BUILDING AND INTEGRATED PLANNING AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objectives of this Bill are:

- to implement the integrated development assessment system (IDAS) created under the *Integrated Planning Act 1997* (IPA) for the development related approval systems in the current *Building Act 1975* and the *Environmental Protection Act 1994*;
- to introduce a system of private building certification by independent accredited building certifiers throughout the State as an alternative to local government assessment and certification of building plans;
- to provide a uniform accreditation system for both private and local government employed building certifiers;
- to clarify and simplify the current complex swimming pool fencing requirements;
- to refine the *Integrated Planning Act 1997* to correct identified errors and anomalies.

Reasons for the Bill

IDAS

The *Integrated Planning Act 1997* was assented to on 1 December 1997. The planning and development assessment system created under the Act fundamentally alters the way planning and development related assessment will be carried out in Queensland.

The IPA is framework legislation that creates a single integrated development assessment system (IDAS) and an integrated framework for planning. The IPA (on its own) replaces the existing *Local Government (Planning and Environment) Act 1990* and the planning assessment and approval systems under that Act. However, in order to give full effect to IDAS it also is necessary to consequentially amend all other legislation that currently regulates development. This is necessary to remove from those Acts the existing separate development related assessment and approval systems (because they are inconsistent with the IDAS concept) and to integrate those Acts into IDAS.

For example, the building approval process under the current *Building Act 1975* is a development related assessment system that is proposed to be integrated into IDAS. Similarly, the environmental authority process under the *Environmental Protection Act 1994*, in so far as it regulates the establishment of new activities, is a development related assessment system for the vast majority of activities that are listed as "environmentally relevant".

The achievement of a fully integrated development assessment system will take time. Affected Acts will be progressively amended. In some cases this involves substantial redrafting of existing Acts.

The *Building Act 1975* and the *Environmental Protection Act 1994* have been targeted as the highest priority amendments (because of the volume and scope of assessments carried out under these Acts) and are proposed in this first round of IDAS related amendments. Bills for the amendment of other IDAS related legislation will be introduced into Parliament progressively over time. Other affected Acts include the *Transport Infrastructure Act 1994*, *Queensland Heritage Act 1992* and the *Coastal Protection and Management Act 1995*.

Private building certification

The IPA created a general head of power for private certification of development requiring code assessment, ie, the assessment of development against standards prescribed in a code. The proposed amendments to the *Building Act 1975* will allow the Standard Building Regulation to be recognised as a code under IDAS for the purposes of private certification.

The private certification provisions will allow accredited practitioners to assess development applications for building works in direct competition

with local government, applying the standards contained under the Standard Building Regulation. Similar private certification provisions already operate successfully in Victoria, South Australia, and the Northern Territory.

There is clear evidence in these States and the Northern Territory that introducing private certification has significantly sped up the approval process and improved the standard of service, without any reduction in the standard of building work. In Queensland the cost savings to industry arising from improved processing times under private certification were estimated in 1995 by an independent cost benefit analysis at $8.5M per annum.

Clarification and simplification of swimming pool fencing requirements

The current *Building Act 1975* contains provisions dealing with swimming pool fences. The provisions are complex and a source of confusion. The proposed amendments clarify and simplify the reading and operation of these provisions without diminishing their purpose.

Refinement of IPA

The Bill contains a number of amendments to the IPA necessary to correct minor errors which have been identified since the Act was passed, or to clarify the operation of some provisions.

Ways in which the objectives are to be achieved

IDAS (Building Act 1975)

The *Building Act 1975* contains assessment, approval and appeal processes for building work. These processes are to be removed from the Act and replaced by the Integrated Development Assessment System (IDAS) contained within the IPA. However building standards will remain in the Standard Building Law (now to be known as the Standard Building Regulation) under the Building Act. The Regulation will now be called up as a code under IDAS. This is consistent with the intention of IDAS to replace the existing raft of overlapping and conflicting development approvals with a single integrated assessment system.

IDAS (Environmental Protection Act 1994)

The *Environmental Protection Act 1994* contains assessment, approval and appeal processes for environmentally relevant activities. These processes, in so far as they relate to development, are to be replaced by IDAS. A new personal licencing system dealing only with the suitability of an individual to conduct an activity has been introduced to deal with higher risk activities. All development and operational matters for an activity will be dealt with through the IDAS approval. Existing current environmental authorities (ie. licences and approvals) continue and the existing processes remain in place for activities that do not constitute development under the IPA.

Private building certification

The IPA establishes a head of power for private certification. The amendments to the Building Act 1975 establish a system of private building certification. The operation of private certification under the Building Act and the IPA is subject to regulations that prescribe:

- specific types of development subject to private certification;
- the qualifications, necessary experience or accreditation requirements of private certifiers;
- what constitutes a conflict of interest;
- the type and minimum limits of liability insurance that a private certifier must have.

In addition the Bill contains specific amendments to establish accrediting bodies to ensure there is no reduction in public health and safety standards arising from private certification. Duties of accrediting bodies include maintaining a code of conduct, maintaining accreditation standards, monitoring compliance, auditing, investigating complaints and taking necessary disciplinary action. The accreditation body will be responsible for the investigation of any complaints and taking disciplinary action regarding the incompetence or unethical conduct of their members. The range of disciplinary action available to the accreditation bodies includes warnings, imposing conditions, suspension and removal of accreditation.

Alternatives to the Bill

One of the key functions of the IPA is to establish a framework for the

creation of an integrated development assessment system. The IPA also envisages private certification of certain development applications and works. In order for that system to become operational it is necessary to carry out consequential amendments to affected legislation to remove conflicting approval processes and to integrate those Acts into the IPA framework. There is no alternative to the amendment of these Acts if IDAS and the proposed system of private building certification are to be implemented.

Retaining or amending the current legislation is not tenable in view of broad demands for changes to the system, and the inability of the existing system to achieve Government policy. This is particularly so in relation to achieving environmentally responsible development, streamlining approvals, cutting red tape, and coordinating infrastructure provision.

Administrative cost to government

While there will be short-term costs to government arising from the implementation of new administrative systems, these will be negligible when compared to the broader savings arising from improved coordination between State and local government, and the removal of red tape and duplication from the system.

For example, the new planning legislation will deliver substantial economic benefits to the State, local government, business, and the community. These are estimated at:

- $4m to $10m per year to the State Government arising from improved coordination between the provision of infrastructure and development;
- $25m per year to business through streamlining the development assessment system by cutting delays and red tape; and
- $8m per year to business from private certification for building by enabling competitive forces to provide cost savings in the development assessment process.

Consistency with fundamental legislative principles

There are no issues concerning fundamental legislative principles in the Bill, either in relation to the implementation of IDAS through these

amendments or in relation to private building certification or the other amendments proposed.

Several issues relating to the IPA were dealt with in the explanatory notes attached to the Integrated Planning Bill. (The most significant issue concerned the retention of the current arrangements about onus of proof in development appeals initiated by third parties. The onus of proof under the current system and under the IPA rests with the applicant. This position was supported by all major stakeholders.)

Consultation

Since 1989 there has been extensive and thorough consultation with all stakeholder groups about the IPA project. Key concepts and issues have been thoroughly discussed with local government, the business community, environmental groups, and professional organisations. Several public discussion papers and numerous stakeholder seminars and meetings have been held throughout the State.

More recently the Minister's taskforce, which included representatives from key stakeholder groups, provided specific advice on the drafting of the IPA framework. There has also been additional targeted consultation with key stakeholders, including local government over the proposed amendments to the *Building Act 1975* and the *Environmental Protection Act 1994*.

Additionally, there has been wide consultation about private building certification with stakeholders, including local government and industry.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Building and*

Integrated Planning Amendment Act 1998.

Commencement

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

Clause 2(2) states that the remaining provisions of this Act will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BUILDING ACT 1975

Act amended

Clause 3 inserts section 3 stating that the intention of this part of the Bill is to amend the *Building Act 1975.*

Amendment of title

Clause 4 amends the title by adding provisions for building certifying. This includes the activities of local government building certifiers as well as private building certifiers.

Amendment of s 1 (Citation)

Clause 5 omits the section 1 heading and inserts the words ‘Short title’.

Omission of s 2 (Commencement of Act)

Clause 6 omits section 2 regarding the commencement of the Act as these provisions are now redundant.

Replacement of s 4

Clause 7 replaces section 4 with section 4(1) binding all persons, including State and local governments. In particular, this continues the requirement under the current Act that building standards in the Standard

Building Regulation apply equally to all parties.

Specific exemptions in the current Act exempting building work carried out on behalf of the Crown and public sector entities from local government approval are removed as these are now provided for in Schedule 8 of the Integrated Planning Act. These bodies will continue to undertake their own assessment of building work against the Standard Building Regulation.

Section 4(2) protects the State from prosecuting itself.

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

Clause 8 omits section 4A, which currently allows the Crown in an emergency to use buildings other than as classified. These emergency provisions will be retained through an amendment to the Standard Building Regulation.

Replacement of s 5 (Interpretation)

Clause 9 replaces the title of section 5 and inserts new definitions of terms used in the Bill. These include new definitions introduced by the Integrated Planning Act and required for private certification while others have been rewritten for clarity.

New definitions introduced by the Integrated Planning Act comprise: assessment manager; building work; private certifier; and tribunal.

New definitions required for private certification comprise: accrediting auditor; accrediting body; building certifier; complaint; disciplinary finding; and professional misconduct.

A private certifier is defined under section 5.3.3.(1) of the IPA as an individual who has the qualifications, necessary experience or accreditation prescribed under a regulation for a private certifier for a stated code.

A building certifier can be either a local government or private building certifier, who is an individual accredited as a building certifier by an accreditation body.

Definitions rewritten for clarity comprise: approved form; build; Building Code of Australia; court; enforcement notice; owner; revocation notice; show cause notice; Standard Building Regulation and young child.

The current definition of “owner” is being construed as including any

tenant or other person who has an estate or interest in the land, building or structure. This creates a potentially difficult situation when issuing notices under the Building Act where a notice would have to be issued to all tenants and other persons having an interest in a body corporate, rather than to the body corporate itself. The new definition of "owner" mirrors that used in the Integrated Planning Act for the purposes of public notification.

A new definition of "young child" has been inserted to define the extent to which the pool fencing requirements are to apply.

Replacement of pt 2

Clause 10 omits Part 2 and inserts a new Part 2—Standard Building Regulation as outlined below.

PART 2—STANDARD BUILDING REGULATION

Standard Building Regulation

The Standard Building Law is to be titled Standard Building Regulation to more accurately reflect its legal status.

Section 6(1) expands the scope of Standard Building Regulation which currently only refers to building work by allowing the making of provisions with respect to the occupation of buildings, the certification of building work, the accrediting of building certifiers, and matters relating to the accrediting of building certifiers, such as,

- necessary qualifications and experience, and the type and minimum limits of liability insurance that a building certifier must have;
- continuing professional development (CPD) competence and training;
- ethical behaviour and standards of performance
- building work for which a building certifier may be engaged;

The current Standard Building Law regulates only building work and the

occupation of buildings.This was creating some concerns with regard to the strict legal interpretation of the extent to which the Building Act applied.

Section 6(2) places an obligation on a person to comply with the Standard Building Regulation even if there are some matters which are contrary to the Regulation on their development permit issued by an assessment manager. This is to ensure that matters in a permit which are in fact contrary to the Standard Building Regulation or are not expressly dealt with in a permit, must still comply with the Regulation. For example, a room may have been approved with insufficient ventilation. Under the Regulation there is an obligation on the person carrying out the building work or the person occupying the building to ensure the error is corrected.

Section 6(3) clarifies that the Standard Building Regulation includes any variation, exception or exemption to the Regulation permitted by the Building Act (which includes the Regulation).

Variation of application of Standard Building Regulation

Section 7 replaces existing section 12B. This section has been redrafted to acknowledge the existence of private certifiers and assessment managers created under the Integrated Planning Act.

The process of considering variations to the Standard Building Regulation can be applied to existing or proposed building work and building work currently under way. It involves specific analysis of the standards prescribed by the code to determine how the code may be varied in its application to a building, while maintaining overall standards. This is distinct from the IDAS processes involved with the assessment of a development application against current codes, regulations and standards.

Sections 7(1) and (2) permit a person to apply to the chief executive to vary the way the Standard Building Regulation is applied to building work proposed to be carried out, being carried out, or carried out in the past, in which some extraordinary circumstance may exist.

The ability to vary how the Standard Building Regulation is applied is sometimes critical in providing additional flexibility, beyond performance based assessment, to address unique circumstances. For example, a correctional centre would not be able to comply with normal requirements for single handed keyless exit doors. This is outside the normal application of the regulations and could not be approved by building certifiers, unless a

variation is permitted.

Section 7(2) provides that an application to vary the Regulation is to be made to the chief executive, instead of a Building Tribunal, as is the case under the current Building Act.

