- (b) the Minister is taken to have been preparing an amendment of a planning scheme if the Minister had started to consider the matters specified in section 2.19<sup>40</sup> of the repealed Act.’.

#### **Amendment of s 6.1.13 (Continuing effect of local planning policies)**

**158.** Section 6.1.13(2), ‘prevails.’—

*omit, insert—*

‘prevails, unless this chapter states otherwise.’.

#### **Amendment of 6.1.17 (Amending transitional planning scheme policies for consistency with ch 3)**

**159.** Section 6.1.17(2)(b), ‘resolution’—

*omit, insert—*

‘proposed amendment’.

#### **Amendment of s 6.1.20 (Planning scheme policies for infrastructure)**

**160.** Section 6.1.20(1)(b)—

*omit.*

**(2)** Section 6.1.20(1)(c)—

*renumber* as (b).

**(3)** Section 6.1.20(3)—

*renumber* as (4).

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<sup>40</sup> Section 2.19 (Assessment of proposed planning scheme amendment)

(4) Section 6.1.20—

*insert—*

‘(3) However, if the local government has an infrastructure charges plan, the planning scheme policy must not deal with the same matters as the infrastructure charges plan.’.

#### **Amendment of s 6.1.23 (Continuing effect of approvals issued before commencement)**

161. Section 6.1.23(1)—

*insert—*

‘(e) approvals (also “**continuing approvals**”) issued under the *Building Act 1975*, in force immediately before the commencement of this section.’.

#### **Amendment of s 6.1.25 (Effect of commencement on certain applications in progress)**

162. Section 6.1.25—

*insert—*

‘(2) If a request made before the commencement of this section was for the revocation of a town planning consent, processing of the request and all matters incidental to the processing must proceed as if the repealed Act had not been repealed.’.

#### **Amendment of s 6.1.26 (Effect of commencement on other applications in progress)**

163. Section 6.1.26.(1)—

*omit, insert—*

‘**6.1.26.(1)** This section applies to—

(a) applications made before the commencement of this section

under section 4.3(1),<sup>41</sup> section 4.6(1)<sup>42</sup> or section 4.9(1)<sup>43</sup> of the repealed Act; or

- (b) an equivalent application made before the commencement of this section under the *Local Government Act 1936* or the *City of Brisbane Town Planning Act 1964*; or
- (c) an application made under section 4.15<sup>44</sup> of the repealed Act relating to the modification of—
  - (i) an application mentioned in paragraph (a) or (b); or
  - (ii) the approval of an application mentioned in paragraph (a) or (b); or
  - (iii) conditions attaching to the approval of an application mentioned in paragraph (a) or (b).’.

### **Amendment of s 6.1.28 (IDAS must be used for processing applications)**

**164.** Section 6.1.28(2) and (3)—

*omit, insert—*

‘(2) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would have required public notification under the repealed Act—

- (a) the application must be processed as if it were a development application requiring impact assessment; and
- (b) a statement made under section 3.2.3(2)(d) on the acknowledgment notice that an aspect of the development applied for requires impact assessment is taken to mean that the application will be processed as if it were a development application requiring impact assessment.

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<sup>41</sup> Section 4.3 (Amendment of a planning scheme etc. by an applicant)

<sup>42</sup> Section 4.6 (Application for rezoning of land in stages)

<sup>43</sup> Section 4.9 (Subsequent staged rezoning approvals)

<sup>44</sup> Section 4.15 (Modification of certain applications and approvals)

‘(3) If an application mentioned in subsection (1) were an application for the same development under the repealed Act and would not have required public notification under the repealed Act—

- (a) the application must be processed as if it were a development application requiring code assessment; and
- (b) a statement made under section 3.2.3(2)(c) on the acknowledgment notice that an aspect of the development applied for requires code assessment is taken to mean that the application will be processed as if it were a development application requiring code assessment; and
- (c) despite section 3.2.3(2)(c), the acknowledgment notice need not refer to codes.’.

