

# Building and Other Legislation Amendment Bill (No. 2) 2010

## Explanatory Notes

### Short Title

The short title of the Bill is the *Building and Other Legislation Amendment Bill (No.2) 2010*.

### Policy objectives of the Bill

#### *Swimming pool safety laws*

The objective of the pool safety reforms is to help reduce the incidence of pool related immersion injuries and deaths for a very vulnerable section of the community, children aged under five. The Bill introduces requirements for pool barriers to be regularly inspected by competent and qualified inspectors to ensure they comply with a uniform pool safety standard.

Pool fencing laws have been successful in the past in saving the lives of young children and the aim of these reforms is to ensure the laws continue to achieve this objective in the most effective manner possible.

It is widely acknowledged that supervision is the first line of protection for children where swimming pools are involved. However, an effective pool barrier provides added protection in cases where supervision breaks down. Research undertaken by the Queensland Injury Surveillance Unit in 2002 suggest that at least 70 people are alive today because of the introduction of pool fencing laws in the early 1990's. The aim of the Bill is to improve even further upon those statistics.

#### *Animal management*

The Bill amends the *Animal Management (Cats and Dogs) Act 2008* (AMCDA) to clarify that American Staffordshire terriers (Amstaffs) are a different breed to American pit bull terriers (APBT).

## *RNA*

The Bill amends the *Royal National Agricultural and Industrial Association of Queensland Act 1971* (the RNA Act) to impose statutory protections on certain land owned by the Royal National Agricultural and Industrial Association of Queensland (the RNA) which is regarded as essential for the ongoing operation of the Royal Queensland Show (the Ekka Site), and to provide that this land will be divested from the RNA and vest in the State if certain defined events occur (an insolvency event).

## *SPA amendment*

The objective of the amendment to the *Sustainable Planning Act 2009* (SPA) is to ensure local government is not in breach of the *Information Privacy Act 2009* by continuing to publish material on their websites relating to development applications made to the local government as assessment manager.

## **Policy rationale and how policy objectives will be achieved**

### *Swimming pool safety laws*

Between 1 January 2004 and 18 May 2010, 35 children under five years of age drowned in Queensland's residential swimming pools, as well as two drownings in wading pools and one in a home-made pool. It is estimated that 50 young children present at emergency departments each year due to immersion injuries, some of whom will suffer permanent brain damage.

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 propped open (often a result of pool gates that do not close and latch automatically) or a child gaining access to a pool via child-resistant doors (permitted for pools built before 1 February 1991).

Pool safety laws introduced in 1991 require all outdoor residential swimming pools to be fenced. These laws have contributed to saving 70 young children between 1992 and 2001.

On 14 September 2009, after the most comprehensive review of Queensland's swimming pool safety laws in nearly 20 years, the Queensland Government adopted a two-staged swimming pool safety improvement strategy. Stage one commenced on 1 December 2009 and applied mostly to new pools.

Stage one included provisions to:

- introduce a new swimming pool safety barrier 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 reporting of drowning fatalities from the Queensland Police Service (QPS); and
- more than triple Government expenditure on the summer pool safety campaign.

The first phase of stage two of the pool safety improvement strategy was implemented by the *Building and Other Legislation Amendment Act 2010* (BOLA 1) which received royal assent on 23 May 2010, BOLA 1 established the legislative framework to support a new class of licensed pool safety inspectors to undertake mandatory pool safety inspections. The licensing system will be administered by an independent body, the Pool Safety Council (PSC), with support of a registrar and departmental officers. BOLA 1 provided that licensed pool safety inspectors can inspect pools and issue safety certificates. Private training organisations will submit pool safety inspector training courses for approval by the PSC. Once approved the cost of the courses will be established by the market.

The Bill implements the second phase of stage two of the pool safety reforms by:

- introducing mandatory pool safety inspections triggered by the sale and lease of properties with pools, including the provision of pool safety and compliance information as part of the sale and lease process;
- extending the pool safety laws to include pools associated with hotels, motels, other residential buildings, caretaker residences, caravan parks and indoor pools;
- reducing the maximum depth of portable pools not requiring a compliant pool fence from 450 mm to 300 mm;
- requiring mandatory reporting to Queensland Health by public and private hospitals and the Queensland Ambulance Service (QAS) of immersion incidents involving young children;

- providing health professionals with the opportunity to voluntarily report pool immersion incidents and the liability protection if they do so;
- removing existing Local Government exemptions, other than exemptions where a person has a disability;
- creating a regime requiring pool safety management plans approved by the chief executive (building) for pools subject to the *Integrated Resort Development Act 1987* and the *Sanctuary Cove Resort Act 1985*; and
- introducing a physical impracticality exemption administered by the chief executive (building).

#### *Animal management*

The *Animal Management (Cats and Dogs) Act 2008* (AMCDA) provides for the effective management of restricted dog breeds. Restricted dogs are defined in the AMCDA as a breed of dog prohibited from importation into Australia under the *Customs Act 1901* (Cwth). The Commonwealth prohibits the importation of APBT's but allows the importation of Amstaffs.

On 6 April 2010 the Queensland Supreme Court, in *Kylie Louise Chivers v Gold Coast City Council* [2010] QSC 98 (*Chivers v GCCC*), determined that Amstaffs and APBTs are the same breed of dog. As a consequence of the Court's decision, an estimated 4000 Amstaff owners in Queensland may be required to comply with strict keeping and control conditions for restricted dogs (fencing, desexing, muzzling, self-closing gates estimated to cost up to \$5000 per dog). Further, for those Queensland Local Government areas with a local law prohibition, such as South-East Queensland, this may mean that a family's pet Amstaff may be euthanized or relocated.

The policy intent of the AMCDA is to restrict only those dog breeds prohibited from importation by the Commonwealth. The Bill achieves the policy objectives by clarifying that Amstaffs and APBTs are not the same breed of dog and that Amstaffs are therefore not a restricted dog breed, consistent with the breeds of dogs prohibited under *Customs Act 1901* (Cwth). If a dog's breed is in question, the Bill provides for a pedigree or veterinary certificate may be used as evidence of the dog's breed.

Also, to ensure the rights of Amstaff owners in Queensland are maintained and protected, the proposed amendments to the AMCDA include a

transitional provision which provides for the amendment to apply as if it had been in force since 6 April 2010. This is to ensure there is no gap between the Supreme Court's decision and the commencement of the amendment to clarify that under the AMCDA, Amstaffs and APBTs are not the same breed of dog.

### *RNA*

The RNA Act amendments achieve their objectives by:

- preventing the RNA from granting a mortgage, charge or lien over the Ekka Site;
- preventing a writ of execution being registered against the Ekka Site; and
- providing that on the occurrence of an insolvency event, as defined, the Ekka Site will divest from the RNA and vest in the State.

### *SPA amendment*

As a matter of importance for the whole community and the transparency and convenience of the development application process, this amendment will ensure local government is not in breach of the *Information Privacy Act 2009* by continuing to publish material on their websites relating to development applications made to local government as assessment manager.

## **Alternative ways of achieving the policy objectives**

### *Swimming pool safety laws*

There are no other viable alternatives that would achieve the Government's policy objectives.

### *Animal management*

There are no other viable alternatives that would achieve the Government's policy objectives.

### *RNA*

The proposed amendment to the RNA Act will ensure that the Ekka Site is preserved for public use and also ensure the ongoing operation of the Ekka. This objective could only be guaranteed by legislative safeguards.

*SPA amendment*

There are no alternatives that would achieve the Government's policy objectives.

**Estimated cost for implementation**

*Swimming pool safety laws*

The new pool safety improvement measures are estimated to impose a cost of approximately \$95M for pool safety upgrades and approximately \$80M for pool safety inspections over the first 10 years. For pool owners not meeting their existing obligations under current pool safety laws, the new safety measures are estimated to impose a further cost of approximately \$164M over the first 10 years to bring those pools up to existing standards.

In addition the PSC is expected to incur expenditure of approximately \$19.7M over 10 years to administer the pool safety inspection and licensing system. These costs will be recovered by fees and charges levied on pool owners, pool safety inspectors and training organisations.

*Animal management*

There are no costs anticipated for implementation. The amendment removes a compliance burden arising from the Queensland Supreme Court's decision.

*RNA*

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

*SPA amendment*

There are no costs associated with proposed amendments to the SPA.

**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 the following potential breaches of FLPs.

*Swimming pool safety laws*

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 allows authorised officers of local governments, both under the *Local Government Act 2009* and the *City of Brisbane Act 2010*, to enter properties at all reasonable times to inspect swimming pools. The power of entry is limited in that it does not allow entry to homes. It is intended that entry would only be exercised to inspect pools that are located in an outdoor area adjacent to a home.

Similar 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. It is considered the expansion of entry powers is necessary for the safety of children and that the power is limited to what is necessary for ensuring swimming pool safety.

Whether legislation has sufficient regard to the rights and liberties of individuals— LSA, s 4(3)

Under the Bill (at clause 21), offence provisions apply to the owners and purchasers of premises on which a regulated pool is situated. Generally, the Bill will impose obligations on the owners to give prospective purchasers or lessees of the premises copies of a relevant pool safety certificate or give the Pool Safety Council and other persons a notice in the approved form if a pool safety certificate is not in effect for a relevant swimming pool. The Bill also imposes obligations on the owners of relevant swimming pools to ensure a pool safety certificate is in effect for the pool within 90 days after settlement under a contract of sale for the premises on which the pool is situated. The Bill also imposes obligations on the owners of shared swimming pools to ensure a pool safety certificate is in effect for the pool within 90 days after an “accommodation agreement” has been entered into for the premises on which the pool is situated.

