

Building and Other Legislation Amendment Bill 2010

Explanatory Notes

Short Title

The short title of the Bill is the *Building and Other Legislation Amendment Bill 2010*.

Policy objectives of the Bill

The objective of the Bill is to:

- amend the *Building Act 1975* (BA) to implement a critical stage of the Government's pool safety improvement strategy, the legislative and administrative arrangements for the pool safety inspector licensing system and State-based pool register. These components of the government's pool safety strategy need to be in place first to help ensure a smooth transition of the proposed mandatory point of sale and lease inspection system which is to be introduced later in 2010. To this end the Bill:
 - establishes a framework for the swimming pool inspector licensing system;
 - creates an independent body, the Pool Safety Council, to oversee the operation of the swimming pool safety inspector licensing system;
 - allows trained and licensed swimming pool safety inspectors to conduct pool safety inspections and issue pool safety certificates if all prescribed requirements are met;
 - provides an approval process for swimming pool safety inspector training courses and the regulation of training for pool safety inspectors; and
 - establishes a State-based swimming pool register;

- amend the “ban the banners” provisions of the BA to remove or modify some prohibitions relating to covenants, body corporate by-laws and the like which impose certain building restrictions;
- amend the *Urban Land Development Act 2007* (ULDA Act) and *Land Title Act 1994* (LTA) to provide certainty as to the process the Urban Land Development Authority (ULDA) is required to undertake to seal plans. The amendments to the ULDA Act also enable the ULDA to approve development where the development applied for is consistent with either a previous preliminary approval or the land use plan;
- amend the *Royal National Agricultural and Industrial Association of Queensland Act 1971* (RNA Act) to clarify the Governor in Council’s power to approve of the Association selling land, and for the Governor in Council to attach conditions on any such approval.

The *Building and Other Legislation Amendment Bill 2010* amends the following Acts to implement the policies: *Building Act 1975*, *Urban Land Development Act 2007*, *Land Title Act 1994* and *Royal National Agricultural and Industrial Association of Queensland Act 1971*

Policy rationale and how policy objectives will be achieved

Pool safety improvement strategy

The primary policy objective of the pool safety strategy is to reduce the number of deaths and injuries caused by accidental immersions in residential swimming pools and in the pools of certain non-private buildings like hotels, motels, hostels and caravan parks. Young children under the age of five are most at risk.

Pool safety laws introduced in 1991 require all outdoor residential swimming pools to be fenced. The Queensland Injury Surveillance Unit suggests that these laws have contributed to saving 70 young children between 1992 and 2001. According to the Commission for Children and Young People and Child Guardian, in the five years from 1 January 2004 to 31 December 2009, 35 young children drowned in Queensland residential swimming pools. All, except one, were under five years of age. It is estimated that 50 young children present to emergency departments each year due to immersion injuries, some of whom will suffer permanent brain damage.

Commission data indicates that drowning is the leading cause of death in Queensland for children aged 1 to 4, at 5.2 per 100 000, including four per

100 000 in pools. Transport related deaths occur at a rate of 3.8 per 100 000 for children aged 1 to 4 and other deaths from poisons and animals at a rate of 3.1 per 100 000 for children aged 1 to 4.

Defective fences remain a significant factor in the findings of coronial reports on fatal immersion accidents, with young children commonly shown to have gained access to a fenced pool through a gate or door. Such circumstances include where a pool gate has been left open (often a result of pool gates that do not shut and latch automatically) or a child gaining access to a pool via child-resistant doors (permitted for pools built before 1 February 1991).

On 14 December 2008, the Premier announced the most comprehensive review of Queensland's swimming pool safety laws in nearly 20 years. An expert committee was established to provide a report to Government, which was subsequently released for community consultation. The report made 23 recommendations aimed at reducing drowning and serious immersion injuries suffered by young children in pools.

On 14 September 2009, the Government announced the implementation of a two-staged swimming pool safety improvement strategy that largely followed the committee's recommendations. Stage one commenced on 1 December 2009 and included provisions to:

- introduce a new swimming pool safety barriers standard for new pools;
- ensure all new swimming pools undergo mandatory final inspections;
- allow temporary pool fencing for short periods of time;
- require mandatory cardiopulmonary resuscitation (CPR) signage to meet best practice;
- obtain better immersion reporting from the Queensland Police Service; and
- more than triple Government expenditure on the summer pool safety campaign.

Stage two, which affects an estimated 325 000 existing pools, is scheduled to be in place later in 2010. The stage two measures include:

- requiring all existing pool fences to comply with the pool fencing laws that now apply to new pools;

- extending the pool safety laws to pools associated with class 3 and class 4 buildings (e.g. hotels, motels and caretaker residences), caravan parks and indoor pools;
- reducing the maximum depth of portable pools that do not require a fence from 450 mm to 300 mm;
- establishing a mandatory swimming pool register;
- removing existing Local Government exemptions, other than exemptions for a disability;
- establishing a new class of swimming pool inspectors; and
- requiring pool safety inspections and certification at the sale and lease of properties that fall within the scope of the new laws.

The Bill achieves the policy objective under stage two of the Government's pool safety improvement strategy by creating the legislative framework to support a new class of licensed pool safety inspectors to undertake pool safety inspections. The licensing system is administered by an independent body, the Pool Safety Council, with support of a registrar, being a departmental official, who will attend to the day to day administration of the pool safety inspector licensing scheme.

The Bill also establishes a State managed swimming pools register. The register will contain swimming pool data provided by local governments, pool owners, licensed pool safety inspectors and building certifiers.

Licensed inspectors will inspect pools and issue safety certificates. It is proposed that the pool safety inspector training courses will be approved by the Pool Safety Council and delivered by registered training organisations and other training organisations approved under regulation. The cost of the courses will be established by the market.

Urban Land Development Authority

ULDA was established in November 2007 under the ULDA Act to assist with improving housing affordability. The role of the ULDA is to deliver a diverse mix of housing for current and future communities within the State's major growth areas and bring housing and land supply to the market quickly. The ULDA Act provides for particular parts of Queensland to be declared as urban development areas and establishes the ULDA to plan, carry out, promote, coordinate and control the development of land in those areas.

Currently the ULDA cannot approve development where development applied for is inconsistent with an existing preliminary approval but consistent with the ULDA land use plan. This has major implications for development investment and delivery within urban development areas and is preventing the progression of significant developments.

The Bill amends the ULDA Act to enable the ULDA to approve development where the development applied for is consistent with either a previous preliminary approval or ULDA land use plan.

The Bill also amends the ULDA Act and the LTA to provide certainty as to the process the ULDA is required to undertake to seal plans of subdivision.

Ban the Banner provisions

Chapter 8A, part 2 of the Building Act 1975 effectively renders invalid the provisions of various instruments made under a number of Acts, and the provisions of particular contracts relating to class 1a or 2 buildings, to the extent the instruments or contracts may be inconsistent with sustainability measures for class 1a or 2 buildings. The Bill removes or amends certain of these provisions.

RNA Act

The Royal National Agricultural and Industrial Association of Queensland (RNA) has proposed the redevelopment of the RNA showgrounds to ensure the long term viability of the RNA and the Royal Queensland Show. To facilitate this redevelopment, the RNA is proposing to sell approximately 5.5 hectares of the showgrounds site for a mix of residential, commercial and retail development.

Part 4 of the Bill amends section 13 of the RNA Act to clarify the Governor in Council's power to approve of the Association selling land, and for the Governor in Council to attach conditions on any such approval.

Section 13(2) of the RNA Act currently requires the Governor in Council to approve a purported sale of land. This would not enable a valid approval to be provided for the proposed land sale arrangements associated with this project as approval may be required before final details of each sale are known.

The amended section 13 will continue to provide that a sale of land made other than under an approval of the Governor in Council, will be void. However, the amended section will allow the RNA to enter into an agreement or transaction that is conditional upon obtaining approval from the Governor in Council.

Alternative ways of achieving the policy objectives

An alternative option for achieving the policy objectives is not to legislate and to permit pool safety inspections to be carried out by unlicensed persons who wish to undertake the inspections. This alternative is not considered viable as it fails to ensure that pool safety inspections are carried out to acceptable standards and is unlikely to result in community confidence in the pool safety inspection system.

To ensure that the primary functions of the ULDA are supported, including bringing land to market quickly, it is imperative that the ULDA Act and LTA be amended as a matter of urgency.

To ensure the removal of the ban on specified provisions there is no alternative but to amend the banning provisions.

The proposed amendment to the RNA Act will ensure the planned redevelopment of the RNA showgrounds can proceed, thereby preserving the future of the RNA and the Royal Queensland Show.

Estimated cost for implementation

It is intended that the administration of the pool safety licensing system will be substantially funded by licensing fees and certificate fees payable by pool safety inspectors.

The fee structure for administering the pool safety system (e.g. pool inspector licensing system, administration of the State-based pool register etc.) is likely to include a per certificate fee and a pool safety inspector licensing fee.

There are no costs associated with the proposed amendment to the RNA Act.

There are no costs associated with the proposed changes to the ULDA Act, the LTA and the ban the banner provisions.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to fundamental legislative principles (FLPs) as defined in the *Legislative Standards Act 1992*. The Bill contains potential breaches of FLPs which are explained below.

Pool safety improvement strategy

Whether legislation allows the delegation of legislative power only in appropriate cases

The proposed amendments include a new class of safety inspectors for pools, licensed by the pool safety council (PSC). To be appointed, one must have completed an approved course. It is proposed to include a power for the chief executive to make guidelines dealing with the required content of training courses and approval of courses. Depending on how the amendments are drafted, the guidelines may be legislative in effect. It is arguable the subject-matter of the guidelines should be included in subordinate legislation or stated in subordinate legislation.

Similar to other guidelines in the BA, these guidelines are intended to be administrative in nature. Accordingly it is not considered necessary to require that they be approved by regulation.

Whether legislation has sufficient regard to the rights and liberties of individuals

Disciplinary action against pool safety inspectors by PSC.

PSC is a body established under the Bill. Its functions include the licensing of individuals as pool safety inspectors and the taking of disciplinary action against pool safety inspectors. Its members consist of an officer of the department and a representative of the Local Government Association of Queensland. The Minister may appoint other members. If a ground for disciplinary action is established against a pool safety inspector, PSC may take a range of actions, including suspending the inspector's licence for a period of not more than 1 year and requiring the inspector to pay to PSC an amount equivalent to not more than 60 penalty units (i.e. \$6000). It should be noted that, if PSC considers that the inspector's licence should be suspended for more than 1 year or cancelled, PSC must apply to QCAT to start a disciplinary proceeding against the inspector.