#### **Amendment of s 6.1.29 (Assessing applications)**

**165.(1)** Section 6.1.29, heading—

*omit, insert—*

**‘Assessing applications (other than against the Standard Building Regulation)’.**

**(2)** Section 6.1.29(1), ‘the assessing aspects’—

*omit, insert—*

‘the part of the assessing aspects’.

**(3)** Section 6.1.29(3)(h)(iv), ‘sections’—

*omit, insert—*

‘section’.

#### **Amendment of s 6.1.30 (Deciding applications)**

**166.(1)** Section 6.1.30, heading—

*omit, insert—*

**‘Deciding applications (other than under the Standard Building Regulation)’.**

(2) Section 6.1.30(1), ‘when the assessment manager decides a’—  
*omit, insert—*

‘only for the part of the deciding aspects of a’.

(3) Section 6.1.30(5)(b), ‘similarly’—  
*omit, insert—*

‘similar’.

**Amendment of s 6.1.31 (Conditions about infrastructure for applications)**

**167.(1)** Section 6.1.31(1)(b)—

*omit, insert—*

‘(b) the local government has—

- (i) a planning scheme policy of the type mentioned in section 6.1.20(1)(b); or
- (ii) a provision, that was included before the commencement of this section, in its planning scheme about monetary contributions for specified infrastructure.’.

(2) Section 6.1.31(2), ‘For deciding the application’—

*omit, insert—*

‘For deciding the aspect of the application relating to the planning scheme policy or planning scheme provision’.

**Amendment of s 6.1.34 (Consequential amendment of transitional planning schemes)**

**168.** Section 6.1.34—

*insert—*

‘(3) If the local government makes the amendment, section 3.5.27 does not apply.’.

**Insertion of new ss 6.1.35A–6.1.35C**

**169.** After section 6.1.35—

*insert—*

**‘Applications to change conditions of rezoning approvals under repealed Act**

**‘6.1.35A.(1)** This section applies if a person wants to change the conditions attached to an approval given under section 4.4(5) of the repealed Act before the commencement of this section and the person can not use the IDAS process to achieve the change.

**‘(2)** A person may apply under section 4.3(1) of the repealed Act to amend the conditions.

**‘(3)** If a person applies under subsection (2) the application must be processed by the local government as if the repealed Act had not been repealed.

**‘(4)** This section expires 5 years after it commences.

**‘Development approvals prevail over conditions of rezoning approvals under repealed Act**

**‘6.1.35B.** To the extent a development approval given under this Act conflicts with a condition of an approval given under section 4.4(5) of the repealed Act, the development approval prevails.

**‘Applications requiring referral coordination**

**‘6.1.35C.(1)** Despite section 3.3.5, referral coordination is required for the following development applications—

- (a) applications for a material change of use for a designated development;
- (b) applications for a material change of use (other than for a dwelling house, outbuilding or farm building) on prescribed land or for the reconfiguration of a lot that is prescribed land.

**‘(2)** Subsection (1) applies even if there are no concurrence agencies for the application.

‘(3) In subsection (1)—

“**designated development**” means a development mentioned in the *Local Government (Planning and Environment) Regulation 1991*, schedule 1, immediately before the repeal of the repealed Act.

“**prescribed land**” means land located in, or having a common boundary with, an area referred to in the *Local Government (Planning and Environment) Regulation 1991*, schedule 2, immediately before the repeal of the repealed Act.

‘(4) This section expires 1 year after it commences.’

### **Amendment of s 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)**

**170.** Section 6.1.44(1)(c) and (d)—

*omit, insert—*

- ‘(c) the development is assessable development as defined for this part, and this Act generally; and
- (d) the other Act or local law is repealed or amended; and
- (e) if the Act or local law is amended—
  - (i) the requirement for the licence, permit, registration or other approval is removed; or
  - (ii) a condition of the licence, permit, registration or other approval that could have been imposed under the other Act or local law before the amendment may be imposed, under this Act, on the development approval.’

