# Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016

# Explanatory Notes

## Short title

The short title of the Bill is the Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Bill 2016.

## Policy objectives and the reasons for them

The objectives of the Bill are to:

1. improve transparency and accountability in local government electoral disclosure requirements and to remove any confusion
2. clarify that the Electoral Commission of Queensland (ECQ) may continue to recover direct and indirect costs associated with local government elections
3. make amendments to planning and building legislation to give early effect to planning reforms contained in the *Planning Act 2016* and *Planning and Environment Court Act 2016*, make various technical and clarifying amendments, and address issues arising from several court decisions concerning development approval for building work.

*Local government electoral donations and incorporated associations legislation*

On 11 December 2015, the Crime and Corruption Commission (CCC) tabled in Parliament its report 'Transparency and accountability in local government'[1] (CCC Report). The CCC Report concluded that the current legislation was confusing and did not clearly prescribe how an elected official or local council must treat campaign funds or donations in a range of circumstances.

The CCC Report made recommendations to the Government for legislative reform to improve transparency and accountability in local government electoral disclosure requirements and to remove any confusion.

On 20 July 2016, the Government's response to the CCC Report was tabled at the Estimates Hearing for the Infrastructure, Planning and Natural Resources Committee[2].

[1] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government* A copy of the report is available at: http://www.ccc.qld.gov.au/publications

[2] A copy of the Government's response is available at: https://www.parliament.qld.gov.au/documents/committees/IPNRC/2016/Estimates2016/Est-tp-20July2016-DeputyPremier.pdf

The Government's response was informed, in part, by a Review Panel established to assist the Department of Infrastructure, Local Government and Planning (DILGP) consider the CCC's recommendations and develop options for legislative reform. The Review Panel comprised representatives of the Local Government Association of Queensland (LGAQ), the ECQ, the Department of the Premier and Cabinet, the Department of Justice and Attorney-General and DILGP.

The Government's response to the CCC Report proposed amendments to the *Local Government Electoral Act 2011* (LGEA), the *Associations Incorporation Act 1981* (AI Act) and the *Associations Incorporation Regulation 1999* (AIR), including amendments to:

- provide that associations (incorporated or unincorporated) are not permitted to use any official title (such as Mayor) in the name unless it is a controlled entity of the local government and therefore subject to auditing by the Queensland Audit Office;
- clarify that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a member's benefit, either directly or indirectly;
- make the disclosure of donations more contemporaneous with the receipt of the donation by the candidate and others required to make a disclosure. The Government also endorsed that a real-time online system to disclose local government election donations be implemented, consistent with the system that will be adopted for state government elections;
- set the candidate and third party election disclosure donation threshold at $500 to align with a councillor's register of interests gift disclosure threshold; and
- require unspent campaign donations to be either held for campaign purposes at a later point, returned to the relevant political party or transferred to a registered charity.

*ECQ may recover direct and indirect costs of local government elections*

At the state level, section 97 of the *Electoral Act 1992* (EA) confers upon ECQ the 'continuing function of making appropriate administrative arrangements for the conduct of elections', including arranging for the appointment and employment of appropriate members of staff for the conduct of elections.

For consistency with the EA section 97, the Bill amends the LGEA to clarify that indirect as well as direct costs incurred by ECQ in carrying out functions relating to conducting elections generally are recoverable from local governments. Examples may include costs incurred by ECQ's Local Government Elections Branch in undertaking administrative tasks including planning for electoral events, training staff and developing and testing innovations for future operational use.

*Planning and building legislation*

Since enactment of the *Planning Act 2016*, the *Planning and Environment Court Act 2016* and the *Planning (Consequential) and Other Legislation Amendment Act 2016* (the planning legislation) several issues of a technical or clarifying nature have been identified, mostly during consultation and training in preparation for commencement of the legislation in mid-2017.

Also, the Planning and Environment Court in *Gerhardt v Brisbane City Council* [2015] QPEC 34 and the Court of Appeal in *Brisbane City Council v Gerhardt* [2016] QCA 76 made findings concerning the relationship between the assessment of building work by a private certifier and a local government.

In those cases, a private certifier had given a development approval for building work for alterations to a house at Wooloowin in Brisbane, even though the building work was also assessable development under the council's planning scheme, and a preliminary approval had not been first sought from the council – a requirement that was widely assumed to apply.

In both cases, the courts found that in the matter in dispute, a preliminary approval was not required, and the council had been able to address relevant matters under its planning scheme through a referral from the certifier, which had been made, but which the council had not responded to in time.

The findings in the cases raised concern among councils about their ability to assess aspects of building work under their planning schemes, particularly as the findings did not address the scenario of where these aspects of building work are not the subject of a referral from the certifier.

However on 16 September 2016, the Planning and Environment Court handed down a decision in another matter (*Gerhardt v Brisbane City Council* [2016] QPEC 48) concerning the demolition of two houses at Morningside in Brisbane. This decision provides significant further context to the issue, in particular the arrangements that apply if building work is assessable under a planning scheme, but the matters the council must assess are **not** within the scope of a certifier's responsibilities, or a referral from the certifier. In that case, the court found:

- that two development approvals **were** required (one from the council and one from the certifier); and
- due to an issue with the definition of "preliminary approval" under the *Sustainable Planning Act 2009* identified in the earlier cases, there was no particular **order** in which the approvals had to be obtained.

Taken together, the cases establish a generally sound approach to identifying the relative responsibilities of certifiers and councils in assessing building work in a way that allows each to effectively address their respective interests. However it would be desirable to reflect this approach clearly in the law, and also establish that if a development approval is required from a council, it should be obtained before a certifier decides an application for the building work, as this would minimise the potential for missed council approvals. Council approvals also often provide a valuable context for the detailed design necessary to support a later application to a certifier.

It would also be desirable to minimise to the greatest extent possible, any duplication between council assessments under development applications, and referrals to councils from private certifiers.

Finally, three features of the planning legislation that would not involve substantial time and resources to implement have been identified as being desirable for implementation as early as possible. These are:

- an increase in penalties for development offences from 1665 penalty units to 4500 penalty units;
- limited retrospective commencement for some temporary local planning instruments; and
- new arrangements for the Planning and Environment Court to award costs.

## Achievement of policy objectives

To achieve the policy objectives the Bill amends:

- the AI Act to clarify that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for the benefit of a member of the association, either directly or indirectly;
- the LGEA to:
  - ensure consistency between the disclosure requirements of candidates and councillors
  - facilitate real-time online electoral donation disclosures for local government elections, consistent with state election requirements
  - require candidates and groups of candidates to account for unspent donations
  - clarify that the ECQ may continue to recover direct and indirect costs associated with the conduct of local government elections;
- the *Planning Act 2016* to make several technical amendments, clarify which building work requires a separate approval from a local government as well as an approval from a private certifier;
- the *Planning and Environment Court Act 2016* to omit a redundant provision;
- the *Building Act 1975* and the *Planning (Consequential) and Other Legislation Amendment Act 2016* to clarify the concept of a building development application, and amend the requirements for private certifiers to await particular development approvals, consistent with changes to the planning legislation in response to the recent court decisions; and
- the *Sustainable Planning Act 2009* to clarify which building work requires a separate approval from a local government as well as an approval from a private certifier, provide for email service of originating applications to the court, and "bring forward":
  - an increase in penalties for development offences from 1665 penalty units to 4500 penalty units
  - limited retrospective commencement for some temporary local planning instruments (TLPIs); and
  - new arrangements for the Planning and Environment Court to award costs.

*Local government electoral donations and incorporated associations legislation*

The Bill's objectives are considered reasonable and appropriate to implement the Government's endorsement of the CCC's recommendations 2-4 and part of recommendation 5.

CCC Report recommendation 1 – *That associations incorporated or unincorporated not be permitted to use any official title (such as Mayor) in the name unless it is a controlled entity and therefore subject to auditing by the Queensland Audit Office*.