These powers are analogous to those that the licensing body under the *Plumbing and Drainage Act 2002* can exercise when taking disciplinary action against plumbers and drainers. It could be considered that a body that is authorised to take actions that have such serious consequences for pool safety inspectors should be required to include members with legal qualifications or experience in disciplinary matters. It is not considered that PSC should be required to include a member with legal qualifications or the requisite disciplinary experience though these are matters that the

Minister may take into account in exercising the discretion to appoint members to PSC. Provision is made in the Bill for the appointment of a registrar, other officers and other appropriately qualified persons to assist PSC to perform its functions. Where PSC requires legal and other assistance to carry out its disciplinary functions this assistance is available under the provisions of the Bill from suitably qualified advisers.

Conferring immunity from proceeding or prosecution without adequate justification

The Bill protects members of PSC from civil liability for acts done or omissions made honestly and without negligence. Where the immunity prevents a civil liability attaching to a member that liability attaches to the State. The immunity is reasonable as it is limited to acts done, or omissions made, honestly and without negligence. Further, in the event that the immunity applies, a claimant has a civil action against the State.

Whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer—LSA, s 4(3)(e)

The Bill contains a number of provisions that provide a power of entry to a place.

Inspection of swimming pools by local government officers

The Bill allows authorised officers of local governments to enter properties, other than dwellings, at all reasonable times to inspect swimming pools. The power of entry is limited in that it does not allow entry to dwellings. It is intended that entry would be exercised to inspect pools that are located in the yard area adjacent to a dwelling. Similarly to the entry powers, under section 144 of the *Local Government Act 2009*, officers entering a property are required to inform occupiers and produce identification. The power of entry is restricted so that officers can not deal with unrelated issues at the same time. The expansion of the entry powers is necessary for the safety of children and the power is limited to what is necessary for swimming pool safety.

Investigation of a complaint by an investigator

For investigating a complaint about a pool safety inspector, a person appointed by PSC may enter and inspect a swimming pool site to which the complaint relates. The Bill provides adequate safeguards in that entry can be only with consent of the occupier or with a warrant and the power of entry does not extend to a dwelling.

Consultation

Community and Government

Pool safety improvement strategy

The Government has worked closely with training organisations (including the Royal Life Saving Society, Queensland Master Builders Association, Swimming Pools and Spa Association and the Housing Industry Association) to help ensure that sufficient numbers of qualified and licensed pool safety inspectors are available to meet anticipated demand for inspections.

The Local Government Association of Queensland has been kept informed of the progress of the implementation arrangements. Discussions have also been held directly with officers in some local governments. Local governments have been surveyed about the impact of the proposed pool safety inspection process and the operation of the State pool register.

Ban the banner provisions

Consultation has been conducted with the property development industry, particularly the Property Council of Australia and the Urban Development Institute of Australia and community organisations especially the Australian Community Services Commission (ACSC).

Submissions from ACSC were supported by the Local Government Association of Queensland and a wide range of community organisations, including Queensland Affordable Housing Consortium, Queensland Community Housing Coalition, Queensland Council of Social Services, Paddington Community Association, Red Hill Community Association, Uniting Church, Centre for Social Justice Advocacy, St Vincent de Paul, Community Housing Federation of Australia, Centre Care, Catholic Church, Queensland Shelter, and the Salvation Army.

The RNA Act provisions are supported by the RNA.

The ULDA Act provisions are supported by the ULDA.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 sets out the commencement dates of the Act. All other provisions of the Act except section 3 and 11-13, Parts 3, 4 and 5 and the schedule, items 1 to 3 and 7, commence on a day fixed by proclamation.

Part 2

Clause 3 provides that Part 2 amends the *Building Act 1975* (BA).

Clause 4 amends the long title of the Bill to make reference to swimming pool inspectors and particular matters about swimming pool safety

Clause 5 amends section 3 of the BA which sets out a simplified outline of the main provisions of the Act. The amended outline indicates the expanded nature of the provisions in the Act, dealing with swimming pool safety.

Clause 6 amends section 17 of the BA to provide that where there is a reference in the Act to local government in relation to a regulated pool the local government referred to is the one for the local government area in which the pool is situated.

Clause 7 amends section 174 of the BA to require the Queensland Building Services Authority to give notice of cancellation, suspension or amendment of a building certifier's licence to the newly created Pool Safety Council if the building certifier is a pool safety inspector.

Clause 8 amends the heading of Chapter 8 from 'Swimming pool fencing' to 'Swimming pool safety'. This reflects the broader scope of the chapter under the amendments.

Clause 9 inserts a new part 1 of chapter 8 which contains definitions relevant to swimming pool safety and a new part 2 heading into chapter 8. The existing sections 232 to 246 of the BA will fall under part 2.

Part 1 Interpretation

231A Definitions for ch 8

Section 231A introduces new definitions for chapter 8 to support the provisions regarding pool safety inspectors and regulated pools.

The term “regulated land” means land on which the following is constructed or is to be constructed:

- class 1, 2 buildings (houses and units);
- class 3 buildings (hotels, motels, hostels and other buildings that provide accommodation of a transient nature);
- a class 4 (residential) part of a building;
- movable dwelling parks under the *Residential Tenancies and Rooming Accommodation Act 2008*; and
- residential parks under the *Manufactured Homes (Residential Parks) Act 2003*.

The term includes land adjacent to the land which is in the same ownership as the land or that is used in association with the land.

The term “shared pool” is defined to mean a regulated pool that the residents of two or more dwellings situated on the same regulated land have, or will have, the right to use. The term also includes a regulated pool situated in a movable dwelling park under the *Residential Tenancies and Rooming Accommodation Act 2008*, a manufactured home on a site in a residential park under the *Manufactured Homes (Residential Parks) Act 2003* and a regulated pool situated on a class 3 property or a property on which a class 3 building (hotels, motels, hostels and other buildings that provide accommodation of a transient nature), is to be constructed.

The definition is necessary to distinguish shared pools from non shared pools as a pool safety certificate issued for a shared pool is valid for one year while a certificate for a pool that is not shared is valid for two years.

Shared pools have a shorter validity period by reason of the typically more extensive usage and consequent increased maintenance requirements for shared pools.

Section 231B What is a *regulated pool*

Section 231B defines ‘regulated pool’ as meaning a swimming pool on regulated land and includes its barriers. The barriers for the pool include fencing, walls and another form of barrier provided for in the pool safety standard.

Section 231C What is a *pool safety inspection function*

This section defines a pool safety inspection function. The functions include inspecting a regulated pool to decide whether to issue a pool safety certificate, carrying out minor repairs arising from an inspection, giving a pool safety certificate and giving a nonconformity notice for a regulated pool.

Section 231D What is the *pool safety standard*

This section defines the term *pool safety standard* to mean the Queensland Development Code Mandatory Part 3.4 and any other standard prescribed under a regulation for ensuring the safety of persons using a regulated pool. The section lists some matters that the regulation may refer to without intending to limit any other matters which may be included in the regulation.

Clause 10 Insertion of new ch8, pts 3 to 9

New parts 3 to 9 are inserted by this section.

Part 3 Inspection of regulated pools and the giving of pool safety certificates

This part contains provisions which are central to the successful implementation of the Government’s pool safety improvement strategy.

The Government proposes to pass legislation later in the year that will prohibit the sale or lease of a property with a pool without a pool safety certificate issued by a licensed pool safety inspector. It is estimated that approximately 190,000 pools will be inspected over the first 10 years of the pool safety measures.

Owners will not be required to obtain a new certificate if the property is re-sold or re-leased within one year of the last certificate for shared pools or two years for non-shared pools. It is proposed that a record of the certificates be entered into a State-based pool register that is accessible to Local Governments.

Division 1 Inspections of regulated pools by pool safety inspectors

Section 246AA Obligation to give pool safety certificate on inspection in particular circumstances

This Section requires a pool safety inspector to give an owner of a regulated pool a pool safety certificate within 2 business days of carrying out an inspection where the section applies. The section applies only if:

- the pool safety inspector inspects the regulated pool. This is intended to require the inspector that issues the certificate to inspect the pool. An inspector that does not inspect the pool cannot give a pool safety certificate for the pool. For instance, an inspector could not give a certificate on the basis of an inspection carried out by someone else; and
- on the basis of that inspection the inspector is reasonably satisfied that the pool complies with the pool safety standard.

The inspector must not refuse to give a pool safety certificate only on the ground that there is no development approval for the construction of the pool, or that the pool does not conform with a development approval that may exist for the pool. This provision is intended to clearly delineate the extent of the inspection carried out by the inspector. The inspector is not obliged to check whether the pool, the pool barrier or other regulated matter complies with any development approval. Even if the inspector is aware that the pool, its associated barrier or other regulated matter does not comply with a development approval the inspector cannot refuse to give a

certificate because of this. The function of the inspector is to inspect the regulated pool to assess compliance with the pool safety standard not to review the development history of the pool. The provision has no effect on the role of local government to regulate unlawful building work.

Under the section the pool safety certificate must be given by the inspector to the owner. Under the common law an owner can be represented by an agent. For instance, for leased properties the inspector may be appointed by the real estate agent that manages the property on behalf of the owner and the certificate of pool safety provided by the inspector to the agent on behalf of the owner.

Section 246AB Nonconformity notice

This section applies if a pool safety inspector inspects a regulated pool and is not satisfied that the pool complies with the pool safety standard.

Where this section applies the pool safety inspector must, within 2 days of an inspection, give the owner of the regulated pool a nonconformity notice stating:

- that the pool does not comply with the pool safety standard;
- how it does not comply with the standard;
- what must be done by the owner to make the pool conform to make the pool conform to the standard;
- that the owner may ask the inspector to reinspect within 3 months and that it is an offence to have the reinspection done by another pool safety inspector or local government within this period;
- that it is an offence for the owner to, in the 3 month reinspection period, ask a person other than the initial pool safety inspector or local government to inspect the pool for the purposes of giving a safety certificate for the pool; and
- that the pool safety inspector must notify the local government if the owner does not ask the pool safety inspector to reinspect the pool within the 3 month period. The pool inspector that would be asked must be the initial pool safety inspector.

The intention of this section is to oblige pool safety inspectors to notify owners precisely, and in a standard way, how a regulated pool does not comply and what needs to be done to make it comply with the pool safety

standard. Pool owners should be advised exactly what needs to be done to the regulated pool to obtain a pool safety certificate.

It is intended that the notice can be given to the pool owner by delivering it to the person personally or by leaving it at, or by sending it by post, telex facsimile or similar facility to the address of the pool owner. Where the notice is posted the intention is that it is taken to be given on the day it is posted.