### **Insertion of new s 6.1.45A**

**171.** After section 6.1.45—

*insert—*

#### **‘Development control plans under repealed Act**

‘**6.1.45A.(1)** This section applies to a development control plan made under the repealed Act that includes a process for making and approving

plans (however named) with which development must comply in addition to, or instead of, the planning scheme.

‘(2) To the extent the development control plan provides for the making and approval of the plans—

- (a) the development control plan is, and always has been, valid; and
- (b) development under the development control plan must comply with the plans in the way stated in the development control plan.’

### **Amendment of s 6.1.50 (Right to compensation continued)**

**172.** Section 6.1.50—

*insert—*

‘(2) A claim in respect of a right mentioned in subsection (1) may be dealt with under section 3.5(1A) of the repealed Act as if the repealed Act had not been repealed.’

### **Amendment of s 6.1.51 (Orders in council about Crown land under repealed Act)**

**173.** Section 6.1.51—

*insert—*

‘(3) Any development lawfully undertaken on premises to which an order in council mentioned in subsection (1) applied while the premises were owned by the State is and always has been lawful development and any use of the premises that is a natural and ordinary consequence of the development is a lawful use.

‘(4) Subsection (3) applies even though the premises may no longer be owned by the State.’

### **Insertion of new s 6.1.53**

**174.** In chapter 6, part 1, after section 6.1.52—

*insert—*

**‘References to repealed Act**

‘**6.1.53.** A reference in an Act or document to the *Local Government (Planning and Environment) Act 1990* may, if the context permits, be taken to be a reference to this Act.’.

**Amendment of sch 1 (Process for making or amending planning schemes)**

**175.(1)** Schedule 1, section 2(1)—

*insert—*

‘(d) the amendment is about a benchmark development sequence.’.

**(2)** Schedule 1, section 2(2) ‘subsection (1)(a) or (b)’—

*omit, insert—*

‘subsection (1)(a), (b) or (d)’.

**(3)** Schedule 1, section 5(1)(b), ‘to’—

*omit, insert—*

‘for’.

**(4)** Schedule 1, section 12, heading, ‘and access of’—

*omit, insert—*

**‘of, and access to,’.**

**(5)** Schedule 1, section 16(2), ‘advertised’—

*omit, insert—*

‘notified’.

**(6)** Schedule 1, section 17(1), from ‘decides to’—

*omit, insert—*

‘proceeds under section 16(1)(a) or (b).’.

**Amendment of sch 4 (Process for making or amending State planning policies)**

**176.(1)** Schedule 4, section 1(3)(e), after ‘period’—

*insert—*

‘(the “**consultation period**”)’.

**(2)** Schedule 4, section 2(1), ‘section 1,’—

*omit, insert—*

‘section 1,<sup>45</sup>’.

**(3)** Schedule 4, section 6, ‘3 to 5’—

*omit, insert—*

‘1 and 3 to 5’.

**Amendment of sch 5 (Community infrastructure)**

**177.(1)** Schedule 5, item 1(l), from ‘(other than’—

*omit.*

**(2)** Schedule 5(1), paragraph (j) (operating works under the *Electricity Act 1994*)—

*renumber* as 5(1)(k).

**Amendment of sch 8 (Assessable, self-assessable and exempt development)**

**178.(1)** Schedule 8, part 1, item 3—

*insert—*

‘(u) if the reconfiguration of a lot is also assessable development—for the reconfiguration of the lot.’.

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<sup>45</sup> Section 1 need not be complied with if the proposal is for a State planning policy that is to have effect for less than 1 year or for a minor amendment of a State planning policy (see schedule 4, section 6).

(2) Schedule 8, part 1, item 4(a), ‘subdivision;’—

*omit, insert—*

‘subdivision that does not subdivide land on or below the surface of the land;’.