The legislative scheme under the Bill is far-reaching and will impact on a large cross-section of the community. The provisions will impose obligations on, for example, owners of units in buildings, and owners of moveable dwellings and manufactured homes. The objective the pool safety reforms, and of this Bill, is to help reduce the incidence of pool related immersion injuries and death for a very vulnerable section of the community, children aged under 5. This Bill implements an important part of the Government’s overall pool safety strategy. It helps to ensure that pool barriers are regularly inspected by competent and qualified inspectors to ensure that they comply with a uniform pool safety standard that applies to all pools captured by the reforms.

Pool fencing laws have been successful in the past in saving the lives of young children and the aim of these reforms is to help ensure that the laws continue to achieve this aim in the most effective manner possible.

The sale and lease compliance mechanisms have been developed paying due regard to the impact of the proposals on existing land transfer and leasing arrangements.

The offences against owners and purchasers, possible disciplinary action against real estate agents and the transactional requirements added to the conveyancing and leasing systems are considered to be necessary and reasonably proportionate to achieving the child protection policy objectives under the scheme.

Whether the legislation has sufficient regard to the rights and liberties of individuals by conferring immunity from proceedings or prosecution without adequate justification — LSA s 4(3)(h)

The success of the health practitioner immersion reporting arrangements depends on voluntary participation by individuals to provide the Department with information about an immersion injury. Based on experience with other health initiatives (such as the root cause analysis provisions of the *Ambulance Service Act 1991* and the *Health Services Act 1991*) and submissions from health practitioners, health personnel may be reluctant to report unless they can be assured that they are provided with protections from liability.

Consequently clauses in the Bill provide protection against liability for certain acts. The inclusion of these provisions raises the issue of whether the legislation has sufficient regard to the rights and liberties of individuals by conferring immunity from proceedings or prosecution without adequate justification (see section 4(3)(h) of the *Legislative Standards Act 1992*).

Section 245H provides that a health professional may give the chief executive (health) information where the practitioner reasonably believes that a young child has been involved in a pool immersion incident. Where such information is provided the professional is not liable criminally, civilly or under an administrative process for giving the information. The protection is intended to extend to civil actions such as defamation and breach of confidence and protection is also extended to breaches of professional ethics and codes of conduct.

These provisions are defensible on the grounds that it is not appropriate for an individual to be made personally liable as a consequence of bringing

public interest matters to the attention of the relevant authorities. Immersion injuries reporting, helping to protect young children from drowning and immersion incidents is a public interest matter. In addition the protection only applies to information given to the chief executive (health). This will minimise the distribution of private information.

The reporting will ensure that existing risks are addressed and it also contributes to the body of knowledge that will inform future policy decisions.

A health practitioner is not compelled to report. Rather the cooperation of health practitioners is sought on the basis that the reporting will contribute to ensuring that policy is adjusted as required to help ensure the reduction in the number of immersion injuries. It is anticipated that health personnel will readily agree to report in these circumstances. As such it is a contribution to the improvement of health. However, this may not be the case unless health personnel are confident that they are free from the fear that their involvement will result in future repercussions or reprisals.

### *Animal management*

#### Sufficient regard to the rights of individuals

The amendments to the AMCDA include a transitional provision which provides for the amendment to apply as if it had been in force since 6 April 2010. This is to ensure there is no gap between the Supreme Court's decision and the commencement of the amendment to clarify that under the AMCDA, Amstaffs and APBTs are not the same breed of dog.

The transitional provision may be raised as an FLP issue in view of the requirement for legislation not to adversely affect an individual's rights and liberties, or impose obligations, under section 4(3)(g) of the *Legislative Standards Act 1992*. The proposed amendment is justified because it does not adversely affect an individual's rights and liberties, or impose obligations. Without the transitional provision an estimated 4000 Amstaff owners in Queensland may have been required to comply with strict keeping and control conditions for restricted dogs (fencing, desexing, muzzling, self-closing gates estimated to cost up to \$5000 per dog). Further, for those Queensland Local Government areas with a local law prohibition, such as South-East Queensland, this may mean that a family's pet Amstaff may be euthanized or relocated.

Whether the legislation is consistent with principles of natural justice

As evidence that a dog is of a particular breed, the amendments to the AMCDA provide that a certificate issued by a veterinary surgeon; the Australian National Kennel Council (ANKC), the peak representative and coordinating body for pedigree pure breed dogs in Australia; a member body of the ANKC; and a national breed council registered with the ANKC is evidence the dog is of the breed stated in the certificate.

This may be raised as a concern in view of the FLP requirement for legislation to be consistent with principles of natural justice under the *Legislative Standards Act 1992* section 4(3)(b). The proposed amendment is justified because if the issue of a dog's breed is contested, either party may present a certificate. In the event that each party produced a certificate and the certificates did not agree as to the breed of the dog, a court would adjudicate, on all relevant evidence, the dog's breed.

*RNA*

Sufficient regard to the Parliament

The appropriate title details of the lots that make up the Ekka Site are not known at this time because the site is being reconfigured to accommodate the proposed private development. It is estimated that the title details will not be available until September 2010. The legislation provides that the land of the RNA to be subject to the provision will be prescribed by regulation. This is a potential breach of FLPs as it creates a power to affect the operation of an Act by subordinate legislation made by someone other than Parliament.

This departure from FLPs is justified on the grounds that the land details are not known at this time, and that the operation of the provision is limited to land owned by the RNA. It is intended that the RNA and the Department of Infrastructure and Planning will agree on the land area to be subject to the legislation and the Governor-in-Council will prescribe by regulation those lots that the RNA advises make up the Ekka Site.

*Compulsory acquisition*

The legislation will provide that on the occurrence of certain events ownership of specific lots of land currently owned by the RNA will be automatically transferred to the State. This is a potential breach of FLPs because the legislation will effectively provide for the compulsory acquisition of property without fair compensation.

Only some of the land owned by the RNA will be subject to this provision. The land in question (the Ekka Site) was vested in the RNA in 1971 for the purposes of the RNA conducting the Royal Queensland Show (the Ekka). The RNA did not provide any consideration for the land at any time. For this reason, the land is analogous to land held in trust by an entity to carry out public purposes. The Ekka Site is essential to the ongoing operation of the Ekka.

The RNA is entering into a development proposal with Lend Lease (Bowen Hills) Pty Ltd to secure its long term financial future. The development area is separate from the Ekka Site and the provision for vesting of the Ekka Site is enacted to ensure that it is not lost to the public for any reason should the RNA not be able to fulfil its obligations to Lend Lease (Bowen Hills) Pty Ltd or others.

The Ekka, a treasured Queensland public event, would be jeopardised by the loss of the Ekka site. The buildings and grounds situated on the site are of considerable historical and cultural value to Queenslanders. The loss of these amenities to the Queensland public for the Ekka would likely result in the Ekka no longer being held or being held in a manner so changed that it could no longer be regarded as “the Ekka”.

The State gifted the land to the RNA for the public benefit. If the RNA loses the land because it is insolvent or unable to pay its debts, the public will lose the benefit of the land. It is appropriate that the land revert to the State rather than being sold to repay the RNA’s debts. The legislation will ensure that the Queensland public will be able to continue to enjoy the benefit of the land and preserve the Ekka as an iconic Queensland event.

Under the proposed legislation, the transfer of the land from the RNA to the State will only be triggered if one of the defined “Insolvency Events” occurs. These events have been carefully limited to circumstances where there is a real threat to the RNA continuing to own the land, therefore jeopardising the public interest in the land.

For these reasons, the departure from the FLPs is justified.

#### Sufficient regard to the rights of individuals

The legislation, as proposed, will provide that on the occurrence of certain events ownership of specific lots of land currently owned by the RNA will be automatically transferred to the State. This affects the rights of the RNA. However, this provision is justified for the reasons outlined in respect of the automatic vesting of the land above. The land will only be transferred to the

State where there is a real possibility that the RNA will lose the land. The land was vested in the RNA by the RNA Act and the RNA did not provide any consideration for the land.

The legislation also provides a mechanism for any person who objects to the land vesting in the State seek a court declaration that an insolvency event has not occurred. This provides a right of review of any transfer of ownership of the land from the RNA to the State under the legislation.

The legislation will provide that the RNA will no longer be able to register a mortgage or other similar interest over the land, except in favour of Queensland Treasury Corporation (QTC). This provision is justified on the grounds that the RNA is entering a \$65M loan with QTC, which will be secured by a first registered mortgage against the Ekka Site (and other assets of the RNA). As such it is unlikely that any other party would view the Ekka Site as offering a valid security for a mortgage. Also the provision is justified on the grounds that the existing section 13(3) provides that any mortgagee in possession of land vested in the RNA can only exercise its powers of sale over the land if it first pays the unimproved value of the land to the State. This means that there is little incentive for a party to enter a mortgage over land vested in the RNA in any event, as the ability to exercise powers as a mortgagee are heavily fettered.

The legislation will provide that no writ of execution can be registered against the Ekka Site. This affects the rights of creditors of the RNA because the Ekka Site will not be available to creditors of the RNA as part of the assets of the RNA. This provision is justified on the grounds that the other assets of the RNA will still be available to the creditors of the RNA. It is also intended that a notice will be registered on the titles of those lots making up the Ekka Site, providing notice that the land is subject to the provisions of the RNA Act. This provides a safeguard so that third parties will not be adversely affected by the legislation.

The legislation will transfer land from the RNA to the State if certain events occur. If the transfer does occur, this will affect the rights of persons who have interests in the Ekka Site, such as leases, licences, etc. This provision is justified because although the land will be transferred to the State, it will be transferred subject to any third party interests in the land. The rights of these persons will not be overridden, as the State will be required to perform the obligations of the RNA under any leases or other agreements over the Ekka Site.

*SPA amendments*

The provisions have been reviewed and are consistent with fundamental legislative principles.