The assessment by the chief executive has been introduced to allow an appellant to a decision the right of appeal to a technical tribunal, rather than having to appeal to a court. A right of appeal to the Building and Development Tribunal will now be provided under the Integrated Planning Act. This change is necessitated by the removal of provisions which previously established the Building Advisory Committee to hear appeals under the Building Act.

Section 7(3) provides that where the assessment manager or private certifier is permitted by the Regulation to exercise discretion about the matter, an application for variation may not be made.

Section 7(4) requires that applications for variation of the Standard Building Regulation are to be submitted to the chief executive on the approved form and accompanied with the prescribed fee.

Section 7(5) states that if an application for variation is about building work involved in a development application under the Integrated Planning Act, then the assessment process (IDAS) stops on the day that the application is received by the chief executive, and starts again the day that the chief executive gives written notice to the applicant (under section 8(5)).

Deciding application to vary application of the Standard Building Regulation

Section 8 replaces existing sections 12BA & 12C. The purpose of the section is to outline the process involved in deciding an application to vary the Standard Building Regulation.

Section 8(1) requires the chief executive to consult with the assessment manager or private certifier about the variation application before deciding the application. This replaces provisions in the current Act which require a building tribunal to discuss the application with the relevant local government before making its decision.

Section 8(2) allows the chief executive to consult with any other person before deciding the application. For example, the Queensland Fire and Rescue Authority.

Section 8(3), (4) and (5) require the chief executive to decide to vary or refuse the application within 20 business days, and to provide written notice of the decision to the applicant within 5 business days. If the application is subject to a development application, then the assessment manager or private certifier must also be provided with a written notice within 5 business days of the decision.

Section 8(6) exempts the chief executive from the requirement to consult the assessment manager or private certifier where building work is being carried out by or on behalf of the State. This is because these bodies are not required to seek approval for building work under the Integrated Planning Act.

Fast track decisions

Section 9 contains new provisions for a fast track variation process. The new provisions will allow a request for a decision within 2 days and give the chief executive the authority to require the applicant to pay any reasonable additional costs in deciding the application within the 2 business days.

Appeal from chief executive's decision

Section 10 replaces existing sections 12E, 12F and 12G. The section allows for an appeal to a tribunal by a dissatisfied applicant against the decision of the chief executive, provided that the appeal is started within 20 business days after the day that notice of the decision is given to the applicant.

Effect of variation of Standard Building Regulation

Section 11 replaces existing section 12D and states that an application to which a decision to vary how the Standard Building Regulation applies to building work, made by the chief executive cannot be refused by an assessment manager or private certifier. The assessment manager must administer compliance with the Standard Building Regulation as varied by the chief executive.

For example, the Standard Building Law requires smoke alarms in all new houses. It may be possible to obtain a variation to allow thermal detectors to be provided instead of the smoke detection device. It could be

argued that because the Standard Building Law specifically requires smoke detection devices, the installation of thermal detectors is not permitted, even with a variation. Section 11 makes it clear, that a variation given by the chief executive cannot be rejected by the assessment manager or the private certifier.

How changes to Standard Building Regulations may affect certain building work to be carried out

Section 12 replaces existing sections 13(1) and (2) and redrafts these to improve their clarity.

Section 12 ensures that no unnecessary hardship is placed on a person where amendments have been made to the Standard Building Regulation. The provisions of this section are necessary as amendments are made to the Building Code of Australia, which is called up by the Regulation, every six months. Otherwise it would be an unreasonable impost on industry for changes to be required after substantial planning or works have been completed.

Section 12(1)(a) allows building work that has already commenced to continue to be carried out and completed in accordance with the Standard Building Regulation in force at the time the building work was first approved, even if it does not comply in all respects with the amended Regulation (ie the application has been approved, the building work commenced, but not completed).

Section 12(1)(b) makes it lawful for building work to commence, in accordance with the Standard Building Regulation in force immediately prior to an amendment to the Regulation, where the approval has been given before the Regulation is amended (ie the application has been approved but building work has not commenced).

Section 12(1)(c) allows an application to carry out building work to be approved in accordance with the Standard Building Regulation in place before any amendments commence. (ie The application has been lodged but not yet approved).

Section 12(1)(d) ensures that no unnecessary hardship is placed on a building applicant where planning for the building work has commenced prior to the amendments to the Standard Building Regulation.

For example, if a substantial amount of planning has been undertaken by

an applicant prior to submitting a development application for building works and to change it because of amendments would create hardship, then the assessing authority has the discretion to approve the application in accordance with the laws in force immediately prior to the amendments to the Standard Building Regulation.

Section 12(2) makes it clear that building work approved or carried out under section 12(1) is lawful only if it is carried out in accordance with the Standard Building Regulation in force immediately before the amendment.

Section 12(3) clarifies that for subsections (1) and (2), an amendment of the Standard Building Regulation includes an amendment of the Building Code of Australia (BCA).

Alterations to safe existing work

New section 13 replaces existing section 13(3) and redrafts it to improve its clarity.

Section 13 requires that building work involving alteration or additions to existing buildings or structures must comply with the Standard Building Regulation in force at the time that the application for the work is approved. However, a concession is allowable where the person approving the application is satisfied that the general safety and structural standards of the building or structure would not be at risk if the work were carried out in accordance with building regulation in force at a particular time before the application was made. In such cases the assessment manager or the private certifier could approve the application under the previous regulation.

For example, a person may propose to add an extension to an existing "old Queenslander" which was built to the laws in force, say, 60 years ago. The existing house may have had ornate balustrades and handrails 900mm high which the building owners want to reproduce on the new extension for aesthetical reasons. The current requirements of the building codes however, require one metre high balustrades and handrails (above three metres from finished ground level). If it can be shown that the general safety and structural standards of the lower balustrade are adequate. This provision will permit the assessment manager or private certifier to approve the lesser height in accordance with laws existing 60 years ago.

Alterations to unsafe existing work

New section 14 replaces existing section 13(4) and redrafts it to improve its clarity.

Section 14 covers the situation where all or part of a building or structure approved prior to amendments to the Standard Building Regulation is considered by the person assessing the application to be unsafe or structurally unsound.

The assessment manager or private certifier could require all or part of the building or structure to conform with either the current Standard Building Regulation or with such previous building law as will ensure the building or structure is made safe and structurally sound.

For example an existing building may not have sufficient means of egress in case of fire, and must therefore be considered unsafe. The person approving the additional building work may use the current Standard Building Regulation to require additional egress to ensure safety.

Omission of pts 3-4A

Clause 11 omits Part 3—Referees and Building Tribunals, Part 4—Building Advisory Committee, and Part 4A—Approval of Local Governments. These provisions are now replaced in the Integrated Planning Act.

Part 3—Building Tribunals will be replaced by Building and Development Tribunals under the Integrated Planning Act. The Act retains the scope of tribunals to hear appeals on building related matters.

Provisions relating to the Part 4—Building Advisory Committee will be omitted. Under the Integrated Planning Act there will no longer be the need for a statutory Building Advisory Committee to hear appeals or to register Building Surveyors. The only avenue of appeal from a building and development tribunal will be to the Planning and Environment Court on a point of law.

Part 4A—Approval of Local Governments is omitted as the decision making process for assessing development is now included under the IDAS provisions in the Integrated Planning Act.

Provisions for the local government to assess amenity and aesthetics in relation to relocation of dwellings, outbuildings and relocations will be made

in the Standard Building Regulation.

Replacement of Pt 4B (Swimming pool fencing)

Clause 12 omits part 4B relating to swimming pool fencing. These sections have been redrafted to improve clarity and the definitions have been relocated to section 5.

PART 4B—SWIMMING POOL FENCING

Local law for fencing of swimming pools

Section 30G replaces existing section 30G and redrafts it to improve its clarity without changing its intent. The purpose of this section is to enable local government to have a local law requiring a higher standard of pool fencing. Tourist resort complexes continue to be exempt from such a local law.

Outdoor swimming pools must be fenced

Section 30H replaces existing section 30H and redrafts it to improve its clarity without changing its intent. The purpose of this section is to inhibit access by young children to swimming pools on residential land.

Section 30H(1) states that this section applies if an outdoor swimming pool is to be constructed or installed on, or is on, residential land.

Section 30H(2) incorporates the previous provisions of existing section 30T regarding the time an owner has to fence a swimming pool. The current time period for fencing a swimming pool has been removed and subsection (2) now requires that a complying fencing be provided around a swimming pool before it is intentionally filled with water to a depth of 300mm or more.

It is considered incongruous that a swimming pool could be filled and left exposed to the unsafe entry of young children for 30 days, while the protective fencing is being constructed. In actual practice, protective swimming pool fencing is constructed in the later finishing stages of construction of a pool and water to a depth of 300mm is permitted, because

sometimes there is a need for ballast water to weigh the pool down and ensure that the pool does not rise out of the ground due to subsoil water table pressure.

Section 30H(3) increases the penalty for failure to construct a compliant fence from a maximum 85 penalty units to a maximum 165 penalty units. These penalty units have been increased to be consistent with those in the Integrated Planning Act.

Section 30H(4) is inserted to allow for situations where an adjoining owner constructs or places something, such as a fixed barbeque up against the swimming pool boundary fence, which could affect the integrity of the fence, by allowing a climable object for young children, to gain entry to the swimming pool. In such cases the owner for the pool is not held responsible for having to construct modifications to the swimming pool fence to counter for the construction works by the neighbour.

Application for exemption from fencing

Section 30N consolidates existing sections 30N, 30O, 30P and 30Q to improve their clarity. The purpose of this section is to empower local government to grant an exemption from the requirement to fence a swimming pool provided young children are unlikely to access the pool.

Existing section 30O does not require a fence to a boundary adjoining a watercourse unless the local government decides it is necessary. Such a boundary will be required to be fenced under the new section 30N unless the owner obtains an exemption.

Section 30N(2) applies the same criteria used in existing section 30N which must be taken into account by a local government when considering an application for exemption. The section states that a local government may only grant the exemption if satisfied it is unlikely a young child would gain access to the pool. The power of local government to grant exemptions is unaffected.

The following examples describe situations where a local government might wish to exercise discretion and permit an exemption, or conditional exemption, to swimming pool fencing requirements:

- where access by a disabled person is necessary or physical site conditions exist which make it impracticable for a pool gate to

open outwards away from the swimming pool as required by section 11.4 Standard Building Regulation.

- where residential land is over 4,000 square metres, and no young child resides on the property, it may not be necessary to isolate the pool from neighbouring land, where there is little chance of a child wandering onto the property due to the distance from a road or adjoining land. Where no other protective barriers exist, a combination of site circumstances might provide suitable barriers to wandering children. Access to the pool from the building by residents or invited guests would need to be taken into account by the local government and in the majority of cases, such considerations could dismiss an application for variation of the fencing requirements, even though a property is over 4000m^2 in area.
- where land adjoins a watercourse, such as a canal, river, creek or lake, a local government may decide that a fence between the pool and watercourse may not be required, due to the unlikelihood of access by young children from the watercourse.

Existing section 30P states that where the area of land is over 4 000 square metres, the local government may grant an exemption to fence the pool. This provision applies only to existing pools as at February 1991 or existing buildings as at February 1992 where a new pool is proposed. This section is removed as it duplicates the exemption provisions in new section 30N.

Existing section 30Q provides for a local government to grant an exemption in relation to an existing building as at April 1992. This section is removed as it duplicates the exemption provisions in new section 30N.

Section 30N(4) is inserted to ensure that an exemption application is handled expeditiously by a local government within 5 business days from the day the application is made.

Section 30N(5) requires the local government to give the owner written notice of the decision regarding an exemption application, as soon as practical after the decision is made.

Section 30N(6) requires a notice of exemption to be granted in writing.

Subsection 30N(7) replaces the existing section 30Z(1) and increases the penalty for failure to comply with a condition of exemption from a

maximum 85 penalty units to a maximum 165 penalty units. These penalty units have been increased consistent with the Integrated Planning Act.

Revocation of decisions or previous variations

Sections 30S(1), (2), (4) and (5) replace the existing sections 30S(1), (2), (4) and (5), to address changes in the numbering of other sections, without changing the intent.

Section 30S(3) replaces the existing section 30S(3) so as to not require a show cause notice to be given where the work required to be done is of a minor nature.

Section 30S(6) replaces the existing section 30Z(1)(c) and increases the penalty for failure to comply with the requirements of a revocation notice from a maximum 85 penalty units to a maximum 165 penalty units. These penalty units have been increased to be consistent with those in the Integrated Planning Act.

Section 30S(7) is inserted to utilise the provisions of the *Local Government Act 1993*, in relation to an owner's failure to comply with a revocation notice.

Section 30S(8) is inserted to enable variations granted under the existing section 30M to be revoked under this section.

Advice as to compliance

Sections 30U(1),(2) and (3), replace the existing sections 30U(1),(2) and(3), without changing the intent, except that section 30U(2)(b) introduces a time limit (10 business days) for the giving of a notice.

