



# **Queensland Reconstruction Authority Act 2011**

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Queensland

# Queensland Reconstruction Authority Act 2011

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title . . . . .	7
2	Main purpose of Act . . . . .	7
3	How main purpose is primarily achieved . . . . .	7
4	Act binds all persons . . . . .	8
<b>Division 2</b>	<b>Interpretation</b>	
5	Definitions . . . . .	8
<b>Part 2</b>	<b>Queensland Reconstruction Authority</b>	
<b>Division 1</b>	<b>Establishment</b>	
7	Establishment of authority . . . . .	9
8	Authority represents the State . . . . .	9
9	Application of other Acts . . . . .	9
<b>Division 2</b>	<b>Functions and powers</b>	
10	Authority's functions . . . . .	9
11	Authority's powers . . . . .	11
12	Ministerial direction or notice . . . . .	11
<b>Division 3</b>	<b>Membership of the authority</b>	
13	Membership of authority . . . . .	12
<b>Division 4</b>	<b>Staff of the authority</b>	
<b>Subdivision 1</b>	<b>Chief executive officer</b>	
14	Chief executive officer . . . . .	12
15	Restriction on appointment . . . . .	12
16	Chief executive officer employed under this Act . . . . .	12
17	Term of office . . . . .	13
18	Functions and powers of chief executive officer . . . . .	13

Contents

---

19	Chief executive officer not to engage in other paid employment .	13
20	Conditions of appointment . . . . .	14
21	Vacancy in office of chief executive officer . . . . .	14
22	Preservation of rights of chief executive officer . . . . .	14
23	Acting chief executive officer . . . . .	15
<b>Subdivision 2</b>	<b>Appointment of persons to help chief executive officer</b>	
24	Appointment . . . . .	15
25	Preservation of rights of persons appointed under s 24 . . . . .	16
<b>Subdivision 3</b>	<b>Other staff</b>	
26	Authority staff . . . . .	16
27	Alternative staffing arrangements . . . . .	17
<b>Part 3</b>	<b>Queensland Reconstruction Board</b>	
<b>Division 1</b>	<b>Establishment and functions</b>	
28	The board . . . . .	17
29	Functions of board . . . . .	17
<b>Division 2</b>	<b>Members</b>	
30	Membership of board . . . . .	18
31	Term of office . . . . .	18
32	Conditions of appointment . . . . .	19
33	Vacancy in office of member . . . . .	19
<b>Division 3</b>	<b>Chairperson</b>	
34	Role of chairperson . . . . .	19
<b>Division 4</b>	<b>Proceedings of the board</b>	
35	Time and place of meetings . . . . .	20
36	Quorum . . . . .	20
37	Presiding at meetings . . . . .	20
38	Conduct of meetings . . . . .	20
39	Minutes and other records . . . . .	21
<b>Division 5</b>	<b>Disclosure of conflict of interests and reporting requirements</b>	
40	Disclosure of conflict of interest . . . . .	21
41	Reporting by the board and chairperson . . . . .	22
<b>Part 4</b>	<b>Declarations about declared projects, reconstruction areas and critical infrastructure projects</b>	
<b>Division 1</b>	<b>Declarations</b>	
42	Declaration of declared project . . . . .	23
43	Declaration of reconstruction area . . . . .	24

44	Notice about declaration of acquisition land . . . . .	25
45	Declaration of critical infrastructure project . . . . .	26
<b>Division 2</b>	<b>Relationship with particular Acts about local government</b>	
46	Relationship with the City of Brisbane Act 2010 or the Local Government Act 2009 . . . . .	26
<b>Part 5</b>	<b>Particular powers for declared projects and development in reconstruction areas</b>	
<b>Division 1</b>	<b>Preliminary</b>	
47	Definitions for pt 5 . . . . .	27
48	Application of laws . . . . .	28
<b>Division 2</b>	<b>Notices about declared projects and development in reconstruction areas</b>	
<b>Subdivision 1</b>	<b>Progression notice</b>	
49	Progression notice . . . . .	29
<b>Subdivision 2</b>	<b>Notice to decide</b>	
50	Notice to decide . . . . .	30
<b>Subdivision 3</b>	<b>Step-in notice</b>	
51	Step-in notice . . . . .	31
52	When step-in notice may be given . . . . .	32
53	Providing assistance or recommendations . . . . .	33
54	Effects of step-in notice . . . . .	34
55	Authority's decision . . . . .	35
56	Effects of decision . . . . .	36
57	Notice of decision . . . . .	37
58	Report about decision . . . . .	37
<b>Division 3</b>	<b>Other matters</b>	
59	Recovering cost of advice or services . . . . .	38
60	No requirement to consult on particular actions . . . . .	38
61	Application of Judicial Review Act 1991 . . . . .	38
<b>Part 6</b>	<b>Development schemes</b>	
<b>Division 1</b>	<b>Making development schemes</b>	
62	Authority may make development scheme . . . . .	39
63	Content of development scheme . . . . .	39
64	Development scheme may make provision for particular assessable development . . . . .	41
65	Preparation of proposed development scheme . . . . .	41
66	Public notification . . . . .	42

Contents

---

67	Submissions on proposed scheme . . . . .	42
68	Consideration of submissions . . . . .	42
69	Amendment of proposed scheme . . . . .	42
70	Initial making and submission of scheme . . . . .	43
71	Notice of submitted scheme . . . . .	43
72	Ministerial power to amend submitted scheme at affected owner's request . . . . .	44
73	Direction to authority to engage again in public notification and submissions . . . . .	44
74	When proposed scheme takes effect . . . . .	44
75	Notice of development scheme . . . . .	44
<b>Division 2</b>	<b>Amendment, tabling and inspection of development schemes</b>	
76	Authority may amend development scheme . . . . .	45
77	Tabling and inspection requirement . . . . .	45
<b>Division 3</b>	<b>Effect of development scheme on other instruments</b>	
78	Relationship with other instruments . . . . .	46
<b>Division 4</b>	<b>Relationship with Planning Act</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
79	Application of sdivs 2 and 3 . . . . .	46
<b>Subdivision 2</b>	<b>Assessing relevant applications</b>	
80	Assessment of development applications . . . . .	47
81	Assessment of change applications . . . . .	48
<b>Subdivision 3</b>	<b>Deciding relevant applications</b>	
82	Restriction on approving relevant application . . . . .	48
<b>Subdivision 5</b>	<b>Existing uses</b>	
89	Lawful use of premises protected . . . . .	49
90	Lawfully constructed buildings and work protected . . . . .	49
91	New instruments can not affect existing development approval . . . . .	50
92	Minister's power to amend development approval . . . . .	50
<b>Subdivision 6</b>	<b>Designations of premises under Planning Act for development of infrastructure</b>	
93	Designation of premises—development scheme . . . . .	51
<b>Subdivision 7</b>	<b>Miscellaneous provision</b>	
95	Planning and Environment Court may make declarations . . . . .	52
<b>Part 7</b>	<b>Undertaking works, taking land, dealing with roads and application of particular laws</b>	
<b>Division 1</b>	<b>Provisions about undertaking works</b>	

96	Direction for authority to undertake works . . . . .	52
97	Application of State Development Act for transfer of authorised works 53	
98	Application of State Development Act for works on foreshore or under waters . . . . .	53
<b>Division 2</b>	<b>Provisions about taking land and entry to land</b>	
99	Authority's power to take land . . . . .	54
100	When authority or local government must take land . . . . .	55
101	Authority's power to take public utility easement . . . . .	56
102	Vesting of land taken . . . . .	56
103	Power to use, lease or dispose of land . . . . .	57
104	Application of other provisions of the State Development Act about the taking of land . . . . .	57
105	Application of provisions of the State Development Act about entry to land . . . . .	57
<b>Division 3</b>	<b>Dealing with roads</b>	
106	Roads and road closures . . . . .	59
107	Power to vest land in permanently closed road or unallocated State land in reconstruction areas . . . . .	60
108	Giving information about roads to relevant local government . . .	60
<b>Division 4</b>	<b>Application of other laws</b>	
109	Application of State Development Act, pt 7 . . . . .	61
110	Application of Planning Act . . . . .	61
<b>Part 8</b>	<b>Direction to take action about local planning instruments</b>	
111	Procedures before exercising particular power . . . . .	61
112	Power of Minister to direct local government to take particular action about local planning instrument . . . . .	62
113	Power of Minister if local government does not comply with direction	63
114	Minister to give notice of direction . . . . .	63
<b>Part 9</b>	<b>General offence provisions and legal proceedings</b>	
<b>Division 1</b>	<b>Offences</b>	
115	Duty to act honestly . . . . .	64
116	Disclosure of information . . . . .	64
117	False or misleading information . . . . .	64
118	False or misleading documents . . . . .	65
119	Obstructing authorised person . . . . .	65
<b>Division 2</b>	<b>Legal proceedings</b>	
<b>Subdivision 1</b>	<b>Evidence</b>	

Contents

---

120	Application of sdiv 1 . . . . .	65
121	Appointments and authority . . . . .	66
122	Signatures . . . . .	66
123	Other evidentiary aids . . . . .	66
<b>Subdivision 2</b>	<b>Offence proceedings</b>	
124	Summary offences . . . . .	67
125	Limitation on time for starting proceeding for summary offence . . . . .	67
<b>Part 10</b>	<b>Miscellaneous provisions</b>	
<b>Division 1</b>	<b>Duty to cooperate and requesting information</b>	
126	Extension of duty to cooperate under State Development Act, s 13 . . . . .	67
127	Information requirement made by authority—general . . . . .	68
128	Information requirement made by authority—prescribed decisions . . . . .	69
129	Giving of information protected . . . . .	69
130	Interaction with other laws . . . . .	70
<b>Division 3</b>	<b>Other miscellaneous provisions</b>	
132	Delegations . . . . .	70
133	Protecting officials from liability . . . . .	70
134	Ministerial access to information . . . . .	71
135	Authority’s guidelines . . . . .	71
136	Application of provisions . . . . .	71
137	Approved forms . . . . .	71
138	Regulation-making power . . . . .	72
<b>Part 11</b>	<b>Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016</b>	
139	Definitions for part . . . . .	72
140	Existing particular development applications . . . . .	72
141	Existing particular requests for compliance assessment . . . . .	73
<b>Schedule</b>	<b>Dictionary . . . . .</b>	<b>74</b>

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# Queensland Reconstruction Authority Act 2011

**An Act to establish the Queensland Reconstruction Authority and provide for other measures to assist Queensland communities to recover from disasters and improve resilience for potential disasters**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Queensland Reconstruction Authority Act 2011*.