**Consultation**

*Swimming pool safety laws*

**Government**

Department of Premier and Cabinet

Queensland Treasury

Department of Infrastructure and Planning

Queensland Health

Department of Community Safety

Department of Justice and Attorney-General

Department of the Environment and Resource Management

Department of Employment, Economic Development and Innovation

Department of Communities

Department of Education and Training

Residential Tenancies Authority

Commission for Children and Young People and Child Guardian

Queensland Building Services Authority

Local Governments

**Non-government and industry**

Real Estate Institute of Queensland

Property Owners Association Queensland

Unit Owners Association Australian

Resident Accommodation Managers Association Inc

Australian Finance Conference

Australian Homestay Network  
Local Government Association of Queensland  
Australian Institute of Building Surveyors  
Royal Institute of Chartered Surveyors  
Royal Life Saving Society  
Swimming Pools and Spas Association  
Queensland Master Builders Association  
Housing Industry Association  
Community Titles Institute of Queensland  
Queensland Tourism Industry Council  
Queensland Hotels Association  
Hotel Motel and Accommodation Association  
Tourism and Transport Forum  
Queensland Law Society  
Australian Medical Association Queensland  
General Practice Queensland  
Private Hospitals Association  
Australian College of Emergency Medicine  
Queensland Nurses Council  
Queensland Nurses Union  
Queensland Retailers Association  
Caravan Parks Association of Queensland  
RTA Industry Development Forum

*Animal management*

## **Government**

Department of Premier and Cabinet  
Queensland Treasury

Department of Justice and Attorney-General

### **Non-government and industry**

Local Government Association of Queensland

Brisbane City Council

Gold Coast City Council

Australian Veterinary Association Qld

Dogs Queensland

Ipswich City Council

*RNA*

Consultation has occurred with the RNA and QTC

*SPA amendments*

Local Government Association of Queensland

Office of the Information Commissioner

## **Notes on Provisions**

### **Part 1 Preliminary**

#### **Clause 1 Short title**

This clause sets out the short title of the Act.

#### **Clause 2 Commencement**

This clause sets out the commencement arrangements for the Act. With the exception of parts 3, 7 and 8 the Act commences on a day to be fixed by proclamation.

## **Part 2**                      **Amendment of Ambulance Service Act 1991**

### **Clause 3 Act amended**

This clause provides that Part 2 amends the *Ambulance Service Act 1991* (ASA).

### **Clause 4 Insertion of new s 23**

This clause inserts a new section 23 that establishes arrangements for the chief executive to notify the Department which administers the *Health Services Act 1991* of pool immersion incidents. The QAS reporting obligations are part of a comprehensive scheme introduced in the Bill that also includes hospitals.

The immersion incident reporting scheme is intended to capture data for both fatal and non fatal incidents. This will close a data gap that currently exists due to inadequate reporting and data collection arrangements for non fatal immersion incidents involving young children. There are already good reporting arrangements in place for drowning deaths. These incidents must be reported to the State Coroner and the Commission for Children and Young People and Child Guardian (CCYPCG). The Queensland Police Service (QPS) provides a report of these incidents to the State Coroner to assist in coronial inquiries and coroners regularly make reform recommendations based on their investigations. The CCYPCG also provides comprehensive data, analysis and recommendations for reform.

The QAS notification is intended to serve two purposes. First, it ensures the pool barrier where the immersion incident occurred is checked to make sure it is a safe and effective barrier. The way this happens is that the chief executive (health) is obliged to pass on to the local government any notifications it receives from the QAS. The local government is then obliged to inspect the pool (see section 246ADA in the Bill).

Second, the State repository of data in relation to the death and injury of children, the CCYPCG is provided with the data so that it can carry out its responsibilities of protecting children and helping to ensure that comprehensive data is available to inform and review safety policies concerning children. The way this happens is that the Department is obliged to pass on to the CCYPCG notifications received from the QAS.

## **Section 23 Requirement to report pool immersion incident**

This section imposes an obligation on the QAS to report immersion incidents within five days of being notified of the incident to the chief executive (health). It also contains definitions used for the immersion reporting scheme.

The notice must include the name and date of birth of the young child, the day the pool immersion incident happened, the address of the child's parents and the address where the pool immersion incident happened (to the extent the QAS has this information).

***Pool immersion incident*** is defined to mean an event involving the immersion or partial immersion of a young child (less than five years of age) under water in a swimming pool which may adversely affect the health or wellbeing of the child and because of the immersion the child has died or has been deprived of air and the health or wellbeing of the child has been adversely affected. This definition is critical to the reporting scheme as it is the trigger for a report to be made.

The definition is purposely wide. It applies to incidents in all swimming pools, not just swimming pools associated with the types of buildings captured by the pool safety standard (Queensland Development Code Mandatory Part 3.4). A swimming pool is defined in schedule 2 of the BA to mean an excavation or structure that is:

- capable of being filled with water to a depth of 300mm or more; and
- solely or principally manufactured, designed or used for, and capable of being used for, swimming or other human aquatic activity.

The definition includes spas and wading pools but does not include a range of other bodies of water including fish ponds, ornamental pools, dams and tanks, watercourses and certain portable wading pools (ones that are capable of being filled to a depth of no more than 300mm, have a volume of 2000 litres or less and have no filtration system).

The purpose for such a wide definition is to make it easier for the QAS to meet its reporting obligations and reduce any subjective element. The QAS deals with hundreds of thousands of requests for assistance each year and it is not intended that the service do any significant investigation about where the incident occurred. Over reporting is preferable to under reporting.

The definition requires that the immersion must adversely affect the health or well being of a child. This is intended to be a very low threshold and to provide that the service is not required to report where a child has been

immersed under water but suffered no ongoing health implications from the incident.

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

*swimming pool* means a swimming pool as defined under the BA, schedule 2.

*young child* is defined to mean an individual under the age of five as this has been shown as the most vulnerable group for swimming pool drownings.

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

### **Clause 5 Act amended**

This clause provides that Part 3 amends the AMCDA.

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

Clause 6 amends section 63 to clarify that a restricted dog breed does not include a cross breed of a restricted dog breed. The policy intent of the AMCDA is to restrict only those dog breeds prohibited from importation by the Commonwealth. The *Customs Act 1901* (Cwth) does not prohibit the importation of cross breeds of restricted dogs.

### **Clause 7 Insertion of new s 63A**

#### **Section 63A Provisions for deciding what is a breed of dog**

The Supreme Court in *Kylie Louise Chivers v Gold Coast City Council [2010] QSC 98*, stated that the determination of whether a dog is of a particular breed can be quite difficult. To enable the AMCDA's policy intent to restrict only APBTs and not Amstaffs, section 63A provides that if a dog's breed is in question, a pedigree certificate or a veterinary surgeon's certificate is evidence the dog is of the breed stated in the certificate.

Section 63A(1)(d) provides for a certificate signed by a veterinary surgeon is evidence the dog is of the breed stated in the certificate. Previously, section 202 applied to a restricted dog breed only and provided that a certificate signed by a veterinary surgeon may be used as evidence that the dog is a restricted dog breed.

In addition to a veterinary surgeon's certificate, section 63A(1)(a)-(c) provides that a certificate issued by the Australian National Kennel Council (ANKC), the peak representative and coordinating body for pedigree pure breed dogs in Australia; a member body of the ANKC; and a national breed council registered with the ANKC is evidence the dog is of the breed stated in the certificate.

Restricted dogs are defined in the AMCDA as a breed of dog prohibited from importation into Australia under the *Customs Act 1901* (Cwth). The Commonwealth prohibits the importation of APBT's but allows the importation of Amstaffs. The intent of the AMCDA is to restrict only those dog breeds prohibited from importation by the Commonwealth.

As a consequence of the Court's decision which determined that Amstaffs and APBTs are the same breed of dog, an estimated 4000 Amstaff owners in Queensland are required to comply with strict keeping and control conditions for restricted dogs (fencing, desexing, muzzling, self-closing gates estimated to cost up to \$5000 per dog). Further, for those Queensland Local Government areas with a local law prohibition, such as South-East Queensland, this meant that a family's pet Amstaff may be euthanized or relocated.

Section 63A (2), (3) therefore provides that if a dog is of the breed Amstaff, that the dog is not of the breed APBT and if a dog is of the breed APBT that the dog is not of the breed Amstaff.

The amendments do not diminish the AMCDA's provisions on dangerous or potentially dangerous dogs. For any dog that shows aggressive or menacing behaviour the AMCDA will continue to allow Councils to declare the dog as a menacing dog. The dog is then subject to strict keeping and control requirements and the dog's owner held liable for its behaviour.

### **Clause 8 Omission of s 202 (Veterinary surgeon certificate)**

Clause 8 omits section 202 as section 63A provides for a pedigree certificate or veterinary surgeon's certificate to be used as evidence of a breed of dog.

### **Clause 9 Insertion of new ch 10, pt 3**

Clause 9 inserts chapter 10 part 3 section 223 to provide a transitional provision for section 63A to apply as if it had been in force since 6 April 2010. This is to ensure there is no gap between the Supreme Court's decision and the commencement of the amendment to clarify that under the AMCDA, Amstaffs and APBTs are not the same breed of dog.

## **Part 3 Transitional provision for Building and Other Legislation Amendment Act 2010.**

### **Section 223 Provision about s 63A**

This section provides that from the commencement of the section, the Act applies as if section 63A had been in force since 6 April 2010.

## **Part 4 Amendment of Building Act 1975**

### **Clause 10 Act amended**

This clause provides that this part and a schedule amend the *Building Act 1975* (BA).

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

This clause replaces the existing section 28 with a new provision.