In relation to the CCC Report recommendation 1, amendments are required to the AIR to clarify that the use of official titles such as mayor and councillor are prohibited in the name

of an incorporated association unless the association is a controlled entity. These amendments are proposed to be progressed separately from the Bill.

CCC Report recommendation 2 – *That the AI Act be amended to make it clear that incorporated associations cannot be used to receive or hold electoral campaign funds which are intended to be applied for a member's benefit, either directly or indirectly.*

To implement the Government's response to recommendation 2, the Bill amends the AI Act to clarify that incorporated associations are prohibited from holding or receiving campaign funds which are intended to be applied for a member's benefit, either directly or indirectly.

While there is no specific legislative prohibition on incorporated associations receiving or holding electoral campaign funds, an incorporated association cannot be formed or carried on for the purpose of providing financial gain for its members or have as its main purpose the holding of property for use by some or all of its members, or among persons claiming through, or nominated by, some or all of its members. A clarifying amendment assists in making this clearer.

The CCC Report provided that the CCC *"does not believe it was the intention of law-makers to allow an individual to use an incorporated association, where that person is involved in the control of the association, for the sole or primary purpose of collecting or holding campaign funds which are intended to be applied to that person's benefit, either directly or indirectly. The use of a separate legal entity to hold election campaign donations intended for use by candidates/councillors has significant potential to diminish transparency in this area and the area of councillor disclosure of financial and non-financial interests."*[3]

CCC Report recommendation 3 – *That the Government consider amendment to disclosure time frames to make the disclosure of donations more contemporaneous with the receipt of the donation by the candidate and others required to make a disclosure.*

The CCC Report noted "*that the candidates are required to disclose campaign donations within 15 weeks from polling day. There is no requirement to disclose donations on or before polling day. This would seem to hamper voters' ability to make an informed decision about a candidate on polling day. …The CCC believes that it should be possible for campaign donations to be declared via online or electronic submission on an ongoing basis throughout a campaign, with a significantly shorter time frame for compliance. In that way, declarations would be more useful to the public in helping them determine the suitability of a candidate before polling day*."[4]

To implement the Government's response to recommendation 3 and to implement a real-time online system of disclosure, the Bill amends the LGEA to provide a head of power for a regulation to prescribe for the contemporaneous disclosure of gifts, loans and third party expenditure. The Bill also amends the definition of disclosure period for candidates, groups of candidates and third parties to provide for a regulation to prescribe the disclosure period, for consistency with the EA.

[3] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government*, page 17
[4] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government*, page 18

Subject to the Bill being passed, the provisions that provide for the contemporaneous disclosure of returns will commence by proclamation and amendments to the *Local Government Electoral Regulation 2011* (LGER) will be proposed, consistent with proposed amendments to the *Electoral Regulation 2013* (ER) to prescribe real-time online disclosure timeframes for state elections.

The Bill also amends the LGEA to provide a head of power for ECQ to make procedures about how a return may be lodged electronically, consistent with the EA section 315A which provides that ECQ may make procedures about how a return may be lodged electronically.

The procedures do not take effect until approved by a regulation. The procedures and the regulation must be tabled in the Legislative Assembly and must be published on ECQ's website.

The Government is working with ECQ to develop a real-time online system of disclosure of election donations at the state government level. The real-time online disclosure system that is developed for state elections will also be used for local government elections.

CCC Report recommendation 4 – *That the Government consider amendment to disclosure requirements in the LGEA and the Local Government Act 2009 (LGA) to align the threshold obligations for reporting*.

The CCC Report noted that differing disclosure requirements under the LGEA and LGA *"make it difficult for those who have to adhere to these requirements to understand and comply with them."*[5]

To implement the Government's response to recommendation 4, the Bill amends the LGEA to set the candidate and third party election disclosure donation threshold at $500 to align with the threshold for a councillor's register of interest gift disclosures under the LGA.

For individual candidates, the Bill increases the donation disclosure threshold from $200 to $500, thereby reducing the disclosure burden. The $500 threshold is lower than the $1,000 threshold for state candidates due to the nature of local government decision making and the real ability for a councillor to have a say on local government matters such as planning applications. The lower threshold is considered to be reasonable and is supported by the LGAQ.

For third parties, the Bill decreases the donation disclosure threshold from $1,000 to $500. The Bill also increases the threshold for an expenditure return by third parties from $200 to $500. By reducing the current $1,000 threshold to $500 for donations received, third parties will have a greater disclosure burden in relation to donations received. By raising the current $200 expenditure threshold to $500, third parties will have a lower disclosure burden in relation to their expenditure returns.

CCC Report recommendation 5 – *That the Government expand the regulation of donations to include the expenditure of donations and a requirement to account for unspent donations by*

[5] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government*, page 18

*either only using the funds for campaign purposes or transferring them to a registered charity.*

The CCC Report provides that "*Integrity in electoral processes is fundamental and prescription of sound process should be such that the recording of monies received and spent is evidence that each candidate is acting in good faith.*

*As a consequence, transparency would be greatly increased if, at the end of the relevant disclosure period, candidates were required to:*
- *submit a return in relation to the expenditure of the funds; and*
- *maintain any unspent funds in a dedicated account until the candidate runs for the next election or transfer the funds to a registered charity*."[6]

Candidates are currently required to operate a dedicated account for receiving gifts and loans, and making expenditure for campaign purposes during the relevant disclosure period.

Without amendment, candidates and groups of candidates are not required to account for unspent donations at the end of the election donation disclosure period. The CCC Report highlighted the inability to trace the expenditure of leftover funds after an election undermines transparency.

Further, the CCC's investigation found that a candidate's dedicated bank account for collecting, holding and expending campaign funds during the relevant disclosure period, continued to operate for collecting, holding and expending community funds after the disclosure period ended.

The CCC Report highlighted that the practice of having one bank account with dual purposes created, '*perceptions of corruption or self-interest…*'[7].

The Government did not endorse that part of recommendation 5 that requires local government candidates to submit an expenditure return in addition to a donations return. The Government responded that the administrative burden of that requirement outweighs any additional public benefit given the vast majority of candidates spend minimal amounts, mainly on advertising. This is particularly the case given local government candidates are not entitled to public funding for electoral expenditure, unlike candidates at state elections.

The Government endorsed the additional proposal considered by the Review Panel to strengthen the requirements around the use of a candidate's dedicated bank account so that it can only be used for gifts and loans received and expenditure made for campaign purposes. This requirement will make it easier to trace campaign expenditure and ensure compliance with legislative requirements. The Government's response noted that while this requirement does not exist for state candidates, it is supported by the LGAQ. The Government's response also considered that this additional amendment would address the underlying fundamental concerns raised by the CCC about the dual use of a dedicated account more effectively than imposing a requirement for an expenditure return.

[6] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government*, page 19
[7] Crime and Corruption Commission Queensland December 2015 *Transparency and accountability in local government*, page 9

The Government endorsed that part of recommendation 5 that requires unspent campaign donations be either held for campaign purposes at a later point or that the donations are transferred to a registered charity, or are returned to the relevant political party.

Accordingly, the Bill amends the LGEA to require the unspent campaign donations of a candidate/group of candidates at the end of the disclosure period for the election to be either kept in the dedicated account for the conduct of another election campaign by the candidate/group of candidates; or if the candidate/group of candidates were members of a political party during the disclosure period - be paid to the political party; or paid to a registered charity, similar to the *Election Funding, Expenditure and Disclosures Act 1981* New South Wales, part 6 section 96B.

The Government did not support CCC Report recommendation 6 *that the Government strengthen the obligation upon councillors, chief executive officers and senior executive employees (relevant persons) to declare funds, gifts or benefits provided to another entity which could be perceived to provide the relevant person with a benefit.*

*ECQ may recover direct and indirect costs of local government elections*

The Bill's objective to clarify that indirect as well as direct costs incurred by ECQ are recoverable from local governments, is considered reasonable and appropriate given the ambiguity of the LGEA section 202 and the contrast with the EA section 97.

## Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as the objectives require amendments of existing legislation.

## Estimated cost for government implementation

Any additional cost associated with the development of real-time electoral donation disclosure will be explored through the established budgetary processes.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

*Local government electoral donations and incorporated associations legislation*

*The LSA section 4(2)(b) requires legislation to have sufficient regard to the institution of Parliament.*

Clause 27 Insertion of new s 132A Electronic lodgement of returns
Consistent with the EA, the Bill at clause 27 provides for the ECQ to make procedures about how a return may be lodged electronically. The procedures do not take effect until approved

by a regulation; must be tabled in the Legislative Assembly with the regulation approving the procedures; and must be published on the ECQ's website.

Corresponding amendments were made to the EA in 2015 and were considered in the Legal Affairs and Community Safety Committee's (the Committee) report No. 1 of May 2015 on the Electoral and Other Legislation Amendment Bill 2015. The Committee commented at page 37 *"…there is an express provision to require the tabling of the procedures document at the same time as the subordinate legislation, and the procedures will be published on the Electoral Commission's website, the Committee considers these are adequate safeguards in place such that clause 29 may be considered proportionate and as having sufficient regard to fundamental legislative principles"*.[8]

Clause 11 Amendment of s 106 Definitions for pt 6

The Bill at clause 11 provides a definition of 'disclosure date' for a return to mean the day prescribed by regulation for the return. The clause therefore provides for a regulation to prescribe contemporaneous timeframes in which certain returns must be lodged. The clause potentially breaches the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament because it provides for a regulation to prescribe shortened donation disclosure timeframes. The delegation of power is considered appropriate as a regulation provides the necessary flexibility for implementation, consistent with the approach taken at the state level under the EA. Further a regulation, when made, will sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

In the same context in relation to donation disclosure timeframes the Committee's report on the Electoral and Other Legislation Amendment Bill 2015 noted at page 37 "*…in all cases the specific date must be prescribed by regulation*".[9]

Clause 12 Amendment of s 114 (disclosure period for candidates who were previously candidates)
Clause 13 Amendment of s 115 (disclosure period – other candidates)
Clause 14 Amendment of s 116 (disclosure period for groups of candidates)
Clause 23 Amendment of s 124 (third party expenditure for political activity)
Clause 24 Amendment of s 125 (gifts received by third parties to enable expenditure for political activity)

These clauses potentially breach the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament because they provide for a regulation to prescribe the start and end of disclosure periods for candidates, groups and third parties. The delegation of power is considered appropriate as a regulation provides the necessary flexibility for implementation, consistent with the approach taken at the state level under the EA. Further a regulation, when made, will sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

[8] Legal Affairs and Community Safety Committee May 2015 *Report No.1 Electoral and Other Legislation Amendment Bill 2015*, page 37
[9] Legal Affairs and Community Safety Committee May 2015 *Report No.1 Electoral and Other Legislation Amendment Bill 2015*, page 37

*The LSA section 4(2)(a) requires legislation to have sufficient regard to the rights and liberties of individuals*.

Clause 25 Amendment of s 126 (Requirement for candidate to operate dedicated account)
Clause 26 Amendment of s 127 (Requirement for group of candidates to operate dedicated account)
The maximum penalty of 100 penalty units currently applies to candidates, including candidates who are members of a group, who fail to take all reasonable steps to ensure the operation of a dedicated account for receiving and paying amounts for the conduct of the candidate's election campaign.

The Bill extends that maximum penalty to candidates who fail to take all reasonable steps to ensure that unspent campaign donations at the end of the disclosure period for the election are either kept in the dedicated account for the conduct of another election campaign by the candidate/group of candidates; or if the candidate/group of candidates were members of a political party during the disclosure period - be paid to the political party; or paid to a registered charity.

The penalty is commensurate with other penalties in the LGEA, for example, the maximum penalty of 100 penalty units applies to a group of candidates who fail to advertise or fundraise if particular requirements are not met.

The departure from the fundamental legislative principle is considered to be reasonably justified because the recording of monies not only received but also spent is evidence that each candidate is acting in good faith thereby promoting the public interest ahead of the private interest of the candidate.

*Planning and building legislation*

The issue of limited retrospective commencement of TLPIs is a feature of the *Planning Act 2016*. The Bill includes provisions to "bring forward" the commencement of these reforms. Retrospective application of a proposed TLPI is subject to Ministerial approval, and the provisions are designed to limit any retrospective effect of TLPIs to the time a local government resolved to make the instrument, and to ensure that persons potentially affected by the making of the TLPI, and the community generally, are aware of the proposed retrospective commencement. Generally Ministerial approval of TLPIs occurs soon after a local government proposes the instrument. Consequently the period of retrospective commencement is expected to be extremely limited.

# Consultation

*Local government electoral donations and incorporated associations legislation*

Representatives of the LGAQ and the ECQ were on the Review Panel. Consultation with the ECQ was ongoing during the drafting of the Bill. A draft exposure Bill in relation to the proposed LGEA amendments was released for consultation with the LGAQ, Brisbane City Council (BCC) and the ECQ. The Bill is consistent with the views expressed by the ECQ, the LGAQ and BCC.

The ECQ advised that consultation was undertaken with the LGAQ, registered political parties and MPs and that the response was positive with general acceptance of the intended outcomes.

*Planning and building legislation*

Technical amendments in the planning legislation have generally arisen in the course of consultation and training to prepare for the commencement of the legislation. Significant consultation has occurred with local governments, the LGAQ, and industry and private certifiers during development of the proposals in the Bill to address the issues raised in the *Gerhardt* court decisions.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

# Notes on provisions

## Part 1 Preliminary

### Clause 1 Short title

*Clause 1* states that, when enacted, the Bill may be cited as the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2016*.

### Clause 2 Commencement

*Clause 2* states that Part 4, other than sections 25, 26 and 29, commences on a day to be fixed by proclamation. Prospective commencement by proclamation of those provisions in part 4 that relate to real-time online disclosure is to allow for amendments to the *Local Government Electoral Regulation 2011* (LGER) to be proposed, consistent with the proposed amendments to the *Electoral Regulation 2013* (ER) to prescribe real-time online disclosure timeframes for state elections.

## Part 2 Amendment of Associations Incorporation Act 1981

### Clause 3 Act amended

*Clause 3* states that this part amends the *Associations Incorporation Act 1981*.

### Clause 4 Amendment of s 5 (Eligibility for incorporation)

*Clause 4* amends section 5(1)(e)(iii) of the *Associations Incorporation Act 1981* to provide an example to clarify that an incorporated association cannot be used to receive or hold electoral campaign funds that are intended to be applied for a member's benefit, either directly or indirectly or a person nominated by a member.

## Part 3 Amendment of Building Act 1975

### Clause 5 Act amended

*Clause 5* states that this part amends the *Building Act 1975*.

### Clause 6 Amendment of s 6 (What is a building development application)

*Clause 6* replaces section 6 to effect changes to the definition of *building development application*, consistent with other provisions of the Bill addressing issues raised in decisions of the Planning and Environment Court and Court of Appeal concerning the relationship between development approvals given by private certifiers and other entities.

In *Gerhardt v Brisbane City Council* [2016] QPEC 48, the Planning and Environment Court found that in particular instances in which an application for a development permit for

building work had been made to a private certifier, a further development approval was required for the building work.

This clause, together with clauses 8, 9, 37, 63, 65, and 70-72, amend several Acts to reflect the findings of the Planning and Environment Court in that case, and earlier cases heard in the Planning and Environment Court and Court of Appeal.

The current definition of building development application refers to a development application to the extent it is for building work. The *Building Act 1975* imposes requirements on the assessment and approval of such applications under the building assessment provisions.