Section 30U(4) requires that an owner complies with a notice given under section 30U(3) and introduces a penalty of a maximum 165 penalty units, for failure to comply with a notice. These penalty units are consistent with the Integrated Planning Act.

Access to outdoor swimming pools must be kept secure

Section 30V is retained but the penalty for failure to comply is increased from a maximum 85 penalty units to a maximum 165 penalty units. These

penalty units have been increased to be consistent with those in the Integrated Planning Act.

Apportionment of cost of constructing dividing fence

Sections 30W(1) and (2), replace the existing sections 30W(1) and (2) to improve clarity without changing the intent.

Section 30W(3) is inserted so that a local law relating to swimming pool fencing does not limit the discretion a Magistrates Court has under the *Dividing Fences Act 1953*.

Appeals about swimming pool fencing

Section 30X(1) replaces the existing subsections 30X(1) and (2), so as to utilise the appeal provisions of the Integrated Planning Act.

New section 30X(2) introduces a provision that an appeal must be started within 20 business days.

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

Clause 13 omits Part 5 as objections and appeals against local governments' decisions are dealt with under the provisions of Integrated Planning Act.

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

Clause 14 replaces the heading with 'Part 6-Show cause and enforcement notices'. The heading has been amended to more correctly reflect the intention of the part.

Enforcement notices outlined in the Integrated Planning Act deal with situations involving development offences committed under that Act. However building enforcement notices are required to deal with existing buildings.

Replacement of ss 50-54

Clause 15 replaces existing sections 50 to 54 with new provisions relating to show cause and enforcement notices for existing buildings and structures.

The provisions of the deleted section 51 declaring the performance of building work without a development permit not to be unlawful in specified emergency situations and in accordance with specified notification procedures are now contained in clause 4.3.6(1) of the Integrated Planning Act.

Show cause notices

Section 50A(1)(a) to (f) replace existing section 54 and allow for a local government or building certifier to serve a notice inviting a person to show cause why an enforcement or revocation notice should not be given to the person. With the exception of unsafe buildings or stop work notice, a show cause notice must be issued before serving an enforcement notice.

The section now provides guidance as to what information a show cause notice must contain. Previously, section 54 did not provide such advice, which resulted in inconsistent styles of notice document formats between local governments. The varieties of notices issued by different local governments also raised questions of uncertainty by a person receiving a notice, such as their rights to natural justice.

Section 50A(2) provides a minimum length of time which may be given for response to a show cause notice as being at least 20 business days after the notice is given. Where considered necessary or desirable a longer period of time could be given.

Enforcement notices

Section 50(1) replaces existing sections 50, 52(1) and 53 and incorporates the circumstances under which a local government may issue an enforcement notice in relation to existing buildings or structures and building work approved before the commencement of this section. This section deals with non-compliances which are not development offences.

Section 50(2) provides that a local government may also give an enforcement notice to an owner who does not comply with a particular matter in the Act. For example, a local government could serve an

enforcement notice regarding an existing swimming pool fence or gate that does not comply with the provisions of section 30H.

Section 50(3) specifies that a private certifier may also issue an enforcement notice under subsection (2) for work on which that certifier has been engaged as the building certifier. For example, private certifiers may issue enforcement notices for non-compliance with the pool fencing requirements or where a building, on which that certifier has been engaged as the certifier, is being illegally occupied, without a certificate of classification having been issued.

Section 50(4) requires a show cause notice to be issued before an enforcement notice is issued.

Section 50(5) provides that the requirement to serve a show cause notice only applies if the matter involved in the notice is not of a dangerous or a minor nature.

Section 50(6) calls into effect the provisions for giving enforcement notices under the Integrated Planning Act, ensuring that those provisions also apply to enforcement notices issued under this section of the Building Act.

Specific requirements of enforcement notices

Section 51(1) and (2) replace existing requirements.

Without limiting specific requirements a notice may impose, section (1) lists actions an enforcement notice may require in relation to existing buildings and structures.

Section (2) permits the local government to require removal or demolition only when it reasonably believes repair or modification to comply is not practical or possible.

Appeals against enforcement notices

Section 52(1) provides an owner who is given an enforcement notice under section 50 with the right of appeal. This section provides the same rights of appeal to a Tribunal as if the appeal was an appeal under the Integrated Planning Act. This is included because the appeal provisions of the Building Act have been relocated in the Integrated Planning Act.

Section 52(2) states that the appeal must be started within 5 business days (if it is a dangerous building) or 20 business days (if it is for any other purpose) after the enforcement notice is given to the person. Given the nature of the issues (ie potential for risk of injury to the occupants of a building or the inhabitants in the area) it is considered necessary to ensure that prompt action can be taken to address dangerous situations.

Replacement of s 55 (Register of notices given)

Clause 16 omits section 55 and inserts section 55(1) and (2).

Register of notices given

Section 55(1) requires the Register of Notices maintained by local governments prior to the Building and Integrated Planning Amendment Act coming into force, to continue to be kept available and open for inspection by the public.

Section 55(2) has been inserted to enable a local government to remove from the Register, maintained under the previous regulation, the details of a notice once the notice has been complied with.

Details of notices issued after the introduction of the amendment Act are required to be entered into a Register under the provisions of the Integrated Planning Act (section 5.7.2). This section also requires that the original or a certified copy of each show cause notice or enforcement notice must be kept available by the local government for inspection or purchase.

Omission of ss 56-58

Clause 17 omits sections 56 to 58 which deal with the service of notices by local government for dangerous buildings and structures and the appeals system available to owners. These sections are superseded by the new provisions in the Integrated Planning Act regarding enforcement notices, which are referred to under the new section 50, as mentioned above.

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

Clause 18 omits section 59 because the provisions for enforcement

notices are dealt with under the Integrated Planning Act, and the recovery of costs are detailed under the Local Government Act.

Action local government may take if enforcement notice not complied with

Section 59 states that if an enforcement notice under section 50(1)(b) or (c) is given by a local government, and the owner fails to perform the required work, then the failure is taken to be a failure mentioned in the Local Government Act, section 661.

This section provides the means by which a local government may recover its costs if required work is not performed by a person receiving a notice.

Replacement of ss 61-63B

Clause 19 omits sections 61 to 63B and inserts after section 60 a new Part 6B—Building Certifiers. The sections dealt with prohibition of erection of buildings or structures on impregnated land (61); right of entry to remedy offence (62); and application of the Act to gas suppliers. The omitted sections 61 and 62 are dealt with by other legislation, and section 63 will be covered by the regulation under the Integrated Planning Act specifying alternative assessment managers to local governments.

Division 1—Accreditation

Authorisation of accrediting bodies

Section 63C(1) provides that a regulation may authorise an incorporated or statutory body to be an accrediting body for building certifiers.

Section 63C(2) outlines terms of acceptability of an accrediting body to include identifiable competence and expertise in accrediting building certifiers.

Section 63C(3) allows for more than one accrediting body for building certifiers to be appointed.

Function of accrediting bodies

Section 63D(1) states that the function of an accrediting body is to accredit individuals as building certifiers.

Section 63D(2)(a) to (j) outlines the parameters of functions, responsibility and accountability which are expected of an acceptable accrediting body.

Duties of accrediting bodies include maintaining a code of conduct, maintaining accreditation standards, monitoring compliance, auditing, investigating complaints and taking necessary disciplinary action. The accreditation body will be responsible for the investigation of any complaints and taking disciplinary action regarding the incompetence or unethical conduct of their members. The range of disciplinary action available to the accreditation bodies includes warnings, imposing conditions, suspension and removal of accreditation.

Section 63D(3) covers the confidentiality expected of the accreditation body regarding unproven complaints against a building certifier.

Persons must not practice as building certifiers without accreditation

Section 63E provides that a person must not practice as a building certifier unless the person holds current accreditation as a building certifier. Failure to be accredited, while practicing as a building certifier can result in a penalty of up to 165 penalty units.

Division 2—Jurisdiction

Jurisdiction of building certifiers

Section 63F(1) to (5) specifies that a building certifier is entitled to assess only the 'building works' component of a development application involving building works.

This section makes it clear that the jurisdiction of a building certifier does not go beyond the scope of the Building Act (including the Standard Building Regulation), unless the building certifier has other appropriate

qualifications, experience or accreditation, which provide competence to assess or decide other aspects of a development application. For example, a building certifier may have plumbing and drainage qualifications and may be delegated authority by a local government to perform inspection and certification of plumbing and drainage works.

Division 3—Auditing building certifiers

Accrediting body must audit building certifier's work

Section 63G(1) to (3) makes it mandatory for an accrediting body to audit the work of a building certifier to fulfil its function under section 63D. The action that an accrediting body may take when carrying out the audit is the same as if a complaint were made under section 63H.

Division 4—Complaints

Making a complaint against a building certifier

Section 63H(1) to (4) provides the procedure by which any person may make a written complaint to an accrediting body if the person believes the building certifier is guilty of misconduct. Further particulars may be requested and the complaint may be dismissed if further particulars are not given or not verified by statutory declaration.

Building certifier must be advised of complaint

Section 63I(1) to (2) requires the accreditation body to advise the building certifier of a complaint and provide an opportunity to the building certifier to respond to the complaint within a period not less than 5 business days.

Accrediting body must investigate complaint

Section 63J(1) to (3) requires the accreditation body to investigate a complaint as soon as possible. If during the course of the investigations, the accreditation body discovers evidence that would suggest a complaint could have been made or received, the accreditation body may also investigate that matter at the same time as it is investigating the first complaint.

Division 5—Investigations

Accrediting body may require documents to be produced

Section 63K(1) to (3) allows the accrediting body to require a building certifier to produce documents within a reasonable time, for the purpose of investigating a complaint or auditing the work of the certifier.

Inspection of documents

Section 63L enables an accrediting auditor to make copies of any information it considers necessary, to assist it with its investigations.

Power to enter and inspect building site

Section 63M(1) to (7) allows an accrediting auditor from the accrediting body to enter and inspect a building site for auditing purposes, but only with the consent of the person in control of the building site. In situations where the auditor is refused entry, a warrant may be obtained from a magistrate for entry and inspection of a building site for auditing purposes.

Cooperating with investigation or audit

Section 63N(1) requires the building certifier to assist and cooperate with the audit of the accreditation body. Using delaying tactics or obstructing audit processes would not be acceptable conduct by the certifier in such a situation.

Section 63N(2) states that a building certifier is guilty of misconduct if the certifier fails to comply with the audit requirements or misleads or

obstructs the accrediting body in the exercise of any of its functions.

Decision after investigation or audit completed

Section 63O(1) to (3) requires the accrediting body to take disciplinary action against a building certifier if the audit detects professional misconduct by the building certifier.

The action that an accreditation body may take varies from taking no action at all if it considers that no other material complaints have been made against the certifier; to suspension of the building certifier's accreditation for an appropriate period of time, or cancellation of the certifiers accreditation.

Accrediting body's decision may be appealed

Section 63P(1) to (3) provides an appeal mechanism to give a building certifier or complainant, dissatisfied with the decision of an accrediting body, (relevant to the investigation of a complaint or the conducting of an audit), the opportunity to appeal to the chief executive. The appeal must be made within 20 business days after the day the person making the appeal received notice of the decision being appealed against.

Division 6—Chief executive and court powers

Chief executive may investigate building certifier

Section 63Q(1) to (2) gives authority to the chief executive to investigate a matter pertaining to a complaint and provides the same power as those given to an accrediting auditor investigating a complaint.

Chief executive's decision

Section 63R(1) to (3) requires the chief executive to decide whether the private certifier is guilty or innocent of professional misconduct. The chief executive must also provide a copy of the decision to the complainant, the accreditation body and the private certifier.

Section 63R(2) states that if the chief executive decides that the private certifier is guilty of professional misconduct, the chief executive may direct the accrediting body to do anything necessary under section 63O.

Section 63R(3) enables the chief executive to require the accrediting body to comply with the direction and do anything necessary to give effect to it.

Appeal to the court against the chief executive's decision

Section 63S(1) to (3) provides the right of appeal, against the chief executive's decision, to the court, including permission for the building certifier to apply to the court for a stay of the decision.

Court may make certain disciplinary findings

Section 63T(1) to (5) requires the court to determine whether the building certifier is guilty of professional misconduct and provide a copy of the decision to the building certifier, the complainant and the accreditation body. If the court determines that the building certifier is guilty of misconduct, the court may take action under subsection (3).

Section 63T(4) enables the court to direct the chief executive or the accreditation body to withdraw a notice relevant to a complaint or audit, if the court decides that the building certifier is not guilty of professional misconduct.

Section 63T(5) enables the court to determine that the building certifier cannot re-apply for accreditation for a period of time, including the lifetime of the building certifier.

Replacement of ss 64-64D

Clause 20 replaces existing sections 64 to 64D and inserts a new section 64. These sections dealt with provisions concerning notices under the Building Act, offences, penalties and prosecution of offences, which are now covered by the Integrated Planning Act.

Approved forms

Section 64 provides for the chief to approve forms for use under the Building Act and Standard Building Regulation.