### **Section 28 Application to build regulated pool**

This section extends the scope of the current section 28 to now require the inclusion of swimming pool barriers in building development applications relating to regulated building types. The former definition applied only to swimming pools associated with houses and units (class 1 and 2 buildings as defined in the Building Code of Australia).

The new definition extends the obligation to provide a swimming pool barrier with the construction of a swimming pool to include hotels, motels and other buildings providing accommodation of a transient nature (class 3 buildings), the residential part of another building (class 4 building), moveable dwelling parks and caravan parks, and indoors pools associated with class 1-4 buildings.

This requirement for the barrier to be approved as part of the same building development application as the pool ensures the swimming pool can be sited, constructed and used with a barrier complying with the pool fencing standard.

By linking the approval of the barrier to the construction of pool, it also becomes entrenched in the building assessment provisions. As a result, a building certifier must inspect the pool barrier within set timeframes from the issue of the building development approval.

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

This clause inserts a number of definitions into chapter 8 of the BA that relate to swimming pool safety.

The definition of *accommodation agreement* is very broad and includes:

- residential tenancy agreements and rooming accommodation agreements under the *Residential Tenancies and Rooming Accommodation Act 2008*; or
- homestay or assisted accommodation agreements as defined under the Bill; or
- other agreements where a person is given a right to occupy premises in exchange for money or other valuable consideration, examples of such accommodation include hotels and motels.

The definition of *pool safety standard application day* means the day that the pool safety standard applies to a regulated pool. A central element of the pool safety improvement program has been the replacement of 12 existing pool barrier standards with a single standard that applies to all regulated pools, regardless of when they were approved or constructed. The amendments will:

- allow pool owners sufficient time to upgrade their pools to meet the new standard; and

- distribute pool inspection work by the new class of pool safety inspectors over a sufficient period to minimise potential demand problems.

The policy applies the standard at different times for different regulated pools, depending on events as described in this definition. The definition describes the precise time that the new pool safety standard applies to a property.

The definition needs be read together with clause 232 which obliges the pool owner to comply with the pool safety standard.

Clause 232(2) provides that the pool safety standard does not apply to a regulated pool until the pool safety standard application day for the pool. Failure to meet this obligation is an offence. The imposition of an offence is considered appropriate given the potential seriousness of a failure to comply.

The timeframe for application of the new pool safety standard is whichever of the following occurs first:

- five years after the proclamation of this section, or
- the day an accommodation agreement is entered into for a non shared pool, or
- the day of issue of a pool safety certificate, or
- 90 days after the notice was given to the purchaser/lessee if a pool safety certificate was not provided prior to settlement/entering into an accommodation agreement for a shared pool.

Note: For shared pools section 300 introduces a six month phase in period for shared pools that are associated solely with short term accommodation. All other shared pools, including those located in ‘mixed’ used buildings will have a two year phase in period.

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

This amendment of section 231B provides an exemption for swimming pools on land subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*, subject to the pool having an approved pool safety management plan in place under section 245K.

## **Clause 14 Replacement of ch 8, pt 2**

This clause amends the swimming pool fencing provisions in line with the new pool safety standard and other pool safety matters. Many of the existing provisions remain unchanged except to the extent the new pool safety standard and the extended application of that standard have been incorporated.

Previously, pool fencing requirements applied only to outdoor pools associated with houses and units (class 1 and 2 buildings as defined in the Building Code of Australia). They now apply to indoor and outdoor pools associated with houses, units, hotels, motels, hostels, backpacker establishments, the residential part of another building (class 1-4 buildings), as well as pools in movable dwelling parks and caravan parks.

## **Part 2 Compliance with pool safety standard and other matters about pool safety**

### **Division 1 Compliance with pool safety standard**

#### **Section 232 Compliance with pool safety standard – regulated pool**

The major component of the new pool safety standard is Queensland Development Code (QDC) MP 3.4. This is effectively the same as the current standard which applies to outdoor residential pools constructed since 1 December 2009.

The pool safety standard applies to regulated pools from the pool safety application day, and the existing standards continue to apply up until that day.

## **Division 2                    Requirements about constructing regulated pool**

### **Section 233 Constructing regulated pool – requirement for warning sign**

This provision extends an existing requirement to all regulated pools (indoor and outdoor pools in class 1-4 buildings (as defined in the Building Code of Australia), moveable dwelling parks and caravan parks). A warning sign is required to be displayed during construction of a regulated pool. The penalty remains at 20 penalty units.

The provision does not apply to portable swimming pools.

### **Section 234 Constructing regulated pool – requirement for compliance with pool safety standard**

This provision extends an existing requirement to all regulated pools (indoor and outdoor pools in class 1 - 4 buildings (as defined in the Building Code of Australia), moveable dwelling parks and caravan parks). The barrier must comply with the pool safety standard not any previous standard. The penalty remains at 165 penalty units.

The effect of the provision is to delay the need for compliance with the pool safety requirement of the Bill until the pool is filled to a depth of 300mm.

## **Division 3                    Exemptions from compliance with pool safety standard – disability**

### **Subdivision 1    Applying for exemption and deciding exemption**

#### **Section 235 Application for exemption – disability**

This provision allows a pool owner to apply to a local government for an exemption from meeting the pool safety standard.

### **Section 236 Requirement for further information**

This provision allows a local government to request medical evidence to support an exemption application.

### **Section 237 Decision on application**

This provision requires a local government to consider the exemption application within 5 business days, potentially including conditions in its decision. Where the applicant does not meet conditions imposed, the penalty remains at 165 penalty units.

### **Section 238 Notice of decision**

This provision requires a local government to provide written notice of the decision.

### **Section 239 Notice of exemption to be given to chief executive**

This provision requires a local government to give the chief executive information on any exemption granted.

### **Section 240 Application of pool safety standard under exemption**

This provision stipulates that where an exemption is granted, the pool safety standard will continue to apply to the extent that the exemption does not apply.

## **Subdivision 2 Ending and revocation of exemptions**

### **Section 241 When exemption ends**

This provision clarifies when a disability exemption ends. Disability exemptions are specific to a particular person. Therefore the exemption will end if the relevant person is no longer associated with the property or is no longer subject to a disability. The ending of an exemption does not require any action on the part of the local government to take effect.

### **Section 242 Local government may revoke exemption**

This provision allows a local government to revoke an exemption in certain circumstances. A local government must issue the appropriate notice(s) to the applicant depending on the circumstances. Where an applicant does not comply with the revocation notice, the penalty remains at 165 penalty units.

### **Section 243 Notice of revocation to be given to chief executive**

This provision requires a local government to give the chief executive notice and information where a revocation notice is issued.

## **Subdivision 3 Miscellaneous**

### **Section 244 Keeping copy of exemption**

This provision requires a local government to keep a record of each exemption it grants.

## **Division 4 Exemption from compliance with pool safety standard – impracticality**

### **Subdivision 1 Applying for exemption and deciding applications**

#### **Section 245 Application for exemption-compliance impracticable**

This section will allow the owner of a regulated pool to apply to the chief executive for an exemption from the requirement to comply with a part of the pool safety standard on the basis that compliance is impracticable.

The application must identify the part of the pool safety standard from which the owner is seeking an exemption and show how the compliance with the part of the standard is not practicable.

### **Section 245A Requirement for further information**

The chief executive has the ability under this section to require more information from the owner regarding the impracticability of complying with that part of the standard.

### **Section 245B Decision on application**

When giving their decision on an application for an exemption based on compliance impracticability, the chief executive may decide to either grant or refuse the application. If the exemption is granted the chief executive must be satisfied that the exemption was required to overcome any impracticality associated with compliance with the standard. In assessing the application the chief executive may consider whether:

- a building or part of building would require to be moved or demolished to comply with the pool safety standard, or
- the location or size of the regulated pool would need to be changed, or
- any vegetation protected from removal under an Act or local law may require removal.

The chief executive may also consider the cost of barriers or work needed to ensure the pool complies with the part of the pool safety standard having regard to the existing conditions.

This section also allows the chief executive to impose conditions on the exemption that are considered necessary or desirable to prevent young children from accessing the pool area. The owner must comply with any conditions the chief executive attaches to their approval. If the chief executive does not decide the application within the decision period it is taken to be a deemed refusal.

### **Section 245C Notice of decision and application under exemption**

This section requires the chief executive to provide the owner with written notification of the granting of the exemption. If the decision is to refuse the application, impose conditions on the exemption or if the application is taken to be a deemed refusal, the chief executive must give an information notice about their decision. This would then allow the owner to be able to appeal the information notice to the building and development committee.

## **Section 245D Continuation of exemption**

If an exemption is granted by the chief executive to an owner from the requirement to comply with a part of the pool safety standard on the basis of impracticality, this section provides that the pool safety standard continues to apply for the regulated pool to the extent the exemption does not apply.

## **Subdivision 2 Revoking of exemptions**

### **Section 245E Chief Executive may revoke exemption**

The chief executive must give the owner a show cause notice prior to revoking an exemption for impracticability.

This section allows the chief executive to consider the following matters in determining whether to issue a show cause notice whether the:

- application for the exemption was based on false or misleading information; or
- conditions of the exemption have been contravened.

The chief executive, after considering representations by the owner, may issue a revocation notice revoking the previous decision to grant an exemption. This further notice must be accompanied by an information notice about their decision. This would then allow the owner to be able to appeal the information notice to the building and development committee.

Subject to any appeal against the revocation notice, the owner must now ensure their regulated pool complies with the pool safety standard.

## **Subdivision 3 Appeals**

### **Section 245F Appeals to building and development committee of decisions under div 4**

This section allows a person who has been given an information notice by the chief executive to appeal to the building and development committee if the appeal is lodged within 20 business days. This provision provides

similar rights of appeal to persons in relation to the issue of an information notices that currently exist in the BA.