These requirements are appropriate for building development applications made to private certifiers. However the findings of the Planning and Environment Court in *Gerhardt v Brisbane City Council* [2016] QPEC 48 indicate that there are instances in which a development application for building work made to an entity other than a private certifier is not intended to be assessed against the building assessment provisions, but against other matters (for example against the provisions of a planning scheme that do not form part of the building assessment provisions).

The current definition also implies that a building development application may include development other than building work. This creates an inconsistency in the requirements of section 83(1)(a) of the *Building Act 1975*, under which a private certifier is required to await a development permit for the other development, which as a result would not need to be included in the building development application made to the private certifier as it would already be authorised under the earlier development permit. It is in any case unclear why it would be necessary generally to apply to a private certifier for development other than building work.

Consequently the Bill amends the definition of *building development application* to provide that, if the local government is the assessment manager, a development application is only a building development application to the extent it is for assessment of building work against the building assessment provisions. To the extent the application is for assessment against matters other than the building assessment provisions, it is not a building development application. This ensures that the requirements applying to building development applications under the *Building Act 1975* do not apply to these other aspects of the building work.

The amendment also provides that if a private certifier is the assessment manager, a building development application is an application for building work. This removes the possibility of a building development application being for development other than building work.

### Clause 7 Amendment of s 25 (General requirements for supporting documents)

*Clause 7* amends section 25 to substitute a reference to a referral agency's response for the existing reference to a referral agency's assessment, for consistency with changes to section 83(1)(d) in clause 8.

## Clause 8 Amendment of s 83 (General restrictions on granting building development approval)

*Clause 8* amends section 83 –

- for consistency with the findings of the Planning and Environment Court in *Gerhardt v Brisbane City Council* [2015} QPEC 34, and *Gerhardt v Brisbane City Council* [2016] QPEC 48, and *Brisbane City Council v Gerhardt* [2016] QCA 76; and
- consistent with the amendment to the definition of *building development application* under clause 6; and
- to seek to clarify the circumstances under which a private certifier must await development permits and SPA compliance permits for development other than building work before granting a building development permit; and
- to clarify and extend the circumstances under which a private certifier must await responses from referral agencies for a building development application, or the expiration of the referral agencies' response times.

Currently section 83(1)(a) requires that, if a building development application includes development other than building work, a private certifier must await "necessary" development permits and SPA compliance permits for the development before granting a building development approval for the application.

Clause 6 amends the definition of building development application to remove the possibility that such a development application made to a private certifier might include development other than building work, as it is unclear why a building development application would need to include such development. 83(1)(a) is also somewhat circular in that a building development application would not need to include development other than building work if another entity must give a development permit for the other development before the building development approval can be granted.

The current restriction in section 83(1)(a) also does not extend to development other than building work if the development is **not** included in the building development application. If an applicant chose not to include such development in the applicant's building development application, the certifier need not await development permits for the other development before granting a building development approval.

Furthermore, the term "necessary development permits and SPA compliance permits" in section 83(1)(a) leaves open the question of which permits and compliance permits are "necessary". There have been disagreements between private certifiers and local governments about which permits are required to be obtained before a building development approval can be granted. In particular several disagreements have centred around which approvals for operation work are "necessary". Some types of operational work are likely to affect the location or form of the building work, and so should ideally be obtained before a building development approval can be granted. However other types of operational work (typically most landscaping or some site drainage works for example) do not affect the location or form of the building work, and could be granted after the building development approval.

The amendments to section 83(1)(a) seek to address these issues by:

- removing the reference to a building development application including other development, consistent with the changes under clause 6; and
- as a consequence applying to any necessary development permits and SPA compliance permits, instead of only those forming part of the building development application; and
- including more detailed guidance about the scope of necessary development permits and SPA compliance permits a certifier must wait for before deciding a building development application. These are development permits and SPA compliance permits that may affect –
  - the form or location of the building work (for example the location of the building on the premises to connect with, or avoid particular assessable operational work);
  - the use to which the building or structure is put (related to the nature and scope of any assessable material change of use in relation to the building work), and
  - the assessment of the building development applications (for example aspects of other assessable development that may determine or otherwise affect the conditions imposed upon any building development approval given by the private certifier).

The example for section 83(1)(a) has been modified to reflect the substance of the above changes to the paragraph.

Section 83(1)(b) has been modified for consistency with the new section 245A, inserted in the *Sustainable Planning Act 2009* by the Bill. Section 245A provides for the circumstances under which a preliminary approval is required to be given by another entity (usually a local government) before a development permit for the same building work given by a private certifier can have effect. Section 83(1)(b) provides that, if such a preliminary approval is required, a private certifier may not give a development permit for the building work until the preliminary approval takes effect.

The Bill creates a relationship between the new section 245A in the *Sustainable Planning Act 2009* and section 83(1)(b) that effectively "activates" a preliminary approval given by another entity for building work through the development permit given for the building work by a private certifier.

The Bill also amends section 83(1)(d) to clarify the circumstances under which a private certifier must await a referral agency response before deciding a building development application. The paragraph currently requires a certifier to await the assessment of the application by any referral agency, but is unclear regarding the timing of the referral agency's response. The new paragraph makes it clear that a private certifier must await the referral agency's response, or the end of the referral agency's response period (including any extension to the period agreed upon between the referral agency and applicant) whichever happens first.

### Clause 9 Amendment of sch 2

*Clause 9* amends the definition of ***building development approval***, consistent with amendments to the definition of ***building development application*** (see clause 6).

## Part 4 Amendment of Local Government Electoral Act 2011

### Clause 10 Act amended

*Clause 10* states that this part amends the *Local Government Electoral Act 2011*.

### Clause 11 Amendment of s 106 (Definitions for pt 6)

*Clause 11(1)* makes a minor editorial amendment to section 106 heading by omitting 'pt 6' and inserting 'part'.

*Clause 11(2)* amends section 106 to include the definition of 'disclosure date' for a return to mean the day prescribed by regulation for the return. The definition applies in part 6.

To implement the Government's response to recommendation 3 of the CCC Report that it would make disclosure timeframes more contemporaneous with receipt of donations and implement a real-time online system of disclosure, the amendment provides a head of power for a regulation to prescribe for contemporaneous disclosure, consistent with the provisions of the EA for state elections where appropriate.

Subject to the Bill being passed, amendments to the LGER will be proposed, consistent with amendments proposed to the ER to prescribe real-time online disclosure timeframes for state elections.

*Clause 11(2)* also includes the definition of 'required period' for an election to mean 15 weeks after the polling day for the election, or if no poll is conducted, the day a poll would have been conducted if it were required. The definition and related clauses continue certain existing requirements for summary returns to be provided to the ECQ.

### Clause 12 Amendment of s 114 (Disclosure period for candidates who were previously candidates in a local government election)

*Clause 12* amends section 114 to provide that the candidate's disclosure period for the current election is the period starting on the day prescribed by regulation for the subparagraph or, if a day is not prescribed, 30 days after the polling day for the most recently held election for which the candidate was also a candidate; and ending on the day prescribed by regulation for the subparagraph or, if a day is not prescribed, 30 days after the polling day for the current election. The amendment is consistent with the EA section 198 which provides for a regulation to prescribe the disclosure period for a state election.

### Clause 13 Amendment of s 115 (Disclosure period – other candidates)

*Clause 13* continues to provide that the candidate's disclosure period for the election is the period starting on the day the first of the following happens or, if they happen at the same

time, when they happen – the person announces the person is to be a candidate in the election; the person nominates as a candidate in the election.

The amendment further provides that the candidate's disclosure period for the election ends on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, 30 days after the polling day for the election. The amendment is consistent with the EA section 198 which provides for a regulation to prescribe the disclosure period for a state election.