The offence provision recognises the public interest role of the pool safety inspector. Its purpose is to prevent owners seeking to retain another pool safety inspector to undertake a further inspection because they disagree with the pool safety inspector or because they wish to seek a more favourable interpretation of the requirements. Under section 246AC the owner can seek permission from PSC to allow inspection by another inspector. Examples where such an application may be made include where the inspector is derelict in his or her duties, dies, is too ill to reinspect or ceases to carry on business as an inspector.

The obligation to notify the local government is intended to ensure that the local government is notified of a potentially non compliant pool. The local government can carry out a compliance inspection of the pool and take such enforcement action as it considers appropriate.

Section 246AB (3) sets out circumstances where a pool safety inspector is not required to give a nonconformity notice. The purpose of the section is to reduce unnecessary paperwork and the giving of unnecessary nonconformity notices. An inspector is not required to give a nonconformity notice where:

- the inspector reinspects the pool within 2 business days and the pool complies; or
- within 2 business days of the initial inspection the owner and the inspector agree that the inspector will carry out minor repairs and within 20 business days of the agreement the inspector carries out the minor repairs and is reasonably satisfied that the pool complies.

If the inspector does not complete the minor works and find the pool complies within 20 business days of the agreement to complete the minor works the inspector must give a nonconformity notice.

The nonconformity notice must also include an information notice about the decision. An appeal against the decision of a pool safety inspector to give a nonconformity notice is available.

Section 246AC Steps after nonconformity notice

The purpose of this section is to set out the steps to be taken after a non-conformity notice is given. If a notice is given:

- Within the reinspection period the inspector must reinspect the pool within 5 days of being asked to do so or such longer period as the inspector and owner agree;
- The safety certificate (section 246AA) and nonconformity notice (section 246AB) provisions apply to the reinspection;
- If the owner fails to ask the inspector to reinspect, the inspector must notify the local government of the failure within 5 business days of the end of the reinspection period and give a copy of the nonconformity notice to the local government; and
- It is an offence for the owner to ask someone other than the initial pool inspector or local government to inspect the pool for the purposes of giving a pool safety certificate. The owner can seek permission from PSC to allow inspection by another person to reinspect the pool. If permission is granted PSC gives a notice to this effect.

Section 246AD Record keeping requirements for inspections

This section requires inspectors to keep a record of the inspection documents for a period of 5 years.

Division 2 Functions of local government for inspections of regulated pools

Section 246AE Power of local government to inspect regulated pool

This section applies where the local government in the area in which the pool is situated is given a nonconformity notice in relation to the pool. In such case an employee or agent of the local government may enter the land on which the regulated pool is situated to inspect the pool.

The power to enter does not apply to a dwelling on the pool site. For instance, the power of entry would enable entry to a backyard to inspect a pool situated in the backyard but would not permit entry to the dwelling located on the land. Where a regulated pool is situated within a dwelling,

entry under this section is not permitted to inspect the indoor pool as this would involve entering the dwelling. Dwellings would include class 1 buildings (houses and boarding houses, hostels), lots in class 2 buildings, a class 4 part of a building and a place of long term living in a class 3 building. It is not intended to cover places of transient living such as a hotel room.

If the owner or occupier is present the employee or agent must do, or make a reasonable attempt to do, the following things before entering the site:

- identify himself or herself by producing or displaying his or her identity card;
- tell the person the purpose of the entry;
- seek the consent of the person to the entry; and
- tell the person that the officer is permitted to enter the land under the Act without the person's consent.

If it is not practicable to produce the identity card the employee or agent must produce the card at the first available opportunity. If the person is not present the agent or employee can still enter the property but must take reasonable steps to advise the person of their intention to enter the property.

Section 246AF Cancellation of pool safety certificate after inspection

This section gives local governments the power to cancel a pool safety certificate for a regulated pool if upon inspection it reasonably believes that the regulated pool does not comply with the pool safety standard. The local government must comply with a show cause procedure before cancelling a safety certificate. The local government must, within 10 business days after cancelling the certificate, give the chief executive notice of the fact. The chief executive must record in the regulation pools register the cancellation of the pool safety certificate for the regulated pool.

This section is intended to recognise the jurisdiction of local governments to monitor compliance of the safety of swimming pools within the local government area. The show cause procedure ensures that local governments properly document the grounds for any decision to cancel a pool safety certificate and that the pool owner is given notice of the proposed cancellation with an opportunity to object. Cancellation of a certificate takes effect either at the end of the appeal period, or where an appeal is lodged, if the owner loses the appeal.

Section 246AG Show cause notice procedure and decision

This section sets out the show cause procedure that is intended to ensure that the owner of a regulated pool is given:

- proper notice of any intention of a local government to cancel a pool safety certificate and the grounds, facts and circumstances supporting that intention;
- an opportunity to make submissions for consideration by the local government in relation to the proposed cancellation; and
- the ability to appeal any cancellation decision.

Section 246AH Request for inspection of required pool

This purpose of this section is to require local governments to appoint or employ a pool safety inspector to inspect a pool for the purposes of giving a pool safety certificate if asked to do so by a pool owner. While private inspectors are expected to undertake the vast majority of inspections for the purposes of issuing pool safety certificates it remains essential for local government services to be available to cater for situations where a private inspector is not available to provide the service. It is expected that local governments will decide whether to provide this service themselves or whether to appoint private contractors to undertake the inspections.

Section 246AI Pool safety certificate does not limit power of local government to enter land for particular purposes

This section clarifies that it is not intended that the power of entry in relation to a pool safety certificate will in any way limit the local government's powers to enter land upon which a pool is situated under this or any other Act.

Division 3 Pool safety certificates

Section 246AJ Identification number for pool safety certificates

This section obliges PSC to make unique indentifying numbers for each pool safety certificate available to pool safety inspectors. PSC can charge a fee prescribed in a regulation for the provision of numbers and the inspector is obliged to assign each pool safety certificate with the

identification number. It is intended that this section provide a mechanism for ensuring that each certificate issued has a unique identifying number. The prescribed fee will also enable the Government to recover from pool owners charges to help cover the cost of administering the pool safety system by charging a fee per certificate. The charge is paid initially by the inspector and is expected to form part of the inspection fee charged by the inspector to the pool owner.

Section 246AK Form of pool safety certificate

This section requires that the safety certificate be in the approved form, have an identification number and be signed by the inspector giving the certificate.

Section 246 AL Term of pool safety certificate

This section states the term for which a pool safety certificate is current. A certificate is current for 1 year for a shared pool and 2 years for all other regulated pools.

Section 246AM Pool safety inspector's obligation to give notice of pool safety certificates

To facilitate maintenance of the pool safety register, a pool safety inspector, upon issuing a pool safety certificate, must within 5 business days give the chief executive a copy of the certificate in the way approved by the chief executive. The intention of this section is to ensure that pool safety inspectors register the details of pool safety certificates on the pool safety register. The information must be provided in a way approved by the chief executive. This provision is intended to give the chief executive a broad discretion to approve the most efficient and effective method of ensuring that safety certificate information is entered onto the register, including, for instance, direct electronic entry of data by pool inspectors.

Section 246AN Final inspection certificate or certificate of classification instead of pool safety certificate

The purpose of this section is to enable a final inspection certificate or a certificate of classification for a regulated pool, issued by a building certifier, to be used instead of a pool safety certificate with the same validity period of 1 year for shared pools and 2 years for other regulated

pools. This section will largely apply to new pools or pools where building work requiring the issue of a development approval is undertaken. It reduces the regulatory burden in that a separate pool safety inspection is not required as the final inspection certificate or certificate of classification performs the same function as a pool safety certificate.

Division 4 Miscellaneous provision

Section 246AO Appeals to building and development committee of decisions under pt 3

This section provides for appeals to a building and development committee under the Planning Act for specified decisions about pool safety inspectors or local governments under Part 3.

Part 4 General provisions about regulated pools

Division 1 Obligations to give notice of regulated pools

Section 246AP Building certifier's obligation to give notice of regulated pool

This section requires a building certifier to give notice to the chief executive after 5 business days of giving a final inspection certificate or certificate of classification that relates to a regulated pool. This obligation ensures that all new pools are recorded on the pool safety register. This section will largely apply to new pools or pools where building work requiring the issue of a development approval is undertaken. It is intended to complement the notification obligations on pool safety inspectors to help ensure that the pool safety register is as complete and accurate as possible.

Section 246AQ Local government's obligation to give notice of existing regulated pool

This section requires local governments to give to the chief executive notice of all regulated pools in the local government area. The notice is to be given in the way approved by the chief executive and is to be given within 3 months of the commencement of the section. The intention is that local governments will provide the initial population of the state pool register. It is intended that local governments provide such information from existing records. It is not intended that local governments seek out further information to populate the register.

Section 246AR Owner's obligation to give notice of existing regulated pool

The owner of a regulated pool is only obliged to give notice of the pool to the chief executive where the pool is not recorded in the register after 3 months from the commencement of the section. Where the pool is not so recorded the pool owner has until 6 months after commencement to notify the chief executive about the pool. The intention is to minimise the inconvenience to pool owners by allowing the initial 3 month period for local governments to populate the state pool register. In practice this means that pool owners will only be required to register a pool where the pool is not registered by the local government.

Division 2 Register of regulated pools

Section 246AS Regulated pools register

This section requires the chief executive to keep a register of regulated pools. The regulated pools register may be kept in the way the chief executive considers appropriate, for example, in an electronic form. The regulated pools register must contain particular information for each regulated pool. The required information is stated in this section and can be further prescribed under a regulation.

Section 246AT Access to regulated pools register

This section provides that the regulated pool register must be made available for inspection by anyone at either the department's head office or

any other place the chief executive considers appropriate. The chief executive may charge a fee for access to the register and a regulation can allow access to the register without payment of a fee. The chief executive may publish a copy of the regulated pools register on the department's website.

Part 5 General provisions about pool safety inspectors

Division 1 Regulation of the performance of pool safety inspection functions

Section 246AU Person must not perform pool safety inspection functions without licence

A person cannot perform the functions of a pool safety inspector, as defined in the Act, unless the person is a pool safety inspector.

The section is stated not to apply to the carrying out of minor repairs. This is intended to ensure that persons that are not pool safety inspectors, for instance pool owners, can carry out minor repairs. The restrictions on unlicensed building work included in the *Queensland Building Services Authority Act 1991* are not affected.

The section does not apply to an authorised local government employee or agent that inspects regulated pools to decide whether a pool complies with the pool safety standard. This preserves the pool safety monitoring and compliance role of local governments. Local governments can continue to carry out pool safety inspections and undertake pool safety inspection programs without committing an offence under this section.

This section is consistent with other provisions of the Bill that recognise the ongoing pool safety compliance role of local governments. In particular, it is consistent with the functions of local government under Part 2, Division 3 of the Bill. These functions include the power to enter land to inspect pools upon receipt of a nonconformity notice and the power to cancel a pool safety certificate issued by a licensed pool safety inspector. The provision does not enable a local government officer or appointee to

give a pool safety certificate or nonconformity notice unless the officer or appointee is also a licensed pool safety inspector.