## **Division 5            Reporting, and giving notice of, pool immersion incidents**

### **Section 245G Requirement to report pool immersion incident**

This section provides that a person in charge of a hospital must notify the chief executive (health) of a pool immersion incident (unless the person has a reasonable excuse) where a young child is examined by a doctor in the hospital and the examination indicates that the child has been involved in a pool immersion incident. It is intended that the examination would include the taking of a history and collection of all relevant information from parents, guardians and others to enable the practitioner to treat the child.

The notice must be given within five business days after the examination and in the way prescribed under a regulation. It must include the name and date of birth of the young child, the day the examination happened, the address of the child's parents and the address where the pool immersion incident happened (to the extent the person has this information).

In this section, *person in charge* means for a public sector hospital—the person responsible for the day-to-day operation and control of the hospital and for a private health facility—the licensee of the private health facility.

### **Section 245H Disclosure of information about pool immersion incident**

This section provides the opportunity for a health professional when undertaking their role to notify the chief executive (health) if in their opinion a young child has been involved in a pool immersion incident.

A health professional includes a doctor or a registered nurse. This provision to report pool immersion incidents does not make it a mandatory requirement for a health professional to provide this notification to the chief executive (health), but it is provided to encourage this exchange of information to assist with the goals of water safety for young children.

## **Section 245I Giving notice of pool immersion incidents**

The immersion incident reporting scheme in the Bill is intended to capture data for both fatal and non fatal incidents. This will close a data gap in that the existing reporting and data collection arrangements for non fatal immersion incidents involving young children are not adequate.

This section provides that within five days of receiving an immersion notice the chief executive (health) gives notice of the immersion incident to the PSC, CCYPCG, the relevant local government and the chief executive (building). The forwarded notice must contain the prescribed details and only one notice per incident is required.

Note: Under new section 246ADA, as soon as practicable after receiving a notice, the local government must inspect the pool for compliance and take any enforcement action necessary to ensure the pool complies with the relevant standard.

## **Division 6 Pool safety management plans for particular pools**

### **Subdivision 1 Preliminary**

#### **Section 245J Application of div 6**

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

#### **Section 245K Requirement to have pool safety management plan**

Within six months after commencement of the Act, the pool owner must either have a pool safety management plan approved under this division of the BA or a pool safety certificate. Breach of the section is an offence with a maximum penalty of 165 penalty units.

## **Section 245L Requirement to comply with approved pool safety management plan**

The pool owner must comply with the approved pool safety management plan. Breach of the section is an offence with a maximum penalty of 165 penalty units.

## **Subdivision 2 Approval, and duration, of pool safety management plans**

### **Section 245M Application for approval**

The pool owner must apply to chief executive (building) for approval of its pool safety management plan. The application must be in the approved form and accompanied by the proposed plan and the prescribed fee.

The pool safety management plan must include details of the measures (the *pool safety measures*) the owner intends to implement under the plan to stop a young child accessing the pool without adult supervision. (The BA defines ‘young child’ as a child under the age of five years.)

### **Section 245N Requirement for further information**

The chief executive may require the pool owner to give it further information about the pool safety management plan. This could include layout of the pool, visibility constraints, supervision proposed and at what times, what safety measures are proposed to be implemented to inhibit young children accessing the pool area unsupervised.

### **Section 245O Decision on application**

The chief executive must consider the application and decide to approve or refuse the pool safety management plan within 20 business days. In deciding the application, the chief executive must have regard to the plan and any information given about it by the owner as well as any guidelines made by the chief executive about preparing pool safety management plans. The chief executive must not approve the plan unless satisfied that the measures in the plan are appropriate to stop a young child accessing the pool without adult supervision. Within five days after deciding the application the chief executive must give the owner notice of approval or

refusal of the application within five business days and in the latter case must give the owner an information notice about the decision.

### **Section 245P Duration of plan**

A pool safety management plan remains in effect for 1 year unless sooner cancelled.

### **Subdivision 3 Cancellation of approval or amendment of approved pool safety management plan**

#### **Section 245Q Cancellation or amendment**

If the chief executive is satisfied that the pool safety measures under a pool safety management plan will no longer stop a young child accessing the pool without adult supervision, the chief executive may give notice cancelling the approval for the plan or requiring amendment of the plan.

Before giving such a notice the chief executive must give the owner a 'show cause notice' stating the action it is proposing to take, the relevant grounds, facts and circumstances, the relevant amendment, if applicable, and that the owner may make submissions about the proposal within a stated period ('show case period'). The chief executive must consider any submissions made by the owner before giving notice cancelling or requiring amendment of the plan. The show cause period must end at least 20 days after the owner is given the show cause notice.

If after giving a show cause notice the chief executive decides not to cancel or require amendment of the plan it must notify the owner. If after giving a show cause notice and considering the owner's submissions the chief executive decides to cancel or require amendment of the plan it must give the owner an information notice about the decision.

#### **Section 245R When decision has effect**

A chief executive decision to cancel an approved pool safety management plan takes effect when the information notice is given. A chief executive decision to amend an approved pool safety management plan takes effect in

the way stated in the notice given by chief executive and at the time the information notice about the decision is given.

## **Subdivision 4 Appeals**

### **Section 245S Appeals to building and development committee of decision under div 6**

An owner may appeal against an adverse decision of the chief executive relating to pool safety management plan within 20 business days after the relevant information notice is given. The appeal lies to a building and development committee established under the *Sustainable Planning Act 2009*.

## **Division 7 Miscellaneous**

### **Section 245T Access to regulated pool to be kept secure**

This section provides that a person who opens a gate or door giving access to a regulated pool must ensure the gate or door is securely closed while the gate or door is not in use. For example, if a person opens a swimming pool gate and is immediately followed through the open gate by a number of other people, the person who opened the gate is responsible for ensuring the gate is then securely closed.

### **Section 245U Apportioning cost of constructing etc. dividing fence**

This section substantially re-enacts the provisions of section 246 of the BA which applied immediately before the commencement of this section.

### **Section 245V When particular local government exemptions about requirements for pool fencing end**

This section provides that any previously granted local government pool fencing exemption will have not effect on or after the pool safety application day for a regulated pool. The exemptions to be revoked are only those granted by the local government for partial or otherwise compliance

with a local law or law of the state and do not include those exemptions granted because the owner/occupier has a disability.

### **Section 246 When particular local law has no force or effect for regulated pool**

A local law which regulates a pool safety matter has no effect on the day the owner of a regulated pool is required to ensure the pool complies with the pool safety standard.

### **Clause 15 Insertion of new s246ACA**

This clause provides for a process to issue pool safety certificates for pools located in areas considered by the local government to be remote.

### **Section 246ACA Special provision for pool inspection in remote areas**

This section provides an alternative procedure for pool safety inspectors to issue a pool safety certificate in remote areas of a prescribed local government. These remote areas are declared by the local government under resolution where satisfied of the need because of the areas remoteness from the business function of persons who perform pool safety functions.

In this case, the pool safety inspector need not carry out an onsite inspection if they can satisfy themselves that the pool complies with the pool safety standard. This may be achieved by assessing the information provided to them and using other means which may be available, which could include real time video conferencing, satellite photographs, photographs, plans and technical details.

### **Clause 16 Insertion of new s 246ADA**

This clause provides the actions a local government must undertake when a pool immersion or pool safety complaint notice is received.

### **Section 246ADA Requirement to inspect particular pools**

This section requires the relevant local government to inspect a property with a regulated pool as soon as practicable after receiving either a notice of a pool immersion or a complaint notice.

The local government cannot charge a fee for the inspection. The pool does not need to be inspected if the local government reasonably believes that the complaint is vexatious and lacks substance. The local government is only obliged to inspect pools where the complaint is made in writing.

If the pool does not comply with the relevant standard (pool fencing or pool safety standard) the local government is obligated to take the necessary enforcement action needed to ensure the pool complies.

The purpose for the reporting mechanism is to ensure that the pool barrier complies, particularly where a pool immersion incident is reported. This is linked to the reporting requirements for the QAS and hospitals, as previously described in these explanatory notes.

The purpose of the provision is to ensure that pools are inspected at least once following an immersion incident. Therefore, if a local government has conducted an inspection on a pool after an immersion incident, but prior to receiving the notice, the local government is not required to re-inspect the pool.

### **Clause 17 Amendment of s246AE (Power of local government to inspect regulated pool)**

This amendment adds to the powers of local government to inspect regulated pools. The section now provides local government with the same power to inspect pools following an immersion incident that they have following receipt of a non compliance notice under section 246AC.

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

Section 246AG sets out the show cause procedure which local governments must follow if they propose to cancel a pool safety certificate because on inspection the local government reasonably believes the pool is not a complying pool.

This clause makes a minor editorial amendment by inserting “days” to make it clear that it applies to business days and inserts a new subsection which provides that if an owner appeals the decision to cancel a pool safety certificate then the decision is stayed until appeal is withdrawn or dismissed.

## **Clause 19 Insertion of new ss 246AIA and 246AIB**

These sections provide details for the record keeping provisions for local government.

### **Section 246AIA Keeping records of particular notices**

This section provides the requirement for local governments to keep records of any pool immersion incidents and pool safety complaint notices which they receive for a period of five years.

In addition the details of the inspections undertaken and any enforcement action taken must also be retained for the same period of time. Local governments can decide in what form these records must be kept.

### **Section 246AIB Local government to give information to Chief Executive**

This section allows the chief executive to request information from the local government regarding the details of the results of any inspection carried out in response to a pool immersion incident notice or a pool safety complaint notice.

The chief executive may decide to request information on enforcement action for the purposes of obtaining information for statistical purposes, policy development, to follow-up on immersion incidents in reporting to the Coroner or for the purposes of targeting pool safety awareness.