Giving security in certain cases

Section 64A(1) to (12) replace existing section 30BH.

Section 64A provides for the giving of security bonds to a local government where an application is submitted for approval to remove or rebuild an existing structure. The provision has been rewritten in more user friendly terms and addresses the obligations of private certifiers who receive applications for removal buildings or structures. The local government may receive a security or bond commensurate with the estimated value of work needed to be carried out to make the building comply with the Standard Building Regulation.

Sections 64A(3) and (4) stipulate the time limits in which the local government must advise of the amount and form of the security or removal bond, as being within 5 business days after the request is made. If the local government does not comply with the requirement to advise within the specified time, subclause (7) states that the certifier must decide the application without requiring any security.

Section 64A(5) allows the owner the right of appeal to a tribunal under the Integrated Planning Act against the decision of the local government about the amount and form of the security. The appeal must be started within 20 business days after the notice of the decision is given to the owner, in accordance with subsection (6).

Section 64A(8) stipulates that the amount of security must not be more than the value of the building work to be carried out in accordance with the Standard Building Regulation.

Section 64A(9) requires the building certifier to check that the security has been paid to the local government prior to approving the application for the removal building.

Section 64A(10) allows the local government to take action it considers necessary to have the building work completed if the building work on the removal building is not completed within the time prescribed for its completion. If such action is taken by the local government subsection (11) allows the local government to use all or part of the security money given for the building work.

Section 64A(12) allows the local government to refund portions of the security at various completed stages of progress. Once the rectification works have been completed in compliance with the building works permit

the local government must refund the remaining balance of the security.

Information to be supplied by the State

Section 64B makes provision for local government to be entitled to receive information prescribed under a regulation. For example, if construction of dwellings is carried out by or on behalf of the State, the plans, specifications, plumbing and drainage detail documents need to be provided to the relevant local government for document storage and referral purposes. Information may also be required from the local government relating to the plumbing and sanitary drainage so that inspections can be carried out prior to covering trenches, so that plans of final installation can be drawn and filed with Council for future reference, if necessary.

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

Clause 21(1) amends the section 64E heading by omitting the word 'Law' and inserting 'Regulation'.

Clause 21(2) amends section 64E so as to refer to the Standard Building Regulation, replacing the previous reference to the Standard Building Law.

Clause 21(3) amends section 64E by omitting 'that law' and inserting 'the Standard Building Regulation'.

Amendment of s 65 (Prosecution of offences)

Clause 22 amends sections 65 by omitting the word 'Law' and inserting 'Regulation' in keeping with the change of title from Standard Building Law to Standard Building Regulation.

Omission of ss 66A and 66B

Clause 23 omits sections 66A (Notice given to body corporate taken to be given to proprietors) and 66B (Certain applications not made unless fees paid). These sections are now covered by the Integrated Planning Act.

Amendment of s 67 (Regulation making power)

Clause 24(1) omits section 67(2)(a) which is no longer relevant, because remuneration to referees, members of the committee and subcommittees is now covered under the Integrated Planning Act.

Clause 24(2) omits section 67(2)(d), '20' and inserts 165 penalty units which is consistent with the Integrated Planning Act.

Insertion of new s 68

Clause 25 inserts a new section 68 in part 7, after section 67 as below.

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

Section 68 is inserted to confirm that the Standard Building Regulation is taken to have been made on 14 December 1993, in conformity with the requirements of the *Statutory Instruments Act 1992*, part 7.

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

Clause 26 omits the words '(Outdoor swimming pools to be fenced)' from Section 76(2) in accordance with modern drafting standards.

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

Clause 27 omits section 78 and inserts a rewritten section 78 as below.

References to Standard Building Law etc.

Section 78 is rewritten to clarify that 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. This clarification is needed to tie together the various titled chronological editions of the Standard Building Regulations down through the years. As shown in the example it also covers the indirect references such as 'those by-laws' and includes these as references to the

Standard Building Regulation.

Insertion of new ss 79-82

Clauses 28 inserts new sections 79 to 82, after section 78, and cover the matters listed below

Existing referees

Section 79 inserts the statement that a person who was appointed as a referee before the commencement of this section, will be taken to be a referee appointed under the Integrated Planning Act. This allows for the carrying over of the existing appointment until expiry of the term for which the person was appointed.

Existing registrar

Section 80 inserts the statement that before the commencement of this section, the existing registrar of the Building Tribunal, appointed under the Building Act, will be taken to be the registrar of the Building and Development Tribunal appointed under the Integrated Planning Act. This allows for the carrying over of the existing appointments until expiry.

Lawfully constructed buildings and structures protected

Section 81 inserts the provision that if a building or structure is lawfully constructed before the commencement of this section, a Standard Building Regulation cannot require the building or structure to be altered or removed unless the building or structure is dangerous, dilapidated, unfit for occupation, is filthy, is infected with disease or is infested with vermin. This provision maintains existing rights.

Lawfully constructed swimming pool fences protected

Section 82 makes the provision that if a swimming pool fence complied with the Standard Building Regulation immediately before the commencement of this section and is maintained to that standard, a new Standard Building Regulation for the erection of swimming pool fencing on or after the commencement cannot require the fence to be altered or

removed.

Numbering and renumbering of Act

Section 83 advises that the next reprint of this Act under the *Reprints Act 1992* must make provision for numbering and renumbering the Act as permitted by the Reprints Act, section 43.

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

Act amended

Clause 29 amends the *Building And Construction Industry (Portable Long Service Leave) Act 1991*.

Omission of s 2 (Commencement)

Clause 30 omits section 2.

Amendment of s 3 (Interpretation)

Clause 31(1) replaces the heading of section 3 with the heading 'Definitions'.

Clause 31(2) amends section 3 to insert the definition of "assessment manager" and "private certifier" having the meanings given by the Integrated Planning Act.

Amendment of s 74 (Liability for levy)

Clause 32 amends section 74(b) to require an applicant for development approval of building work made under the Integrated Planning Act to be liable for portable long service leave levy.

Amendment of s 75 (When levy is payable)

Clause 33 amends section 75(1)(a) to require the levy be payable before a development application for building work is made under the Integrated Planning Act.

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

Clause 34(1) replaces the heading of section 77 with the heading 'Duty of assessment manager to sight approved form'.

Clause 34(2) amends section 77(1) by requiring an assessment manager to accept an application for building work under the Integrated Planning Act only if the assessment manager has seen an approved form issued by the Authority signifying payment of the levy as required.

Clause 34(3) amends section 77(3) inserting "subsections (1) and (3) do", which means that the new subsections (1) and (3) do apply to an application about building and construction work if no levy is payable for the work under section 70(2).

Clause 34(4) renumbers section 77(3) to section 77(4) so as to make way for insertion of new subsection (3) as below.

Clause 34(5) inserts new section 77(3) making it an offence for a private certifier, acting as an assessment manager, to issue a development permit for building works under the Integrated Planning Act if the private certifier has not seen an approved form issued by the Authority signifying payment of the levy as required.

PART 4—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994

Act amended

Clause 35 states the intention of the part to amend the Environmental Protection Act.

Amendment of s 37 (Duty to notify environmental harm)

Clause 36 inserts section 37(2)(e) to exempt a person carrying out an environmentally relevant activity from the obligation to notify actual or threatened environmental harm which is authorised under conditions imposed or required to be imposed on a development approval by the administering authority as assessment manager or concurrence agency. This is to ensure consistency with environmental authorities under the Act.

Replacement of ch 3, pt 4 heading

Clause 37 inserts a new heading for part 4 which draws attention to the distinction between environmental authorities which stand alone, and those which operate in conjunction with development approvals.

Section 40A states the particular circumstances in which a part 4 environmental authority alone will be required to carry out an environmentally relevant activity. These circumstances are:

- where a person holds an environmental authority immediately before section 40A commences and the activity continues as previously;
- where an application for an environmental authority is made before section 40A commences, the authority is issued after commencement (or becomes effective after commencement), and the activity is carried out as specified in the application;
- the activity does not involve development, eg. an itinerant activity;
- where an application for the development for the activity is made and approved before the section commences, but the application for the environmental authority to carry out the activity is not made until after commencement. This provision is necessary to ensure that the administering authority has the opportunity to assess the developmental aspects of the activity.

Amendment of s 41 (Application for environmental authority)

Clause 38 inserts section 41(3) which provides for flexibility for when an application fee for an environmental authority is required. The same subclause has been inserted in the corresponding provision for new part 4A licences (section 60G(2)).

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

Clause 39 amends section 45 to provide that a licence does not take effect until the balance of any fees owing is paid.

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

Clause 40 inserts section 49(9) to provide for consistency in the matters to be taken into account in deciding an application whether the application is for an authority, an amendment of an authority, or a development approval.

Amendment of s 51 (Procedure for amending licence)

Clause 41 inserts section 51(3) to provide for flexibility in deciding the date an amendment is to take effect.

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

Clause 42 deals with the integration of level 1 environmentally relevant activities into IDAS. This is achieved in the follow way:

- IDAS becomes the mechanism for assessing the impacts of an activity and for integrating all development and operating conditions of the activity;
- part 4A establishes a separate licencing system for level 1 activities, however, licences under this part are limited to dealing with the suitability of an individual to conduct an activity. A licence of this type, in addition to the development approval (which deals with all planning, building, environmental management and operational requirements), is necessary to maintain parity with the existing situation where environmental licences deal with both applicant suitability and environmental management matter

This clause inserts part 4A which is the counterpart to continuing part 4, and addresses the situation where an environmental authority will be required in addition to a development approval issued under the Integrated Planning Act (new section 60F). The clause also inserts part 4B which relates to the issue of a development approval under the Integrated Planning Act (new section 60Z).

The provisions of part 4A largely repeat the provisions of existing part 4. The following deviations are significant:

- Section 60G(1)(b) - examples concerning matters of land use have been deleted.
- The uncommenced public notification provisions in existing section 42 are not relevant. Public notification requirements would be relevant only to development applications and are provided for under the Integrated Planning Act.
- Section 60I - considerations for granting with or without conditions, or refusing an application are confined to matters which relate to the applicant, rather than the activity, ie the applicant's suitability, and any submission for an integrated environmental management system.
- Section 60K - conditions that may be imposed on a licence are confined to matters which relate to the applicant, rather than the activity, ie about the integrated environmental management system, or financial assurance.
- The provisional licence provisions in existing sections 47 and 47A are omitted. These have no application in the context of a personal licence.
- Existing division 2 which deals with amendment of licences is not appropriate in the context of a personal licence and has been omitted.
- Existing division 3 of part 4 has been largely omitted as its provisions are not appropriate in the context of a personal licence. The provisions which are relevant to part 4A licences are dealt with in part 4A division 4 and are confined to giving notice to a buyer when a licensee's business is disposed of (section 60X) and giving notice to the administering authority when a licensee ceases to operate (section 60Y).
- New part 4A division 3 reflects the provisions of existing part 4 generally, and part 4, division 4A in particular with respect to level 1 approvals for which a licensee may apply where certain performance standards have been maintained over two years. These provisions maintain fairness between holders of part 4 and part 4A licences who meet their environmental obligations. The

criteria for deciding the application (section 60Q) relate to the performance of the particular licensee. Provision is made (section 60S) for similar conditions with respect to the integrated environmental management system, to be imposed on a part 4A level 1 approval as on the original part 4A licence. As with existing part 4 level 1 approvals, provision is made for suspension or cancellation (section 60).

New part 4B (section 60Z) provides for the assessment of applications for development associated with environmentally relevant activities (which will be prescribed by regulation under the Environmental Protection Act). This part directs the considerations of the administering authority in the role of either concurrence agency or assessment manager.

- Section 60ZA provides for the application to be assessed against the same criteria as would be the case if it were for an environmental authority (existing section 44), with the exception of the applicant's suitability and the views expressed at a conference on the application. The suitability of the applicant is to be considered in their assessment for a part 4A licence. The conference provisions (existing section 64) have not been included on the basis that they are still uncommenced. Subsection 60ZA(2) reinforces the time constraints applying under the Integrated Planning Act for the assessment of development applications; subsection (3) makes it clear that where a local government is also the administering authority the application of the criteria only apply to the consideration of that part of the development application related to the environmentally relevant activity; subsection (4) makes it clear that the considerations specified in the Integrated Planning Act for consideration of an application by an assessment manager or concurrence agency are not limited by the criteria in the Environmental Protection Act.
- Section 60ZB provides for the same criteria and conditioning powers to apply to the assessment of a development application as would have applied if it were an application for a part 4 environmental authority.
- Division 3 deals with the effect of the issue of a development approval for a person who already holds an environmental authority for the activity, or a single licence for multiple activities (existing section 61). Section 60ZC provides that the division

applies only to development prescribed by regulation. It is intended that the division will not apply where the development approval sought is a material change of use alone, and does not for the time being involve other development. A part 4A licence (section 60ZD) or a single licence which includes the activity (section 60ZE) would not be required until the activity commenced.