#### **2 Main purpose of Act**

The main purpose of this Act is to provide for appropriate measures—

- (a) to ensure Queensland and its communities effectively and efficiently recover from the impacts of disasters; and
- (b) to improve the resilience of communities for potential disasters.

#### **3 How main purpose is primarily achieved**

The main purpose is to be achieved primarily by—

- (a) establishing the Queensland Reconstruction Authority to coordinate and manage the rebuilding and recovery of

- affected communities, including the repair and rebuilding of community infrastructure and other property; and
- (b) establishing the Queensland Reconstruction Board to oversee the operations of the authority; and
  - (c) providing for the declaration of, and the making of development schemes for, declared projects and reconstruction areas to facilitate the following—
    - (i) the protection, rebuilding and recovery of affected communities;
    - (ii) mitigating against potential disasters for affected communities;
    - (iii) improving the resilience of affected communities for potential disasters through, for example, the betterment of the communities.

#### **4 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

## **Division 2 Interpretation**

### **5 Definitions**

The dictionary in the schedule defines particular words used in this Act.

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## **Part 2**                      **Queensland Reconstruction Authority**

### **Division 1**                **Establishment**

#### **7**                      **Establishment of authority**

The Queensland Reconstruction Authority is established.

#### **8**                      **Authority represents the State**

- (1) The authority represents the State.
- (2) Without limiting subsection (1), the authority has the status, privileges and immunities of the State.

#### **9**                      **Application of other Acts**

- (1) The authority is—
  - (a) a unit of public administration under the *Crime and Corruption Act 2001*; and
  - (b) a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B explains how that Act affects the authority's powers.

### **Division 2**                **Functions and powers**

#### **10**                    **Authority's functions**

- (1) The main functions of the authority are as follows—
  - (a) to coordinate the development and implementation of whole-of-government policies for—

- (i) managing flood risks; and
  - (ii) ensuring Queensland and its communities effectively and efficiently recover from the impacts of disasters; and
  - (iii) improving the resilience of communities for potential disasters through, for example, the betterment of the communities;
- (b) to decide priorities for community infrastructure and community services needed for the protection, rebuilding and recovery of affected communities;
- (c) to work closely with affected communities to ensure each community's needs are recognised in the rebuilding and recovery of the communities and improving their resilience;
- (d) to collect and collate information about community services, and community infrastructure and other property, damaged or otherwise affected by a disaster;
- (e) to coordinate and distribute financial assistance for communities in relation to mitigating against, recovering from or improving resilience for disasters;
- (f) to put into effect the strategic priorities of the board;
- (g) to ensure the protection, rebuilding and recovery of affected communities is—
  - (i) effectively and efficiently carried out; and
  - (ii) appropriate, having regard to the nature of the disaster;
- (h) to facilitate mitigating against potential disasters, including facilitating the development of a network of flood warning gauges that complies with best practice;
- (i) to plan for, coordinate and put in place measures to improve the resilience of communities for potential disasters through, for example, the betterment of the communities;

- (j) if asked by the Minister, to give the Minister advice about putting into effect recommendations made after an inquiry or inquest, particularly recommendations about mitigating against, recovering from or improving resilience for disasters.
- (2) The authority's functions also include any other function given to the authority under this Act or another Act.

## 11 Authority's powers

- (1) Subject to any Ministerial direction or notice under section 12, the authority has all the powers of an individual, and may, for example—
- (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) appoint agents and attorneys; and
  - (d) engage consultants; and
  - (e) do anything else necessary or convenient to be done in the performance of its functions.
- (2) Without limiting subsection (1), the authority has the powers given to it under this Act or another Act.

## 12 Ministerial direction or notice

- (1) The Minister may give the authority a written direction about the performance of its functions or the exercise of its powers, or notice of a public sector policy, if the Minister is satisfied it is necessary to give the direction or notice in the public interest.
- (2) The authority must ensure the direction or policy is complied with.
- (3) The authority—
- (a) must include in its annual report, prepared under the *Financial Accountability Act 2009*, section 63, details of any direction or notice given by the Minister under

subsection (1) during the financial year to which the report relates; and

- (b) may include in the report a comment about the effect on the authority's activities of complying with the direction or notice.

## **Division 3                    Membership of the authority**

### **13            Membership of authority**

The authority consists of—

- (a) the chief executive officer; and
- (b) the other staff of the authority.

## **Division 4                    Staff of the authority**

### **Subdivision 1            Chief executive officer**

#### **14            Chief executive officer**

- (1) The authority must have a chief executive officer.
- (2) The chief executive officer is appointed by the Governor in Council.

#### **15            Restriction on appointment**

A member of the board must not be appointed as chief executive officer.

#### **16            Chief executive officer employed under this Act**

The chief executive officer is employed under this Act and not under the *Public Service Act 2008*.

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## **17 Term of office**

Subject to this subdivision, the chief executive officer holds office for the term stated in the officer's instrument of appointment.

## **18 Functions and powers of chief executive officer**

- (1) The main functions of the chief executive officer are as follows—
  - (a) to ensure the authority performs its functions effectively and efficiently;
  - (b) to undertake or commission investigations, prepare plans or take steps the Minister directs, or the chief executive officer considers necessary or desirable, to ensure proper planning, preparation, coordination and control of development for the protection, rebuilding and recovery of affected communities;
  - (c) to make recommendations to the Minister about any matter that—
    - (i) relates to the performance or exercise of the chief executive officer's or authority's functions or powers; and
    - (ii) may help the Minister in the proper administration of this Act.
- (2) The chief executive officer's functions also include any other function given to the chief executive officer under this Act or another Act.
- (3) The chief executive officer may exercise the powers of the authority and any other powers given to the chief executive officer under this Act or another Act.

## **19 Chief executive officer not to engage in other paid employment**

The chief executive officer must not, without the approval of the board—

- (a) engage in paid employment outside the duties of the office of chief executive officer; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

## **20 Conditions of appointment**

- (1) The chief executive officer is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The chief executive officer holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

## **21 Vacancy in office of chief executive officer**

- (1) The office of the chief executive officer becomes vacant if the chief executive officer—
  - (a) completes a term of office; or
  - (b) resigns office by signed notice given to the Minister; or
  - (c) is removed from office by the Governor in Council under subsection (2); or
  - (d) is convicted of an indictable offence or an offence against this Act; or
  - (e) is a person who is an insolvent under administration under the Corporations Act, section 9.
- (2) The Governor in Council may at any time remove the chief executive officer from office for any reason or none.

## **22 Preservation of rights of chief executive officer**

- (1) This section applies if an officer of the public service is appointed as the chief executive officer.
- (2) The person keeps all rights accrued or accruing to the person as an officer of the public service as if service as the chief

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executive officer were a continuation of service as a public service officer.

- (3) At the end of the person's term of office or resignation as the chief executive officer—
  - (a) the person has the right to be appointed to an office in the public service on the same terms and conditions that applied to the person before being appointed as the chief executive officer; and
  - (b) the person's service as the chief executive officer is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.

## **23 Acting chief executive officer**

The Governor in Council may appoint a person, other than a member of the board, to act in the office of chief executive officer during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the chief executive officer is absent from duty, or can not, for another reason, perform the functions of the office.

## **Subdivision 2 Appointment of persons to help chief executive officer**

### **24 Appointment**

- (1) The chief executive officer may appoint any person to help the chief executive officer in the performance or exercise of his or her functions or powers.
- (2) The person holds office on the terms and conditions, not provided by this Act, stated in—
  - (a) the person's instrument of appointment; or

- (b) a notice signed by the chief executive officer and given to the person.
- (3) In appointing a person under this section, the chief executive officer must consult with the commission chief executive under the *Public Service Act 2008*.
- (4) A person appointed under this section is employed under this Act and not under the *Public Service Act 2008*.

## **25 Preservation of rights of persons appointed under s 24**

- (1) This section applies if an officer of the public service is appointed under section 24 to help the chief executive officer.
- (2) The person keeps all rights accrued or accruing to the person as an officer of the public service as if service in the office to which the person is appointed (the *appointed office*) were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or resignation from the appointed office—
  - (a) the person has the right to be appointed to an office in the public service at a salary level no less than the current salary level of an office equivalent to the office the person held before being appointed to the appointed office; and
  - (b) the person's service in the appointed office is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.

## **Subdivision 3 Other staff**

### **26 Authority staff**

- (1) The authority may employ other staff it considers appropriate to perform its functions.
- (2) The other staff are to be employed under the *Public Service Act 2008*.

## **27 Alternative staffing arrangements**

- (1) The chief executive officer may arrange with the chief executive of a department, a local government, a government entity or a government owned corporation, for the services of officers or employees of the department, local government, entity or corporation to be made available to the authority.
- (2) An officer or employee whose services are made available under subsection (1)—
  - (a) continues to be an officer or employee of the department, local government, entity or corporation; and
  - (b) continues to be employed or otherwise engaged by the department, local government, entity or corporation on the same terms and conditions applying to the officer or employee before his or her services were made available; and
  - (c) is, for the period the services are made available and for the carrying out of the authority's functions, taken to be a member of the staff of the authority.

# **Part 3 Queensland Reconstruction Board**

## **Division 1 Establishment and functions**

### **28 The board**

The authority has a board of management (the *Queensland Reconstruction Board*).

### **29 Functions of board**

The functions of the board are as follows—

- (a) to set the strategic priorities for the authority;
- (b) to make recommendations to the Minister about—

[s 30]

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- (i) priorities for community infrastructure, other property and community services needed for the protection, rebuilding and recovery of affected communities; and
  - (ii) the need for the declaration of declared projects and reconstruction areas;
- (c) to ensure the authority performs its functions and exercises its powers in an appropriate, effective and efficient way.