Section 246AV Person must not perform pool safety inspection functions without prescribed professional indemnity insurance.

A pool safety inspector must not perform a pool safety function without the prescribed professional indemnity insurance. The existence of such insurance is important to ensuring public confidence in the pool safety inspection scheme. Under Part 6, Division 2 of the Bill an applicant for a pool safety inspector licence must produce evidence that the applicant has the prescribed professional indemnity insurance and this evidence must again be produced for renewal of a licence. In the case of inspectors that are employees it is expected that the insurance would be held by the employer to cover the employee inspector.

Section 246AW Giving pool safety certificates and nonconformity notices

This section restricts the capacity of pool safety inspectors to give safety certificates and nonconformity notices. The inspector must have inspected the pool. The intention is that every pool safety inspection must be actually carried out by a licensed inspector. There is no capacity, for instance, for inspections to be carried out by another person and a safety certificate or nonconformity notice given by a licensed inspector based on the report of another person that carried out the inspection.

The inspector must only give a safety certificate if the inspector is reasonably satisfied that the regulated pool complies with the pool safety standard. The inspector must only give a non-conformance certificate if the inspector is reasonably satisfied that the regulated pool does not conform to the pool safety standard.

Section 246AX Pool safety inspector's duty to act in public interest in performing pool safety inspection function

A pool safety inspector must always act in the public interest. The need to clearly specify there is a primary duty to act in the public interest is because the pool safety inspector carries on a private business and may not be an employee or agent of a regulatory agency such as a local government. In these circumstances inspectors must ensure that commercial interests do

not in any way affect or undermine their role as safety inspector. The duty to act in the public interest is critical to maintaining community confidence in pool safety inspectors in the discharge of their duties to ensure that regulated pools conform to the pool safety standard. A non exclusive list of occasions when a pool safety inspector does not act in the public interest in performing pool safety inspection functions is listed in the section.

Section 246AY Pool safety inspector must not perform pool safety inspection function if there is a conflict of interest

This section provides that a pool safety inspector must not perform a pool safety inspection function if, in performing the function, the inspector has a conflict of interest. The section provides a non exhaustive list of occasions when a pool safety inspector has a conflict of interest. The list of potential conflict of interest occasions remains, however, unlimited. It is a critical part of the duty of a pool safety inspector to properly manage potential conflict of interest situations such that there is not breach of the duty created by this section.

Division 2 Code of conduct for pool safety inspectors

Section 246AZ Making code of conduct for pool safety inspectors

The chief executive may make a code of conduct for pool safety inspectors in relation to performing pool safety inspection functions. Within 14 sitting days of the code of conduct for pool safety inspectors taking effect, the Minister must table a copy of the code of conduct in the Legislative Assembly.

Section 246BA When code of conduct for pool safety inspectors takes effect

This section provides that the code of conduct for pool safety inspectors, or an amendment or replacement of the code, does not take effect until it has been approved under a regulation. A reference to the code of conduct for pool safety inspectors is taken to include any amendment or replacement that has taken effect.

Section 246BB Tabling and inspection of amendment or replacement not part of or attached to regulation

This section provides for the tabling or amendment of amendments to the code of conduct that are not part of a regulation.

Section 246BC Access to the code of conduct for pool safety inspectors

The chief executive must make the code of conduct for pool safety inspectors available for inspection. The code may be made available for inspection in the way the chief executive considers appropriate, for example, on the Department's website.

Division 3 Miscellaneous provisions

Section 246BD Effect of pool safety inspector not complying with Act if no penalty provided

If, under the Bill, no penalty is stated for a failure to comply with a section of the Act, failure to comply is not an offence by a pool safety inspector. Failure to comply is taken to be a ground of disciplinary action as defined under the Bill in that it is conduct contrary to a function under the Bill.

The effect of this provision is to make the breach of certain duties created by the Bill answer in disciplinary rather than criminal proceedings.

Section 246BE Pool safety inspector may carry out minor repairs in particular circumstances

A pool safety inspector may, in prescribed circumstances, carry out minor repairs prescribed under a regulation. The prescribed circumstances are those prescribed in the Bill. This list is exhaustive in that no other circumstances exist for the pool safety inspector to carry out minor repairs.

The minor repairs that can be carried out will be prescribed in a regulation. The intention is that the inspector is able to undertake minor repairs so that the number of visits that an inspector has to make is reduced and the necessity to retain another contractor is also minimised with resultant cost savings to pool owners. As it is expressly authorised by the Bill the carrying out of minor repairs, and the subsequent giving of a safety

certificate in relation to those repairs, does not constitute a conflict of interest for a pool safety inspector.

The minor repairs provisions do not affect the provisions under the *Queensland Building Services Authority Act 1991* that require a license for the undertaking of building work.

Section 246BF Pool safety inspector to have regard to particular guidelines

In performing a pool safety inspection function, a pool safety inspector must have regard to the guidelines made under section 258 that are relevant to performing the function.

Part 6 Licensing of pool inspectors

Division 1 Role

Section 246BG Role of pool safety inspector

This section provides that a pool safety inspector can perform pool safety inspection functions for all regulated pools.

Division 2 Applying for and obtaining a licence

Section 246BH Who may apply

Only individuals that hold a certificate of competency issued by a course provider can apply to PSC for a licence. To be an eligible course provider the provider must be a registered training organisation or prescribed under a regulation. The certificate of competency must be for a training course approved by PSC. The intention is that potential pool safety inspectors must have completed a training course and have been assessed as competent to undertake the functions of a pool safety inspector as a prerequisite to obtaining a licence.

Certificate of competency is defined in the Schedule 2 of the Bill to mean a certificate issued by an eligible course provider to an individual that states the individual has satisfactorily completed an approved training course and is competent to perform pool safety inspection functions.

In addition to the attainment of a certificate of competency the chief executive may approve a test about pool safety and pool safety functions. If such a test is approved by the chief executive, the test must be passed by an individual, as a prerequisite to obtaining a licence. The intention of the test requirement is to act as a final check and balance to provide assurance that the applicant has the knowledge to undertake the functions of a pool safety inspector.

Section 246BI Requirements for applications

This section provides that the person making an application to PSC for a licence must do so in the approved form. If required by the approved form the information in the form must be verified by a statutory declaration.

The application must include the prescribed licence fee, the prescribed application fee, evidence of the applicant's identity, a copy of the certificate of completion of an approved course, evidence that the applicant has passed any pool safety inspector test approved by the chief executive and evidence that the applicant has the prescribed professional indemnity insurance.

Section 246BJ Decision on licence application

Subject to seeking further information about suitability, if the applicant is a suitable person PSC must make a decision on the licence application and grant or refuse the licence. The criteria for deciding suitability are set out in Part 6, Division 6. PSC must only license the individual if it believes the applicant is suitable to hold the licence. The licence may be approved, with conditions imposed. An example of a condition which PSC may impose on an inspector would be that the inspector can only issue safety certificates and is not permitted to carry out minor works. This condition may be appropriate where PSC decides that the applicant has insufficient experience in pool barrier or other building maintenance to undertake minor works.

Section 246BK Steps after making the decision

This section provides that after PSC has made a decision to license the applicant, PSC must issue a licence to the applicant. If PSC decides to refuse the applicant the licence or impose conditions on the licence, the committee must inform the applicant of the decision through an information notice.

Section 246BL Duration of licence

A licence remains in force for one year unless it is earlier cancelled, suspended or surrendered under this Act.

Division 3 Renewal and restoration of licenses

This division provides administrative arrangements for the renewal, and restoration after expiry, of pool safety licenses. The division is intended to ensure that:

- inspectors are given advance notice of the expiry date of licences and information about what the inspector needs to do to renew the licence;
- the decision making process for the renewal of licences by PSC is clearly established.

Subdivision 1 Notice of expiry

Section 246BM Notice of expiry of licence

PSC is required to give pool safety inspectors notice of the date of expiry and the ability of the inspector to apply or renewal of the licence at least 20 business days before the date that the licence is due to expire. The notice must tell the inspector that the inspector must apply to renew the licence and pay the renewal fee on or before the expiry day for the licence. The notice must also tell the inspector how to apply for renewal of the licence.

Subdivision 2 Renewals

Section 246BN Applying for renewal

This section enables inspectors to renew pool safety licences and sets out when an application cannot be made, that the application must be in the approved form and what must accompany the application.

Section 246BO Existing licence taken to be in force while application is being considered

This section provides that where a licensee has applied to renew a licence the old licence continues in force until the day PSC decides the application. The intention is to ensure that a licence does not expire during any time taken by PSC to make a decision about the renewal of the licence. This provision does not apply if the applicant's licence has been earlier cancelled or suspended.

Section 246BP Decision on renewal application

PSC must consider the renewal application and decide whether to renew the application or refuse the application. PSC can decide to renew the licence only if it is satisfied that the applicant is still a suitable person to hold a licence. The matters that PSC must consider in deciding whether an applicant is a suitable person are set out in Part 6, Division 6 of the Bill and are the same matters that must be considered on deciding the original licence application by the inspector.

The reconsideration of suitability criteria at the licence renewal stage is intended to help ensure that suitability issues such as the commission of relevant offences or the refusal of a licence under this or another Act can be taken into account in an ongoing manner. This is intended to help ensure the ongoing integrity of pool safety inspectors. The suitability matters listed include the accumulation of demerit points under a regulation. It is intended to define in a regulation conduct that will attract demerit points and any demerit points accumulated must be taken into account by PSC in considering a licence renewal application.

PSC is taken to have refused a renewal application if it is not decided within 40 business days from when the application is made. If PSC asks for further information or documents to decide the application the 40 day

time period stops and does not recommence until after the requested information or documents are received.

Section 246BQ Steps after making the decision

If PSC decides to refuse to renew, or, impose conditions on, the licence, it must give an information notice to the applicant and the applicant is entitled to appeal that decision to QCAT.

Subdivision 3 Restoration

Section 246BR Applying for restoration

If a pool safety inspector's licence expires the inspector can apply for restoration of the licence. The application must be made within 3 months of the expiry and must be accompanied by an application in the approved form, the restoration and licence fee prescribed under a regulation and the same material that must accompany a renewal application.

It is administratively efficient to enable licences to be restored after expiry to cater for the usual frailties of human nature in attending to matters in due time. Otherwise licensees would be required to apply again for a licence including undertaking the relevant training and approval processes which is considered to be unnecessary.

Section 246BS Existing licence taken to be in force while application is being considered

If an application for the restoration of a licence is made the licence is taken to be in force from the day it would have expired until the application is decided.