## **Clause 20 Amendment of s 246AO (Appeals to building and development committee of decision under pt 3)**

This clause makes minor editorial amendments regarding appeals to the building and development committee, to avoid duplication with section 532 of the SPA.

## **Clause 21 Insertion of new ch 8, pt 4, divs 3-5**

This clause inserts new sections regarding the requirements for private building certifiers, provision of information by local governments to owners of regulated pools and compliance provisions for the point of sale and lease process.

## **Division 3            Functions of private certifiers – regulated pools**

### **Section 246ATA Application of div 3**

This section clarifies the application of division 3 to private building certifiers where a pool does not comply with the pool safety standard and the owner has not taken or is not taking appropriate action to ensure it complies.

### **Section 246ATB Private certifier to take enforcement action**

This section requires a private building certifier to take enforcement action against the owner where the regulated pool does not comply with the pool safety standard where they are undertaking building certification work for the pool. The private certifier can issue an enforcement notice without the need to first issue a show cause notice, as non-compliance with the pool safety standard would be considered dangerous.

Note: The term enforcement action as defined does not include commencing a prosecution.

If the pool owner does not comply with the enforcement notice the private certifier must give the local government notice of this non-compliance. The local government will assess the information provided and consider any appropriate further enforcement action, for example, this may include taking legal proceedings against the owner.

## **Division 4            Obligation to give information to owner of regulated pool**

### **Section 246ATC Local government's obligation to give information about regulated pools**

Local governments are now obliged every four years to give each owner of regulated swimming pool relevant advisory information. This information provides the pool owner with details to ensure their swimming pool barriers are maintained in a safe condition to avoid the risk of the drowning of young children. Examples given in the Bill include information

promoting the importance of having pools inspected for compliance with the pool safety standard.

## **Division 5            Provisions about dealings involving regulated pools**

### **Subdivision 1    Preliminary**

#### **Section 246ATD Definitions for div 5**

This section inserts a number of definitions that deal with regulated pools. A *regulated premises* is defined as a building or part of a building on regulated land if a regulated pool is situated on the land. The pool safety standard only applies to land and buildings which contain a regulated pool.

However, this does not apply to that part of the building that is not a Class 1 building under the Building Code of Australia (houses), Class 2 building (units, etc), Class 3 building (residential buildings, hotel, motels, etc) and Class 4 buildings (dwelling attached to another class of building).

This will be relevant in a building that has a number mixed uses, for example where a building comprises offices, residential dwelling units and eateries. In this case the definition is intended to ensure that the requirement to obtain or display a pool safety certificate for the regulated pool only relates to a regulated premise. For example, the lease of office space would not require the provision of pool safety certificate.

The section also defines a *relevant regulated pool*. This definition provides the scope for circumstances where a pool safety certificate is required.

It applies to pools on common property or common property lot, for example where a pool owned by the body corporate. It also applies to part of a building on the common property or common property lot, for example where there are a number of use in the building and the pool is located in that part of the building.

The definition also applies to moveable dwellings situated in a moveable dwelling park and to manufactured homes in a residential park, whether the pool is located on a site or in the common areas.

Regulated pools situated on the regulated land where the premises are located are also included. This would include most pools that are pool located on a residential house block.

### **Section 246ATE When pool safety certificate taken to be in effect for div 5**

The purpose of this provision is to clarify that for the purpose of any offence under Division 5, a person is entitled to rely on the register on the question of whether a pool safety certificate is in effect for a particular pool.

This section will not apply if a pool owner has actual knowledge of a revocation of a certificate that has not been reflected in the swimming pool register.

## **Subdivision 2 Offences and other requirements**

### **Section 246ATF Offences about sale of regulated premises**

This section provides for an owner of regulated premises to provide to the purchaser with a copy of a pool safety certificate if one is obtained prior to settlement.

If a pool safety certificate is not in effect prior to settlement, the seller of the property must, prior to the settling of the contract, give notice in the approved form to the chief executive and the purchaser for non shared pools and to the pool owner (body corporate) for shared pools, that the contract is to be settled without a pool safety certificate in place and the pool may not comply with the pool safety standard.

The notice must advise that work may be required to ensure that a pool safety certificate can be issued. After settlement, the requirement to provide a pool safety certificate will rest with the purchaser for non-shared pools who then will have 90 days from the day of settlement to have an inspection undertaken and a pool safety certificate issued for the pool.

In the case of a shared pool the pool owner (body corporate) will be required to have an inspection undertaken and provide a pool safety certificate within 90 days from the day of settlement.

The chief executive is required to be notified that the sale has proceeded without a pool safety certificate being in place and the date the notice/s were given. The swimming pool register will be updated with this information and enforcement action can be taken against the purchaser or body corporate if a pool safety certificate is not provided for the regulated pool within 90 days of the notice.

It is not intended that a purchaser/pool owner will have committed any offence at settlement but must within 90 days have the pool inspected and provide a pool safety certificate.

The intended effect of this section is to ensure that in any transaction the purchaser is made aware about whether the pool complies with pool safety standard. It also places obligations on the purchaser or the owner of a shared pool to obtain a pool safety certificate. This is part of the government's pools safety strategy to ensure that pools sold or leased comply with the pool safety standard. This and the following sections provide maximum flexibility to buyers, sellers, agents and lawyers to negotiate suitable arrangements without compromising pool safety or the preventing sale of land.

### **Section 246ATG Offences about entering into accommodation agreements - regulated pool that is not a shared pool**

This section requires a pool safety certificate to be obtained and provided to the lessee prior to the entering into an accommodation agreement for a non shared pool.

It will be an offence for an owner to enter into an accommodation agreement without a pool safety certificate in place for a non shared pool. For shared pools when a pool safety certificate has not been provided, it will be an offence for the lessor to enter into an accommodation agreement and not provide the relevant notices to the PSC, pool owner and for pools not associated with short term accommodation to the lessee.

These provisions help ensure that pools in this high risk section of the market are inspected before the tenant moves in. According to fatal immersion data recorded on a national register maintained by Queensland's Hannah's Foundation, 10 of the 14 drowning deaths of young Queensland children between 2007 and 2009 occurred in swimming pools associated with residential rental properties. However, rental properties are much less likely to have pools than owner occupied properties. Owner occupied properties represent approximately 85 per cent of household swimming

pools, whereas rental properties represent only 14.5 per cent (47 400 properties). The low number of residential rental properties with pools compared to the high number of drowning deaths indicates that residential rental properties present higher levels of risk.

The provisions apply to all accommodation agreements, including the renewal of residential and other tenancy agreements. The term “accommodation agreement” is defined very broadly and includes:

- residential tenancy agreements under the *Residential Tenancies Agreement and Rooming Accommodation Act 2008* ;
- rooming accommodation agreements;
- home-stay or assisted accommodation agreements; and
- other agreements that that give a right to occupy premises in exchange for money or other valuable consideration.

### **Section 246ATH Offences about entering into accommodation agreement – pool safety certificate in effect for shared pool**

If a pool safety certificate is in effect for a regulated shared pool, this section details the requirements of the pool owner and lessor to either provide or display the certificate.

Where a pool safety certificate is in effect, a copy of the pool safety certificate must be displayed as near as practicable to the main entrance of the premises or near each gate or door where access to the pool is provided. For any accommodation agreement apart from a short term accommodation agreement the lessor must give to lessee or other person intending to occupy the premises a copy of the pool safety certificate.

The purpose for excluding short term accommodation agreements from the obligation to provide a copy of the certificate to the occupier is to cut down red tape for holiday and tourist type accommodation. For example it is not necessary for an owner to give a copy of a certificate to a person renting a holiday unit for a few days. The certificate in such circumstances would still be displayed.

Short term accommodation is purposely not defined in the legislation to enable flexibility in application. It is intended to cover motels, backpackers, and hotels where occupation is transient in nature and usually lasting for a period no longer than 12 weeks.

The intent of this section is that persons using pools in unit complexes, hotels, motels and other buildings with shared pools are informed that the pool has been inspected by a licensed pool safety inspector and, at least as at the date of the inspection complied with the pool safety standard.

In addition before the owner or lessor enters into an accommodation agreement for regulated premises (not short term accommodation) associated with a shared pool a copy of the pool safety certificate must be given to the lessee.

### **Section 246ATI Offence about entering into accommodation agreement – pool safety certificate not in effect for shared pool**

If a pool safety certificate is not in effect prior to the entering into an accommodation agreement, the lessor of the property must prior to the entering into the agreement give notice in the approved form. The notice must be given to the chief executive, pool owner (body corporate) and the lessee (only for shared pools not associated with premises for short term accommodation). The notice provides that the agreement is to be entered into without a pool safety certificate in place and the pool may not comply with the pool safety standard.

The pool owner of the shared pool must have an inspection undertaken and a pool safety certificate issued for the pool within 90 days after the day of entering into an accommodation agreement.

This requirement is delayed for shared pools to give the pool owners time to bring the pools up to the pool safety standard. For shared pools solely associated with short term accommodation the owners will have six months to obtain a certificate. All other shared pools will have two years from commencement to obtain a certificate.

### **Section 246ATJ Requirement to obtain pool safety certificate for regulated pool that is not a shared pool**

If a pool safety certificate is not in effect prior to settlement, the seller of the property must prior to the settling of the contract give notice in the approved form to the chief executive and the purchaser for non shared pools that the contract is to be settled without a pool safety certificate in place and the pool may not comply with the pool safety standard.

The purchaser of the non-shared pool must have an inspection undertaken and a pool safety certificate issued for the pool within 90 days after the day of settlement.

The chief executive is required to be notified that the sale has proceeded without a pool safety certificate being in place and the date the notice was given. The swimming pool register will be updated with this information and enforcement action can be taken against the purchaser if a pool safety certificate is not provided for the regulated pool within 90 days of the notices.