## **Division 2                    Members**

### **30            Membership of board**

- (1) The board consists of the following persons (each a *member*)—
- (a) the chairperson;
  - (b) 2 members nominated by the Commonwealth;
  - (c) 1 member nominated by the Local Government Association of Queensland Ltd ACN 142 783 917;
  - (d) at least 3 other members.
- (2) Each member must be appointed by the Governor in Council.
- (3) A member mentioned in subsection (1)(d) must have expertise and experience in engineering, finance, planning or another field the Minister considers appropriate for a member of the board.

### **31            Term of office**

Subject to this division, a member holds office for the term stated in the member's instrument of appointment.

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### **32 Conditions of appointment**

- (1) A member is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

### **33 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member—
  - (a) completes a term of office; or
  - (b) resigns office by signed notice given to the Minister; or
  - (c) is removed from office by the Governor in Council under subsection (2); or
  - (d) is convicted of an indictable offence or an offence against this Act; or
  - (e) is a person who is an insolvent under administration under the Corporations Act, section 9; or
  - (f) becomes employed by, or becomes a contractor of, the authority.
- (2) The Governor in Council may at any time remove a member from office for any reason or none.

## **Division 3 Chairperson**

### **34 Role of chairperson**

The chairperson is responsible for leading and directing the activities of the board to ensure the board performs its functions appropriately.

## **Division 4                      Proceedings of the board**

### **35            Time and place of meetings**

- (1) The board may hold its meetings when and where it decides.
- (2) However, the board must meet at least 8 times each year.
- (3) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by at least 2 other members.

### **36            Quorum**

A quorum for a meeting of the board is at least half of the members.

### **37            Presiding at meetings**

- (1) The chairperson presides at all meetings of the board at which the chairperson is present.
- (2) If the chairperson is absent, the member chosen by the members present presides.

### **38            Conduct of meetings**

- (1) Subject to this division, the board may conduct its proceedings, including its meetings, as it considers appropriate.
- (2) The board may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.
- (3) A member who takes part in a meeting of the board under subsection (2) is taken to be present at the meeting.
- (4) A question at a meeting of the board is to be decided by a majority of the votes of the members present at the meeting.

- 
- (5) If the votes are equal, the member presiding has a casting vote.
  - (6) A resolution is a valid resolution of the board, even though it is not passed at a meeting of the board, if—
    - (a) at least half the members give written agreement to the resolution; and
    - (b) notice of the resolution is given under procedures approved by the board.

### **39 Minutes and other records**

The board must keep—

- (a) minutes of its meetings; and
- (b) a record of any decisions and resolutions of the board.

## **Division 5 Disclosure of conflict of interests and reporting requirements**

### **40 Disclosure of conflict of interest**

- (1) If—
  - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the board; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
- (2) Particulars of any disclosure made under this section must be recorded by the board in a register of interests kept for the purpose.

[s 41]

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- (3) After a member has disclosed the nature of an interest in any matter, the member must not be present during any deliberation of the board about the matter, or take part in any decision of the board about the matter, unless the board otherwise decides.
- (4) For the making of a decision by the board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—
  - (a) be present during any deliberation of the board for the purpose of making the decision; or
  - (b) take part in the making of the decision by the board.
- (5) A contravention of this section does not invalidate any decision of the board.
- (6) However, if the board becomes aware a member contravened this section, the board must reconsider any decision made by the board in which the member took part in contravention of this section.

#### **41 Reporting by the board and chairperson**

- (1) As soon as practicable after the end of each quarter, the board must give the Minister a report about the performance of the authority's functions and the exercise of its powers during the quarter.
- (2) Also, if the Minister asks the board for a report about the performance of the authority's functions and the exercise of its powers, the board must comply with the request.
- (3) The authority must keep a copy of each report given under subsection (1) or (2) on its website.
- (4) If the chairperson becomes aware of any matter the chairperson considers may adversely affect the authority's ability to perform its functions or exercise its powers, the chairperson must immediately give the Minister a report about the matter.

## **Part 4                      Declarations about declared projects, reconstruction areas and critical infrastructure projects**

### **Division 1                Declarations**

#### **42        Declaration of declared project**

- (1) The Minister may declare a project for proposed development to be a declared project if the Minister is satisfied—
  - (a) the project is to be undertaken in a part of the State that has been directly or indirectly affected by a disaster; and
  - (b) the declaration is necessary to facilitate—
    - (i) the protection, rebuilding and recovery of an affected community; or
    - (ii) mitigating against potential disasters for an affected community; or
    - (iii) improving the resilience of an affected community for potential disasters through, for example, the betterment of the community.
- (2) The declaration must be made by gazette notice.
- (3) The gazette notice must describe the land to which the declared project relates.

*Example of a description of land—*

a lot on plan description
- (4) Before declaring a declared project, the Minister must have regard to the responsibilities of the relevant local government for matters about land use, and the giving of development approvals, for the local government's area.
- (5) The Minister may make the declaration on the Minister's own initiative or at the request of a local government.

### 43 Declaration of reconstruction area

- (1) A regulation (a *declaration regulation*) may declare a part of the State to be a reconstruction area.
- (2) However, the Minister must not recommend to the Governor in Council the making of a regulation under subsection (1) unless the Minister is satisfied—
  - (a) the part of the State has been directly or indirectly affected by a disaster; and
  - (b) the declaration is necessary to facilitate a matter mentioned in section 42(1)(b).
- (3) Before recommending to the Governor in Council the making of a declaration regulation, the Minister must have regard to the responsibilities of the relevant local government for matters about land use, and the giving of development approvals, for the local government's area.
- (4) A declaration regulation for a reconstruction area may declare that land in a part of the area is land (*acquisition land*) that is subject to section 100.

*Note—*

Under section 100, the owner may not dispose of acquisition land other than to the authority or a local government, and the authority or local government may be required to acquire acquisition land.

- (5) However, the Minister must not recommend to the Governor in Council the making of a declaration regulation for a reconstruction area that includes acquisition land unless the Minister is satisfied the declaration of the acquisition land is necessary for the carrying out of a reconstruction function of the authority.
- (6) If a declaration regulation declares land to be acquisition land, the declaration regulation must—
  - (a) describe the acquisition land; and

*Example of a description of land—*

a lot on plan description

- 
- (b) if the authority may be required to acquire the land under section 100—state that fact; and
  - (c) if a local government may be required to acquire the land under section 100—state that fact and the name of the local government.
- (7) The declaration regulation must not state a local government for subsection (6)(c) without the agreement of the local government.
- (8) The Minister may recommend to the Governor in Council the making of a declaration regulation on the Minister's own initiative or at the request of a local government.

#### **44 Notice about declaration of acquisition land**

- (1) As soon as practicable after land is declared to be acquisition land, the authority must—
- (a) give each owner of the land a notice that—
    - (i) states the land is subject to section 100; and
    - (ii) states the entity that, under the section, may be required to acquire the land; and
    - (iii) includes information about how the section affects the owner's dealing with the land; and
  - (b) give the registrar of titles notice of the declaration.
- (2) A notice given under subsection (1) must include particulars of the land subject to the declaration.
- (3) The registrar of titles must keep records that show the land is subject to the declaration.
- (4) The registrar of titles must keep the records in a way that a search of the freehold land register will show the land is subject to the declaration.

#### **45 Declaration of critical infrastructure project**

- (1) This section applies if the Minister considers the undertaking of a declared project, or particular development in a reconstruction area, is critical or essential for the State for economic, environmental or social reasons.
- (2) The Minister may, by gazette notice, declare the project or development to be a critical infrastructure project.

*Note—*

For the application of the *Judicial Review Act 1991* to a decision about declaring a critical infrastructure project, see section 61.

### **Division 2 Relationship with particular Acts about local government**

#### **46 Relationship with the City of Brisbane Act 2010 or the Local Government Act 2009**

- (1) The declaration of a declared project or an area as a reconstruction area does not affect—
  - (a) the operation of the *City of Brisbane Act 2010* or the *Local Government Act 2009* in relation to land the subject of the declared project or land in the reconstruction area; or
  - (b) the area of the relevant local government; or
  - (c) the jurisdiction, under the Acts, of the relevant local government.
- (2) However, the performance of the relevant local government's functions or the exercise of its powers under the Acts in relation to land the subject of the declared project or land in the reconstruction area is subject to the authority's functions or powers under this Act.

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## Part 5 Particular powers for declared projects and development in reconstruction areas

### Division 1 Preliminary

#### 47 Definitions for pt 5

In this part—

***applicant***, for a prescribed decision or prescribed process, means the person seeking the decision or undertaking of the process under the relevant law for the decision or process.

***critical infrastructure project*** means a declared project or development in a reconstruction area the Minister declares, under section 45, to be a critical infrastructure project.

***decision-maker***—

- (a) for a prescribed decision, means the entity that may make the decision under the relevant law for the decision; and

*Example of a decision-maker for paragraph (a)—*

an assessment manager

- (b) for a prescribed process, means the entity responsible for undertaking the process under the relevant law for the process.

*Example of a decision-maker for paragraph (b)—*

a referral agency

***declaration***, for a declared project, means the declaration for the project made by the Minister under section 42.

***notice to decide*** see section 50(1).

***prescribed decision***—

- 1 A *prescribed decision* means a decision, in relation to a declared project or development in a reconstruction

area, required to be made under a law of the State, including, for example, a decision about the construction, undertaking, carrying out, establishment, maintenance or operation of a declared project or development in a reconstruction area.

- 2 However, a *prescribed decision* does not include a decision required to be made by the Governor in Council or a Minister.

*Example of a prescribed decision—*

a decision of an assessment manager on an application for a development approval

***prescribed process*** means a process, in relation to a declared project or development in a reconstruction area, required to be undertaken under a law of the State, including, for example, a process under the development assessment process under the Planning Act.

***progression notice*** see section 49(1).

***relevant law***, for a prescribed decision or prescribed process, means the law, other than this Act, under which the decision may be made or the process undertaken.

***step-in notice*** see section 51(1).

## 48 Application of laws

This part applies despite any other law.