## Clause 14 Amendment of s 116 (Disclosure period for groups of candidates)

*Clause 14* amends section 116 to provide that the disclosure period for an election for a group of candidates is the period starting on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, 30 days after the polling day for the most recently held quadrennial elections; and ending on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, 30 days after the polling day for the current election. The amendment is consistent with the EA section 198 which provides for a regulation to prescribe the disclosure period for a state election.

## Clause 15 Omission of s 116A (Definition for div 3)

*Clause 15* omits section 116A, as the definition of 'required period' is located in amended section 106.

## Clause 16 Amendment of s 117 (Gifts to candidates)

*Clause 16* amends section 117 to provide that if during a candidate's disclosure period for an election the candidate receives a gift of a value equal to or more than $500, the candidate must give the ECQ a return about the gift. The return must be given to the ECQ on or before the disclosure date (as defined in clause 11) for the return. The value of a gift is taken to include the value of all other gifts previously given to the candidate by the same entity during the candidate's disclosure period.

Each return must be in the approved form; and state the relevant details for the gift. 'Relevant details' is defined in section 109 and includes the value of the gift and when the gift was made, in addition to certain requirements applying to unincorporated associations, trust funds and funds of a foundation.

The amendment implements the Government's response to recommendation 3 of the CCC Report by making provision for contemporaneous disclosure. It also implements the Government's response to recommendation 4 of the CCC Report by increasing the disclosure threshold from $200 to $500.

*Clause 16* further amends section 117 to provide that the candidate must, within the required period (as defined in clause 11) for the election, give the ECQ a return in the approved form, stating, if the candidate received gifts during the disclosure period, the total value of all gifts received during the disclosure period and the number of entities that gave the gifts; or otherwise that no gifts were received during the disclosure period. This provision continues the requirement for a summary return to be provided to the ECQ.

*Clause 16* continues to provide that a candidate need not comply with this section if the candidate gives a return to the ECQ before making the declaration of office under the LGA section 169 and the return states the candidate does not expect to receive gifts in the candidate's disclosure period for the election after giving the return and will give returns under this section if gifts are received during the candidate's disclosure period for the election after giving the return; and the candidate does not receive gifts during the candidate's disclosure period for the election after giving the return.

The LGEA section 117 does not apply to a candidate who is a member of a group of candidates.

## Clause 17 Amendment of s 118 (Gifts to groups of candidates)

*Clause 17* amends section 118. Section 118 applies if, during the disclosure period for an election for a group of candidates, a member of the group, or a person acting on behalf of the group, receives a gift of a value equal to or more than $500. The group's agent must give the ECQ a return about the gift on or before the disclosure date (as defined in clause 11) for the return. The value of a gift is taken to include the value of all other gifts previously given to any member of the group, or a person acting on behalf of the group, by the same entity during the group's disclosure period.

Each return must be in the approved form; and state the names of the candidates forming the group; and the name if any of the group; and the relevant details for the gift. 'Relevant details' is defined in section 109 and includes the value of the gift and when the gift was made, in addition to certain requirements applying to unincorporated associations, trust funds and funds of a foundation.

The amendment implements the Government's response to recommendation 3 of the CCC Report by making provision for contemporaneous disclosure. It also implements the Government's response to recommendation 4 of the CCC Report by increasing the disclosure threshold from $200 to $500.

*Clause 17* further provides that the agent must within the required period (as defined in clause 11) for the election give the ECQ a return in the approved form stating, if any members of the group received gifts during the disclosure period, the total value of all gifts received during the disclosure period; and the number of entities that gave the gifts; or otherwise that no gifts were received by any member of the group during the disclosure period. This provision continues the requirement for a summary return to be provided to the ECQ and also clarifies that this requirement applies where there are no gifts.

## Clause 18 Amendment of s 119 (Particular gifts not to be received)

*Clause 18* amends section 119 to change the definition of prescribed gift from a gift with a value of at least $200 to a gift with a value of at least $500. Section 119(1) provides that a candidate for an election, or a person acting on behalf of the candidate, must not during the candidate's disclosure period for the election receive a prescribed gift unless certain requirements are met. Section 119(2) provides that a group of candidates for an election, or a person acting on behalf of the group, must not during the group's disclosure period for the election receive a prescribed gift unless certain requirements are met.

For this section, the value of a gift is taken to include the value of all other gifts previously received by the candidate, groups of candidates or person acting on behalf of the candidate or group, from the same entity during the candidate's or group's disclosure period.

The amendment is consistent with the other amendments in the Bill changing the disclosure threshold from $200 to $500 to implement the Government's response to recommendation 4 of the CCC Report.

## Clause 19 Replacement of s 120 (Loans to candidates or groups of candidates)

*Clause 19* amends section 120 to provide that if, during a candidate's disclosure period for an election, the candidate receives a loan equal to or more than $500, the candidate must give the ECQ a return about the loan on or before the disclosure date (as defined in clause 11) for the return. If during the disclosure period for a group of candidates for an election the group receives a loan equal to or more than $500, the agent for the group must give the ECQ a return about the loan on or before the disclosure date (as defined in clause 11) for the return. These provisions do not apply to a loan from a financial institution.

Each return must be in the approved form and state the value of the loan and the date on which the loan was made. Additional requirements apply to a loan made by members of an unincorporated association and a loan purportedly made out of a trust fund or out of the funds of a foundation, otherwise the return must also state the name and residential or business address of the person who made the loan. The return must also state the terms of the loan.

The amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

The amendment implements the Government's response to recommendation 3 of the CCC Report by making provision for contemporaneous disclosure. It also implements the Government's response to recommendation 4 of the CCC Report by increasing the disclosure threshold from $200 to $500.

*Clause 19* also provides that the candidate or agent must, within the required period (as defined in clause 11) for the election, give the ECQ a return in the approved form, stating, if the candidate or group received loans during the disclosure period, the total value of all loans received during the disclosure period and the number of entities who made the loans; or otherwise that no loans were received by the candidate or group during the disclosure period. This provision continues the requirement for a summary return to be provided to the ECQ and also clarifies that this requirement applies where there are no loans.

## Clause 20 Amendment of s 121 (Particular loans not to be received)

*Clause 20* amends section 121(1) to provide that a candidate for an election, or person acting on behalf of the candidate, must not receive a loan of $500 or more from a person, other than a financial institution, during the candidate's disclosure period for the election unless the candidate or person keeps a record of the loan. The previous loan amount was $200.

*Clause 20* also amends section 121(2) to provide that a group of candidates for an election, or person acting on behalf of the group of candidates, must not receive a loan of $500 or more from a person, other than a financial institution, during the group's disclosure period for the election unless the group or person keeps a record of the loan. The previous loan amount was $200.

For these subsections the amount of a loan received by the candidate or group is taken to include the value of all other loans previously given to the candidate or group by the same entity during the disclosure period.

The amendments are consistent with the other amendments in the Bill changing the disclosure threshold from $200 to $500 to implement the Government's response to recommendation 4 of the CCC Report.

### Clause 21 Amendment of s 122 (Electoral commission to give reminder notice to candidates)

*Clause 21* amends section 122 to provide for the ECQ to give reminder notices about summary returns required under section 120 (Loans to candidates or groups of candidates). The amendments continue the requirement for the ECQ to give reminder notices about summary returns required under amended sections 117 and 118 and further provide that the notice must state that the candidate or agent is required to give the return under section 117, 118 or 120.

### Clause 22 Amendment of s 123 (Definitions for div 4)

*Clause 22* amends section 123 to remove the definition of 'required period'. A definition of 'required period' is located in amended section 106.

### Clause 23 Amendment of s 124 (Third party expenditure for political activity)

*Clause 23* amends section 124 to change the disclosure threshold for third party expenditure for political activity from $200 to $500. It also provides that the third party must, for each amount of expenditure incurred during the disclosure period, give the ECQ a return on or before the disclosure date (as defined in clause 11) for the return.