It is not intended that a purchaser owner will commit any offence at settlement but must within 90 days have the pool inspection and provide a pool safety certificate.

The purpose of this provision as part of the wider scheme is explained in the notes to section 246ATF.

### **Section 246ATK Requirement to obtain pool safety certificate for regulated pool that is a shared pool**

If a pool safety certificate is not in effect prior to settlement/entering into an accommodation agreement for a shared pool, the seller/lessor of the regulated property must prior to the settling of the contract/entering into the agreement give notice in the approved form to the chief executive, the purchaser and the lessee (for shared pools not associated with short term accommodation) and the pool owner (body corporate) that the contract/agreement is to be settled without a pool safety certificate in place and the pool may not comply with the pool safety standard.

The pool owner (body corporate) of the shared pool must have an inspection undertaken and a pool safety certificate issued for the pool within 90 days after the day of settlement of contract of sale or the entering into an accommodation agreement.

The chief executive is required to be notified that the sale/accommodation agreement has proceeded without a pool safety certificate being in place and the date the notice was given. The swimming pool register will be updated with this information and enforcement action can be taken against the purchaser if a pool safety certificate is not provided for the regulated pool within 90 days of the notices.

It is not intended that the pool owner (body corporate) will commit any offence at settlement but must within 90 days have the pool inspected and provide a pool safety certificate.

The purpose of the pool safety certificate provisions is to ensure that owners, purchasers and lessees are made aware of the requirement to obtain a pool safety certificate either prior to settling a contract of sale or entering into an accommodation agreement or within 90 days after.

To provide body corporates sufficient time to obtain pool safety certificates, having regard to the decision making, funding structure and requirements for bodies corporate, will have two years after commencement to obtain a pool safety certificate.

### **Section 246ATL Requirement not to ask for, or receive, reward in particular circumstances**

A pool safety certificate is required to be obtained for a non-shared regulated pool prior to the entering into an accommodation agreement. This section raises the prospect of disciplinary action for real estate agents who seek or receive payment in relation to an accommodation agreement for a premise with a regulated non shared pool, if a pool safety certificate has not been obtained.

The section provides that action may be taken under the *Property Agents and Motor Dealers Act 2000* against licensees who breach this section.

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

This clause amends section 246AU of the BA to clarify the role of local government pool inspectors to remove an unintended consequence. Only persons registered as pool safety inspectors or building certifiers may now carry out pool safety inspection functions. Local government employees or agents who are not registered as pool safety inspectors or building certifiers may not perform such functions.

### **Clause 23 – Amendment of s 246CK (Making a complaint against a pool safety inspector)**

This clause amends section 246CK of the BA to streamline the provisions for making a complaint against a pool safety inspector. The requirement that a complaint must be verified by statutory declaration has been

removed. However the PSC may now require that a compliant or further particulars be verified by a statutory declaration. Additional provisions have been added to permit the PSC to dismiss complaints where further particulars are not given or where not verified by a statutory declaration, where required.

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

This clause amends section 246DI of the BA to clarify the matters which the PSC should consider when deciding whether an eligible course provider is a ‘suitable entity’ to conduct training courses for pool safety inspectors. For example, the PSC may now take into account whether the executive officer of the entity has been convicted of a relevant offence. This is important to ensure the integrity of the course providers which is a key component of the regulatory framework and the quality of pool safety inspectors.

### **Clause 25 - Amendment of s 246FD (Payments from fund)**

This clause amends section 246FD of the BA to clarify the types of payments which may lawfully be made from the Pool Safety Fund established under section 246FB. This broadens the powers to include matters that relate or are incidental to exercising the powers of the PSC. The amendment is necessary to ensure that the PSC and its officers can adequately perform their functions.

### **Clause 26 Insertion of new s246FK**

This inserts new section in chapter 8, part 9, division 6

### **Section 246FK Privacy**

This section provides that members of PSC or persons appointed under section 246FA must keep confidential any personal information that is not publicly available. This will be relevant where the PSC receives information from the chief executive under section 257A about pool immersion incidents and activity undertaken under chapter 8.

### **Clause 27 - Amendment of s 256 (Prosecution of offences)**

This clause amends section 256 of the BA to clarify that the chief executive (building) or a local government may prosecute by way of complaint for certain proposed new offences. They are the offences about entering into contracts of sale, selling or purchasing regulated premises or entering into lease agreements without a pool safety certificate.

The amendments also include offences related to pool safety management plans required for resorts mentioned in the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*, which may be prosecuted by the chief executive (building) and local government.

### **Clause 28 Insertion of new s 257A**

This clause inserts a new section which details disclosure provisions regarding pool immersion information held by the chief executive.

### **Section 257A Disclosure of particular information**

Pool immersion information is required to be provided to the chief executive (health) pursuant to the section 23 of the *Ambulance Service Act 1991* and sections 245G and 245H of the BA, as noted in the Bill.

This section outlines the procedure for the chief executive (building) to disclose pool immersion information received under those provisions to entities other than those mentioned in section 245I (PSC, local government, CCYPCG and chief executive).

Disclosure of pool immersion information can be made if authorised in writing by the chief executive (building) after an assessment has been made that the release would be in the public interest.

This information can be made to the Commonwealth or entity, another state or entity or an entity of the state of Queensland subject to being required or allowed under an agreement or prescribed by regulation. The disclosure of information is also permitted to perform a function under the *Coroner's Act 2003*, other than the preparation of the annual report.

This provision also authorises the chief executive to give information relevant to the administration of the swimming pool safety laws contained in chapter 8 BA to the PSC.

The department's annual report each year must include details of the nature of pool immersion incident information disclosed and the purpose for

which this information was disclosed. This information provided in the annual report must not identify directly or indirectly any person involved with the pool immersion incident.

### **Clause 29 Amendment of s 258 (Guideline)**

This section allows guidelines to be approved to assist:

- Tourist resort complexes to develop and maintain pool safety management plans for the resort pools.
- Local governments to decide if some or all of their area is considered remote for the purposes of s246ACA and the pool safety inspector may not need to undertake an on site inspection if they satisfy themselves that the pool complies with the pool safety standard.

### **Clause 30 Amendment of s 273 (Swimming pool fences for existing tourist complexes exempted)**

This clause amends section 273 of the BA by adding a note to clarify that chapter 8 of the BA applies to pools in tourist resort complexes where local laws are made ineffective under the section. This is to remind people reading the BA that where a local law applied in other circumstances, e.g. hotels, motels, resorts or other tourist accommodation, the local law has no effect when it is revoked. This will occur when the pool safety standard application day applies as described in the new section 231A of the BA, as noted in the notes to the Bill.

### **Clause 31 Insertion of new ch 11, pt 10**

This clause inserts a new part 10 into chapter 11 of the BA. The new part 10 contains transitional provisions for BOLA 2.

## **Part 10**

# **Transitional provisions for Building and Other Legislation Amendment Act (No.2) 2010**

### **Section 290 Definitions for pt 10**

This section contains definitions for the new part 10.

### **Section 291 When s 232 applies to particular regulated pools**

This section relates to the transitional operation of the proposed new section 232 of the BA to be introduced by the Bill for shared pools. For shared pools associated solely with short term accommodation there will be a six month phase in period. This is a concession for the tourism industry in recognition of the possible difficulty of complying with the pool safety standard at the start of the busy summer period. For other shared pools there will be a two year phase in period.

For a shared pool during the phase in period, the requirement on the seller or lessor to either obtain a pool safety certificate or issue a notice prior to settlement or entering into an accommodation agreement remains. However, a shared pool owner will not be required to comply with the standard until after the end of the phase in period. Specific provision has been made for transactions that take place within 90 days of the phase in period to ensure pool owners have a minimum of 90 days to obtain a pool safety certificate. The pool will not have to be a complying pool until there is a pool safety certificate in effect for the pool, to the end of the phase in period.

### **Section 292 Term of pool safety certificate for particular regulated pools**

This relates to the transitional operation of section 246AL of the BA introduced by BOLA 1. It is intended to create an incentive for owners of regulated pools situated on land at which short term accommodation is provided for tourists or for holiday purposes, to apply early for a pool safety certificate.

This is in response to advice from the Queensland Tourism Industry Council that an incentive scheme would provide operators with a strong motivation to obtain their pool safety certificate earlier than required. If the

certificate is obtained within three months of commencement, it will have a life of two years instead of one year.

### **Section 293 Continuing application of particular provisions – requirements about fencing pool**

This section relates to the transitional operation of the current section 235 of the BA. Section 235 imposes the ‘fencing standards’ for outdoor residential swimming pools. Under the Bill, the fencing standards will be replaced with the ‘pool safety standard’ which will apply to a wider range of pools, namely ‘regulated pools’. This section has the effect of preserving the old provisions of the BA until the pool safety application day, as noted in the Bill, i.e. when the pool is required to meet the new standard.

### **Section 294 Continuing application of particular provisions – resuscitation sign**

This section relates to the transitional operation of current section 236 of the BA which relates to the requirement for display of a resuscitation sign, as prescribed, for outdoor swimming pools on residential land.

This provision will continue to apply for an outdoor pool on residential land until the pool safety standard commences to apply. The pool safety standard will include an identical requirement for all regulated pools which includes the provision of resuscitation signage.

### **Section 295 Application of s 233**

This section relates to the transitional operation of section 233 of the BA (to be inserted by the Bill) which relates to the requirement for display of a warning sign, as prescribed, before construction of a pool starts. It makes it clear that the provision applies to a regulated pool being constructed on commencement of the Bill from the date of that commencement other than portable swimming pools.