- Section 60ZD provides that if a development application is made and issued to a person holding a part 4 environmental authority the cancellation of the environmental authority and the issue of both the development approval and the part 4A environmental authority, take effect at the same time.
- Section 60ZE provides that if a person holds a single environmental authority under section 61 to carry out a number of different environmentally relevant activities on one site, or environmentally relevant activities on different sites, and:
  - the person applies for and is issued a development approval for one of those activities; and
  - applies for a part 4A environmental authority for that activity;

  then if the administering authority grants the application for the part 4A environmental authority, then it must issue a single environmental authority for all the activities which takes effect when the development approval takes effect. The single environmental authority is issued under both part 4A (applying to the activity the subject of the development approval), and part 4 (applying to the environmentally relevant activities).

Section 60ZF is similar where relevant to existing section 70 (Offence to contravene an environmental authority). It provides that it is an offence to contravene a condition imposed, or required to be imposed on a development approval by the administering authority as the assessment manager or a concurrence agency for the application. This offence has been excepted from the offence provisions of the Integrated Planning Act (section 4.3.3 of that Act) so that provision can be made for wilful contravention of a condition, and the penalty of a more substantial fine (2000 penalty units) or the possibility of imprisonment for 2 years.

Replacement of ch 3, pt 4, div 5 heading

Clause 43 inserts a heading for part 4C. The part contains substantially the same general provisions about environmental authorities (including new Part 4A environmental authorities) as in existing division 5 of part 4.

Amendment of s 61 (Single applications and environmental authorities)

Clause 44 inserts new subsection 61(3) which explains that a single environmental authority may be issued for a number of different activities which require either a part 4 or part 4A environmental authority.

Amendment of s 68 (Annual licence fee and return)

Clause 45 amends section 68 to provide for flexibility about when an annual licence fee is payable.

Insertion of new s 70A

Clause 46 inserts section 70A which defines a material change of use with respect to a continuing environmentally relevant activity for the purposes of the Integrated Planning Act. The development is defined in terms of the release of contaminants into the environment which is the basis of prescription of an activity as an environmentally relevant activity under existing section 38 of the Environmental Protection Act. A material change of use is development for the purposes of the Integrated Planning Act when a person who already holds a part 4 environmental authority, or a development approval, for an environmentally relevant activity, carries out certain works at the relevant premises, the effect of which will be a 10% or greater increase of contaminants released into the environment.

The clause ensures parity with the existing regulatory regime under the Act.

Amendment of s 72 (When environmental audit required)

Clause 47 inserts section 72(1)(b) to extend the circumstances in which an environmental audit is required to where a person does not comply with a condition imposed, or required to be imposed on a development approval by the administering authority as the assessment manager or a concurrence

agency for the application.

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

Clause 48 amends and inserts sections 76(2)(b) and (c) to allow appropriate action to be taken as a consequence of an environmental report with respect to a condition imposed, or required to be imposed on a development approval by the administering authority as the assessment manager or a concurrence agency for the application.

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

Clause 49 amends section 82(1) to extend the circumstances in which an environmental management program may be required as a condition, to where the administering authority is the assessment manager or a concurrence agency for an application for development related to an environmentally relevant activity.

Amendment of s 89 (Criteria for deciding draft program)

Clause 50 inserts section 89(2) to provide for the circumstance where a draft environmental management program is prepared as required by a condition of a development approval. The subsection requires that the administering authority may approve the draft program only if it is not inconsistent with conditions of the development approval other than those imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for the application.

Amendment of s 97 (Effect of compliance with program)

Clause 51 inserts section 97(2) to extend the circumstances in which a person may comply with an environmental management program despite a contrary requirement of a condition of the development approval which was imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for the application.

Amendment of s 109 (When order may be issued)

Clause 52 inserts section 109(d)(iii to extend the circumstances for the issue of an environmental protection order to secure compliance with a condition of the development approval which was imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for a development application.

Amendment of s 119 (Unlawful environmental harm)

Clause 53 and inserts section 119(1)(e) to extend the circumstances where environmental harm or nuisance may be lawful if done or omitted to be done under a condition of the development approval which was imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for a development application.

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

Clause 54 amends section 127 to extend the offence of interfering with monitoring equipment to include equipment used under a condition of a development approval imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for a development application.

Amendment of s 135 (Entry of place)

Clause 55 inserts section 135(3) which defines “licensed place” to extend the circumstances where an authorised person may enter a place to a place which is the subject of a condition of a development approval which was imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for a development application.

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

Clause 56 inserts section 146(1) to extend the power to require production of documents to a document required to be held under a condition of a development approval which was imposed, or required to be imposed by the administering authority as the assessment manager or a concurrence agency for the application.

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

Clause 57 amends section 162(3) to extend the obligation to produce a document to producing a document required to be held under a condition of a development approval which was imposed or required to be imposed by the administering authority as the assessment manager or concurrence agency for a development application.

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

Clause 58 amends section 163(3) to extend the obligation to produce a document to producing a document required to be held under a condition of a development approval which was imposed or required to be imposed by the administering authority as the assessment manager or concurrence agency for a development application.

Insertion of new s 193A

Clause 59 inserts section 193A which excepts from the application of existing chapter 5, part 4 (restraint orders) an offence under section 60ZF, ie. contravening a condition imposed, or required to be imposed on a development approval by the administering authority as the assessment manager or a concurrence agency for the application. New part 4A in chapter 5 applies specifically to this offence.

Insertion of new pt 4A

Clause 60 inserts part 4A in chapter 5 which deals with enforcement orders which apply specifically to an offence under new section 60ZF, ie contravening a condition imposed, or required to be imposed on a development approval by the administering authority as the assessment manager or a concurrence agency for the application. The intention of the proposed part is to make similar enforcement provisions as appear under the Integrated Planning Act available to third parties with respect to these conditions.

Sections 195A to 195G of new part 4A substantially repeat the relevant parts of the following sections of the Integrated Planning Act: 4.3.22 (195A), 4.3.23(195B), 4.3.24(195C), 4.3.25 (195D), 4.3.26 (195E), 4.3.27(195F), 4.3.28(195G), with the exception that section 195E(1) and

(2) makes relevant changes to the orders the Court may make, and 195E(4) provides the same penalty for contravention, ie. a maximum fine of 3 000 penalty units, and the possibility of imprisonment for two years, as applies under the Integrated Planning Act (section 4.1.5 of that Act).

Amendment of s 196 (Devolution of powers)

Clause 61 inserts section 196(1A) to allow the devolution to local governments of the administering authority's jurisdiction, with respect to environmentally relevant activities, over water beyond the local government's boundary.

Amendment of s 213 (Register)

Clause 62 amends section 213(d) and inserts section 213(c) to allow details of monitoring programs carried out under development approvals, and development approvals for environmentally relevant activities to be inserted in an appropriate register.

Amendment of s 220 (Regulation-making power)

Clause 63 inserts section 220(3A) to provide the power to prescribe fees with respect to the functions of the administering authority under the Integrated Planning Act.

Amendment of sch 1 (Original decisions)

Clause 64 amends schedule 1 to include more original decisions made necessary by the amendments to the Environmental Planning Act.

Amendment of sch 4 (Dictionary)

Clause 65 amends the dictionary in schedule 4 as follows:

- amends the definition of "licence" by extending the definition to include a licence issued under new part 4A.
- inserts a definition of "advice agency" by referring to the definition in schedule 10 of the Integrated Planning Act.
- inserts a definition of "approval" which extends its meaning to

include a level 1 approval under new part 4A.

- inserts a definition of "assessment manager" by referring to the definition in section 3.1.7 of the Integrated Planning Act.
- inserts a definition of "concurrence agency" by referring to the definition in schedule 10 of the Integrated Planning Act.
- inserts a definition of "development" by referring to section 1.3.2 of the Integrated Planning Act.
- inserts a definition of "development approval" by referring to the Integrated Planning Act.
- inserts a definition of "development application" by referring to the Integrated Planning Act.
- inserts a definition of "development condition" which is fundamental to the relationship between the Integrated Planning Act and the Environmental Protection Act with respect to environmentally relevant activities.
- inserts a definition of "development offence" by referring to new section 60AF.
- inserts a definition of "enforcement order" by referring to new section 195A.
- inserts a definition of "integrated environmental management system" for reference in new part 4A.
- inserts a definition of "Integrated Planning Act".
- inserts a definition of "interim enforcement order" by referring to new section 195A.
- inserts a definition of "level 1 approval" which extends its meaning to include a level 1 approval under new part 4A.
- inserts a definition of "part 4 environmental authority" which assists in distinguishing between authorities required under the existing Act and authorities required under the amendments.
- inserts a definition of "part 4A environmental authority" which assists in distinguishing between authorities required under the existing Act and authorities required under the amendments.
- inserts a definition of "referral agency" which is the generic term for both advice and concurrence agencies under the Integrated

Planning Act.

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

Act amended

Clause 66 states the intention of the part to amend the affected Act.

Amendment of s 29 (Amendment of s 196 (Devolution of powers)) *Clause 67*

Amendment of s 39 (Amendment of sch 4 (Dictionary)) *(Clause 68)*

These clauses repeal 2 sections that otherwise would be inconsistent with the operation of the Bill as an Act.

PART 6 —AMENDMENT OF INTEGRATED PLANNING ACT 1997

Act amended

Clause 69 states the intention of the part to amend the Integrated Planning Act.

Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 70 amends the defin ition of "material change of use" in section 1.3.5 to remove a redundant expression, ie "the start of a new use" includes "a material change in the character" of a use.

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

Clause 71 amends section 2.2.18(4) to correct a reference to another section of the Act.

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

Clause 72 amends section 2.2.22 by applying "in good faith" to "things done" as well as to "things purportedly done".

Amendment of s2.4.1 (Meaning of "State planning policy")

Clause 73 amends section 2.4.1(2) which incorrectly refers to a "local planning instrument" instead of a "State planning policy".

Amendment of s2.6.18 (Repealing designations)

Clause 74 amends section 2.6.18(4)(d) which incorrectly refers to the "Minister's decision" only, whereas a similar decision may also be made by a local government.

Amendment of s2.6.19 (Request to acquire designated land under hardship)

Clause 75 inserts section 2.6.19(4) to clarify that an interest in designated land may be the whole interest owned by a person rather than only that part of the interest which is directly affected by the designation.

Amendment of s2.6.23 (If the designator does not act under the notice)

Clause 76 amends section 2.6.23 by:

- extending the period in subclause (1)for issue of a notice of intention to resume to reflect the time taken for statutory requirements to be fulfilled under the Acquisition of Land Act;
- expanding the nature of the agreement to be signed under subclause (1)(a) to include an agreement to take land under section 15 of the Acquisition of Land Act;

- removing the redundant word "written" under subclause (1)(b);
- reflecting in subsections (2) and (3) the definition of an interest in land under proposed section 2.6.29(4) to confirm that if an action is taken under the Acquisition of Land Act to resume the property, the whole of the land can be resumed.
- providing in subsection (4) that sections 13 and 41 of the Acquisition of Land Act do not apply. (These sections respectively provide for small parcels of land to be taken, and for land not used to be offered to the former owner.)

Amendment of s 3.1.2 (Development under this Act) *(Clause 77*)

Amendment of s 3.1.3 (Code and impact assessment for assessable development) *(Clause 78)*

Amendment of s 3.1.4 (When is a development permit necessary) *(Clause 79)*

Amendment of s 3.1.6 (Preliminary approval may override local planning instrument) *(Clause 80)*

These clauses have been amended to clarify the relationship between planning schemes and schedule 8 in relation to assessable and self-assessable development. The amendments ensure that while schedule 8 may make development assessable (eg. building work is generally treated as assessable development under this schedule) this does not automatically mean that any development application also must be assessed against the planning scheme. If schedule 8 makes development assessable but a planning scheme does not have formal assessment requirements, there is no requirement for the application to be assessed against the planning scheme. However, even though there may be no requirement for formal assessment there still may be codes in the planning scheme that have to be complied with (as per self-assessable development). The amendments make it clear non-compliance with these codes is an offence (see inserted section 4.3.2A).

For example building work for the purpose of a dwelling house in a residential zone under a planning scheme may not require formal assessment against the scheme even though an application for approval of the work must be made and assessed for its compliance with the Standard

Building Regulation.

In relation to *Clause 78*, subsections (4) and (5) clarify that a code identified in a regulation under this or another Act cannot be changed under a local planning instrument or a local law. Furthermore section 3.1.3(5) confirms that to the extent a local planning instrument or a local law is inconsistent with the scope of a code identified in the regulation, then they are of no effect.

The Standard Building Regulation is a code that will be identified under section 3.1.3(4) which will quarantine not only the provisions of the Standard Building Regulation from contradiction by planning instruments and local laws, but also matters mentioned in a planning instrument or local law falling within the scope of the Standard Building Regulation as having no effect.