Each return must be in the approved form and state the total value of the expenditure to which the return relates; and when the expenditure was incurred; and the particular purpose of the expenditure.

The amendment implements the Government's response to recommendation 3 of the CCC Report by making provision for contemporaneous disclosure. It also implements the Government's response to recommendation 4 of the CCC Report by increasing the disclosure threshold from $200 to $500.

Each amount of expenditure incurred by the third party is taken to include any amounts previously incurred by the third party for a political activity relating to the election during the disclosure period for the election. An amount of expenditure incurred by the third party for political activity relating to two or more elections is taken to have been incurred by the third party for each of the elections.

*Clause 23* also amends the definition of disclosure period in section 124 to mean the period starting on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, on the day after the day the returning officer publishes notice of the election in a newspaper under section 25; and ending on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, at 6p.m. on the polling day for the election. The amendment is consistent with the EA section 198 which provides for a regulation to prescribe disclosure periods for a state election.

## Clause 24 Amendment of s 125 (Gifts received by third parties to enable expenditure for political activity)

*Clause 24* amends section 125 to change the threshold for disclosure by third parties of gifts to enable expenditure for political activity from $1000 to $500.

The third party who receives the gift must give the ECQ a return about the gift on or before the disclosure date (as defined in clause 11) for the return. Each return must be in the approved form and state the relevant details for the gift. 'Relevant details' is defined in section 109 and includes the value of the gift and when the gift was made, in addition to other requirements.

The amendment implements the Government's response to recommendation 3 of the CCC Report by making provision for contemporaneous disclosure. The amendment also implements the Government's response to recommendation 4 of the CCC Report by changing the disclosure threshold to $500 to align with councillors' gift disclosure requirements under the LGA.

*Clause 24* also amends the definition of disclosure period to mean the period starting on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, 30 days after the polling day for the most recently held quadrennial elections; and ending on the day prescribed by regulation for the subparagraph; or, if a day is not prescribed, ending 30 days after the polling day for the current election. The amendment is consistent with the EA section 198 which provides for a regulation to prescribe the disclosure period for a state election.

## Clause 25 Amendment of s 126 (Requirement for candidate to operate dedicated account)

*Clause 25* amends section 126 to provide that the candidate's dedicated account must not, during the candidate's disclosure period for the election, be used other than for receiving and paying amounts under section 126(3) and (4).

A new subsection is included which provides that if an amount remains in the account at the end of the disclosure period, the amount or part of the amount may be kept in the account for the conduct of another election campaign by the candidate; or, if the candidate was a member of a political party during the disclosure period, be paid to the political party; or be paid to a charity nominated by the candidate. An amount mentioned in the new subsection must not be dealt with other than under that subsection.

*Clause 25* also extends the existing penalty in section 126 to candidates who fail to take all reasonable steps to ensure that the requirements of the new subsection are complied with.

These amendments implement the Government's response to recommendation 5 of the CCC Report.

### Clause 26 Amendment of s 127 (Requirement for group of candidates to operate dedicated account)

*Clause 26* amends section 127 to provide that a group's dedicated account must not, during the group's disclosure period for the election, be used other than for receiving and paying amounts under section 127(3) and (4).

A new subsection is included which provides that if an amount remains in the account at the end of the group's disclosure period for the election, the amount or part of the amount may be kept in the account for the conduct of another election campaign by the group; or, if each member of the group was a member of a political party during the disclosure period, be paid to the political party; or be paid to a charity nominated by the group. An amount mentioned in the new subsection must not be dealt with other than under that subsection.

*Clause 26* also extends the existing penalty in section 127 to a candidate (who is a member of the group) who fails to take all reasonable steps to ensure the requirements of the new subsection are complied with.

These amendments implement the Government's response to recommendation 5 of the CCC Report.

### Clause 27 Insertion of new s 132A

*Clause 27* inserts new section 132A (Electronic lodgement of returns) into the LGEA. It provides that the ECQ may make procedures about how a return under this part may be lodged electronically. The procedures do not take effect until approved by a regulation; and must be tabled in the Legislative Assembly with the regulation approving the procedures; and must be published on the ECQ's website. If a return is lodged as provided for under the procedures the return is taken to have been given to the ECQ.

This amendment implements the Government's response to recommendation 3 of the CCC Report that it would implement a real-time online system of disclosure, consistent with the system that will be adopted for state government elections.

### Clause 28 Amendment of s 195 (Offences about returns)

*Clause 28* consequentially amends section 195(3) to replace the references to section 118(2) and section 120(2) with references to section 118 and 120. Because the Bill amends section 118 and 120 to provide for contemporaneous returns, in addition to summary returns within 15 weeks after polling day, *clause 28* provides that section 195(3) will apply to both contemporaneous and summary returns.

### Clause 29 Amendment of s 202 (Local governments responsible for expenditure for conducting local government elections)

Under the LGEA section 202 a local government currently pays the costs incurred by the ECQ for conducting an election in its local government area, including the remuneration, allowances and reasonable expenses paid to members or staff of the ECQ. *Clause 29* clarifies that indirect as well as direct costs incurred by the ECQ are recoverable from local governments. *Clause 29* amends the LGEA section 202 heading to read 'Local governments responsible for expenditure incurred by electoral commission'. It adds a provision that a local government must pay the costs incurred by the ECQ in carrying out functions relating to conducting elections generally, including, for example the remuneration, allowances and reasonable expenses paid to members or staff of the ECQ; and the costs of making appropriate administrative arrangements for the conduct of elections.

### Clause 30 Amendment of schedule (Dictionary)

*Clause 30* amends the Schedule to provide for definitions of 'disclosure date' and 'required period' in the LGEA section 106.

## Part 5 Amendment of Planning Act 2016

### Clause 31 Act amended

*Clause 31* states this part amends the *Planning Act 2016*.

### Clause 32 Replacement of s 19 (Applying planning scheme in tidal areas)

*Clause 32* replaces section 19 to give effect to several changes or clarifications about the application of planning schemes in tidal areas.

The scope of section 19 and its corresponding provisions under repealed legislation has been narrow. The Tidal Works Code under the Coastal Act contains benchmarks for local governments to use as assessment manager for development applications for prescribed tidal works. The code allows for a planning scheme to vary the outcomes in the code in some ways. Section 19 facilitates this by enabling planning schemes to apply outside a local government's area for this limited purpose.

For this purpose section 19 includes a definition of ***tidal area***, which essentially refers to areas of tidal influence adjacent to local government areas.

The term ***tidal area*** is also used in the regulation for identifying areas in which local governments and port authorities are assessment managers for applications for prescribed tidal works. In this context, the application of the definition has been problematic, as it unintentionally excludes local governments from being assessment manager for prescribed tidal works within their local government areas.

Consequently the replacement section 19 defines ***tidal area*** more broadly to refer to tidal areas "in or next to" a local government area.

However the scope of the section in applying planning schemes for limited purposes outside a local government's area has been maintained through the addition of the term "even if the tidal area is outside the local government's local government area" in subsection 1(b). It is unnecessary to extend the effect of the section to tidal areas within a local government area, as planning schemes already apply to the whole of a local government's local government area.

The replacement section also includes several refinements and changes to defined terms to link more directly to current terminology in other legislation (such as through the use of the term "tidal water", which is already defined under the Coastal Act), or to simplify or clarify them.

### Clause 33 Amendment of s 48 (Who is the assessment manager)

*Clause 33* amends section 48 to re-instate an inadvertently omitted provision from SPA allowing the Minister the option, in deciding an assessment manager under the regulation, to direct the application be split into 2 or more applications.

### Clause 34 Amendment of s 49 (What is a *development approval, preliminary approval* or *development permit*)

*Clause 34* amends section 49(6) to clarify the scope of the definition of *decision notice* in relation to a development approval. The amendment clarifies that a decision notice includes a negotiated decision notice, other than a decision notice given for a change application (other than for a minor change).