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## Division 2                      Notices about declared projects and development in reconstruction areas

### Subdivision 1                  Progression notice

#### 49                      Progression notice

- (1) The authority may, by notice (a *progression notice*) given to the decision-maker for a prescribed process, require the decision-maker to undertake, within the period stated in the notice, administrative processes required to complete the process.
- (2) The progression notice must—
  - (a) identify the process; and
  - (b) state the decision-maker must—
    - (i) undertake the process within the stated period; and
    - (ii) inform the authority of the completion of the process within 5 business days after it is completed.
- (3) On receiving the progression notice, the decision-maker must—
  - (a) subject to subsection (5), undertake the prescribed process within the period stated in the notice for that purpose; and
  - (b) inform the authority of the completion of the process within 5 business days after it is completed.
- (4) The authority may, by notice given to the decision-maker and without the decision-maker's agreement, extend the period for undertaking the prescribed process.
- (5) If the authority extends the period for undertaking the prescribed process under subsection (4), the decision-maker must undertake the process within the extended period.

- (6) Before giving a progression notice for a prescribed process, the authority must have regard to the requirements, if any, under the relevant law for undertaking the process.
- (7) Subject to this section, the relevant law for the prescribed process continues to apply to the undertaking of the process.

## **Subdivision 2      Notice to decide**

### **50      Notice to decide**

- (1) The authority may, by notice (a *notice to decide*) given to the decision-maker for a prescribed decision, require the decision-maker to make the decision within the period stated in the notice.
- (2) The stated period must be at least—
  - (a) 20 business days after the notice is given; or
  - (b) if, under the relevant law for the prescribed decision, the decision-maker would, other than for this section, be required to make the decision within a period that is less than the period mentioned in paragraph (a)—the lesser period.
- (3) The notice to decide must—
  - (a) identify the decision; and
  - (b) state the decision-maker must—
    - (i) make the decision within the stated period; and
    - (ii) inform the authority of the decision within 5 business days after it is made.
- (4) On receiving the notice to decide, the decision-maker must—
  - (a) subject to subsection (6), make the prescribed decision within the period stated in the notice for that purpose; and
  - (b) inform the authority of the decision within 5 business days after it is made.

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- (5) The authority may, by notice given to the decision-maker and without the decision-maker's agreement, extend the period for making the prescribed decision.
  - (6) If the authority extends the period for making the prescribed decision under subsection (5), the decision-maker must make the decision within the extended period.
  - (7) If the prescribed decision relates to an application for a development approval, or a change application other than a minor change application, the notice to decide may be given to the decision-maker only after the decision-making period for the application starts.
  - (8) Before giving a notice to decide for a prescribed decision, other than a decision mentioned in subsection (7), the authority must have regard to the requirements, if any, under the relevant law for the decision about public notification of information or other matters in relation to the decision.
  - (9) Subject to this section, the relevant law for the prescribed decision continues to apply to the making of the decision.
  - (10) In this section—  
*decision-making period* means—
    - (a) for an application for a development approval—the period, or extended period, allowed under the development assessment rules under the Planning Act for the assessment manager to decide the application; or
    - (b) for a change application—the period, or extended period, allowed under the development assessment rules under the Planning Act for the responsible entity to decide the application.

### **Subdivision 3 Step-in notice**

#### **51 Step-in notice**

- (1) The authority may, with the approval of the Minister, give the decision-maker and applicant for a prescribed decision or a

prescribed process a notice (a *step-in notice*) advising the decision-maker and applicant that the authority is to make an assessment and a decision about the prescribed decision or process under this subdivision.

- (2) Before deciding to approve the giving of a step-in notice, the Minister must be satisfied the giving of the notice is necessary to facilitate a matter mentioned in section 42(1)(b).
- (3) The step-in notice must—
  - (a) identify the decision or process; and
  - (b) state that the authority is the decision-maker for the prescribed decision or process from the time the notice is given until the authority makes a decision, under section 55, about the prescribed decision or process.

## **52 When step-in notice may be given**

- (1) The authority may give a step-in notice for a prescribed decision or a prescribed process only after a progression notice or notice to decide has been given for the decision or process.
- (2) If a progression notice or notice to decide has been given for a prescribed decision or process, the step-in notice may be given—
  - (a) at any time after the authority is satisfied the decision-maker has not complied with the progression notice or notice to decide, but before the decision-maker has undertaken the process or made the decision; or
  - (b) if the decision-maker has complied with the progression notice or notice to decide—only if the applicant, by notice given to the authority within 10 business days after the applicant is notified of the decision, asks the authority to give a step-in notice for the decision.
- (3) Despite subsection (1), a step-in notice also may be given for a prescribed decision at any time after the decision is made until 10 business days after—

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- (a) if an appeal against the decision has been started under the relevant law for the decision—the start of the appeal; or
  - (b) otherwise—the expiry of the period, under the relevant law for the decision, for starting an appeal against the decision.
- (4) For subsection (2)(b), the step-in notice must be given to the decision-maker within a reasonable period after the authority receives the request.
- (5) In this section—  
*appeal* includes review.

### **53 Providing assistance or recommendations**

- (1) The decision-maker for the prescribed decision or prescribed process must give the authority all reasonable assistance or materials it requires to act under this subdivision, including—
- (a) all material about the prescribed decision or process the decision-maker had before the step-in notice was given; and
  - (b) any material received about the prescribed decision or process by the decision-maker after the step-in notice was given.
- (2) Without limiting subsection (1), the authority may, by notice, require the decision-maker to give the authority within the reasonable period stated in the notice a written report containing—
- (a) an assessment of matters, stated in the notice, relevant to the prescribed decision or process; or
  - (b) recommendations about the assessment mentioned in paragraph (a), including, for example, recommendations about proposed conditions relevant to the prescribed decision or process.
- (3) Subsection (4) applies if, other than for the giving of the step-in notice, under the relevant law for the prescribed

decision a local government could have imposed a condition, in relation to the decision, about infrastructure.

- (4) The local government may, before the authority makes a decision under section 55 about the prescribed decision, give the authority a written recommendation to impose the condition.

## **54 Effects of step-in notice**

- (1) If the authority gives a step-in notice for a prescribed decision or prescribed process—
- (a) the authority is the decision-maker under the relevant law for the prescribed decision or process from the time the step-in notice is given until the authority makes a decision under section 55 about the prescribed decision or process; and
  - (b) for making the decision, the authority has all the powers of the decision-maker under the relevant law for the prescribed decision or process; and
  - (c) for making the decision, the authority must consider the following—
    - (i) the criteria, if any, for making the prescribed decision or undertaking the prescribed process under the relevant law;
    - (ii) the main purpose of this Act; and
  - (d) if the prescribed decision or process relates to an application for a development approval or a change application, other than a minor change application—
    - (i) the assessment manager or responsible entity for the application is taken, for the Planning Act, to be a referral agency for the application; and
    - (ii) the functions and powers of a referral agency for the application (including a referral agency mentioned in subparagraph (i)) is, for the Planning Act, limited to the power to only give advice; and

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- (e) if an appeal was made or was started in relation to the prescribed decision or process under the relevant law for the decision or process—the appeal is of no further effect; and
  - (f) despite paragraph (a), the authority’s decision about the prescribed decision or process is taken to be the exercise of a power or performance of a function of the authority under this Act.
- (2) In this section—  
*appeal* includes review.

## 55 Authority’s decision

- (1) After making an assessment about the prescribed decision or prescribed process, the authority may—
- (a) if the decision has not been made or the process has not been undertaken by the decision-maker—
    - (i) make the decision or undertake the process; or
    - (ii) send back the decision or process, with or without conditions, to the decision-maker under the relevant law for the decision or process; or
    - (iii) decide aspects of the decision and send back undecided aspects of the decision, with or without conditions, to the decision-maker under the relevant law for the decision; or
  - (b) otherwise—
    - (i) confirm or amend the decision; or
    - (ii) cancel the decision and substitute a new decision.
- (2) In acting under subsection (1), the authority may, for the prescribed decision, impose conditions it considers necessary or desirable having regard to—
- (a) the nature of the declared project, or development in the reconstruction area, to which the decision relates; and

- (b) the matters mentioned in section 54(1)(c) the authority considered for the decision.
- (3) If the authority receives a recommendation under section 53(4) to impose a condition in relation to the prescribed decision, the authority must impose the condition unless the Minister directs otherwise.
- (4) For a condition imposed under this section, the authority may nominate an entity that is to have jurisdiction, under the relevant law for the prescribed decision, for the condition.
- (5) An entity may be nominated for 1 or more of the conditions.
- (6) If the authority nominates an entity under subsection (4), the authority must give each of the following notice of the nomination—
  - (a) the entity;
  - (b) the decision-maker and the applicant for the prescribed decision.
- (7) Subject to this subdivision, the relevant law for the prescribed decision or process applies to the making of the authority's decision under this section.

## 56 Effects of decision

- (1) The authority's decision under section 55 about the prescribed decision or prescribed process, including a decision to impose a condition—
  - (a) is taken to be a decision of the decision-maker (the *original decision-maker*) under the relevant law for the prescribed decision or process but a person may not appeal against the authority's decision under this Act or the relevant law; and
  - (b) takes effect when the applicant for the prescribed decision or process and the original decision-maker are given notice under section 57(1) of the authority's decision.

- (2) A condition imposed by the original decision-maker in relation to the prescribed decision is of no effect to the extent it is inconsistent with a condition imposed by the authority.
- (3) If the original decision-maker makes another prescribed decision for the declared project, or development in the reconstruction area, to which the step-in notice relates, the other prescribed decision must not be inconsistent with the authority's decision.

## **57 Notice of decision**

- (1) The authority must give notice of its decision under section 55 about the prescribed decision or prescribed process to—
  - (a) the applicant and decision-maker for the prescribed decision or process; and
  - (b) each entity nominated by the authority to have jurisdiction for a condition in relation to the prescribed decision or process.
- (2) The authority must also give notice of its decision under section 55 about the prescribed decision to the local government for the land to which the prescribed decision relates if—
  - (a) the prescribed decision is a decision on an application for a development approval or a change application; and
  - (b) the local government is not the decision-maker for the prescribed decision.
- (3) A notice under this section must include—
  - (a) the reasons for the authority's decision; and
  - (b) the conditions, if any, imposed under section 55(2) in relation to the decision.

## **58 Report about decision**

- (1) The authority must prepare a report about each step-in notice given for a prescribed decision or prescribed process.