For example, the Standard Building Regulation addresses amenity within a building, prescribing minimum ceiling heights, but is silent on the matters of minimum floor areas. This is intentional as market demand has effectively dictated room sizes. It is intended that room sizes fall within the scope of the amenity requirements addressed by the Standard Building Regulation, and a planning instrument or local law prescribing room sizes would be contrary to the intent of the Standard Building Regulation.

Amendment of s 3.1.7 (Assessment manager)

Clause 81 amends section 3.1.7(2) by providing that the Minister is not obliged to specify one entity only as assessment manager for development which is not wholly within one local government area. This allows for a development application which applies to development across more than one local government area, eg development associated with establishing a number of franchises, in different local government areas, to be dealt with by the respective local government.

Amendment of s 3.2.1 (Applying for development approval)

Clause 82 amends section 3.2.1(4)(c) to allow for fees to be determined under other legislation as well as under the Integrated Planning Act.

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

Clause 83 amends the numbering of section 3.2.2.

Amendment of s 3.2.3 (Acknowledgment notices generally)

Clause 84 (see notes clauses 77-80)

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

Clause 85 amends section 3.2.6(2)(c) to allow for fees to be determined under other legislation as well as under the Integrated Planning Act.

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

Clause 86 replaces section 3.2.10(c) to clarify that the assessment manager's consideration of the effect of not notifying the changed application is to be directed to the likelihood of a submission objecting to that part of the development to which the change relates, rather than to anything else about the development.

Amendment of s 3.2.11 (Withdrawing an application)

Clause 87 amends section 3.2.11 to reflect a provision of the Local Government (Planning and Environment) Act which allows submissions on an earlier application, which has been withdrawn and is not substantially different, to carry over to the later application.

Amendment of s 3.2.12 (Applications lapse in certain circumstances)

Clause 88 amends section 3.2.12 to clarify that it is not the intent of the Act that development applications that have not been correctly notified under section 3.4.4 lapse. There was a concern that if an applicant inadvertently made an error in publicly notifying an application it would not be possible to re-notify the application because the time for the actions to be taken had passed.

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

Clause 89 amends section 3.2.14(1) by requiring notification in "the local government's area" rather than just "the local area" to more adequately reach potential service providers.

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

Clause 90 amends section 3.3.3(1)(c) to allow for fees to be determined under other legislation as well as under the Integrated Planning Act.

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

Clause 91 inserts section 3.3.6(4A) to ensure that the assessment manager for a development application knows the agency's referral day.

Amendment of s 3.3.7 (Information requests to applicant (referral coordination)

Clause 92 replaces section 3.3.7 to clarify that the time limits in the section apply to the actions of the chief executive.

Amendment of s 3.3.15 (Referral agency assesses application)

Clause 93 replaces a reference to the "Standard Building Law" with "Standard Building Regulation".

Amendment of s 3.3.16 (Referral agency's response)

Clause 94 amends section 3.3.16 to maintain consistency of format by raising the definition of "referral agency's response".

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

Clause 95 amends section 3.3.20 by substituting "mentioned in" for "under", the latter being inappropriate in the context.

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

Clause 96 inserts section 3.4.4(4) to ensure that no notification of owners is necessary with respect to some areas (such as public roads) which adjoin land the subject of a development application.

Amendment of s 3.4.9 (Making submissions)

Clause 97 amends sections 3.4.9(3) and (4) to require all submissions, withdrawals and amendments of submissions, to be in writing. To be accepted by the assessment manager a submission must meet this requirement even if it does not meet the other requirements of a "properly made" submission.

Amendment of s 3.5.4 (Code assessment)

Clause 98 amends clause 3.5.4(4) to correct a reference to another section of the Act, and to substitute "existing" for "current" for consistency of expression.

Amendment of s 3.5.5 (Impact assessment)

Clause 99 amends clause 3.5.5 to correct a reference to another section of the Act, to correct an inconsistency with a similar provision in section 3.5.5(2)(e), and to substitute "existing" for "current" for consistency of expression.

Amendment of s 3.5.11 (Decision generally)

Clause 100 amends section 3.5.11(3)(b) to correct any implication in the existing wording that an applicant has a right to choose to apply for and only receive either a preliminary approval or a development permit. This is not the case, and a preliminary approval may be issued where the applicant has actually sought a development permit.

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

Clause101 amends section 3.5.13 to clarify that a decision requiring code

assessment may not conflict with the Building Act, and must not compromise desired environmental outcomes, subject to consistency with any State Planning Policies not identified as being appropriately reflected in the relevant planning scheme. The proposed provision is intended to overcome potential difficulties where a State Planning Policy postdates the approval of a planning scheme.

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

Clause 102 inserts section 3.5.14(4) which requires that a decision requiring impact assessment should not be inconsistent with State Planning Policies which are not identified as being appropriately reflected in the relevant planning scheme. The proposed provision is intended to overcome potential difficulties where a State Planning Policy postdates the approval of a planning scheme.

Amendment of s 3.5.15 (Decision notice)

Clause 103 amends section 3.5.15 by prescribing that a decision notice take a particular form (to achieve uniformity across assessment managers), and that copies of approved plans and specifications should accompany a decision notice.

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

Clause 104 amends section 3.5.17 by inserting a provision previously misplaced under s 3.5.18(5).

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

Clause 105 amends section 3.5.18 by removing the provision now relocated to s 3.5.17.

Amendment of s 3.5.19 (When approval takes effect)

Clause 106 omits section 3.5.19(c) and insert a new subclause (c), clarifying that if an appeal is made to a tribunal or court, the decision regarding approval of the development application takes effect from the date that the decision is made by the tribunal or court.

Replacement of s 3.5.20 (When development may start)

Clause 107 replaces section 3.5.20 to clarify the provision and to correct an ambiguity with respect to the meaning of "any submitter's appeal period".

Amendment of s 3.5.21 (When approval lapses)

Clause 108(1) amends section 3.5.21(1)(b) to provide for where a plan for reconfiguration of a lot is submitted before the end of the currency period.

Clause 108(2) corrects a punctuation error in section 3.5.21(4)(b).

Clause 108(4) inserts section 3.5.21(6) to allow for the currency period for an approval of the reconfiguration of a lot which requires operational works to be 4 years. This is consistent with existing practice for subdivision.

Amendment of s 3.5.22 (Request to extend currency period)

Clause 109 replaces section 3.5.22(4)(b) to avoid any misunderstanding as to the document required to accompany a request to extend a currency period.

Amendment of s 3.5.26 (Request to cancel development approval)

Clause 110 inserts section 3.5.26(2) to provide that where land is the subject of a written agreement to sell, the consent of the purchaser must be given to a cancellation of a development approval for the land. This is to protect the interests of persons who have contracted to purchase land.

Amendment of s 3.5.32 (Conditions that cannot be imposed)

Clause 111 amends section 3.5.32(2)(a) making "safety" and "efficiency" disjunctive, and changing the inappropriate expression "State-owned" to "state owned or state-controlled" transport infrastructure.

Amendment of s 3.6.2 (Notice of direction)

Clause 112 amends section 3.6.2(1) to correct a spelling error.

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

Clause 113(1) and (2) amends sections 3.7.2(1), (2) and (3) for consistency with the amendment of section 3.5.21(6).

Clause 113(3) amends section 3.7.2(4) to make the approval of the plan for reconfiguration of a lot discretionary rather than mandatory. This is consistent with existing practice.

Amendment of s 4.1.21 (Court may make declarations)

Clause 114 amends section 4.1.21(1)(a) to provide for a declaration to be made with respect to an obligation under the Act.

Amendment of s 4.1.23 (Costs)

Clause 115 amends section 4.1.23 to:

- replace subsection (3) to provide for costs to be awarded against the owner where a written agreement has been entered into to sell the land and the purchaser's consent to the cancellation of a development application has not been given. This provision relates to the amendment of section 3.5.26(2);
- correct an incorrect reference in subsection (5) to another section of the Act;
- insert subsection (10) to make any order for costs under the section an order of, and enforceable in, the District Court.

Amendment of s 4.1.33 (Stay of operation of enforcement notice)

Clause 116 replaces section 4.1.33(b) to provide that the relevant demolition of a work is development for the purposes of the Act.

Amendment of s 4.1.36 (Appeals against disqualification as a private certifier)

Clause 117 omits section 4.1.36 regarding an appeal by a disqualified private certifier. The substance of this section is to be handled under section 6B of the amended Building Act.

Amendment of s 4.2.1 (Establishing building and development tribunals)

Clause 118(1) amends section 4.2.1.(2) to refer to referees for appeals other than an appeal against a local government's decision about the amenity and aesthetics assessment under the Standard Building Regulation as general referees.

Clause 118(2) inserts new section 4.2.1(4) and (5) establishing procedures for the appointment of an aesthetics referee to hear an appeal against a local government's decision about the amenity and aesthetics assessment of a building under the Standard Building Regulation.

Amendment of s 4.2.2 (Consultation about multiple members tribunals)

Clause 119 inserts section 4.2.2(2) deleting the requirement under section 4.2.2(1) for the chief executive to consult with a representative of the Local Government Association of Queensland about the appointment of aesthetics referees.

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

Clause 120 amends section 4.2.4(1)(a)(ii) to also exclude a referee who in the past acted as a building practitioner for the project.

Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 121 amends section 4.2.7(2) to make it clear that an appeal to a tribunal under that section can only be made to an application as it relates to the Building Act.

Amendment of s 4.2.10 (Appeal by advice agency)

Clause 122(1) amends section 4.2.10(1) by providing a right of appeal to an advice agency for the aspect of building work to be assessed against the Building Act. Previously, the provision only related to the Queensland Fire and Rescue Authority.

Clause 122(2) amends subsection (2) by requiring an advice agency who proposes to appeal to start the appeal within 10 business days.

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

Clause 123 amends section 4.2.14(2)(b) to address the situation where an enforcement notice (eg, stop work) has been issued to a person who is carrying out the illegal demolition of a building. The stay of operation of the enforcement notice does not apply under these circumstances.

For example, a person may be in the process of illegally demolishing a heritage significant building. The local government may issue a notice to cease the demolition. Section 4.1.33 (2) will ensure that demolition work cannot continue to be carried out while an appeal is lodged.

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

Clause 124 amends section 4.2.33 by requiring the tribunal to decide an appeal based on the laws and policies applying when the application was made.

The previous wording, which required the tribunal to decide an appeal based on the material the assessment manager or referral agency was "required" to have regard to when deciding an application was unnecessarily restrictive.

Amendment of s 4.2.34 (Appeal decision)

Clause 125 inserts a new section 4.2.34(2)(e) to provide the scope for the tribunal to address appeals that relate to the amenity and aesthetics aspects of an application relevant to building work. If the appellant agrees, the tribunal may impose conditions in its decision that will satisfy the tribunal that a building will not adversely impact on the amenity and aesthetics of a neighbourhood.

Insertion of new s 4.2.35A

Clause 126 inserts a new section 4.2.35A which requires an assessment manager (or a private certifier acting as an assessment manager) to provide the registrar (the registrar of building tribunals under the previous Building Act) with notification that a direction or order of a tribunal has been carried out.

Amendment of s 4.2.36 (Appointment of referees)

Clause 127(1) amends section 4.2.36(1) by replacing "referee" with "general referee". This is to differentiate between a referee who considers appeals on general issues such as enforcement notices and those who consider aesthetics issues.

Clause 127(2) inserts a new section 4.2.36(4) which allows the chief executive to appoint an aesthetics referee as opposed to a general referee.

Amendment of s 4.2.37 (Qualification of referees)

Clause 128(1) amends the heading of the section to reflect that the scope of the provision applies to general referees and not aesthetics referees.

Clause 128(2) amends section 4.2.37 by replacing the word "referee" with the words "general referee". The provision does not apply to aesthetics referees.

Replacement of s 4.2.38 (Term of referee's appointment)

Clause 129 amends section 4.2.38 to allow for the appointment of aesthetics referees.

Amendment of s 4.2.39 (Referee to make declaration)

Clause 130(1) inserts a new heading for section 4.2.39 "General referee to make declaration".

Clause 113(2) amends section 4.2.39 to clarify that only general referees are to make a declaration.

Insertion of new s 4.3.2A

Clause 131 inserts section 4.3.2A to provide for the offence of failing to comply with codes for the development under a planning scheme when the development is made assessable under schedule 8. Amended section 3.1.2 requires compliance.

Amendment of s 4.3.3 (Compliance with development approval)

Clause 132 inserts section 4.3.3(3) which excepts contravention of a condition of a development approval imposed by the administering authority under the Environmental Protection Act from this penalty provision. New section 60ZF in the Environmental Protection Act provides for wilful commission of the offence and a higher penalty for contravening these conditions than applies under the Integrated Planning Act.

Amendment of s 4.3.5 (Carrying on unlawful use of premises)

Clause 133 amends the numbering in section 4.3.5.

Amendment of s 4.3.8 (Application of div 2)

Clause 134 amends section 4.3.8 to extend circumstances where exceptions to the requirement for giving a show cause notice are to include:

- for development involving demolition of work; or
- a cease work for building work.