### Clause 35 Amendment of s 64 (Deemed approval of development applications)

*Clause 35* amends section 64 to facilitate, in connection with amendments to section 68 and schedule 2, the ***standard conditions*** for deemed approvals to be made as a separate document from the development assessment rules.

Since the enactment of the Act, draft standard conditions have been developed. The size and detail of the conditions mean that they would be considerably larger than the balance of the development assessment rules. The standard conditions are also likely to need more frequent amendment/refinement than the balance of the development assessment rules, so may necessitate numerous regulation amendments to authorise what are in effect technical matters concerning development conditions.

The proposed arrangements for the Minister to make the standard conditions involve the same level of accountability as for making the development assessment rules – i.e. the process for making or amending a State planning policy applies. However unlike the development assessment rules it would be unnecessary to approve the standard conditions under a regulation.

### Clause 36 Amendment of s 68 (Development assessment rules)

*Clause 36* amends section 68 by omitting a reference to the standard conditions, consistent with the amendment under clause 35.

## Clause 37 Insertion of new s 73A

*Clause 37* inserts a new section 73A (Development permits for building work given by private certifiers) establishing the circumstances under the *Planning Act 2016* in which a preliminary approval is required in relation to an application for a development permit for building work made to a private certifier.

The new section 73A is similar to, and consistent with new section 245A inserted in SPA under clause 72.

Under SPA, only one development permit is required to be effective in order to enable development to start. Consequently, the second development approval required under the new section 245A of SPA must be in the form of a preliminary approval. The amendments to section 83(1)(b) of the *Building Act 1975* in clause 8 create a relationship between this preliminary approval and a development permit for the same building work given by a private certifier, and also require the preliminary approval to be in effect before the private certifier may give the development permit.

Under the *Planning Act 2016*, and unlike SPA, it is possible that two development permits may be required for particular development. The assessment manager arrangements under section 43 allow for different assessment managers to be identified under a regulation in relation to different aspects or "parts" of development, and also allow for chosen assessment managers to be identified by a local government or the chief executive in relation to different aspects or "parts" of particular development. Section 72(1)(a) provides that development may start when "*all development permits for the development have started to have effect*".

In common with the SPA amendments inserting new section 245A, the new section 73A of the *Planning Act 2016* refers to a requirement to obtain a preliminary approval (a *relevant preliminary approval* as defined in subsection (6)). However a relevant preliminary approval refers only to a preliminary approval given under the **old Act** (i.e. SPA). In other words the new section 73A deals *prima face* with a transitional situation under which a development permit is being sought from a private certifier after the commencement of the *Planning Act 2016*, but the preliminary approval necessary to give the permit effect was sought under SPA before the commencement.

However, amendments to the *Planning (Consequential) and Other Legislation Amendment Act 2016* in clause 65 that further amend section 83(1)(b) of the *Building Act 1975* refer to the need for **either** a relevant preliminary approval (under the transitional circumstances outlined above) **or** a development permit (for the ongoing administration of section 83(1)(b) in relation to the *Planning Act 2016*).

Consequently, while the new section 73A appears *prima face* to deal with transitional circumstances, section 83(1)(b) of the *Building Act 1975* will give section 73A ongoing effect, by requiring a second development permit under the *Planning Act 2016* for the parts of building work for which a relevant preliminary approval under the old Act is required.

### Clause 38 Amendment of s 74 (What this subdivision is about)

*Clause 38* amends section 74 to facilitate negotiated decision notices being sought for approvals for non-minor change applications.

### Clause 39 Amendment of s 75 (Making change representations)

*Clause 39* amends section 75 for clarity, and for consistency with amendments concerning the standard conditions of a deemed approval under clause 35.

### Clause 40 Amendment of s 76 (Deciding change representations)

*Clause 40* omits a redundant note from section 76(2).

### Clause 41 Amendment of s 79 (Requirements for change applications)

*Clause 41* amends section 79 to require a change application to be made in the approved form.

### Clause 42 Amendment of s 81 (Assessing and deciding application for minor changes

*Clause 42* amends section 81 to extend the requirement to consider submissions made about a development application to apply, not only to considering a minor change application made in relation to an approval for the development application, but also to a minor change application made in relation to a non-minor change to the original approval.

### Clause 43 Amendment of s 82 (Assessing and deciding application for other changes)

*Clause 43* amends section 82 to provide that properly made submissions for development applications are also taken to be properly made submissions for any non-minor change application made within 12 months after the approval of the development application.

### Clause 44 Amendment of s 83 (Notice of decision)

*Clause 44* amends section 83 to address an omission, by establishing when a decision notice about a non-minor change application must be given to submitters.

### Clause 45 Amendment of s 103 (Call in notice)

*Clause 45* amends section 103 to clarify that, if the Minister calls in an application after it is decided, the Minister reassesses and re-decides the application.

### Clause 46 Amendment of s 104 (Effect of call-in notice)

*Clause 46* amends section 104 to clarify that only a decision made by a decision-maker about a called in application becomes void if the application is called in. The current wording is unintentionally broad.

### Clause 47 Amendment of s 105 (Deciding called in application)

*Clause 47* amends section 105 to clarify that, if the Minister calls in an application after it is decided, the Minister reassesses and re-decides the application.

### Clause 48 Amendment of s 112 (Regulation prescribing charges)

*Clause 48* amends section 112 to clarify the means of calculating a percentage increase in an infrastructure charge.

### Clause 49 Amendment of s 115 (Provisions for participating local governments and distributer-retailers)

*Clause 49* amends section 115 to require both a local government and a distributer-retailer that are parties to a breakup agreement to keep a copy of the agreement on their websites.

### Clause 50 Amendment of s 230 (Notice of Appeal)

*Clause 50* amends section 230 to allow for a notice of appeal to be served on the chief executive by email. Currently copies of originating applications are required to be served in person or by post.

### Clause 51 Amendment of s 231 (Other appeals)

*Clause 51* amends section 231 to clarify its scope.

### Clause 52 Amendment of s 249 (Conduct of tribunal proceedings)

*Clause 52* amends section 249 to address an inconsistency in the ability of a tribunal to decide how it is to conduct proceedings.

### Clause 53 Amendment of s 287 (Statutory instruments)

*Clause 53* amends section 287 to clarify that the section applies to processes for designating land for community infrastructure started but not completed before the commencement. A designation is a decision rather than a statutory instrument, so the intended application of section 249 to designations may be unclear.

### Clause 54 Amendment of s 289 (References to the old Act or provisions of the old Act)

*Clause 54* makes two minor clarifying amendments to section 289.

### Clause 55 Amendment of s 297 (Categorising development under designations)

*Clause 55* amends section 297 to broaden its scope to encompass processes for making designations for community infrastructure started but not completed before the commencement.

### Clause 56 Insertion of new s 307A

*Clause 56* inserts a new clause 307A (Application to convert infrastructure to trunk infrastructure) to establish transitional arrangements for conversion applications in relation to existing development approvals at the commencement.

### Clause 57 Amendment of sch 1 (Appeals)

*Clause 57* amends schedule 1 to correct an omission.

### Clause 58 Amendment of sch 2 (Dictionary)

*Clause 58* amends schedule 2:

- to include a definition of *prescribed tidal works* referencing the Coastal Act, consistent with amendments to section 19 under clause 32; and
- to extend the definition of *required fee* to allow the Planning and Environment Court to establish fees for applications as well as appeals; and
- for consistency with changes to the treatment of standard conditions under clauses 35 and 36; and
- to omit a redundant sub-paragraph in the definition of *building work*.

## Part 6 Amendment of Planning and Environment Court Act 2016

### Clause 59 Act amended

*Clause 59* states this part amends the *Planning and Environment Court Act 2016*.

### Clause 60 Amendment of s 60 (Orders for costs)

*Clause 60* omits a redundant reference to the development assessment rules.