Section 246BT Decision on restoration application

Similar to renewal applications PSC can seek information from applicants about suitability and other matters in considering a restoration application. PSC can restore a licence only if it considers that the applicant is still a suitable person to hold a licence.

Section 246BU Steps after making decision

Division 4 Cancellation and suspension of, and other changes to, licences

PSC can decide to restore or refuse to restore a licence. If it decides to, refuse to restore, or impose conditions on the licence, it must notify the applicant of the decision and applicant can appeal the decision to QCAT.

Subdivision 1 PSC's Powers

Section 246BV Power to amend, cancel or suspend licence

This section permits PSC to take specified action in relation to a licence up to and including cancellation of a licence on the ground that a person is not a suitable person to hold a licence. The action can be taken by PSC at any time provided it follows the show cause notice procedure specified in subdivision 2. PSC is not required to refer such matters to QCAT.

The matters that PSC must consider in deciding whether an applicant is a suitable person is set out in Part 6, Division 6 of the Bill and are the same matters that must be considered on deciding the original licence application by the inspector, an application for renewal of a licence and an application for restoration of a licence.

The section is intended to help ensure that suitability issues such as the commission of relevant offences or the refusal of a licence under this or another Act can be taken into account in an ongoing manner. This is intended to help ensure the ongoing integrity of the pool of licensed pool safety inspectors. The suitability matters listed include the accumulation of demerit points under a regulation. It is intended to define in a regulation conduct that will attract demerit points and any demerit points accumulated must be taken into account by PSC in taking action in relation to a licence at any time.

Section 246BV states that, to put the matter beyond doubt, action cannot be taken under this section only because a ground of disciplinary action is established.

Section 246BW Notice of particular events to inter state licensing authorities and other entities

This section provides that if a pool safety inspector's licence has been cancelled, suspended or amended by PSC, as soon as practical after this event, PSC must inform any New Zealand or state authority of which PSC is aware the inspector is licensed by. PSC may give notice of events to any employer of the pool safety inspector or any other entity PSC believes needs to know about this event. Where the inspector is a building certifier PSC may give notice to the Queensland Building Services Authority.

Subdivision 2 Show cause notice procedure

Section 246BX Show cause notice

This section provides that if PSC believes grounds exist to cancel, suspend or make amendments to the pool safety inspector's licence, before taking action it must give the relevant pool safety inspector a show cause notice.

The show cause notice must include information regarding the proposed action, the grounds for taking the proposed action, the facts and circumstances forming the basis for the grounds, if the proposed action is to amend or suspend the licence – the proposed amendment or suspension period. The pool safety inspector may, within 20 days, make submissions about why the proposed action should not be taken.

The licensee must be given at least 20 business days from receiving the notice to show cause.

Section 246BY Submissions about the show cause notice

This section provides that a pool safety inspector may within the show cause period, make submissions to PSC about the show cause notice and PSC must consider the submissions.

Section 246BZ Decision on proposed action

This section provides that after PSC has considered the submission from the pool safety inspector in question, PSC must make decide whether to continue with the proposed action. If the proposed action was to cancel the

pool safety inspector's licence, PSC may instead decide to suspend it for a stated period.

Section 246CA Notice and taking effect of decision

This section provides that if PSC decides not to take the proposed action; the pool safety inspector must be given notice to this effect. Where PSC decides to take the proposed action the decision takes effect when an information notice is given.

Division 5 General provisions about licences

Section 246CB Register of pool safety inspectors

This section requires PSC to keep a register of pool safety inspectors containing specified particulars for each pool safety inspector, including the name, licence number and business contact details for the inspector.

The particulars include details of any disciplinary decisions made by PSC. If the disciplinary decision was that a ground for disciplinary action against the pool safety inspector was established, the register must also include the details of what PSC decided to do in relation to the breach. The options available to PSC are listed in section 246CY (4).

The register must also include the details of any orders made by QCAT other than details that the QCAT order states should not be included in the register.

The section requires removal of PSC disciplinary details after 5 years and the removal of QCAT orders as specified in the order.

Section 246CC Access to pool safety inspector register

This section provides that PSC must make the register available for inspection by anyone while its office is open for business. PSC has the ability to charge a reasonable fee to anyone who wishes to access part or all of the information held in register. The chief executive may allow the register to be available for viewing on the department's website.

Section 246CD Surrendering licence

A pool safety inspector may surrender a pool safety licence by notice to PSC. The section details the requirements for the surrender of a licence, including an obligation on the inspector to return the surrendered licence to PSC within 10 business days after the surrender takes effect.

Section 246CE Obtaining replacement licence

Section 246CE allows an inspector to apply to PSC for a replacement licence. If PSC is satisfied that the licence has been damaged, destroyed, lost or stolen it must replace the licence on payment of the prescribed fee.

Section 246CF Obligation of pool safety inspector to give notice of change in particular circumstances

Section 246CF obliges an inspector to give notice to PSC within 20 business days of:

- a change of address;
- the cancellation or suspension in another State or in New Zealand of a licence that is the same or substantially the same as a licence under the Bill; or
- any conviction for a relevant offence that occurs after the issuing of the licence.

Some of the matters notified may go to the suitability of the inspector to continue to perform the functions of a pool safety inspector. Upon notification of a cancellation or suspension of licence or any conviction PSC may, under section 246BV, take action to amend, cancel or suspend a licence on the grounds that the inspector is not a suitable person to hold a licence.

Division 6 Miscellaneous provisions

Section 246CG Criteria for deciding suitability of applicants and licensees

Section 246CG applies if PSC is considering an application for, or for the renewal of, a licence or a licence holder is a suitable person to hold a licence.

In such cases PSC is obliged to consider a list of specified matters including whether the applicant or licence holder has been convicted of a relevant offence, accumulated demerit points, holds professional indemnity insurance and a range of other matters. The matters that must be considered by PSC include matters that are quite broad in scope including dealings in which the applicant or holder has been involved and the standard of honesty and integrity demonstrated in the dealing and any other relevant circumstances.

PSC is obliged to consider the suitability of an applicant or licence holder and to consider the range of suitability matters listed in section 246CG (2) where a person applies for a licence (s 246BJ (2)), where an inspector applies to renew a licence (s 246BP), where the inspector applies for restoration of a licence (s 246BT) and at any other time (s 246BV).

Section 246CH PSC may seek information from applicants about suitability and other matters

Section 246CH permits PSC, by notice to an applicant for, or to renew, or restore a licence to require the applicant to give PSC documents or information that PSC reasonably considers is needed to establish that a person is a suitable person or to decide the application.

If the applicant does not comply with the notice within the time stated in the notice the applicant is taken to have withdrawn the application.

Section 246CI Refund of particular licence fees accompanying applications

If an application is refused or withdrawn PSC is obliged to refund the licence fee that accompanied the application.

Section 246CJ Reviews by tribunal of decisions under pt 6

Where a person is given an information notice about a decision of PSC under this Part the person may apply to QCAT for a review of the decision.

Part 7 Complaints, investigations and disciplinary proceedings relating to pool safety inspectors

Division 1 Complaints

Section 246CK Making a complaint against a pool safety inspector

Section 246CK permits a person to make a complaint to PSC if the person believes there is a ground for disciplinary action against the inspector. A ground of disciplinary action is defined in Schedule 2 of the Bill to include a broad range of grounds from conduct that shows incompetence, or is of a lesser standard than the standard that might reasonably be expected by the public, up to fraudulent or dishonest behaviour in performing pool safety functions.

Under section 246CK (2) the complaint must be in writing, contain particulars of the allegations upon which it is founded and be verified by statutory declaration.

PSC may require further particulars of the complaint from the complainant and may dismiss a complaint without taking any action if further particulars are not given or if the further particulars or the complaint are not verified by a statutory declaration.

Under section 246CK PSC must not disclose to another person complaints that have not been proved to PSC's satisfaction.

Section 246CL Pool safety inspector must be advised of complaint

After receiving a complaint PSC must inform the inspector of the nature of the complaint and invite the inspector to make representations to PSC

about the complaint within the time stated in the notice. The time stated must be at least 5 business days. If PSC makes a decision under section 246CY about whether or not a ground of disciplinary action is established it must have regard to the inspector's representations.

Section 246CM PSC may recommend mediation to resolve complaint

This section provides that if PSC considers a complaint about a pool safety inspector is capable of resolution by mediation, PSC must give the complainant and the pool safety inspector a notice stating that PSC considers the complaint is capable of resolution by mediation. The notice must also state that attendance at, or participation in, the mediation is voluntary, that either party may withdraw from the mediation at anytime, and the date when mediation ends. The effect of giving PSC a certificate about the mediation must also be stated on the certificate.

PSC may recommend the complainant and the pool safety inspector enter into a process of mediation to resolve the complaint as soon as practicable and before PSC investigates the complaint.

The mediation process is intended to achieve a result that both parties agree to and that finalises the complaint in a shorter time period.

Section 246CN Mediation process

This section provides that if at the mediation, the parties agree to a resolution to the complaint; the agreement must be signed by, or for, each party and by the mediator.

Mediation ends on the earlier of the following: if a party withdraws from mediation – the day the party withdraws; if the parties agree the mediation has ended – the day the parties agree mediation has ended; if there is a mediation agreement – the day the agreement has been signed.

The above provisions about ending mediation apply unless PSC extends the period and advises parties in writing of the extension. In that case the mediation ends 20 business days after PSC gave the notice under section 246CM that the complaint was capable of mediation.

As soon as practical after mediation has ended, the mediator must give PSC a certificate about the mediation in the approved form.

If the parties sign an agreement, the complaint is taken to be withdrawn.

Section 246CO Investigation of complaint

This section applies if PSC does not recommend the complainant and the pool safety inspector enter into mediation; or PSC recommends the complainant and the pool safety inspector enter into mediation and the complaint is not resolved.

PSC must conduct an investigation as soon as possible.

PSC may deal with one or more complaints about a pool safety inspector in the same investigation.

If during an investigation PSC is satisfied there is matter about which another complaint could have been made against the pool safety inspector, PSC may deal with the matter in its investigation as if a complaint had been made about the matter.

Division 2 Investigations

Section 246CP PSC may require documents to be produced

The functions of PSC include conducting audits and inspections. For investigating a complaint or conducting an audit PSC may by notice to a pool safety inspector, require the pool safety inspector to produce a document to PSC, or a person authorised by PSC

The notice may also state a time and place by which the document must be produced or that the document must be verified by statutory declaration.

PSC must ensure that the time stated in the notice is a reasonable time for the pool safety inspector to produce the documents.

The pool safety inspector must comply with the notice, unless the pool safety inspector has a reasonable excuse.