- (2) The authority must include the following in the report—
  - (a) a copy of the step-in notice;
  - (b) details of each entity nominated, under section 55(4), to have jurisdiction for a condition in relation to the prescribed decision or process;
  - (c) a copy of the notice, given under section 57(1), of the authority's decision;
  - (d) other details about the authority's decision required by the Minister.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after notice is given under section 57(1) of the authority's decision.

## **Division 3                      Other matters**

### **59            Recovering cost of advice or services**

- (1) This section applies if, in making an assessment under this part about a prescribed decision or prescribed process, the authority obtains from another entity advice or services the authority considers necessary to make the assessment.
- (2) The authority may recover from the applicant for the prescribed decision or process as a debt the reasonable cost of obtaining the advice or services.

### **60            No requirement to consult on particular actions**

The authority is not required to consult with anyone before giving a progression notice or notice to decide under this part.

### **61            Application of Judicial Review Act 1991**

The *Judicial Review Act 1991*, parts 3 and 5, other than section 41(1), do not apply to—

- (a) a decision of the Minister to declare—

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- (i) a declared project or development in a reconstruction area to be a critical infrastructure project; or
  - (ii) a declared project if the project is a critical infrastructure project; or
  - (b) a decision of the authority to give a progression notice, notice to decide or a step-in notice for a critical infrastructure project; or
  - (c) the authority's decision under section 55 about a prescribed decision or prescribed process for a critical infrastructure project; or
  - (d) a decision or conduct leading up to or forming part of the process of making a decision mentioned in paragraph (a), (b) or (c).

*Note—*

The *Judicial Review Act 1991*, part 3 deals with statutory orders of review, and part 5 deals with prerogative orders and injunctions.

## **Part 6                      Development schemes**

### **Division 1                Making development schemes**

#### **62            Authority may make development scheme**

- (1) Subject to the other provisions of this division, the authority may make a development scheme for a declared project, a reconstruction area or part of a reconstruction area.
- (2) The development scheme is a statutory instrument under the *Statutory Instruments Act 1992* and has the force of law as provided for under this Act.

#### **63            Content of development scheme**

- (1) The development scheme may provide for any matter that the authority considers will promote the proper and orderly

planning, development and management of the declared project or reconstruction area.

- (2) The development scheme must include—
  - (a) a land use plan regulating development for the project or in the area; and
  - (b) a plan for infrastructure for the project or in the area; and
  - (c) an implementation strategy to achieve each reconstruction function of the authority for the project or in the area, to the extent it is not achieved by the land use plan or the plan for infrastructure.
- (3) Without limiting subsection (2)(a), the land use plan may—
  - (a) provide for any matter about which a planning instrument may provide; or
  - (b) categorise development for the project or in the area to be accepted development, assessable development or prohibited development for the Planning Act; or
  - (c) state whether development categorised as assessable development by the plan requires code assessment or impact assessment under the Planning Act; or
  - (d) state assessment benchmarks for the Planning Act that assessable development under the plan must be assessed against; or
  - (e) state whether particular development for the project or in the area is consistent or inconsistent with the plan.
- (4) In making the development scheme, the authority must consider, but is not bound by, a requirement under any of the following relevant to the project or area—
  - (a) a planning instrument;
  - (b) assessment benchmarks prescribed by a regulation made under the Planning Act;
  - (c) assessment benchmarks made under another Act for the Planning Act.

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**64 Development scheme may make provision for particular assessable development**

- (1) A development scheme may provide that development categorised as assessable development under a regulation made under the Planning Act is not assessable development for a declared project or a part of a reconstruction area.
- (2) If a development scheme provides that development is not assessable development for the declared project or a part of a reconstruction area, the development is not assessable development under the Planning Act for the declared project or part.
- (3) A development scheme may provide that an entity that, but for the development scheme, would be a referral agency for a development application or change application for the declared project or reconstruction area, is not a referral agency for the development application or change application.
- (4) If a development scheme provides that an entity is not a referral agency for a development application or change application, the entity is not a referral agency for the application under the Planning Act.

**65 Preparation of proposed development scheme**

Before preparing a proposed development scheme, the authority must—

- (a) consult, in the way it considers appropriate, with the relevant local government; and
- (b) make reasonable endeavours to consult, in the way it considers appropriate, with any of the following the authority considers will be likely to be affected by a development scheme for the declared project or reconstruction area—
  - (i) a government entity or GOC;
  - (ii) a person or other entity.

## **66 Public notification**

- (1) After preparing the proposed development scheme, the authority must—
  - (a) publish the proposed scheme on its website; and
  - (b) in a gazette notice—
    - (i) state that the proposed scheme may be inspected on the authority’s website; and
    - (ii) invite anyone to make submissions on the proposed scheme within a stated period fixed by the authority (the *submission period*); and
  - (c) publish a notice to the same effect as the gazette notice at least once in a newspaper circulating in the area of the relevant local government.
- (2) The submission period must be at least 30 business days.

## **67 Submissions on proposed scheme**

Anyone may make submissions about the proposed development scheme within the submission period.

## **68 Consideration of submissions**

- (1) The authority must consider any submissions received within the submission period.
- (2) Subsection (1) does not prevent the authority from considering a submission made to it after the submission period has ended.

## **69 Amendment of proposed scheme**

- (1) After complying with section 68, the authority may amend the proposed development scheme in any way it considers appropriate.

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- (2) If the authority considers the amendment significantly changes the proposed scheme, it must re-comply with sections 66 and 68 for the amended scheme.

## **70 Initial making and submission of scheme**

- (1) The authority must, as soon as practicable after complying with sections 68 and 69, make the development scheme (the *submitted scheme*) and give it to the Minister.
- (2) The submitted scheme must be accompanied by a report that—
- (a) summarises the submissions considered by the authority; and
  - (b) is about—
    - (i) the merits of the submissions; and
    - (ii) to what extent the proposed development scheme was amended to reflect the submissions.

## **71 Notice of submitted scheme**

The authority must, as soon as practicable after giving the Minister the submitted scheme, give each person (a *submitter*) who made a submission received within the submission period about the scheme a notice stating that—

- (a) the scheme has been made and submitted to the Minister; and
- (b) the authority's report about the submitted scheme can be inspected on its website; and
- (c) if the submitter is an affected owner for the relevant declared project or reconstruction area—the submitter may, within 20 business days after receiving the notice, ask the Minister to amend the submitted scheme to protect the owner's interests.

**72 Ministerial power to amend submitted scheme at affected owner's request**

- (1) The Minister may amend the submitted scheme in a way the Minister considers appropriate to protect an affected owner's interests.
- (2) However, the amendment may be made only if—
  - (a) the affected owner has, within 20 business days after being given notice of the submitted scheme under section 71, asked the Minister to amend it to protect the owner's interests; and
  - (b) the amendment is made within 40 business days after the submitted scheme was given to the Minister.

**73 Direction to authority to engage again in public notification and submissions**

If the Minister considers an amendment of the submitted scheme significantly changes the submitted scheme, the Minister must give the authority a written direction to re-comply with sections 66, 68, 69 and 70 for the submitted scheme as amended.

**74 When proposed scheme takes effect**

The development scheme does not take effect until it has been approved under a regulation.

**75 Notice of development scheme**

The authority must, as soon as practicable after the development scheme takes effect—

- (a) publish the scheme on its website; and
- (b) publish, at least once in a newspaper circulating in the area to which the development scheme applies, a notice stating that—
  - (i) the scheme has been approved; and

- (ii) the scheme may be inspected on the authority's website; and
- (c) give each person who made a submission received within the submission period about the scheme a notice stating that—
  - (i) the scheme has been approved; and
  - (ii) the authority's report about the scheme can be inspected on its website.

## **Division 2                      Amendment, tabling and inspection of development schemes**

### **76            Authority may amend development scheme**

- (1) The authority may amend a development scheme only if procedures under division 1 for making a development scheme have been followed.
- (2) Division 1 applies to the amendment as if—
  - (a) a reference in the division to making a development scheme were a reference to the making of the amendment; and
  - (b) a reference in the division to a proposed development scheme were a reference to the proposed amendment.

### **77            Tabling and inspection requirement**

- (1) This section applies if—
  - (a) a regulation under this part approves a development scheme or an amendment of a development scheme; and
  - (b) the development scheme or amendment is not part of, or attached to, the regulation.
- (2) The Minister must, when the regulation is tabled in the Legislative Assembly under the *Statutory Instruments Act*

1992, section 49, also table a copy of the development scheme or amendment.

- (3) A failure to comply with this section does not invalidate or otherwise affect the regulation.

## **Division 3                    Effect of development scheme on other instruments**

### **78            Relationship with other instruments**

- (1) If there is a conflict between a development scheme and any of the following instruments, the development scheme prevails to the extent of the inconsistency—
  - (a) a planning instrument;
  - (b) assessment benchmarks prescribed by a regulation made under the Planning Act;
  - (c) assessment benchmarks made under another Act for the Planning Act.
- (2) A development scheme may suspend or otherwise affect the operation of a planning instrument, but does not amend the planning instrument.

## **Division 4                    Relationship with Planning Act**

### **Subdivision 1            Preliminary**

#### **79            Application of sdivs 2 and 3**

Subdivisions 2 and 3 apply to the following applications (each a *relevant application*)—

- (a) a development application for development in the area (the *scheme area*) to which a development scheme for a

- 
- declared project or a reconstruction area, or part of a reconstruction area, applies;
- (b) a change application to change a development approval that already approves particular development in the scheme area;
  - (c) a change application to change a development approval—
    - (i) to approve particular development in the scheme area; and
    - (ii) that does not already approve particular development in the scheme area.

## **Subdivision 2      Assessing relevant applications**

### **80      Assessment of development applications**

- (1) This section applies to a relevant application that is a development application.
- (2) A referral agency for the application must assess the application having regard to the development scheme.
- (3) The assessment manager for the application must assess the application against the matters stated in the development scheme as assessment benchmarks for the Planning Act for the application.
- (4) This section does not limit the Planning Act, sections 45, 55, 60 and 61.
- (5) In this section, a reference to the development scheme is a reference to the development scheme in effect when the application was properly made under the Planning Act.
- (6) However, an entity mentioned in subsection (2) or (3) may give the weight that the entity considers is appropriate, in the circumstances, to any amendment or replacement of the development scheme that came into effect after the application was properly made under the Planning Act.