### Clause 61 Amendment of s 61 (Orders for costs for particular proceedings)

*Clause 61* amends section 61 to correct an incorrect reference to a failure to comply with a requirement under the Planning Act to obtain the consent of persons affected by a cancellation application under that Act.

## Part 7 Amendment of Planning (Consequential) and Other Legislation Amendment Act 2016

### Clause 62 Act amended

*Clause 62* states this part amends the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

## Clause 63 Amendment of s 39 (Replacement of s 6 (What is a building development application))

*Clause 63* amends section 39 to amend the definition of *building development application* in the *Building Act 1975* to reflect circumstances in which a development application for building work made to a local government may not require assessment against the building assessment provisions.

This has a similar effect to the amendment made to the definition of *building development application* under clause 6. However as the definition was extended under the *Planning (Consequential) and Other Legislation Amendment Act 2016* to include non-minor change applications under the *Planning Act 2016*, it is necessary to make a similar amendment to the *Planning (Consequential) and Other Legislation Amendment Act 2016* to maintain consistency after commencement of the *Planning Act 2016*.

## Clause 64 Amendment of s 49 (Amendment of s 25 (General requirements for supporting documents)

*Clause 64* amends s 49 for consistency with changes made to section 83 of the *Building Act 1975*.

## Clause 65 Amendment of s 75 (Amendment of s 83 (General restrictions on granting building development approval))

*Clause 65* amends section 75 to make several amendments to section 83 of the *Building Act 1975* to clarify the circumstances under which a private certifier must await a development approval from another assessment manager before deciding a building development application.

The changes to section 83(1)(b) further modify the amendments made to the *Building Act 1975* under clause 8, and are linked to the commencement of the new section 73A in the *Planning Act 2016* under clause 37 that establishes when such an approval is necessary.

The effect of section 83(1)(b) when considered in relation to section 73A of the *Planning Act 2016* is that a private certifier must await either a *relevant preliminary approval* (for applications to other assessment managers made under SPA), or another development permit (for applications to other assessment managers made under the *Planning Act 2016* after its commencement) before the private certifier can give a development permit for building work if one or both of the following apply:

- a part of the building work requires impact assessment;
- a part of the building work is not a building assessment provision, and cannot be assessed by a referral agency for the development application made to the private certifier, and so must be assessed by another assessment manager.

## Clause 66 Amendment of s 113 (Amendment of sch 2 (Dictionary))

*Clause 66* amends section 113 to insert a section reference.

### Clause 67 Amendment of section 153 (Amendment of s 167 (Regulation–making power))

*Clause 67* amends the section amending section 167 of the Coastal Act for consistency with changes made to section 19 of the *Planning Act 2016* under clause 32.

## Part 8 Amendment of Sustainable Planning Act 2009

### Clause 68 Act amended

*Clause 68* states that this part amends the *Sustainable Planning Act 2009*.

### Clause 69 Amendment of s 120 (When planning scheme, temporary local planning instrument and amendments have effect)

*Clause 69* amends section 120 to "bring forward" provisions of the *Planning Act 2016* providing for the limited retrospective commencement of temporary local planning instruments.

### Clause 70 Amendment of s 241 (Preliminary approvals)

*Clause 70* amends section 241 to insert a note referencing the new section 245A inserted under clause 72. Section 241 provides that a preliminary approval is not necessary for development – it is an optional tool that may be used by an applicant to test aspects of development before applying for a development permit.

However, the new section 245A provides that a preliminary approval **is** required under certain circumstances related to the consideration of an application for a development permit for building work by a private certifier.

### Clause 71 Amendment of s 243 (Development permits)

*Clause 71* amends section 243 to insert a note referencing the new section 245A inserted under clause 72.

### Clause 72 Insertion of new section 245A

*Clause 72* inserts a new section 245A (Development permits for building work given by private certifiers) identifying circumstances under which a preliminary approval must be obtained in relation to an application for a development permit for building work made to a private certifier

Section 245A relates to the amendments made to the *Building Act 1975* under clause 8. It is also the SPA equivalent of the new section 73A inserted in the *Planning Act 2016* under clause 37, and provides that a development permit given by a private certifier cannot have effect unless there is an effective preliminary approval, if either or both of the following apply for the building work the subject of the development application to the private certifier;

- a part of the building work requires impact assessment;

- a part of the building work is not a building assessment provision, and cannot be assessed by a referral agency for the development application made to the private certifier, and so must be assessed by another assessment manager.

Section 83(1)(b) of the *Building Act 1975* (as amended under clause 8 in relation to SPA, and clause 65, in relation to the *Planning Act 2016*) provides that, if such a preliminary approval is required under the circumstances outlined above, the preliminary approval must be effective before the private certifier may give a development permit for the building work.

### Clause 73 Amendment of s 456 (court may make declarations and orders)

*Clause 73* amends section 456 to allow for a notice of appeal to be served on the chief executive by email. Currently, copies of originating applications are required to be served in person or by post.

### Clause 74 Replacement of s 457 (Costs)

*Clause 74* amends section 457, and inserts new sections 457A (Orders for costs in particular circumstances) and 457B (Orders for costs for particular proceedings) to "bring forward" arrangements for costs contained in the *Planning Act 2016*.

### Clause 75 Amendment of s 482 (Notice of appeal to other parties – development applications and approvals)

*Clause 75* amends section 482 to allow for a notice of appeal to be served on the chief executive by email. Currently copies of originating applications are required to be served in person or by post.

### Clause 76 Amendment of s 491B (Power of ADR registrar)

*Clause 76* amends a section reference consistent with the replacement of section 457 under clause 74.

### Clause 77 Amendment of s 575 (Carrying out development without compliance permit)

*Clause 77* amends section 575(1) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 78 Amendment of s 578 (Carrying out assessable development without permit)

*Clause 78* amends section 578(1) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 79 Amendment of s 580 (Compliance with development approval)

*Clause 79* amends section 580(1) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 80 Amendment of s 581 (Offence to carry out prohibited development)

*Clause 80* amends section 581(1) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 81 Amendment of s 582 (Offence about the use of premises)

*Clause 81* amends section 582 to increase the penalty units for an offence under that section from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 82 Amendment of s 585 (Coastal emergency exemption for operational work that is tidal works)

*Clause 82* amends section 585(5) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 83 Amendment of s 586 (Exemption for building work on Queensland heritage place or local heritage place)

*Clause 83* amends section 586(5) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 84 Amendment of s 587 (False or misleading document or declaration)

*Clause 84* amends section 587(1), (2) and (3) to increase the penalty units for an offence under those subsections from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 85 Amendment of s 594 (Offences relating to enforcement notices)

*Clause 85* amends section 594(1) and (2) to increase the penalty units for an offence under those subsections from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for these offences under the *Planning Act 2016*.

### Clause 86 Amendment of s 595 (Processing application or request required by enforcement notice or show cause notice)

*Clause 86* amends section 595 to increase the penalty units for an offence under that section from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 87 Amendment of s 599 (Magistrates Court may make orders)

*Clause 87* amends section 599(5) to increase the penalty units for an offence under that subsection from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 88 Amendment of s 921 (Compliance with master plans)

*Clause 88* amends section 921(4) and (5) to increase the penalty units for an offence under those subsections from 1665 to 4500. This "brings forward" into SPA the increase in penalty units for this offence under the *Planning Act 2016*.

### Clause 89 Insertion of new ch 10, pt 15

*Clause 89* inserts a new part 15 (Transitional provision for Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2016) with new section 999 (Costs for existing court proceedings) in chapter 10 of SPA which include transitional arrangements for the costs provisions "brought forward" under clause 74. The part provides that the new costs arrangements do not apply to proceedings or interlocutory proceedings brought before the commencement.

### Clause 90 Amendment of sch 3 (Dictionary)

*Clause 90* inserts a definition of *costs* into schedule 3, relating to the costs provisions "brought forward" under clause 74.