Section 246CQ Issue of identity card to investigator

Each investigator must be provided with an identity card. The identity card must contain a recent photo of the investigator, contain a copy of the investigator's signature, identify the person as an approved investigator and state an expiry date for the card. The card is required to identify the investigator.

Section 246CR Production or display of identity card

When an investigator is exercising a power under this Act in relation to another person, the investigator must produce his or her identity card for the person's inspection before exercising the power; or have the identity card displayed so it is clearly visible to the person exercising the power.

If this is not practicable the investigator must display his identification for the person's inspection at the first reasonable opportunity.

Section 246CS Inspection of documents

The purpose of this section is to allow an investigator to inspect any document produced to PSC and copy it or any part of it to assist with an investigation.

Section 246CT Power to enter and inspect pool site relating to complaint or audit

This section provides that for investigating a complaint, an investigator may enter and inspect a pool site to which the complaint or audit relates. The entry and inspection must be made with the consent of the person in control of the pool site.

For the purpose of asking the person in control of the pool site for consent to inspect the pool, the investigator may enter the property without consent or a warrant to an extent that is reasonable to contact the person. This is a practical matter. The inspector can enter the site for the purposes only of seeking consent to enter and for no other reason. If the consent is refused the inspector must leave the site.

If a pool safety inspector can not obtain consent from the person in control of the pool site, an investigator may apply to a magistrate for a warrant to obtain access to the pool site. The application must be sworn and state the grounds on which it is sought. If the magistrate requires further information about the grounds on which the warrant is sought, the magistrate must not issue the warrant unless the investigator or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

The magistrate must only issue the warrant only if satisfied there is a proper reason for entering and inspecting the pool site.

The warrant must state that the investigator may, with necessary and reasonable help and force, enter the pool site, the hours of the day when entry may be made and the day that is not more than 14 days after the issue of the warrant ceases to have effect.

For the purpose of asking the person in control of the site for consent to inspect the pool, the investigator may enter the property without consent or a warrant to the extent that is reasonable to contact the person. For example an inspector could enter for the purposes of asking if entry can be made by consent.

Section 246CU Procedure before entry

This section provides that where an investigator is intending to enter a pool site other than for the purpose of seeking consent to enter, the investigator must do or make a reasonable attempt to identify himself or herself to a person present at the pool site who is an occupier of the pool site.

The person present at the pool must be told by the investigator that entry is permitted to the pool under section 246CT and the person must be given an opportunity to allow the investigator immediate entry to the pool without the investigator using force.

If the investigator is entering under the warrant, the investigator must give the person a copy of the warrant.

The investigator need not comply with section 246CU (2), which lists all the things an investigator must do before entering the pool site, if the investigator believes that to do so may frustrate or otherwise prevent the investigation of the complaint or the conduct of the audit.

Section 246CV Cooperating with investigation or audit

The purpose of this section is to require a pool safety inspector who is being investigated by PSC to assist in and cooperate with the investigation.

If the inspector, without reasonable excuse, fails to assist in and cooperate with the investigation, obstructs PSC or misleads PSC in the discharge of its functions or fails to produce a document requested under section 246CP this constitutes a ground for disciplinary action against the inspector.

Section 246CW False or misleading statements

This section states that a person must not, in relation to an investigation or audit stating anything to PSC that a person knows is false or misleading.

Section 246CX False or misleading documents

This section provides that a person must not in relation to an investigation or audit give PSC a document which contains information that the person knows is false or misleading in a material particular.

A person does not commit an offence where the person tells PSC to the best of the person's ability, how the document is false or misleading and if the person has, or can reasonably get the correct information gives the correct information to PSC.

Section 246CY Decision after investigation or audit completed

This section provides that after investigating a complaint or conducting an audit, PSC must decide whether or not a ground for disciplinary action against the pool safety inspector is established.

After the decision has been made, PSC must give the pool safety inspector an information notice of the decision. PSC must also give the information notice to the employer of the inspector if PSC is aware that the inspector is employed by somebody else to perform pool safety inspection functions.

If PSC decided that a ground of disciplinary action against the pool safety inspector is established PSC must decide to do one or more of the following:

- Reprimand the pool safety inspector;
- Impose the conditions it considers appropriate to the pool safety inspector's licence;
- Direct the pool safety inspector to complete to the satisfaction of PSC an educational course stated by PSC;
- Direct the pool safety inspector to report on his or her practice as a pool safety inspector at times and person which is stated by PSC;
- Require the inspector to refund some or all of a fee paid for an inspection of a regulated pool;

- Require the inspector to pay to PSC a stated amount of not more than the equivalent of 60 penalty units;
- Suspend the inspector's licence for a period of not more than one year;
- If PSC is satisfied the pool safety inspector is generally competent and diligent, advise the pool safety inspector it does not intend to take any further action.

If PSC is satisfied that it would be reasonable to suspend the inspector's licence for more than one year or the cancel the licence PSC must apply to QCAT to start a disciplinary proceeding against the pool safety inspector. The operation of this section does not affect the capacity of PSC to take action in relation to an inspector on the grounds of suitability under section 246BV.

PSC must give the inspector an information notice about any decision to take a disciplinary action against the inspector. If the decision is taken after the investigation of a complaint a copy of the information notice must be given to the complainant.

The taking of disciplinary action under this section does not prevent PSC taking the matter into account as part of a pattern of conduct that may result in disciplinary proceedings against the inspector. Such an action also does not prevent the prosecution of the inspector for an offence under the Bill.

Section 256CZ Review of PSC's decision

This section provides that if a pool safety inspector or complainant is dissatisfied with PSC's decision under section 246 CY (1) the pool safety inspector or complainant may apply as provided under the QCAT Act, to the tribunal for a review of the decision.

Division 3 Disciplinary proceedings

Section 246DA Tribunal may conduct disciplinary proceeding

This section provides that the tribunal may on application by PSC conduct a disciplinary proceeding to decide whether proper grounds for taking disciplinary action against a pool safety inspector are established.

An application must be made as provided under QCAT Act.

Section 246 DB Constitution of tribunal for disciplinary proceeding

This section provides that for proceedings under section 246DA, if the president of the tribunal under QCAT Act considers it appropriate, the president may choose the following persons to constitute the tribunal –

- 1 legally qualified member under the QCAT Act;
- 1 senior member or ordinary member who has special knowledge of pool safety inspection functions and the administration of this Act;
- 1 other senior member or ordinary member.

Section 246DC Orders relating to current pool safety inspector

This section provides that if the tribunal decides that a ground of disciplinary action is established against a pool safety inspector who is licensed at the time of decision, the tribunal may make one or more of the following orders:

- Reprimanding the pool safety inspector;
- Imposing conditions it considers appropriate on the pool safety inspector's courses stated in that order;
- Directing the pool safety inspector to report on his or her practise as a pool safety inspector at the times, in the way and to the person stated in the order;
- Require the inspector to refund some or all of a fee paid for an inspection of a regulated pool;
- Require the inspector to pay to PSC a stated amount of not more than the equivalent of 160 penalty units;
- Suspending the pool safety inspectors licence for the term the tribunal considers appropriate;
- Cancelling the pool safety inspector's licence;
- Disqualifying, indefinitely or for a stated period, the pool safety inspector from obtaining a licence as a pool safety inspector from PSC.

The tribunal can make any other order it considers appropriate.

Section 246DD Orders relating to former pool safety inspector

This section provides that if the tribunal decides that a ground for disciplinary action is established against a former pool safety inspector the tribunal may make an order:

- Imposing a penalty in the former safety inspector of not more than 160 penalty units;
- Not be licensed or re-licensed by PSC ; or
- Never be licensed or re-licensed by PSC.

Section 246DE Consequences of failure to comply with tribunal's orders and directions

The tribunal may, in a disciplinary proceeding against a pool safety inspector, order that if the pool safety inspector fails to comply with an order or direction of the tribunal within the time allowed by the tribunal the inspector's licence be suspended or cancelled.

Section 246DF Recording details of orders

An order may state the period in which the details of the order are to be included in the pool safety inspectors register for the person and the details of the order, if any, that the tribunal decides are not be included in the register.

Part 8 Approved training courses for pool safety inspectors

Division 1 Role of eligible course providers

Section 246DG Eligible course providers and their functions

An eligible course provider is a registered training organisation and any other entity prescribed under a regulation. The section restricts the entities that may be prescribed under a regulation. Such entities must demonstrate

identifiable competence and expertise in conducting training courses about performing pool safety functions.

The function of an eligible course provider is to issue certificates of competency to individuals proposing to apply to be pool safety inspectors.

Certificate of competency is defined in the Schedule 2 of the Bill to mean a certificate issued by an eligible course provider to an individual that states the individual has satisfactorily completed an approved training course and is competent to perform pool safety inspection functions.

An eligible course provider must set educational and experiential standards for a training course that comply with the training course guidelines and conduct approved training courses.

Division 2 Applying for and obtaining approval of training course

Section 246DH Application to conduct training course

An eligible course provider may apply to PSC to approve a training course. The course providers application must be in the approved form contain sufficient details to show the training course complies with the training course guidelines and be accompanied by the fee prescribed under a regulation.

Section 246DI Decision on application and steps after making decision

Upon receiving an application from an eligible course provider PSC must consider the application and decide to either approve or refuse the training course.

PSC may approve a training course only if it considers that the eligible course provider is a suitable person to conduct the course and the training course complies with the course guidelines.

If PSC approves the course, it may impose conditions on the way the eligible course provider conducts the training course. PSC must, upon reaching a decision, give the applicant notice about the decision. If the decision is to refuse or impose conditions on the course provider, the course provider may apply to a tribunal for a review of the decision.

Section 245DJ Duration of approval

Training course approvals generally remain in force for two years.

Division 3 Renewals of approvals

Section 246DK Applying for renewal

An eligible course provider may apply to PSC for renewal of its approved training course, but needs to make the application before the two year approval expires.

The application must be in the approved form and demonstrate compliance with any new training course guidelines.

A renewal fee and an approval fee is payable.

Section 246DL Decision on application and steps after making decision

PSC must consider the renewal application by an eligible course provider and may renew the course approval if the course provider remains a suitable entity and the course complies with the current training course guidelines.

PSC may impose conditions on an approval.

Appeal rights apply if PSC refuses to renew the approval or imposes conditions on the approval.

Division 4 Cancellation and amendment of approvals

Section 246DM Cancellation and amendment of approval

If PSC reasonably considers that an eligible course provider is no longer a suitable entity to conduct the course or that the course no longer complies with the guidelines it may cancel the approval or impose conditions on the approval, so long as it first complies with the following division.

Division 5 Show cause notice procedure

Section 246DN Show cause notice

If PSC believes that grounds exist to cancel a course provider's approval or impose conditions on the approval it must give a show cause notice to the provider. The show cause notice must end at least 20 business days after it is given to the course provider.