Show cause notices are intended to prevent the indiscriminate use of enforcement notices. A "show cause notice" is given to a person before an enforcement notice, inviting the person to show cause why the enforcement notice should not be given. However, these new exceptions are meant for work which may have an immediate irreversible effect.

Amendment of s 4.3.11 (Giving enforcement notice)

Clause 135 amends section 4.3.11 by inserting new subsections "(3) to (7)".

Clause 135 (3) states that an assessing authority, such as a local government, must consult with the private certifier engaged for a development, before the assessing authority considers giving an enforcement notice on the development.

Clause 135 (4) covers the situation where an assessing authority does not need to have prior consultation with a private certifier, prior to issuing an enforcement notice, if it believes the work is dangerous.

Clause 135 (5) replaces Section 64A of the Building Act which restricts an assessment manager's power to delegate its power to give an enforcement notice about the demolition of a building.

Clause 135 (6) allows a stop work notice to be served by fixing it to the building where a personal service of the notice is not able to be achieved.

A stop work notice may be served on the owner and/or builder, when development is being carried out without an approval, or not in accordance with an approval. There is provision in subsection (6) to leave the notice on the site if no-one is present to receive it. There have been cases where personal service of an enforcement notice was not possible and where it was critical on public safety grounds to have the unlawful work stopped without delay. Having a stop work enforcement notice fixed to the site can form part of the process of notifying contractors to cease work until the problem has been rectified.

Clause 135 (7) allows an enforcement notice to also be given to the owner, if the person who committed the offence is not the owner.

Amendment of s 4.3.18 (Proceedings for offences)

Clause 136(1) amends section 4.3.18(3) to replace a reference to the "Standard Building Law" with "Standard Building Regulation".

Clause 136(2) amends section 4.3.18 (3) to correct a grammatical error.

Amendment of s 4.3.22 (Proceedings for orders)

Clause 137(1) amends section 4.3.22(2) to replace a reference to the "Standard Building Law" with "Standard Building Regulation".

Clause 137(2) amends section 4.3.22 (2) to remove the unnecessary words "having enforcement jurisdiction for the matter" as the definition of assessing authority clarifies this matter.

Amendment of s 4.4.7 (Application of div 3)

Clause 138 amends section 4.4.7 to extend the application of the division to proceedings in relation to the Act rather than proceedings under the Act only.

Amendment of s 5.1.17 (Local government to consider all submission)

Clause 139 amends section 5.1.17 to correct a spelling error.

Amendment of s 5.2.2 (Agreements may be entered into about infrastructure)

Clause 140 replaces sections 5.2.2(1)(b) to (d) to avoid misunderstanding caused by the original sections.

Amendment of s 5.3.3 (What is a private certifier)

Clause 141 amends section 5.3.3(1) to clarify that a private certifier is an individual who undertakes work by contractual arrangements with clients, either as an individual or through an entity that employs the individual.

Amendment of s 5.3.4 (Application must not be inconsistent with earlier approval)

Clause 142 amends section 5.3.4 to remove the unnecessary word "be".

Replacement of ss 5.3.5-5.3.7

Clause 143 amends sections 5.3.5 to 5.3.7 by omitting the existing sections and replacing them as follows.

Private certifier may decide certain development applications and inspect and certify certain works

Section 5.3.5(1) sets out the scope of the private certifier's powers in deciding a development application.

Section 5.3.5(2) prescribes that in addition to assessing and deciding relevant development applications, a private certifier must, if required by this or another Act, inspect and certify that the work complies with the development permit authorising the work, any conditions of the permit and the code stated in a regulation against which the work must be assessed.

Section 5.3.5(3) provides for development proposals involving self-assessable development (ie development for which no approval is required but which still must comply with applicable codes), where the private certifier shall notify the applicant of other codes the applicant may need to comply with. For example, a planning scheme may include a code covering the design of works for car parking areas but may make the carrying out of the works (ie operational works) self-assessable development under the scheme. A person must comply with the code but is not required to obtain a development permit.

Section 5.3.5(4) requires that a private certifier must not decide a development application until all other assessments are completed. Many development proposals will involve different types of assessable development (eg change of use, building work, reconfiguration, etc.). Because private certifiers in many cases will have jurisdiction to deal only with an aspect of the overall proposal, it is important that certifiers are not empowered to decide their component of the proposal ahead of the other assessable components (eg until the other assessments have been completed). This ensures that the certifier's approval is consistent with the assessment manager's decisions on the other aspects of the proposal.

Section 5.3.5(5) renumbers previous section 5.3.5(4).

Section 5.3.5(6) requires that when a private certifier decides an application, the certifier must send a copy of the decision notice and any other approved documents to the person who would otherwise have been the assessment manager (eg the local government). This is to ensure:

- the assessment manager has a complete record of decisions available for inspection by the public; and
- the assessment manager may monitor construction to ensure

necessary inspections that are the responsibility of the assessment manager are carried out.

Section 5.3.5(7) requires that when a private certifier issues a certificate required by this or another Act, the certifier must send a copy of the certificate to the person who would otherwise have been the assessment manager (eg the local government).

Private certifier may act as assessing authority in certain circumstances

Section 5.3.6(1) replaces previous provision 5.3.5(5) and states that for Chapter 4, part 3, divisions 2 and 3, a private certifier can be an assessing authority if the certifier is qualified, has the necessary experience or is accredited, and clarifies the private certifier must has been engaged to perform the functions of a private certifier for the development. A private certifier may instigate enforcement action, such as issuing show cause and enforcement notices, related to the development the certifier has been engaged to assess, inspect or certify.

Section 5.3.6(2) prescribes that if there is any failure to comply with a private certifier's enforcement notice, then the assessment manager must be given written notice of the failure, by the private certifier.

Entities (including local governments) may undertake private certification anywhere

Section 5.3.7(1) which replaces sections 5.3.6 and 5.3.7 states that an entity (including a local government) may undertake the work of a private certifier in any local government area. Private certification (to the extent authorised by regulation) is a Statewide mechanism. This means an applicant who lives in Brisbane has the option of engaging a private certifier who also may live in Brisbane even though the development is to be carried out in Bundaberg. This has a number of advantages for applicants, not least of which being convenience.

Previous section 5.3.6 stated that a local government may be a private certifier anywhere in the State outside its area. This unfairly prevented a local government from carrying out private certification services in its own local government area.

Section 5.3.7(2) states that if an entity offers private certification services,

the certification must be undertaken by an employee who is a private certifier. This is to ensure there is a level playing field in the provision of private certification services.

Omission of s 5.3.14 (Minister or accrediting body may disqualify a private certifier)

Clause 144 omits section 5.3.14 regarding the ability of the Minister or accrediting body to disqualify a private certifier as the substance of this section is to be handled under section 6B of the amended Building Act.

Amendment of s 5.4.5 (Compensation for erroneous planning and development certificates)

Clause 145 amends section 5.4.5 to correct a spelling error.

Amendment of s 5.7.1 (Meaning of "available for inspection and purchase")

Clause 146 amends sections 5.7.1(1)(d) and (e) to provide for documents to come within the definition if they are held by the chief executive where specified, rather than by the Minister or the department. This is consistent with the function being administrative rather than executive.

Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

Clause 147 replaces section 5.7.2(p) and (q) as described below.

Section 5.7.2(p) clarifies that the show cause notices and enforcement notices that local government must keep available for inspection and purchase, are the notices given by the local government under the Integrated Planning Act or another Act, such as the Building Act.

Section 5.7.2(q) requires that a copy of each show cause notice and enforcement notice given to the local government by an assessing authority or private certifier must be kept available by the local government for inspection and purchase.

Section 5.7.2(r) contains the contents of the relocated paragraph (q) which states that each enforcement order made by the court on the application of

the local government are considered to be documents that local government must keep available for inspection and purchase.

Section 5.7.2(2) permits local governments to keep documents mentioned in subsection (1) in hardcopy or electronic form in one or more registers kept for the purpose.

Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

Clause 148 amends section 5.7.4 to correct an omission, and to allow for flexibility in the form in which documents are kept in registers.

Amendment of s 5.7.5 (Documents assessment manager must keep available for inspection only)

Clause 149 amends section 5.7.5 to correct an omission, and to allow for flexibility in the form in which documents are kept in registers.

Amendment of s 5.7.6 (Documents department must keep available for inspection and purchase

Clause 150 amends section 5.7.6 refer to the "chief executive" rather than the "department".

Replacement of s 5.7.7 (Documents department must keep available for inspection only)

Clause 151 amends section 5.7.7 to refer to the "chief executive" rather than the "department" and to add other documents to be made available for inspection only.

Amendment of s 5.8.3 (Application of State Development and Public Works Organization Act 1971)

Clause 152 amends section 5.8.3 to correct an error in punctuation.

Amendment of s 6.1.1 (Definitions for pt 1)

Clause 153 amends section 6.1.1 to clarify the definitions of:

- "applicable codes" to include the Standard Building Regulation;
- "assessable development" to clarify the definition;
- "former planning scheme" by specifying that the definition also means certain town planning by-laws and subdivision of land by-laws;
- "self-assessable development" to clarify the definition.

Amendment of s 6.1.2 (Continuing effect of former planning scheme)

Clause 154 amends section 6.1.2 to correct an anomaly by clarifying that the provision is subject to the chapter in which it appears.

Amendment of s 6.1.3 (What are transitional planning schemes)

Clause 155 amends section 6.1.3 to correct anomalies by clarifying that the provision is subject to the chapter in which it appears.

Amendment of s 6.1.4 (Transitional planning schemes for local government areas)

Clause 156 inserts section 6.1.4(2) to clarify the effect of the section.

Amendment of s 6.1.10 (Preparation of amendments to planning schemes under repealed Act may continue)

Clause 157(1) amends section 6.1.10 to clarify that if at commencement of the Act a local government is preparing an amendment for the purpose of converting the planning scheme to an IPA scheme the local government may continue with the amendment as required under Schedule 1.

Clause 157(2) amends subsection (5) to state that preparation of a planning scheme amendments is taken to have commenced if a resolution to that effect has been made rather than giving a public notice.

Amendment of s 6.1.13 (Continuing effect of local planning policies)

Clause 158 amends section 6.1.13 to be consistent with the provisions for planning schemes in amended sections 6.1.2 and 6.1.3.

Amendment of s 6.1.17 (Amending transitional planning scheme policies for consistency with ch 3)

Clause 159 amends section 6.1.17 to replace an incorrect term to be consistent with schedule 3, section 5 which requires the local government to adopt a proposed amendment by resolution.

Amendment of s 6.1.20 (Planning scheme policies for infrastructure)

Clause 160 amends section 6.1.20 to provide for a local government which has both a local planning policy about infrastructure and an infrastructure charges plan. The two may both be used but must not deal with the same matters.

Amendment of s 6.1.23 (Continuing effect of approvals issued before commencement)

Clause 161 inserts section 6.1.23(1)(e) to correct an omission.

Amendment of s 6.1.25 (Effect of commencement on certain applications in progress)

Clause 162 inserts section 6.1.25(2) to provide that where an application for revocation of town planning consent is still in progress it should be dealt with under the repealed Local Government (Planning & Environment) Act.

Amendment of s 6.1.26 (Effect of commencement on other applications in progress)

Clause 163 replaces section 6.1.26(1) to correct omissions.

Amendment of s 6.1.28 (IDAS must be used for processing applications)

Clause 164 replaces sections 6.1.28(2) and (3) to clarify the intent of the section for particular applications.

Amendment of s 6.1.29 (Assessing applications)

Clause 165 amends:

- the heading of the section to except the assessment of applications against the Standard Building Regulation;
- section 6.1.29(1) to limit the assessing aspects to those relevant under the section; and
- section 6.1.29(3) to correct a spelling error.

Applications to which the Standard Building Regulation apply will be subject to IDAS on commencement of the Act. Transitional arrangements are unnecessary.

Amendment of s 6.1.30 (Deciding applications)

Clause 166 amends

- the heading of the section to except the assessment of applications against the Standard Building Regulation;
- section 6.1.30(1) to limit the deciding aspects to those relevant under the section; and
- section 6.1.30(5) to correct a spelling error.

Applications to which the Standard Building Regulation apply will be subject to IDAS on commencement of the Act. Transitional arrangements are unnecessary.

Amendment of s 6.1.31 (Conditions about infrastructure for applications)

Clause 167 replaces sections 6.1.31(1)(b) and (2) to correct an anomaly with respect to where infrastructure contribution requirements are specified in planning schemes as opposed to being addressed only through policies.

Amendment of s 6.1.34 (Consequential amendment of transitional planning schemes)

Clause 168 inserts section 6.1.34(3) to clarify that local governments are not required to undertake the whole amendment process in schedule 1 for amendments under this section.