## **81 Assessment of change applications**

- (1) This section applies to a relevant application that is a change application.
- (2) The responsible entity for the application must assess the application against the development scheme.
- (3) This section does not limit the Planning Act, sections 81, 81A and 82.
- (4) In this section, a reference to the development scheme is a reference to the development scheme in effect when the application was made.
- (5) However, the responsible entity for the application may give the weight the entity considers is appropriate, in the circumstances, to any amendment or replacement of the development scheme that came into effect after the application was made.

## **Subdivision 3 Deciding relevant applications**

### **82 Restriction on approving relevant application**

- (1) A relevant application must not be approved under the Planning Act to the extent the development the subject of the application is inconsistent with the land use plan for the development scheme, unless—
  - (a) a preliminary approval under the Planning Act is in force for the land on which the development is to be carried out; and
  - (b) the development is consistent with the preliminary approval.
- (2) To remove any doubt, it is declared that subsection (1) does not require the application to be approved under the Planning Act only because subsection (1)(a) and (b) applies.

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## Subdivision 5 Existing uses

### 89 Lawful use of premises protected

- (1) This section applies if, immediately before the taking of effect of a development scheme, or of an amendment of a development scheme, the use of premises to which the scheme relates was a lawful use of the premises.
- (2) Neither the development scheme nor the amendment can—
  - (a) stop the use from continuing; or
  - (b) further regulate the use; or
  - (c) require the use to be changed.

- (3) In this section—

*lawful use*, of premises, includes—

- (a) a use that is generally in accordance with a current rezoning approval given under—
  - (i) the repealed *Local Government Act 1936*, section 33(5)(k), to which section 33(5)(m) of that Act also applied; or
  - (ii) the repealed *Local Government (Planning and Environment) Act 1990*, section 4.5(6), 4.8(6), 4.10(6) or 8.10(9A); and
- (b) a use that is a natural and ordinary consequence of making a material change of use of the premises if the change was lawfully made under the Planning Act, the repealed *Sustainable Planning Act 2009* or the repealed *Integrated Planning Act 1997*.

*material change of use*, of premises, see the Planning Act, schedule 2.

### 90 Lawfully constructed buildings and work protected

To the extent a building has been lawfully constructed or work lawfully carried out, neither a development scheme nor an

amendment of a development scheme can require the building or work to be altered or removed.

**91 New instruments can not affect existing development approval**

- (1) This section applies if—
  - (a) a development approval exists for premises; and
  - (b) after the approval is given, a new development scheme or amendment of a development scheme commences.
- (2) To the extent the approval has not lapsed, neither the development scheme nor the amendment can stop or further regulate the development, or otherwise affect the approval.

**92 Minister's power to amend development approval**

- (1) The Minister may, by a notice given to the assessment manager and the holder of an existing development approval for development in a reconstruction area for which there is a development scheme, amend the development approval if satisfied the amendment is necessary for the carrying out of a reconstruction function of the authority.
- (2) For the Planning Act, any amendment of a development approval under subsection (1)—
  - (a) is taken to be a part of the approval; and
  - (b) is taken to have been made by the assessment manager for the development approval; and
  - (c) takes effect when the notice under subsection (1) is given.
- (3) If an assessment manager is given a notice under subsection (1), the assessment manager must comply with the requirements under the Planning Act about giving public access to development approvals, as if the notice were a development approval.

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- (4) If there is an inconsistency between the amendment and the development approval, the amendment prevails to the extent of the inconsistency.
  - (5) This section applies despite sections 89, 90 and 91.
  - (6) In this section—  
*existing*, for a development approval, means a development approval in effect for development in a reconstruction area, or part of a reconstruction area, immediately before a development scheme takes effect for the area or part.

## **Subdivision 6      Designations of premises under Planning Act for development of infrastructure**

### **93      Designation of premises—development scheme**

- (1) To remove any doubt, it is declared that—
  - (a) the planning Minister or a local government may make a designation under the Planning Act, chapter 2, part 5 of premises in, or partly in, the area to which a development scheme applies; and
  - (b) a designation of premises under the Planning Act that is in force immediately before a development scheme takes effect for all or part of the premises continues in force despite the development scheme taking effect.
- (2) Development carried out on premises that are the subject of a designation under the Planning Act is accepted development to the extent the development—
  - (a) is carried out under the designation; and
  - (b) would, other than for this subsection, be assessable development under a development scheme.
- (3) Subsection (2) does not limit the Planning Act, section 44(6)(b).
- (4) In this section—

*planning Minister* means the Minister administering the Planning Act.

## **Subdivision 7      Miscellaneous provision**

### **95      Planning and Environment Court may make declarations**

- (1) The authority may bring a proceeding in the Planning and Environment Court for a declaration about—
  - (a) a matter done, to be done or that should have been done for this Act; or
  - (b) the interpretation of this Act; or
  - (c) the lawfulness of land use or development—
    - (i) for a declared project; or
    - (ii) in a reconstruction area.
- (2) The court may make—
  - (a) a declaration about a matter mentioned in subsection (1); or
  - (b) an order about the declaration.

## **Part 7                      Undertaking works, taking land, dealing with roads and application of particular laws**

### **Division 1                  Provisions about undertaking works**

#### **96      Direction for authority to undertake works**

- (1) This section applies if the Minister is satisfied that, for the effective and efficient carrying out of a reconstruction

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function of the authority, it is necessary or desirable for particular works to be undertaken by the authority.

- (2) A regulation may direct the authority to undertake the works.
- (3) If a regulation directs the authority to undertake the works, the State Development Act, sections 110, 111(2) to (4) and 112 apply in relation to the direction as if—
  - (a) the references in the sections to section 109 were a reference to this section; and
  - (b) the references in the sections to the Coordinator-General were references to the authority; and
  - (c) the reference in section 110(1) of that Act to ‘or other person directed under the section’ were omitted; and
  - (d) the reference in section 110(2) of that Act to ‘or by another person on behalf of the Coordinator-General’ were omitted.

## **97 Application of State Development Act for transfer of authorised works**

The State Development Act, section 134 applies in relation to authorised works under this Act as if—

- (a) the references in the section to the Coordinator-General were references to the authority; and
- (b) the references in the section to authorised works were references to authorised works under this Act; and
- (c) the reference in section 134(2) of that Act to the Minister were a reference to the Minister administering this Act.

## **98 Application of State Development Act for works on foreshore or under waters**

For the effective and efficient carrying out of a reconstruction function of the authority, the State Development Act, section 140 applies to the authority as if the references in the

section to the Coordinator-General were references to the authority.

## Division 2                      Provisions about taking land and entry to land

### 99      Authority's power to take land

- (1) The authority may, as provided under this section, take land for any of the following purposes—
  - (a) to carry out authorised works;
  - (b) to implement a development scheme for a declared project or a reconstruction area;
  - (c) to carry out a reconstruction function of the authority;
  - (d) to comply with section 100(3).
- (2) The *Acquisition of Land Act 1967* (the *ALA*) applies for taking land under subsection (1) and paying compensation for the land taken as if—
  - (a) the taking were a taking under the ALA by a constructing authority; and
  - (b) the constructing authority were the authority; and
  - (c) the reference in the ALA, section 5(1)(c) to the taking of land for a purpose stated in the schedule to that Act were a reference to the taking of land for a purpose mentioned in subsection (1); and
  - (d) the reference in the ALA to the relevant Minister were a reference to the Minister administering this Act.
- (3) For applying the process for taking land and paying compensation, the ALA applies with all other necessary changes.
- (4) The power to take land under this section for a purpose (the *primary purpose*) includes power to take land at any time,

either for the primary purpose or for any purpose incidental to the carrying out of the primary purpose.

- (5) This section does not limit the power of a constructing authority under the ALA to take land under that Act.
- (6) To remove any doubt, it is declared that the taking of land under this section is not a taking of land under the ALA, even though the process for taking the land and paying compensation for the land is the process stated in that Act.

## 100 When authority or local government must take land

- (1) This section applies if an owner of acquisition land is given a notice under section 44(1)(a) (the *relevant notice*).
- (2) The owner must not dispose of the acquisition land other than to the entity (the *relevant entity*) stated in the relevant notice for the purpose of this section.

Maximum penalty—165 penalty units.

- (3) If the owner of the land gives the relevant entity a notice that the owner proposes to sell the land, the entity must acquire the land from the owner—
  - (a) if the entity is the authority—in the way provided for under section 99; or

*Note—*

Under section 102, land taken by the authority may be vested in a government entity, GOC or local government.

- (b) if the entity is a local government—in the way provided for under the *Acquisition of Land Act 1967*.
- (4) If any transaction is entered into in contravention of subsection (2), the transaction is not invalid, and the new owner is taken to have been given notice under section 44(1)(a).
- (5) This section does not limit the authority's power to take the land for a purpose mentioned in section 99(1)(a) to (c).

## **101 Authority's power to take public utility easement**

- (1) The authority's power under section 99 to take land for a purpose mentioned in section 99(1), includes the power to create, by registration, a public utility easement over the land under the *Land Title Act 1994*, part 6, division 4.
- (2) For the *Land Title Act 1994*, section 89, the person for whom the land is to be taken under section 99 is taken to be a public utility provider.
- (3) The easement may be registered under the *Land Title Act 1994* without the document having been signed by the owner of the land to be burdened by the easement.
- (4) Subsection (3) applies despite the *Land Title Act 1994*, section 83(1).

## **102 Vesting of land taken**

- (1) Land taken by the authority under this division vests, as provided for in the instrument under which it is taken, in the State, the authority, a government entity, GOC or local government.
- (2) A regulation may divest any land from the authority and vest the land in the State, a government entity, GOC or local government.
- (3) The State Development Act, section 128(3) applies to land taken by the authority and vested in the State as if—
  - (a) the reference in the subsection to the Coordinator-General were a reference to the authority; and
  - (b) the reference in the subsection to the proclamation were a reference to the instrument; and
  - (c) the reference in the subsection to the works or purposes were a reference to the purposes.