Section 246DO Submissions about show cause notice

The eligible course provider may make submissions about the show cause notice and PSC must consider the submissions.

Section 246DP Decision, notice and taking effect of decision

After considering the submissions of the course provider about the proposed action, namely, to cancel the course provider's approval or impose conditions on the approval, PSC must decide whether to take the proposed action. Appeal rights exist if the decision is adverse to the course provider.

Division 6 Audit powers

Section 246DQ Definition for div 6

The term 'compliance audit' is defined as an audit to establish whether the eligible course provider's course complies with the guidelines and whether the course provider is complying with any conditions on the approval.

Section 246DR Compliance audit of eligible course provider

This section gives PSC power to conduct a compliance audit of an eligible course provider at any time. The course provider must cooperate with the audit.

Section 246DS PSC may require documents to be produced

When conducting a compliance audit of an eligible course provider PSC may give the course provider a notice requiring it to give information or produce a document to PSC. It is an offence not to comply with the notice.

Division 7 Reviews of decisions

Section 246DT Reviews by tribunal of decisions under pt 8

All appeals by eligible course providers under chapter 8 of part 8 (relating to approved training courses) are to the tribunal under the Queensland Civil and Administrative Tribunal Act 2009. In deciding such appeals the tribunal is to have regard to the safety of persons as its primary consideration.

Section 246DU Assessors to help tribunal

The tribunal hearing any appeal under chapter 8 of part 8 (relating to approved training courses) must be helped by at least 1 assessor nominated under section 246DW (2)(b), unless the presiding member decides otherwise for reasons of urgency.

Section 246DV Functions and powers of assessors

The assessor's function is to help the tribunal decide questions of fact. The assessor may ask questions of a witness and have discussions with a party's representative.

Section 246DW Appointment of assessors

PSC must appoint persons each year to help the tribunal in proceedings mentioned in section 246DU. A person may only be appointed if PSC is satisfied they have relevant knowledge, expertise and experience and if nominated by the chief executive. Each nominee's relevant area of knowledge, expertise and experience is to be stated on appointment.

Section 246DX Disqualification from appointment as assessor

A person's appointment as an assessor may not continue if the person is not qualified or ceases to be qualified.

Section 246DY Tribunal may have regard to assessor's view

In deciding a question of fact the tribunal members may have regard to the assessor's view to the extent they consider appropriate.

Division 8 Offences

Section 246DZ Falsely claiming to be eligible course provider

It is an offence to falsely claim to be an eligible course provider.

Section 246EA Falsely claiming to be conducting approved training course

It is an offence to falsely claim to be conducting an approved training course.

Section 246EB Offences about issuing certificates of competency

It is an offence for a person who is not an eligible course provider or a representative of such a provider to issue, or claim to be able to issue, a certificate of competency. Division 2 of part 6 refers to such certificates.

Division 9 Miscellaneous provisions

Section 246EC Training course guidelines

The chief executive may issue training course guidelines to help eligible course providers apply to PSC for course approvals.

Section 246ED PSC may seek information from applicants and holders of approvals about suitability and other matters

PSC may give applicants for a course approval or renewal or holders of an approval a notice requiring documents or information to assist PSC in determining whether the applicant or holder is a suitable entity to conduct training courses. If an applicant fails to provide the documents or

information within a stated period, the relevant application is taken to be withdrawn.

Section 246EE Refund of particular approval fees accompanying applications

PSC must refund the approval fee if an application for a course approval is refused or withdrawn.

Part 9 Pool Safety Council

Division 1 Establishment, functions and powers

Section 246EF Establishment of PSC

This section establishes PSC. The intent is that there be an independent body responsible broadly for overseeing pool safety inspectors and pool safety inspection training course providers.

Section 246EG Legal status

PSC is not a body corporate and does not represent the State.

Section 246EH Functions of PSC

This section sets out PSC's functions which it must perform independently, impartially and in the public interest.

Section 246EI Powers of PSC

PSC has the powers necessary or convenient to perform its functions or incidental to the performance of the functions. This places a practical limitation on PSC's powers – the exercise of the powers must be referable to the performance of the identified functions.

Section 246EJ Delegation by PSC

PSC may delegate its powers to a member or members, or to the chief executive or other appropriately qualified person in the department. However, PSC may not delegate its power to make certain decisions.

Division 2 Membership of PSC

Section 246EK Members

The Minister appoints the members of PSC and decides the number of members considered appropriate.

PSC must, as a minimum, consist of one representative from each of the department and the Local Government Association of Queensland. Appointees, other than a public service officer, are appointed under the BA and not the *Public Service Act 2008*.

Section 246EL Appointment of deputy members

In the event of an absence of a member of PSC, the Minister may appoint a deputy to act for each absent member during the absence. The deputy appointed by the Minister for the absent member is taken to have the same duties, powers, protection and rights as the member. The appointed deputy must be a representative of the entity that the member represents.

Section 246EM Chairperson and deputy chairperson of PSC

The Minister must appoint a chairperson and deputy chairperson of PSC. The chairperson and deputy chairperson hold office only for the term decided by the Minister.

A vacancy occurs in the office of chairperson or deputy chairperson if the person resigns by notice to the Minister, or otherwise ceases to be a member. A member may however, resign from the position of chairperson or deputy chairperson and continue to be a member of PSC.

The deputy chairperson must act as the chairperson during a vacancy in the office of the chairperson and during all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

Section 246EN Conditions of appointment to PSC

A member of PSC holds office for the term stated in the member's instrument of appointment. A member may not be appointed for longer than 4 years, is paid the remuneration and allowances decided by the Minister and holds office on the terms and conditions decided by the Minister.

Section 246EO Disqualification from membership

This section lists various circumstances which disqualify a person from becoming or continuing as a member.

Section 246EP Criteria for deciding suitability of member

Before appointing a member of PSC the Minister must first consider:

- whether the person has previously been refused a licence or has had a licence suspended or cancelled under this Act or another Act;
- whether the person has, under another relevant Act, been disqualified from holding a licence under that Act;
- dealings in which the person has been involved and the standard of honesty and integrity demonstrated in the dealings; and
- any other relevant circumstances.

Section 246EQ When appointed member's office becomes vacant

A member's office becomes vacant if the member resigns by signed notice given to the Minister, is disqualified from holding office or is absent, without the chief executive's leave and without reasonable excuse, from 3 consecutive meetings of PSC.

Section 246ER Leave of absence

The chief executive may approve a leave of absence of greater than 3 consecutive meetings for a member of PSC. If a leave of absence of greater than 3 consecutive meetings is approved by the chief executive and no deputy has been appointed for the member, the Minister may appoint another person as an acting member for the period of the member's absence.

Section 246ES Disclosure of interests

If a member of PSC has an interest in an issue being considered or about to be considered and the interest could conflict with the proper performance of the member's duties about the consideration of the issue, the member must disclose the nature of the interest to a meeting of PSC. The disclosure of interest of a member must be recorded in PSC's minutes.

Unless PSC otherwise directs, the interested member must not be present when PSC considers the issue or take part in a decision of PSC about the issue.

The interested member must not be present when PSC is considering whether to give a direction about the member's presence.

If a member is absent from a meeting of PSC for considering or deciding an issue as a result of declaring an interest in an issue, and there would have been a quorum if the member were present, the remaining members present are a quorum of PSC for considering or deciding the issue.

Section 246ET Protection of members from civil liability

This section provides that a member of PSC, or a person acting on behalf of a member, is not civilly liable to someone for an act done, or omission made, honestly and without negligence under the BA or a direction or a requirement under the BA. If civil liability does not attach to the member or person by virtue of this section, the liability attaches instead to the State.

Division 3 Meetings and other business of PSC

Section 246EU Conduct of business

Subject to any regulations as to how PSC must conduct its business PSC may conduct its business, including meetings in the way it considers appropriate.

Section 246EV Times and places of meetings

PSC's meetings are to be held at the times and places the chairperson decides. The chairperson must call a meeting if asked by at least half of PSC's members. The request of the members must be in writing. The Minister may call a meeting of PSC at any time.

Section 246EW Quorum

A quorum for a PSC meeting is more than half of the number of members.

Section 246EX Presiding at meetings

The chairperson is to preside at all PSC meetings at which the chairperson is present.

Section 246EY Conduct of meetings

PSC may hold meetings using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. The intention is that technology such as teleconferencing or video conferencing might be used.

A decision at a PSC meeting must be a majority decision of the members present.

Section 246EZ Minutes

PSC must keep minutes of its proceedings.

Division 4 Staff of PSC

Section 246FA Officers, employees and agents

The chief executive may, by gazette notice, appoint a registrar to the Pool Safety Council. The registrar has the powers and must perform the functions of the registrar under this Act.

The chief executive may also appoint officers the chief executive considers appropriate to help PSC perform its functions. A public service officer appointed to help the Pool Safety Council holds the appointment or performs the duties concurrently with any other appointment the officer holds in the public service.

The chief executive may appoint any other appropriately qualified person to help PSC perform its functions. A person appointed under this subsection is employed under the BA and not the *Public Services Act 2008*.

Division 5 Pool Safety Fund

Section 246FB Establishment of fund

The Pool Safety Fund is established under this section.

Section 246FC Purpose and administration of fund

The purpose of the fund is to record the amounts received for and paid from the Pool Safety Fund to achieve the purposes of chapter 8 of this Act.

The amounts received for the fund include the fees paid to the Pool Safety Council under this Act.

Accounts for the amounts must be kept as part of the departmental accounts of the department. Amounts received for the fund may be deposited in a departmental financial-institution account of the department with other moneys of the department.

Section 246FD Payments from fund

Amounts are payable from the fund only for paying the expenses incurred by the Pool Safety Council under this Act, an amount authorised by the chief executive as payable from the fund for purposes relating to pool safety and other amounts required or permitted by this Act to be paid out of the fund.

Division 6 Miscellaneous provisions

Section 246FE Criminal history checks

The purpose of this provision is to ensure that appropriate checks can be undertaken to determine whether a person is suitable for appointment to PSC.

To facilitate this purpose the Minister may ask the commissioner of the police service for a written report about the person's criminal history and a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history.

If the request to the commissioner relates to a prospective member, the Minister can only make the request if the person has given the Minister written consent for the request.

Section 246FF Disclosure of changes in criminal history

The purpose of this provision is to ensure that the Minister is made aware if a PSC member commits a criminal offence that is relevant to their suitability to remain a member of PSC.

If there is a change in the criminal history of a member, the member must, unless the member has a reasonable excuse, immediately disclose the change to the Minister. The information disclosed by the member about a conviction for an offence in the member's criminal history must include:

- the existence of the conviction
- when the offence was committed
- details adequate to identify the offence
- whether or not a conviction was recorded
- the sentence imposed on the member.