Insertion of new ss 6.1.35A-6.1.35C

Clause 169 inserts:

New section 6.1.35A (Applications to change conditions of rezoning approvals under repealed Act)

Under the current Act it is possible to apply to a local government to change the conditions attached to a rezoning. This section makes provision for that existing mechanism to continue. This is because rezonings do not carry over to the Integrated Planning Act. Rezoning approvals become scheme amendments and conditions attached to rezonings attach to the land. Rezoning approvals are not recognised as development approvals. Accordingly it is necessary to make provision for the continuation of the existing rezoning condition amendment process.

New section 6.1.35B (Development approvals prevail over conditions of rezoning approvals under repealed Act)

Development approvals under the Integrated Planning Act will be given in the knowledge of any existing rezoning conditions attaching to the land. Because the development approval is a later approval it is appropriate that the development approval be able to override any rezoning condition.

New section 6.1.35C (Applications requiring referral coordination)

It is recognised that IDAS will take time to be fully implemented. The integration of the full range of development related assessment systems will occur progressively over the next 1 to 2 years. Under the current Act there is a coordinated terms of reference/information gathering process for certain designated developments and for development in or adjacent to certain designated areas. When IDAS is fully operational there will be no need for the continuation of this separate terms of reference system that currently operates in addition to the existing development system. However, until IDAS is fully operational it is recognised there is a need for interim measures to be put in place to ensure there is no diminution of the existing environmental management system. The interim solution proposed under this section is for certain development proposals and certain development in or adjacent to certain designated areas to be deemed to require referral coordination. This ensures that there is a coordinated whole-of-government approach to the gathering of information necessary for the assessment of the

application. The list of designated developments and areas is the same as applies under the current Act.

Amendment of s 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances)

Clause 170 amends section 6.1.44 to maintain the existing power of the administering authority under the Environmental Protection Act to amend environmental authorities. The amendment allows for the particular circumstances of the inclusion of environmental authorities in the IDAS process.

Amendment of s 6.1.51 (Orders in council about Crown land under repealed Act)

Clause 171 inserts section 6.1.51(3) and (4) to clarify the situation in relation to Crown land subject to Orders in Council. There is a possibility that due to an anomaly in the repealed Act, the use of Crown land in the above circumstances may be unlawful. This was never intended and this clause seeks to address the problem.

Insertion of new s 6.1.53

Clause 172 is included to ensure references to the repealed Act are taken to be references to the Integrated Planning Act. This is to avoid uncertainty in relation to interpretation.

Amendment of sch 1 (Process for making or amending planning schemes)

Clause 173 amends schedule 1

- by inserting section 2(1), and amending section 2(2), to avoid the need for preliminary consultation in relation to the annual review and updating of benchmark development sequences. Benchmark sequences are an important feature of planning schemes under the Integrated Planning Act and relate to planning for the provision of infrastructure. In order that infrastructure planning and residential land supply are kept up to date to meet community needs it is necessary that the sequence be reviewed annually. This review

process is technical in nature and there is community benefit in requiring preliminary consultation;

- section 5(1)(b) by replacing the incorrectly used word "advertised" with "notified";
- section 12 by changing the heading;
- section 16(2) by changing an inconsistent term; and
- section 17(1) by clarifying the action to be taken by local government as provided in the previous section.

Amendment of sch 4 (Process for making or amending State planning policies)

Clause 174 amends schedule 4

- section 1(3)(e) by raising a definition of "consultation period" to maintain consistency of format;
- section 2(1) by referring to the relevant footnote; and
- section 6 by amending a reference to relevant sections of the schedule.

Amendment of sch 5 (Community infrastructure)

Clause 175 amends schedule 5, section 1(l) by removing an expression which is redundant as a consequence of an earlier change.

Amendment of sch 8 (Assessable, self-assessable and exempt development)

Clause 176 amends schedule 8:

- part 1, section 3, by requiring that operational works for the reconfiguration of a lot which is itself assessable development, should be assessable development;
- part 1, section 4(a), by excluding subdivision of airspace above the surface of land;
- part 1, section 5, to be consistent with the definition of "material change of use" in amended section 1.3.5;

- part 1, section 6, to make the provision consistent with the amended section 60Z of the Environmental Protection Act;
- part 2, divisions 1 and 2, by omitting the headings of schedule 8, part 2, divisions 1 and 2;
- part 2, by inserting a new section 7 which clarifies that building work may be declared under the Standard Building Regulation to be self-assessable against the provisions of the Standard Building Regulation;
- part 2, by inserting a new section 9, which clarifies that self-assessable development includes all building work carried out by the State, a public sector entity or a local government, other than exempt development. This means that these bodies can self-assess their own developments; and
- part 3, by inserting a new section 11, which clarifies that building work declared under the Standard Building Regulation to be exempt development is exempt from assessment against the Standard Building Regulation.

Amendment of sch 9 (Consequential amendments)

Clause 177 amends schedule 9, item 2 by correcting two section numbers.

Amendment of sch 10 (Dictionary)

Clause 178 amends schedule 10 by:

- replacing the definition of "accrediting body" for reference in chapter 5, part 3 to include a statutory body.
- inserting a definition of "applicable code" for reference in chapters 3, and 4.
- replacing the definition of "assessable development" to clarify the definition.
- replacing the definition of "building" for consistency with the Standard Building Regulation;

- replacing the definition of "code" to include codes which apply to preliminary approvals.
- inserting a definition of "development application (superseded planning scheme)" which replaces the term "transitional development application" throughout the Act (clause 180).
- replacing the definition of "self-assessable development" to clarify the definition.
- inserting a definition of "Standard Building Regulation".

Amendments for referral coordination

Clause 179 amends a number of sections in the same way for consistency of expression within the Act.

Amendment for "transitional development applications"

Clause 180 amends a number of sections to replace "transitional development application" with the term "development application (superseded planning scheme)" to avoid confusion with applications under transitional planning schemes.

PART 7—QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

Act amended

Clause181 amends the *Queensland Building Services Authority Act 1991*

Omission of s 2 (Commencement)

Clause 182 omits section 2.

Amendment of s 4 (Definitions)

Clause 183

- amends section 4 to include the definition of "assessment manager" having the meaning given by the Integrated Planning Act.

Amendment of s 18 (Role of the General Manager)

Clause 184(1) inserts section 18(1)(c) which extends the power of the General Manager of the Queensland Building Services Authority to carry out any function authorised by another Act. This will enable the General Manager to undertake the accreditation of building certifiers under Part 6B of the Building Act.

Clause 184(2) inserts section 18(1A) which clarifies that the General manager when undertaking functions under another Act will use the procedure prescribed in the Queensland Building Services Authority Act if the other Act does not prescribe an alternative procedure.

Amendment of s 68 (Payment of insurance premium)

Clause 185(1) amends section 68(2) by requiring an assessment manager to not issue a development approval under the Integrated Planning Act for building work until receipt for payment of insurance premium required under the *Queensland Building Services Authority Act 1991* is sighted.

Clause 185(2) inserts section 68(4) making it an offence for a private certifier, when acting as an assessment manager, to fail to sight receipt for payment of insurance premium required under the Queensland Building Services Authority Act prior to issuing a development approval for building work.

Amendment of s 108 (Obligation of local authority)

Clause 186(1) amends the heading of section 108 to 'Obligation of assessment manager'.

Clause 186(2) amends section 108 by deleting the words 'local authority' and replacing with 'assessment manager'.

PART 8—CONSEQUENTIAL AMENDMENTS

Consequential amendments—schedule

Clause 187 establishes a schedule of consequential amendments.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

BEACH PROTECTION ACT

Clause 1 amends the definition of "court" to mean the Planning and Environment Court.

Clause 2 amends section 44A(2) by replacing the reference to "Standard Building Law under the *Building Act 1975"* with "*Standard Building Regulation 1993*".

BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

Clause 1 amends schedule 4 by replacing a reference to the *Local Government (Planning and Environment) Act 1990* with a reference to the *Integrated Planning Act 1997*.

CENTURY ZINC PROJECT ACT

Clause 1 amends schedule 6 by replacing the definition of "development application" with "the *Integrated Planning Act 1997"*.

COASTAL PROTECTION AND MANAGEMENT ACT

Clause 1 amends schedule 2, definition of "planning scheme" by referring to the *Integrated Planning Act 1997,* section 2.1.1.

Clause 2 amends section 59(2) by replacing a reference to an approval to build under the *Building Act 1975* with a reference to a development approval under the *Integrated Planning Act 1997.*

CREMATION ACT 1913

Clause 1 amends section 3 by changing a reference to the *Local Government (Planning and Environment) Act 1990* to the *Integrated Planning Act 1997.*

FIRE AND RESCUE AUTHORITY ACT 1990

Clause 1 amends section 104A by omitting the definitions of "Building Code of Australia", "fire safety installation", and "Standard Building Law", and inserting "Standard Building Regulation".

Clause 2 amends section 104A by omitting the definitions of "Building Advisory Committee", "building surveyor" and "Standard Building Law".

Clause 3 inserts in section 104A definitions of "building certifier" from the *Building Act 1975,* and "Standard Building Regulation".

Clause 4 replaces section 104N(1)(c) "1 person nominated by the chief

executive of the department administering the *Building Act 1975*".

Clause 5 amends Section 104N(3) by replacing the reference to "building surveyor" with the term "building certifier".

Clause 6 omits sections 104N(4) & (4A) which refer to the Building Advisory Committee.

Clause 7 omits "chairperson of the Building Advisory Committee" from section 104N(5) and replaces with "chief executive of the department administering the *Building Act 1975"*.

INTEGRATED RESORT DEVELOPMENT ACT 1987

Clause 1 replaces section 15(4) by making an exception to the *Integrated Planning Act 1997.*

Clause 2 omits section 15(5).

Clause 3 omits a reference to the *Local Government (Planning & Environment) Act 1990* and inserts a reference to the *Integrated Planning Act 1997.*

LAND ACT 1994

Clause 1 omits a reference to the *Local Government (Planning & Environment) Act 1990* and inserts a reference to the provisions of the *Integrated Planning Act 1997* about reconfiguring a lot.

LAND TITLE ACT 1994

Clause 1 amends section 53 by changing a reference to the *Local*

Government (Planning and Environment) Act 1990 to a reference to the *Integrated Planning Act 1997.*

LOCAL GOVERNMENT ACT 1993

Clause 1 amends section 4 by replacing the definition of "interim development control provisions" by reference to the *Integrated Planning Act 1997.*

Clause 2 amends section 4, the definition of "local Government Act", by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Integrated Planning Act 1997.*

Clause 3 amends section 4, the definition of "planning scheme", by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Integrated Planning Act 1997.*

Clause 4 amends section 377(1)(g) by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Integrated Planning Act 1997.*

Clause 5 amends section 507(1) by omitting the words "approved by the Governor in Council".

LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984

Clause 1 amends section 3 definition of "the court" to mean the Planning and Environment Court.

NATIONAL TRUST OF QUEENSLAND ACT 1963

Clause 1 amends section 6(3) by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Integrated Planning Act 1997.*

NATURE CONSERVATION ACT 1992

Clause 1 amends section 7, the definition of "planning scheme" by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Integrated Planning Act 1997.*

SEWERAGE AND WATER SUPPLY ACT 1949

Clause 1 amends section 7AA(1)(a) by changing a reference to the *Local Government (Planning and Environment) Act 1990* to a reference to the *Building Act 1975.*

Clause 2 amends section 7AA(1)(f) by inserting a reference to "Communications, Electrical and Plumbing Union, Plumbing Division, Queensland Branch".

Clause 3 amends section 9(e) by inserting "a restricted plumber's or restricted drainer's licence."

Clause 4 amends section 12(4) by providing for a refund of application fees.

Clause 5 amends section 14A by changing a reference to a section of the Act.

SOUTH BANK CORPORATION ACT 1989

Clause 1 amends section 34(3)(a) by replacing the reference to "an application to which the *Building Act 1975* relates" with "a development application under the *Integrated Planning Act 1997"*.

Clause 2 amends section 39G by replacing a reference to the *Building Act 1975* with a reference to the *Integrated Planning Act 1997*.

Clause 3 amends Schedule 7, section 7 by omitting the definitions of "building approvals authority", and "the *Building Act 1975*" and inserting a definition of "the *Integrated Planning Act 1997"*.

TRANSPORT INFRASTRUCTURE ACT 1994

Clause 1 inserts section 40(9A) stopping the IDAS process if the chief executive notifies the local government under subsection (9)(b).

Clause 2 omits section 136 as railway works on corridor land are self assessable development under the *Integrated Planning Act 1997*.

Clause 3 amends section 172 by replacing a reference to the *Local Government (Planning and Environment Act) 1990* with a reference to the *Integrated Planning Act 1997*.

TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Clause 1 amends sections 145(3) and (5) by replacing references to the *Local Government (Planning and Environment Act) 1990* with references to the *Integrated Planning Act 1997*.

WET TROPICS WORLD HERITAGE PROTECTION AND MANAGEMENT ACT 1993

Clause 1 amends section 4, definition of "planning scheme", by replacing a reference to the *Local Government (Planning and Environment Act) 1990* with a reference to the *Integrated Planning Act 1997*.