(3) Schedule 8, part 1, item 4—

*insert—*

‘(c) is in relation to the acquisition of land for a purpose set out in the *Acquisition of Land Act 1967*, schedule 2.’.

(4) Schedule 8, part 1, item 5, ‘character,’—

*omit.*

(5) Schedule 8, part 1, item 6—

*omit, insert—*

‘6. Development prescribed under a regulation under the *Environmental Protection Act 1994* for this section for carrying out an environmentally relevant activity under that Act.’.

(6) Schedule 8, part 2, divisions 1 and 2 (headings)—

*omit.*

(7) Schedule 8, part 2, item 7—

*omit, insert—*

‘7. All building work declared under the Standard Building Regulation to be self-assessable development.’.

(8) Schedule 8, part 2, item 9—

*omit, insert—*

‘9. All building work carried out by or on behalf of the State, a public sector entity or a local government, other than exempt development.’.

(9) Schedule 8, part 3, item 11—

*omit, insert—*

‘11. All building work declared under the Standard Building Regulation to be exempt development.’.

(10) Schedule 8, part 3, item 15(a), ‘subdivision;’—

*omit, insert—*

‘subdivision that does not subdivide land on or below the surface of the land;’.

(11) Schedule 8, part 3, item 15—

*insert—*

‘(c) is in relation to the acquisition of land for a purpose set out in the *Acquisition of Land Act 1967*, schedule 2.’.

### **Amendment of sch 9 (Consequential amendments)**

179.(1) Schedule 9, item 2, ‘After section 464’—

*omit, insert—*

**‘In chapter 8, part 1, after section 464’.**

(2) Schedule 9, item 2, ‘464A.(1)’—

*omit, insert—*

‘464AA.(1)’.

### **Amendment of sch 10 (Dictionary)**

180.(1) Schedule 10, definitions “accrediting body”, “assessable development”, “building”, “code”, “self-assessable development” and “transitional development application”—

*omit.*

(2) Schedule 10—

*insert—*

‘**“accrediting body”** means an incorporated or statutory body prescribed under a regulation to be an accrediting body for accrediting private certifiers.

**“applicable code”**, for development, means a code that can reasonably be identified as applying to the development.

**“assessable development”** means—

- (a) development specified in schedule 8, part 1; or
- (b) for a planning scheme area—development that is not specified in schedule 8, part 1 but is declared under the planning scheme for the area to be assessable development.

**“building”** means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

**“code”** means a document or part of a document identified as a code—

- (a) in a planning instrument; or
- (b) for IDAS in this Act or another Act;<sup>46</sup> or
- (c) in a preliminary approval.

**“development application (superseded planning scheme)”** means—

- (a) for development that would not have required a development permit under a superseded planning scheme but requires a development permit under the planning scheme in force at the time the application is made, a development application—
  - (i) in which the applicant advises that the applicant proposes to carry out development under the superseded planning scheme; and
  - (ii) made only to a local government as assessment manager; and
  - (iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.
- (b) for any other development, a development application—
  - (i) in which the applicant asks the assessment manager to assess the application under a superseded planning scheme; and

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<sup>46</sup> Under the *Acts Interpretation Act 1954*, section 7, “Act” includes a reference to a statutory instrument made or in force under an Act.

- (ii) made only to a local government as assessment manager; and
- (iii) made within 2 years after the day the planning scheme or planning scheme policy creating the superseded planning scheme was adopted or the amendment creating the superseded planning scheme was adopted.

**“self-assessable development”** means—

- (a) development specified in schedule 8, part 2; or
- (b) for a planning scheme area—development that is not specified in schedule 8, part 2 but is declared under the planning scheme for the area to be self-assessable development.

**“Standard Building Regulation”** means the *Standard Building Regulation 1993*.

(3) Schedule 10, definition “agency’s referral day” ‘see section 3.3.1(1)(a), (b) and (c)’—

*omit, insert—*

‘section 3.3.1(1)’.