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**103 Power to use, lease or dispose of land**

The authority may, to give effect to a purpose mentioned in section 99(1), do any or all of the following—

- (a) lease, or agree to lease, to any person land taken, or proposed to be taken, under this division;
- (b) sign an agreement with any person to carry out, own, operate and maintain any works or development on land taken, or proposed to be taken, under this division;
- (c) sign an agreement with any person in relation to works or development for land taken, or proposed to be taken, under this division;
- (d) sell land taken, or agree to sell land to be taken, under this division.

**104 Application of other provisions of the State Development Act about the taking of land**

The State Development Act, sections 130, 132 and 133 apply in relation to the taking of land by the authority under this division as if—

- (a) the references in the sections to the Coordinator-General were references to the authority; and
- (b) the reference in section 130(1) of that Act to the proclamation were a reference to the instrument; and
- (c) the references in sections 130 and 133 of that Act to ‘this Act’ were references to ‘the *Queensland Reconstruction Authority Act 2011*’.

**105 Application of provisions of the State Development Act about entry to land**

- (1) An authorised person may, to undertake authorised works, exercise a power stated in the State Development Act, section 136(1)(a) to (f) in relation to land.

- (2) For subsection (1), the State Development Act, section 136(1)(f) applies as if—
  - (a) the reference in that paragraph to the Coordinator-General were a reference to the authority; and
  - (b) the reference in that paragraph to officers or employees were a reference to authorised persons.
- (3) The State Development Act, section 136(2) to (4) applies to the exercise of a power mentioned in subsection (1) as if—
  - (a) the reference in section 136(4) of that Act to the Coordinator-General were a reference to the authority; and
  - (b) the reference in section 136(4) of that Act to ‘or his or her delegate’ were omitted.
- (4) Also, the State Development Act, section 139(1), (2), (3) and (5) applies to the exercise of a power mentioned in subsection (1) as if—
  - (a) the references in the subsections to section 136 included a reference to section 136 as applied under this section; and
  - (b) the reference in section 139(5) of that Act to the Coordinator-General were a reference to the authority.
- (5) The authority may, by notice in writing given to an appropriately qualified person, authorise the person to exercise a power under the State Development Act, section 136(1)(a) to (f) as applied under this section.
- (6) In exercising or attempting to exercise a power mentioned in subsection (1) at a place, the authorised person must take all reasonable steps to ensure the authorised person causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.
- (7) In this section—

*appropriately qualified*, for the exercise of a power, means having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification or level in a department

*land* does not include a part of a place where a person resides.

## Division 3                      Dealing with roads

### 106      Roads and road closures

- (1) The authority may perform functions or exercise powers for a road in a reconstruction area that the authority considers necessary or desirable to perform its other functions.
- (2) Without limiting subsection (1), the authority may, by gazette notice, permanently or temporarily close all or part of a road in a reconstruction area.
- (3) Before the closing of the road takes effect, the authority must publish a notice the authority considers appropriate about the closure in a newspaper circulating in the reconstruction area.
- (4) Failure to comply with subsection (3) does not invalidate the closure.
- (5) The authority may do everything necessary to stop traffic using a road or part of a road closed under this section.
- (6) To remove any doubt, it is declared that this section applies—
  - (a) whether or not a road is a State-controlled road under the *Transport Infrastructure Act 1994*; and
  - (b) whether or not the *Land Act 1994* applies to a road.

**107 Power to vest land in permanently closed road or unallocated State land in reconstruction areas**

- (1) The Authority may, by gazette notice, declare that any of the following land in a reconstruction area is vested, in fee simple, in the authority—
  - (a) land that comprised a road under the *Land Act 1994* that has been permanently closed under section 106;
  - (b) unallocated State land under the *Land Act 1994*.
- (2) The chief executive of the department in which the *Land Act 1994* is administered must, under that Act, register the vesting if the authority lodges in the land registry under that Act—
  - (a) a request under that Act to register the vesting; and
  - (b) if that chief executive so requires—a plan of subdivision under that Act for the land the subject of the vesting; and
  - (c) a copy of the gazette notice.
- (3) On the registration of the request to vest, the Governor in Council may issue to the authority a deed of grant under the *Land Act 1994* for the land the subject of the vesting.
- (4) Despite the *Land Act 1994* and the *Land Title Act 1994*, no fee is payable by the authority in relation to the registration of the vesting or to give effect to it.

**108 Giving information about roads to relevant local government**

- (1) This section applies if the authority performs a function or exercises a power relating to a road or former road in a reconstruction area.
- (2) The authority must give the relevant local government the information the authority has to allow the local government to comply with its obligation for its map and register of roads under the *Local Government Act 2009*, section 74.

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## **Division 4                      Application of other laws**

### **109      Application of State Development Act, pt 7**

The State Development Act, sections 154 to 156 apply in relation to works undertaken by the authority or chief executive officer as if—

- (a) a reference in section 154 or 155 to the Coordinator-General included a reference to the authority or chief executive officer; and
- (b) the reference in section 155 to ‘or the Coordinator-General’s delegate’ were omitted.

### **110      Application of Planning Act**

Despite the Planning Act, section 7(1), that Act does not bind the authority or chief executive officer in relation to the authority’s or chief executive officer’s functions or powers under this Act.

## **Part 8                              Direction to take action about local planning instruments**

### **111      Procedures before exercising particular power**

- (1) Before a power is exercised under section 112, the Minister must give notice of the proposed exercise of the power to the local government to be affected by the exercise of the power.
- (2) However, notice need not be given if the power is proposed to be exercised at the local government’s request.
- (3) The notice must state—
  - (a) the reasons for the proposed exercise of the power; and
  - (b) a period within which the local government may make submissions to the Minister about the proposed exercise of the power.

[s 112]

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- (4) The Minister must consider any submissions made under subsection (3) and advise the local government that the Minister has decided—
  - (a) not to exercise the power; or
  - (b) to exercise the power.
- (5) If the Minister decides to exercise the power, the Minister must advise the local government the reasons for deciding to exercise the power.

## **112 Power of Minister to direct local government to take particular action about local planning instrument**

- (1) This section applies if the Minister is satisfied it is necessary to give a direction to a local government to ensure the main purpose of this Act is achieved.
- (2) The Minister may direct the local government to take an action in relation to—
  - (a) a local planning instrument; or
  - (b) a proposed local planning instrument; or
  - (c) a proposed amendment of a local planning instrument.
- (3) The direction may be as general or specific as the Minister considers appropriate and must state the reasonable period within which the local government must comply with the direction.
- (4) Without limiting subsection (2), the direction may require the local government to—
  - (a) review its planning scheme; or
  - (b) make a planning scheme or amend its planning scheme; or
  - (c) make, amend or repeal a temporary local planning instrument; or
  - (d) make, amend or repeal a planning scheme policy.
- (5) In this section—

*planning scheme* means a planning scheme under the Planning Act.

*planning scheme policy* means a planning scheme policy under the Planning Act.

*temporary local planning instrument* means a temporary local planning instrument under the Planning Act.

### **113 Power of Minister if local government does not comply with direction**

- (1) If the local government does not comply with the Minister's direction under section 112 within the reasonable period stated in the notice, the Minister may take the action the Minister directed the local government to take.
- (2) Anything done by the Minister under subsection (1) is taken to have been done by the local government and has the same effect as it would have if the local government had done it.
- (3) An expense reasonably incurred by the Minister in taking an action under subsection (1) may be recovered from the local government as a debt owing to the State.

### **114 Minister to give notice of direction**

If the Minister gives a local government a direction under section 112, the Minister must ensure a copy of the direction is given to the chief executive of the department in which the Planning Act is administered.

## **Part 9**                      **General offence provisions and legal proceedings**

### **Division 1**                **Offences**

#### **115**    **Duty to act honestly**

- (1) This section applies to a person who is a member of the board or an officer of the authority.
- (2) The person must at all times act honestly in the exercise of the person's powers and the performance of the person's functions.

Maximum penalty—200 penalty units.

#### **116**    **Disclosure of information**

A person must not disclose information obtained in the administration of this Act, or another Act giving functions to the authority, unless the disclosure is made—

- (a) with the agreement of the person from whom the information was obtained; or
- (b) for the administration of this Act or another Act giving functions to the authority; or
- (c) in legal proceedings; or
- (d) under the *Crime and Corruption Act 2001* or the *Ombudsman Act 2001*; or
- (e) with another lawful excuse.

Maximum penalty—100 penalty units.

#### **117**    **False or misleading information**

- (1) A person must not, for the purposes of this Act, state anything the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

## **118 False or misleading documents**

- (1) A person must not, for the purposes of this Act, give the authority a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—200 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

## **119 Obstructing authorised person**

- (1) A person must not obstruct an authorised person who is exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) In this section—

*obstruct* includes hinder and attempt to obstruct or hinder.

# **Division 2                    Legal proceedings**

## **Subdivision 1            Evidence**

### **120 Application of sdiv 1**

This subdivision applies to a proceeding under this Act.

## **121 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the appointment of—
  - (i) the chairperson; or
  - (ii) an authorised person;
- (b) the authority of a person to do anything under this Act.

## **122 Signatures**

A signature purporting to be the signature of the chairperson or the chief executive officer is evidence of the signature it purports to be.

## **123 Other evidentiary aids**

- (1) In a proceeding, a certificate purporting to be that of the chief executive officer stating any of the following matters is evidence of the matter—
  - (a) a stated document is an appointment or notice made or given under this Act;
  - (b) a stated document is a document given to the authority or chief executive officer;
  - (c) a stated document is a copy of a document mentioned in paragraph (a) or (b).
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

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## **Subdivision 2      Offence proceedings**

### **124      Summary offences**

An offence against this Act is a summary offence.