This provision now excludes portable swimming pools from this requirement as it is unrealistic to expect a warning sign to be displayed prior to construction due to the short time required to erect them. It would also be difficult to enforce this requirement.

### **Section 296 Continuing application of previous s 237**

This section relates to the transitional operation of current section 237 of the BA which relates to replacing fencing. The section will continue to apply for an outdoor pool on residential land until the pool safety standard commences to apply for it.

### **Section 297 Application for exemption under previous s 240**

This section relates to the transitional operation of current section 240, which refers to applications to local government for exemption from compliance with the fencing standards for disability. If the application has been made but has not been decided before commencement of the Bill, the local government may continue to deal with the application under the current section 240.

### **Section 298 Continuing effect of particular provisions**

Like section 296, this section also relates to the transitional operation of current section 240 which refers to applications to local government for exemption from compliance with the fencing standards. In essence, section 298 provides that where an exemption under the current section 240 has been granted, the exemption continues subject to any conditions.

### **Section 299 Keeping copy of exemption**

Like sections 297 and 298, this section also relates to the transitional operation of current section 240 which refers to applications to local government for exemption from compliance with the fencing standards.

### **Section 300 When s246ATK applies to particular regulated pools**

For shared pools a six month (for shared pools associated with short term accommodation) or two year (other shared pools) phase in period applies which delays the application of the pool safety application day

For a shared pool during the phase in period, the requirement on the seller or lessor to either obtain a pool safety certificate or issue a notice prior to settlement or entering into an accommodation agreement remains. However, a shared pool owner will not be required to comply with the standard until after the end of the phase in period. Specific provision has

been made for transactions that take place within 90 days of the phase in period to ensure pool owners have a minimum of 90 days to obtain a pool safety certificate. The pool will not have to be a complying pool until there is a pool safety certificate in effect for the pool, to the end of the phase in period.

### **Clause 32 Amendment of sch 2 (Dictionary)**

This clause inserts definitions into schedule 2 (Dictionary) of the BA.

This clause amends the definition of *portable wading pool* by reducing the applicable maximum depth from 450mm to 300mm.

This clause confirms that a *swimming pool* does not include a spa bath situated in a bathroom other than a spa bath continually filled with water to a depth of more than 300mm or a birthing pool used solely for water births.

## **Part 5                      Amendment of the City of Brisbane Act 2010**

### **Clause 33 Act amended**

This part contains amendments to the *City of Brisbane Act 2010*.

### **Clause 34 Insertion of new s 41A**

This section inserts a new section 41A in the *City of Brisbane Act 2010* to provide that the council cannot make local laws that regulate matters including the construction and maintenance of barriers or matters that are contained in the pool safety standard.

### **Section 41A Swimming pool safety**

This section provides that council must not amend provisions in existing local laws that regulate matters mentioned above and must repeal these by 1 January 2017.

The purpose of this provision is that for regulated pools only one standard will apply being the pool safety standard.

### **Clause 35 Insertion of new s123A**

This section provides that at all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a swimming pool, and barriers or fencing for the pool, for compliance purposes.

### **Section 123A Entry by authorised person, at reasonable times to inspect regulated pools**

This section provides that an authorised person may enter a property, other than a home without permission at all reasonable times to inspect a regulated pool, barriers or fencing.

This includes circumstances where the owner of the pool must ensure that the pool complies with the pool safety standard or where a provision in another law regulates the construction or maintenance of barriers or another matter relating to the safety of persons using the pool.

However, after entering the property the authorised person must produce his or her identity card and inform the occupier of the property of the reason for entry and that this can be made without permission.

Local government will now have sufficient power to enter a property to ensure that pools and pool barriers comply with the pool safety standard. For example this will be essential where the officer experiences difficulty in contacting the owner and needs to access the property to assess the level of risk presented by a non compliant pool and take action as necessary to protect young children.

### **Clause 36 Amendment of s124 (General powers after entering a property)**

This section amends section 124 to refer to the relevance of the new section 123A.

### **Clause 37 Amendment of schedule (Dictionary)**

This section inserts the definition of *regulated pool*.

## **Part 6**                      **Amendment of Local Government Act 2009**

### **Clause 38 Act amended**

This part contains amendments to the *Local Government Act 2009*.

### **Clause 39 Insertion of new s 38A**

This section inserts a new section 38A in the *Local Government Act 2009* to provide that local governments cannot make local laws that regulate matters including the construction and maintenance of barriers or matters that are contained in the pool safety standard.

### **Section 38A Swimming Pool Safety**

This section provides that local governments must not amend provisions in existing local laws that regulate matters mentioned above and must repeal these by 1 January 2017.

The purpose of this provision is that for regulated pools only one standard will apply being the pool safety standard.

### **Clause 40 Insertion of new s 134A**

This section provides that at all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a swimming pool, and barriers or fencing for the pool, for compliance purposes.

### **Section 134A Entry by authorised person, at reasonable times, to inspect regulated pools**

This section provides that an authorised person may enter a property, other than a home without permission at all reasonable times to inspect a regulated pool, barriers or fencing.

This includes circumstances where the owner of the pool must ensure that the pool complies with the pool safety standard or where a provision in another law regulates the construction of maintenance of barriers or another matter relating to the safety of persons using the pool.

However, after entering the property the authorised person must produce his or her identity card and inform the occupier of the property of the reason for entry and that this can be made without permission.

Local government will now have sufficient power to enter a property to ensure that pools and pool barriers comply with the pool safety standard. For example this will be essential where the officer experiences difficulty in contacting the owner and needs to access the property to assess the level of risk presented by a non compliant pool and take action as necessary to protect young children.

#### **Clause 41 Amendment of s135 (General powers after entering a property)**

This section amends section 135 to refer to the relevance of the new section 134A.

#### **Clause 42 Amendment of sch 4 (Dictionary)**

This section inserts the definition of *regulated pool*.

## **Part 7                      Amendment of Royal National Agricultural and Industrial Association of Queensland Act 1971**

#### **Clause 43 Act amended**

This part contains amendments to the *Royal National Agricultural and Industrial Association of Queensland Act 1971* (RNAIAQA).

#### **Clause 44 Amendment of s4 (Definitions)**

This clause inserts definitions of *prescribed land* and *registrar*.

#### **Clause 45 Amendment of s13 (Dealing with Association's land)**

This clause extends the application of section 13(1) in the RNAIAQA to include a new part 3A.

## **Clause 46 Insertion of new part 3A**

This section defines certain terms for Part 3A.

## **Part 3A Dealing with particular land**

### **Section 17D Land to which this part applies**

Section 17D defines *prescribed land*.

### **Section 17E Dealing with prescribed land**

The specific land that will be subject to Part 3A will be prescribed by regulation under section 17E (the prescribed land).

This section provides that land may be prescribed if it is land vested for an estate in

fee simple in the RNA (see section 10 of the RNA Act).

### **Section 17F Insolvency events**

Section 17F will prohibit certain dealings with prescribed land.

Section 17F(1) prohibits the RNA from granting or agreeing to grant a mortgage, charge or lien over prescribed land other than to Queensland Treasury Corporation.

Section 17F(2) provides that any mortgage, charge or lien granted by the RNA in contravention of section 17F(1) is void.

Section 17F(3) provides that no writ of execution may be registered in the freehold land register in relation to the prescribed land.

### **Section 17G Notice in freehold land register**

Section 17G(2) provides that on the occurrence of an “insolvency event” as defined in section 17G(1), the prescribed land is divested from the RNA and vests for an estate in fee simple in the State subject to any mortgages, charges, encumbrances, liens, leases, easements, agreements, licences and other transactions affecting the land at the time the insolvency event occurs.

Section 17G(4) provides a mechanism for the chief executive to have the vesting recording in the freehold land register.

Section 17G(5) requires the registrar of titles to record the vesting of the prescribed land in the freehold land if the registrar of titles receives the chief executive's certificate and request, issued under section 17G(4).

Section 17G(6) provides that the registration of the vesting of the prescribed land is subject to any court declaration that the insolvency event referred to in the certificate issues by the chief executive under section 17(4)(a) has not happened.

Section 17G(7) provides that if the prescribed land is divested from the RNA under section 17G, the prescribed land vests for an estate in fee simple in the State and nothing in the RNA Act limits how the State may use or deal with the land. The State may use or deal with the land as permitted by law.

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

### **Clause 47 Act amended**

This part amends the *Sustainable Planning Act 2009*

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

Current subsections (1) and (2) are unchanged, mandating the information that must be published on a local government website and the period for which it must be published. Subsection (2) is renumbered to (3).

New subsection (2) provides for the local government, at its discretion, to publish on its website, certain information and documents relating to a development application made to it as assessment manager. The amendment ensures that the local government's publication on its website of material containing personal information relating to the development application conforms to requirements under the *Information Privacy Act 2009* which applies to local governments from 1 July 2010. The

information and documents that may be published will be prescribed in an amendment to the *Sustainable Planning Regulation 2009*.

Renumbered subsection (3) ensures that the mandatory period for the publishing of information on the website applies only to the information that must be published by the local government under subsection (1).

New subsection (4) provides for the local government, at its discretion, to continue to publish the information that must be published under subsection (1) after the mandatory period in subsection (3) ends. This will ensure that if any of the information contains personal information the requirements under the *Information Privacy Act 2009* will be met.

Renumbered subsection (5) confirms that the local government is not required to publish information or documents to the extent it is satisfied the information or documents contain sensitive security information. This applies to both the mandatory publication of information under subsection (1) and the discretionary publication of information under subsection (2).

New subsection (6) confirms that the discretionary publication of information under subsection (2) also applies to development applications made under the repealed *Integrated Planning Act 1997*.

### **Schedule Minor amendments of Building Act 1975**

This Schedule includes minor amendments to the BA to correct minor errors.