(4) Schedule 10, definition “principal submitter”, ‘about a development application’—

*omit.*

### **Amendments for referral coordination**

**181.(1)** Sections 3.2.3(2)(f), 3.3.4(b), 3.3.5(2), 3.3.6(1) and 3.3.7(1), ‘the application requires referral coordination’—

*omit, insert—*

‘referral coordination is required’.

(2) Section 3.2.6.(2), ‘an application requires referral coordination’—

*omit, insert—*

‘referral coordination is required’.

**Amendment for “transitional development applications”**

**182.** Sections 3.2.1(5), 3.2.3(1), 3.2.5(1) and (3), 3.5.4(4), 3.5.5(4), 3.5.6(1), 3.5.21(2) to (5), 4.1.30(3), 4.1.52(3), 4.2.11(3), 5.4.2 and 5.4.9(1), ‘transitional development application’—

*omit, insert—*

‘development application (superseded planning scheme)’.

## **PART 7—AMENDMENT OF LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990**

**Act amended**

**183.** This part amends the *Local Government (Planning and Environment) Act 1990*.

**Amendment of s 3.5 (Compensation)**

**184.(1)** Section 3.5—

*insert—*

‘**(1A)** A claim for compensation arising under subsection (1)(a) may be satisfied, or partially satisfied, by the amendment of the planning scheme to remove or partially remove the provision, prohibition or restriction.

‘**(1B)** Subsection (1A) applies to claims for compensation made before or after the commencement of this section.’.

**(2)** Section 3.5(8), ‘subsections (2A)’—

*omit, insert—*

‘subsections (1A), (2A)’.

**(3)** Section 3.5(8)—

*insert—*

‘(e) any removal, or partial removal, of the provision, prohibition or

restriction mentioned in subsection (1)(a) by the amendment of the planning scheme before the claim being made is to be taken into account.’

(4) Section 3.5(11)(d), ‘subsection (2A)’—

*omit, insert—*

‘subsection (1A) or (2A)’.

## **PART 8—QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991**

### **Act amended**

**185.** This part amends the *Queensland Building Services Authority Act 1991*.

### **Omission of s 2 (Commencement)**

**186.** Section 2—

*omit.*

### **Amendment of s 4 (Definitions)**

**187.** Section 3—

*insert—*

‘ “assessment manager” has the meaning given by the *Integrated Planning Act 1997*.<sup>47</sup>’.

### **Amendment of s 18 (Role of the General Manager)**

**188.(1)** Section 18(1)—

*insert—*

‘(c) the power to carry out any function the General Manager is authorised by another Act to carry out.’.

**(2)** Section 18(1)—

*insert—*

‘**(1A)** In carrying out a function under subsection (1)(c), the General Manager may adopt the procedures of this Act unless the Act authorising the function prescribes another procedure.’.

### **Amendment of s 68 (Payment of insurance premium)**

**189.(1)** Section 68(2), ‘A local authority’ to ‘*Building Act 1975*’—

*omit, insert—*

‘An assessment manager must not, under the *Integrated Planning Act 1997*, issue a development approval for building work’.

**(2)** Section 68—

*insert—*

‘**(4)** A private certifier who is acting as an assessment manager must not contravene subsection (2).’

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<sup>47</sup> *Integrated Planning Act 1997*, section 3.1.7—

The “assessment manager”, for an application, is—

- (a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or
- (b) if paragraph (a) does not apply—
  - (i) the entity prescribed under a regulation; or
  - (ii) if no entity has been prescribed—the entity decided by the Minister.

Under *Integrated Planning Act 1997*, section 5.3.5(1)(a), a private certifier may, in certain circumstances, act as an assessment manager.

Maximum penalty—20 penalty units.’.

**Amendment of s 108 (Obligation of local authority)**

**190.(1)** Section 108, heading—

*omit, insert—*

**‘Obligation of assessment manager’.**

**(2)** Section 108, ‘A local authority’—

*omit, insert—*

‘An assessment manager’.