### **125      Limitation on time for starting proceeding for summary offence**

A summary proceeding under the *Justices Act 1886* for a summary offence must start within whichever is the longer of the following—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

## **Part 10                      Miscellaneous provisions**

### **Division 1                      Duty to cooperate and requesting information**

#### **126      Extension of duty to cooperate under State Development Act, s 13**

- (1) This section applies to an entity on whom a duty is imposed, under the State Development Act, section 13(1), to cooperate with the Coordinator-General in the performance of the Coordinator-General's functions and duties under that Act.
- (2) The entity is also taken to be subject to a duty to cooperate with the authority in the performance of the authority's functions and the exercise of its powers under this Act.
- (3) The State Development Act, section 13(2) applies to the entity as if—

[s 127]

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- (a) a reference in the subsection to the Coordinator-General were a reference to the authority; and
- (b) the reference in section 13(2)(b) to ‘the State or within any area over which the State claims jurisdiction’ were a reference to a reconstruction area; and
- (c) the reference in section 13(2)(c) to the functions or duties of the Coordinator-General were a reference to the functions or powers of the authority.

## 127 Information requirement made by authority—general

- (1) The authority may, by notice, ask a relevant entity or other person to give the authority information, other than personal information, in the entity’s or person’s possession or control that the authority reasonably requires for the effective and efficient carrying out of the authority’s functions.
- (2) If the authority asks an entity or other person for information under this section, the entity or person must comply with the request.

Maximum penalty—100 penalty units.

- (3) For subsection (1), information is not taken to be in the entity’s or person’s control merely because of an agreement between the entity or person (the *first person*) and anyone else (the *second person*) under which the second person must give the information to the first person.
- (4) This section does not limit section 126.
- (5) In this section—

*personal information* means information or an opinion, including information or an opinion forming part of a database, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.

*relevant entity* means a government entity, GOC or local government.

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**128 Information requirement made by authority—prescribed decisions**

- (1) The authority may ask a relevant person for a prescribed decision to give the authority information it reasonably requires—
  - (a) to decide whether to give a progression notice, a notice to decide or a step-in notice for the decision; or
  - (b) to make an assessment and a decision about the prescribed decision under this Act; or
  - (c) to undertake a prescribed process.
- (2) The relevant person must comply with a request under subsection (1).
- (3) This section does not limit section 126.
- (4) In this section—

*relevant person*, for a prescribed decision, means the applicant for the decision or another entity the authority reasonably considers has information that may help it act on the matters mentioned in subsection (1)(a) or (b).

**129 Giving of information protected**

- (1) This section applies if a person, acting honestly, gives information or a record (the *information*) to the authority—
  - (a) in compliance with this division; or
  - (b) otherwise under this Act.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

### **130 Interaction with other laws**

- (1) This division does not limit a power or obligation under another Act or law to give information.
- (2) This division applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.

## **Division 3 Other miscellaneous provisions**

### **132 Delegations**

- (1) The chief executive officer may delegate his or her functions under this Act to an appropriately qualified senior executive under the *Public Service Act 2008*.
- (2) In this section—  
*appropriately qualified* includes having qualifications, experience or standing appropriate for the function.  
*functions* includes powers.

### **133 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means any of the following when performing a function or exercising a power under this Act—
  - (a) the Minister;
  - (b) a member of the board;
  - (c) an authorised person or another officer of the authority.

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### **134 Ministerial access to information**

- (1) The Minister may by notice require the authority to give the Minister stated information or stated documents, or copies of documents, in the authority's possession.
- (2) The authority must comply with the requirement.

### **135 Authority's guidelines**

- (1) The authority may make guidelines (each an *authority guideline*), consistent with this Act, to provide guidance to persons about matters relating to the operation of the Act or the authority.
- (2) An authority guideline may be amended or replaced by a later guideline made under this section.
- (3) The authority must—
  - (a) give a copy of an authority guideline to a person on request; and
  - (b) keep a copy of each guideline on the authority's website.

### **136 Application of provisions**

- (1) This section applies if a provision of this Act applies to another law, or a provision of another law, (each the *applied law*) for a purpose.
- (2) The applied law and any definition relevant to it apply with necessary changes.
- (3) Subsection (2) is not limited merely because a provision states how the applied law is to apply.

### **137 Approved forms**

The authority may approve forms for use under this Act.

### **138 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty of no more than 20 penalty units for contravention of a regulation.

## **Part 11 Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **139 Definitions for part**

In this part—

*amending Act* means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

*former*, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

*repealed Planning Act* means the repealed *Sustainable Planning Act 2009*.

### **140 Existing particular development applications**

- (1) This section applies to an existing development application mentioned in former section 79.
- (2) The pre-amended Act continues to apply in relation to the application as if the amending Act had not been enacted.
- (3) In this section—

*existing development application* means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

*pre-amended Act* means this Act as in force immediately before the commencement.

#### **141 Existing particular requests for compliance assessment**

- (1) Subsection (2) applies to an existing request for compliance assessment of development mentioned in former section 84(a).
- (2) Former section 87 continues to apply for assessing the development as if the amending Act had not been enacted.
- (3) Subsection (4) applies to an existing request for compliance assessment of a document or work mentioned in former section 84(b).
- (4) Former sections 86 and 87 continue to apply for assessing the document or work as if the amending Act had not been enacted.
- (5) In this section—

*existing request for compliance assessment* means a request for compliance assessment made under the repealed Planning Act, to which the Planning Act, section 288 applies.

## Schedule Dictionary

### section 5

***accepted development*** see the Planning Act, section 44(4).

***acquisition land*** see section 43(4).

***affected community*** means a community affected by a disaster.

***affected owner***, for a declared project or a reconstruction area, means a person who owns land in, or that adjoins—

- (a) the area to which the declared project relates; or
- (b) the reconstruction area.

***applicant***, for a prescribed decision or prescribed process, see section 47.

***assessable development*** see the Planning Act, section 44(3).

***assessment benchmarks*** see the Planning Act, section 43(1)(c).

***assessment manager*** means an assessment manager under the Planning Act.

***authorised person*** means—

- (a) the chief executive officer; or
- (b) an employee, or other member of staff, of the authority; or
- (c) another person authorised in writing under section 105(5).

***authorised works*** means works authorised under this Act, or the State Development Act as applied under this Act, to be undertaken by the authority.

***authority*** means the Queensland Reconstruction Authority established under section 7.

***betterment***, of a community, includes improving the community's infrastructure so that the infrastructure is less likely to be damaged or otherwise affected by the impacts of a disaster.

***board*** means the Queensland Reconstruction Board.

***chairperson*** means the chairperson of the board.

***change application*** means a change application under the Planning Act.

***chief executive officer*** means the chief executive officer appointed under section 14.

***community infrastructure*** means—

- (a) infrastructure of a type prescribed by regulation under the Planning Act, section 35(1); or
- (b) other infrastructure prescribed by regulation.

***convicted*** includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

***Coordinator-General*** means the Coordinator-General under the State Development Act.

***critical infrastructure project***, for part 5, see section 47.

***decision-maker***, for part 5, see section 47.

***declaration***, for part 5, see section 47.

***declared project*** means a project declared under section 42 to be a declared project.

***development*** means development as defined under the Planning Act.

***development application*** means a development application under the Planning Act.

***development approval*** means a development approval under the Planning Act.

***development scheme***, for a declared project or a reconstruction area, or part of a reconstruction area, is the

development scheme for the project or area made under section 62, as amended from time to time under section 76.

**disaster** see the *Disaster Management Act 2003*, section 13(1).

**government entity** means—

- (a) a government entity, other than a GOC, as defined under the *Public Service Act 2008*, section 24; or
- (b) a rail government entity under the *Transport Infrastructure Act 1994*.

**indictable offence** means an offence for which a charge may be laid by indictment or an equivalent process, whether that is the only or an optional way to lay a charge of the offence.

**infrastructure** see the *Planning Act*, schedule 2.

**land use plan**, for a development scheme, means the land use plan included in the development scheme.

**local planning instrument** means a local planning instrument under the *Planning Act*.

**member**, of the board, see section 30(1).

**minor change application** means a change application for a minor change to a development approval, as defined in the *Planning Act*.

**mitigating**, against a potential disaster, means reducing or eliminating—

- (a) the risk of the disaster happening; or
- (b) the potential impacts of the disaster.

**notice** means a notice in writing.

**notice to decide**, for part 5, see section 47.

**officer**, of the authority, means—

- (a) the chief executive officer; or
- (b) an employee, or other member of staff, of the authority; or
- (c) an individual who performs services for the authority—

- 
- (i) under a contract, other than a contract of employment, between the individual and the authority; or
  - (ii) under an arrangement between the authority and a person (other than an individual).

**owner**, of land, means the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for it if it were let to a tenant at a rent.

**Planning Act** means the Planning Act 2016.

**planning instrument** means a planning instrument under the Planning Act.

**premises** means—

- (a) a building or other structure; or
- (b) land, whether or not a building or other structure is situated on the land.

**prescribed decision** see section 47.

**prescribed process** see section 47.

**progression notice**, for part 5, see section 47.

**Queensland Reconstruction Board** see section 28.

**reconstruction area** means a part of the State declared to be a reconstruction area under section 43.

**reconstruction function**, of the authority, means any of the following functions of the authority—

- (a) the function mentioned in section 10(1)(g);
- (b) the function mentioned in section 10(1)(h) to the extent it relates to an affected community;
- (c) the function mentioned in section 10(1)(i) to the extent it relates to an affected community.

**referral agency** means a referral agency under the Planning Act.

**relevant application**, for part 6, division 4, subdivisions 2 and 3, see section 79.

**relevant law**, for part 5, see section 47.

**relevant local government**, for a reconstruction area, land or a development scheme, means each local government in whose area the reconstruction area, the land, or the land to which the development scheme applies is located.

**resilience**, of a community, means the ability of the community and its systems—

- (a) to recover from the impacts of a disaster, including, for example, the ability to restore essential infrastructure and community functions; and
- (b) to accommodate or adapt to the impacts of a disaster.

**responsible entity**, for a change application, means the responsible entity for the application under the Planning Act.

**road** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area of land that—
  - (i) is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; and
  - (ii) is open to or used by the public; or
- (c) a bridge, culvert, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ford, tunnel, viaduct or path mentioned in any of paragraphs (a) to (d).

**State Development Act** means the *State Development and Public Works Organisation Act 1971*.

**step-in notice** see section 47.

**structure** means anything built or constructed, whether or not attached to land.

**submission** means a written submission.

**submission period**, for a proposed development scheme, see section 66(1)(b).

**submitted scheme** see section 70(1).