Where a member does not have a criminal history, there is taken to be a change in the member's criminal history if the member acquires a criminal history.

Section 246FG Ministerial directions to PSC

The purpose of this provision is to provide the Minister with appropriate control of the operation of PSC.

The Minister may give PSC a written direction about the performance of its functions. The direction cannot be about a decision relating to licensing an individual as a pool safety inspector. PSC must comply with the Ministerial direction.

Section 246FH Delegation by registrar

This section provides that the registrar may delegate the registrar's powers under this Act to an appropriately qualified public service officer or employee.

Section 246FI Authentication of documents

This section provides that a document made by PSC is sufficiently made if it is signed by the registrar.

Section 246FJ Annual report

The purpose of this section is to ensure that PSC reports on its functions to government.

This section provides that the (1) PSC must prepare and give the chief executive a written report about the performance of its functions each financial year.

The report must be given as soon as practicable after the end of the financial year, but within 4 months after the year ends and must include—

- (a) a copy of any Ministerial directions given during the financial year; and
- (b) information about action taken by PSC in response to each Ministerial direction; and
- (c) any other matter prescribed under a regulation.

PSC must exclude from the written report all information likely to identify a person mentioned in a direction made by the Minister to PSC.

Clause 11 Amendment of s 246O (Prohibitions or requirements that have no force or effect)

The purpose of this provision is to repeal aspects of the Government’s “ban the banners” policy that relate to amenity issues while retaining those provisions that relate to environmental issues.

The provision removes the ban on a relevant instrument imposing amenity related prohibitions or requirements, including the number of car parking spaces, minimum roof pitch, external surface finishes and materials and completion timeframes for building, landscaping, fencing, and driveways.

It is not intended to affect the prohibition on relevant instruments that impact on environmental outcomes. To this end the provision provides that a restriction relating to house orientation will only be valid where it is required for energy efficiency purposes.

It is not intended to change the current prohibition relating to minimum floor area, however in response to industry representations, covenants will be able to require a minimum frontage to preserve street amenity. This will be allowed except where imposing a minimum frontage would result in the construction of less energy efficient house.

For example, a provision in a relevant instrument which stipulates that a proposed house must have a floor area of not less than 250 square metres would be invalid, but a frontage (house width) of not less than 15 metres would be valid, provided that the stipulation does not have the effect of construction of a less energy efficient building. An example of a stipulation having such an effect may be where having regard to the dimensions of the lot, the house is required to be oriented on the lot in a way which is not energy efficient in order to achieve the stipulation about minimum frontage.

The provision will have no effect on the prohibitions relating to solar hot water systems, photovoltaic cells, dark coloured roofs, energy-efficient windows and the minimum number of bathrooms and bedrooms.

Clause 12 Amendment of s 246Q (Restrictions that have no force or effect-other restrictions)

The purpose of this provision is to make amendments to section 246Q analogous to those made to section 246O with regard to occupation of a building before completion of landscaping, fencing, driveways or similar work and also with regard to use of specific materials or types of surface finish for the roof or external walls of a building.

Clause 13 Amendment of s 246S (When requirement to obtain consent for particular activities can be withheld- other matters)

The purpose of this provision is to make amendments to section 246S analogous to those made to section 246O with regard to occupation of a building before completion of landscaping, fencing, driveways or similar work and also with regard to use of specific materials or types of surface finish for the roof or external walls of a building.

Clause 14 Amendment of s 256 (Prosecution of offences)

The purpose of this provision is to clarify that:

- (a) PSC, a local government or a person authorised by a local government may commence proceedings for offences against chapter 8, part 5; and
- (b) PSC may commence proceedings for an offence against chapter 8, part 6 or 7.

The provision also clarifies that any penalties recovered from proceedings must be paid to PSC and not into general revenue.

Clause 15 Amendment of s 258 (Guidelines)

The purpose of this provision is to clarify that the chief executive may make guidelines about the ways of complying with the pool safety standard and performing pool safety inspection functions. The clause also allows the chief executive to make guidelines to help persons prepare a sustainability declaration under chapter 8A, part 1, division 2.

Clause 16 Amendment of s 260 (Evidentiary aids)

The purpose of this provision is to facilitate the operation of the pool safety inspections functions under the BA by empowering the registrar of PSC to issue evidential certificates.

Clause 17 Amendment of s 261 (Regulation-making power)

The purpose of this provision is to clarify that the regulation making power under the BA extends to the

- (a) Performance of pool safety inspection functions; and
- (b) Licensing of pool safety inspectors; and
- (c) Approval of training courses conducted by eligible course providers.

Clause 18 insertion of new ch 11, pt 9

This clause inserts a new part 9 of chapter 11 which contains transitional provisions to deal with the effects of the Bill.

Part 9 Transitional provisions for Building and Other Legislation Amendment Act 2010

288 Term of pool safety certificate in force before the commencement

The purpose of this provision is to clarify that a pool safety certificate that is obtained prior to the commencement date of this section will continue in effect:

- (a) for a regulated pool that is a shared pool—one year from the commencement date; or
- (b) otherwise—2 years after the commencement date.

289 Building certifiers taken to be licensed as pool safety inspectors for 12 months

The purpose of this provision is to deem a building certifier to be a pool safety inspector from the date of commencement of this section for twelve months.

During this period a building certifier will be able to undertake any of the functions and exercise any of the powers that can be exercised by a pool safety inspector. They will also be required to comply with any provisions under the BA that a pool safety inspector must comply with and will be subject to the jurisdiction of PSC for any inspections undertaken as a pool safety inspector.

In order to continue acting as a pool safety inspect after 12 months a building certifier will be required to ‘renew’ their licence to be a pool safety inspector

Clause 19 Replacement of sch 1 (the QDC on 26 October 2009)

This provision inserts a new list of the parts of the QDC for the purposes of section 13 of the BA.

Clause 20 Amendment of schedule 2 (Dictionary)

This provision amends schedule 2 of the BA to introduce, or modify definitions consistent with the provisions of the Bill.

Part 3 Amendment of Land Title Act

Clause 21 Act amended

This section provides that Part 3 amends the LTA.

Clause 22 Amendment of s 50 (Requirements for registration of plan of subdivision)

This section clarifies that a plan of subdivision within a UDA is registered after approval by the Urban Land Development Authority under the *Urban Land Development Authority Act 2007*.

Endorsement of certain plans of subdivision by the authority is not required if the plan does not require assessment for compliance under the ULDA. This clause applies similar exemptions for local government endorsement of plans under SPA, as outlined in the definition of subdivision plan under the SPR.

Clause 23 Amendment of s 83 (Registration of Easement)

This section clarifies the easement registration process where the plan of survey is not a plan for which assessment for compliance is required under the *Urban Land Development Authority Act 2007*, similar to the provisions relating to compliance assessment under the *Sustainable Planning Act 2009*.

Part 4 **Amendment of Royal National Agricultural and Industrial Association of Queensland Act 1971**

Clause 24 Act amended

This section provides that Part 4 amends the *Royal National Agricultural and Industrial Association of Queensland Act 1971*.

Clause 25 Amendment of s 13 (Dealing with Association's land)

This section removes the requirement of the Governor in Council to approve a purported sale of land and replaces it with the power to approve the Royal National Agricultural and Industrial Association of Queensland (RNA) selling land, and for the Governor in Council to attach conditions on any such approval.

The amended section 13(2) provides that the RNA may not sell land vested in the RNA without the Governor in Council's prior approval.

The insertion of new section 13(2A) provides that the Governor in Council may attach conditions to an approval given under section 13(2) (for example, relating the sale to a particular project, purpose or timeframe, or specifying sale arrangements).

The insertion of new section 13(2B) will retain the existing intent that a sale of land vested in the RNA is void, unless it is in accordance with section 13(2).

New section 13(2C) provides that section 13(2) does not preclude the RNA from entering into agreements or transactions that are conditional on obtaining the Governor in Council's approval under section 13(2).

New section 13(5) inserts a definition for 'sell' to clarify the intent of the amendments.

Part 5 **Amendment of Urban Land Development Authority Act 2007**

Clause 26 Act amended

This section states that this part amends the ULDA Act.

Clause 27 Replacement of s 56 (Restrictions on granting approval)

This section clarifies that the authority may grant a UDA development approval for development inconsistent with the land use plan where there is a preliminary approval in force under the Sustainable Planning Act and the relevant development is consistent with the preliminary approval.

Section 56(2) clarifies that this does not create an obligation on the authority to grant a UDA development approval.

Clause 28 Replacement of s 80 (Plans of subdivision)

This section clarifies the application of the compliance assessment provisions of the *Sustainable Planning Act 2009* (SPA) to the ULDA Act in relation to the assessment and endorsement of plans of subdivision.

Prior to the commencement of SPA, the ULDA Act section 80 provided for assessment and endorsement of plans of subdivision for land in a urban development area (UDA) by the ULDA and applied the process for plan sealing under Chapter 3 part 7 of the *Integrated Planning Act 1997* (IPA). Through the introduction of SPA the assessment process contained in IPA was replaced with a compliance assessment process under SPA. The process and requirements for compliance assessment of subdivision plans under SPA are set out under Schedule 19 of *Sustainable Planning Regulation* (SPR).

The amendments clarify that plans of subdivision for land in an UDA are assessed under section 80 of the ULDA Act and not the SPA. However, for the purposes of assessment of compliance of plans of subdivision in a UDA, section 80 applies the compliance assessment process. The section provides for the following:

- That a plan of subdivision for land within an UDA is assessed by ULDA under section 80 and does not require compliance assessment under the SPA.
- For the ULDA to provide its approval to allow a plan for subdivision of land within an UDA to be recorded or registered under another Act
- For the Authority to assess the plan for compliance using the compliance assessment process under the SPA.
- For the same exemptions under the SPA, as outlined in the definition of subdivision plan under the SPR, to apply to plans of subdivision for land in an UDA.

Clause 29 Replacement of pt 8 hdg (Transitional provision for Sustainable Planning Act 2009)

This section inserts a new heading.

Clause 30 Insertion of new pt 8, div 2

This section inserts a new pt 8, div 2

Division 2 Transitional provisions for Building and Other Legislation Amendment Act 2010

148 Application of s 80

This section clarifies that the application of the compliance assessment provisions of the SPA to the ULDA Act as detailed in section 80 applied from the commencement of SPA on 18 December 2009. This provision is included so as to remove any doubt for persons who may have submitted plans to the authority after 18 December 2009.

Schedule Minor and consequential amendments of Building Act 1975

The schedule makes a number of minor editorial changes to the BA. These amendments are consequential in nature and are not intended to affect the meaning of the amended provisions.

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