**PART 9—CONSEQUENTIAL AMENDMENTS**

**Consequential amendments—schedule**

**191.** An Act mentioned in the schedule is amended as shown in the schedule.

## SCHEDULE

### CONSEQUENTIAL AMENDMENTS

section 191

#### BEACH PROTECTION ACT 1968

##### Amendments

**1. Section 3, definition “court”—**

*omit, insert—*

‘**“court”** means the Planning and Environment Court.’.

**2. Section 44A(2), ‘Standard Building Law under the *Building Act 1975*’—**

*omit, insert—*

‘*Standard Building Regulation 1993*’.

#### BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

##### Amendment

**1. Schedule 4, definition “Planning Act”, ‘*Local Government (Planning and Environment) Act 1990*’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

## SCHEDULE (continued)

**CENTURY ZINC PROJECT ACT 1997****Amendment****1. Schedule 6, definition “development application”, paragraph (a) ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

*‘Integrated Planning Act 1997’.*

**COASTAL PROTECTION AND MANAGEMENT  
ACT 1995****Amendments****1. Schedule 2, definition “planning scheme”, ‘Local Government (Planning and Environment) Act 1990, section 1.4’—**

*omit, insert—*

*‘Integrated Planning Act 1997, section 2.1.1’.*

**2. Section 59(2), ‘An approval to build under the *Building Act 1975*’—**

*omit, insert—*

*‘A development approval under the *Integrated Planning Act 1997*’.*

## SCHEDULE (continued)

**CREMATION ACT 1913****Amendment****1. Section 3, ‘Local Government (Planning and Environment) Act 1990’—***omit, insert—**‘Integrated Planning Act 1997’.***FIRE AND RESCUE AUTHORITY ACT 1990****Amendments****1. Section 104A, definitions “Building Code of Australia” and “fire safety installation”, ‘Standard Building Law’—***omit, insert—**‘Standard Building Regulation’.***2. Section 104A, definitions “Building Advisory Committee”, “building surveyor” and “Standard Building Law”—***omit.***3. Section 104A—***insert—**‘ “building certifier” has the meaning given by the Building Act 1975.<sup>48</sup>*

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<sup>48</sup> *Building Act 1975, section 5—**“building certifier” means an individual accredited as a building certifier by an accrediting body.*

## SCHEDULE (continued)

**“Standard Building Regulation”** means the *Standard Building Regulation 1993*.

**4. Section 104N(1)(c)—**

*omit, insert—*

‘(c) 1 person nominated by the chief executive of the department administering the *Building Act 1975*.’

**5. Section 104N(3), ‘building surveyor’—**

*omit, insert—*

‘building certifier’.

**6. Section 104N(4) and (4A)—**

*omit.*

**7. Section 104N(5), ‘chairperson of the Building Advisory Committee’—**

*omit, insert—*

‘chief executive of the department administering the *Building Act 1975*.’

**INTEGRATED RESORT DEVELOPMENT ACT 1987****Amendments****1. Section 15(4)—**

*omit, insert—*

‘(4) The provisions of the *Integrated Planning Act 1997* about

## SCHEDULE (continued)

reconfiguring a lot do not apply to the site.’.

**2. Section 15(5)—**

*omit.*

**3. Section 72(5), ‘Part 7 of the *Local Government (Planning and Environment) Act 1990*’—**

*omit, insert—*

‘The *Integrated Planning Act 1997*’.

**LAND ACT 1994****Amendment****1. Section 109(4), ‘*Local Government (Planning and Environment) Act 1990*, part 5’—**

*omit, insert—*

‘provisions of the *Integrated Planning Act 1997* about reconfiguring a lot’.

**LAND TITLE ACT 1994****Amendment****1. Section 53, ‘section 5.3 of the *Local Government (Planning and Environment) Act 1990*’—**

*omit, insert—*

‘the *Integrated Planning Act 1997*, section 3.7.6’.

## SCHEDULE (continued)

**LOCAL GOVERNMENT ACT 1993****Amendments****1. Section 4, definition “interim development control provisions”—**

*omit, insert—*

- ‘ “**interim development control provision**” means an interim development control provision that continues to have effect under the *Integrated Planning Act 1997*, section 6.1.12.<sup>49</sup>’.

**2. Section 4, definition “local government Act”, ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

**3. Section 4, definition “planning scheme”, ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*, section 2.1.1’.

**4. Section 377(1)(g), ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

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<sup>49</sup> Section 6.1.12 (Continuing effect of interim development control provisions)

## SCHEDULE (continued)

- 5. Section 507(1), ‘approved by the Governor in Council’—**  
*omit.*

**LOCAL GOVERNMENT (CHINATOWN AND THE  
VALLEY MALLS) ACT 1984**

**Amendment**

- 1. Section 3, definition “the court”—**

*omit, insert—*

‘**“court”** means the Planning and Environment Court.’.

**NATIONAL TRUST OF QUEENSLAND ACT 1963**

**Amendment**

- 1. Section 6(3), ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

## SCHEDULE (continued)

**NATURE CONSERVATION ACT 1992****Amendment****1. Section 7, definition “planning scheme”, ‘of the *Local Government (Planning and Environment) Act 1990*, section 1.4’—**

*omit, insert—*

‘the *Integrated Planning Act 1997*, section 2.1.1’.

**SEWERAGE AND WATER SUPPLY ACT 1949****Amendments****1. Section 7AA(1)(a), ‘*Local Government (Planning and Environment) Act 1990*’—**

*omit, insert—*

‘*Building Act 1975*’.

**2. Section 7AA(1)(f), ‘Electrical’ to ‘Branch’—**

*omit, insert—*

‘Communications, Electrical and Plumbing Union, Plumbing Division, Queensland Branch’.

**3. Section 9(e)—**

*omit, insert—*

‘(e) a restricted plumber’s or restricted drainer’s licence.’.

## SCHEDULE (continued)

**4. Section 12(4)—***omit, insert—*

‘(4) If the board refuses to grant an application for a licence, the board must refund to the applicant the amount of the application fee paid, less the amount of the cost to the board of processing the application.’.

**5. Section 14A, ‘section 19’—***omit, insert—*

‘section 15’.

**SOUTH BANK CORPORATION ACT 1989****Amendments****1. Section 34(3)(a), ‘an application to which the *Building Act 1975* relates’—***omit, insert—*‘a development application under the *Integrated Planning Act 1997*’.**2. Section 39G, ‘the *Building Act 1975*, section 4’—***omit, insert—*‘the *Integrated Planning Act 1997*’.**3. Schedule 7, section 7, definition “building approvals authority”, ‘the *Building Act 1975*’—***omit, insert—*‘the *Integrated Planning Act 1997*’.

## SCHEDULE (continued)

**TRANSPORT INFRASTRUCTURE ACT 1994****Amendments****1. Section 40—**

*insert—*

‘(9A) If the chief executive notifies the local government under subsection (9)(b), the IDAS process under the *Integrated Planning Act 1997* stops for the local government until the chief executive’s approval is received by the local government.’.

**2. Section 136—**

*omit.*

**3. Section 172, ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

**TRANSPORT OPERATIONS (PASSENGER  
TRANSPORT) ACT 1994****Amendment****1. Section 145(3) and (5), ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

‘*Integrated Planning Act 1997*’.

## SCHEDULE (continued)

**WET TROPICS WORLD HERITAGE PROTECTION  
AND MANAGEMENT ACT 1993****Amendment**

**1. Section 4, definition “planning scheme”, ‘Local Government (Planning and Environment) Act 1990, section 1.4’—**

*omit, insert—*

*‘Integrated Planning Act 1997, section 2.1.1’.*