

Sustainable Planning and Other Legislation Amendment Bill 2011

Report No. 9

Transport and Local Government Committee

February 2012

Transport and Local Government Committee

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Abbreviations

CPI	Consumer Price Index
DLGP	Department of Local Government and Planning
LGAQ	Local Government Association of Queensland
MPAQ	Master Plumbers' Association of Queensland
PIC	Plumbing Industry Council
RNA	Royal National Agricultural and Industrial Association of Queensland
SPA	<i>Sustainable Planning Act 2009</i>
the bill	Sustainable Planning and Other Legislation Amendment Bill 2011
the committee	Transport and Local Government Committee
the Minister	Attorney-General, Minister for Local Government and Special Minister of State

Chair's foreword

This report presents the findings of the Transport and Local Government Committee regarding the Sustainable Planning and Other Legislation Amendment Bill 2011. This bill is an omnibus bill that amends the *Animal Management (Cats and Dogs) Act 2008*, the *Building Act 1975*, the *Coastal Protection and Management Act 1995*, the *Local Government Act 2009*, the *Plumbing and Drainage Act 2002*, the *Sustainable Planning Act 2009* and the *Urban Land Development Authority Act 2007*. The bill implements several policy initiatives.

Given that the bill implements several policy initiatives within the local government portfolio, the committee spent some time considering the bill. This included three public briefings from the Department of Local Government and Planning as well as a public hearing. The committee considered the evidence from these forums as well as the written submissions carefully as part of their deliberations regarding the bill and before making the recommendations contained within this report.

The committee system, particularly since its reform earlier this year, provides an excellent opportunity for public participation in the Queensland Parliament and the legislative process. The committee was pleased with the level of interest in this inquiry. The committee received over 50 written submissions. There was also strong attendance at the public hearing from both invited witnesses and observers. On behalf of the committee I thank all submitters and witnesses as well as the officials from the Department of Local Government and Planning for their participation in the inquiry.

I also thank the committee members for their deliberations and work in compiling this report. Additionally, the committee secretariat has provided excellent support for the committee throughout this inquiry process.



Jo-Ann Miller MP
Chair

Recommendations

Recommendation 1

4

The committee recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be passed subject to the Queensland Legislative Assembly agreeing to the amendments recommended in this report.

Recommendation 2

12

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to ensure that the clarification in clause 25 of the Sustainable Planning and Other Legislation Amendment Bill 2011 to the *Local Government Act 2009*, is also made to the *City of Brisbane Act 2010*.

Recommendation 3

18

The committee recommends that the Department of Local Government and Planning monitor the number of audits undertaken by local governments, the level of compliance and the financial impacts on local governments, particularly noting any impacts on remote and regional councils, in order to identify if there is a need to adjust the fee or take other action to increase the revenue available to fund audits.

Recommendation 4

28

The committee recommends that the Attorney-General, Minister for Local Government and Special Minister of State include the Royal National Agricultural and Industrial Association of Queensland (RNA) in its urban encroachment policy once the RNA ceases to be part of the Bowen Hills Urban Development Area and no longer falls under the Urban Land Development Authority.

Recommendation 5

29

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to extend the length of time an owner of premises may seek registration from 10 years to up to, but not exceeding, 25 years at the Minister's discretion.

Recommendation 6

35

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to require the Urban Land Development Authority to consult with the public sector entities who are likely to be involved with the infrastructure agreement after the Urban Land Development Authority withdraws from all or part of an urban development area, when negotiating an infrastructure agreement.

Point of clarification**Point of clarification****15**

The committee seeks clarification from the Attorney-General, Minister for Local Government and Special Minister of State on what is categorised as notifiable works.

1 Introduction

1.1 Role of the committee

The Transport and Local Government Committee (the committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the *Standing Rules and Orders of the Legislative Assembly*.¹ The committee was established on 16 June 2011² with the following primary areas of responsibility:

- Transport
- Main Roads
- Marine infrastructure
- Infrastructure
- Local Government
- Building industry.³

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee, such as this committee, is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider—

- the policy to be given effect by the legislation
- the application of fundamental legislative principles to the legislation
- for subordinate legislation – its lawfulness.

When examining a bill, a portfolio committee shall:

- determine whether to recommend that the bill be passed
- may recommend amendments to the bill
- consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.⁴

Although there is no mandated process for examining a bill, a portfolio committee may examine the bill by:

- calling for and receiving submissions about the bill
- holding hearings and taking evidence from witnesses
- engaging expert or technical assistance and advice
- seeking the opinion of other committees.⁵

1.2 Inquiry process

1.2.1 Referral

Hon Paul Lucas MP, Attorney-General, Minister for Local Government and Special Minister of State (the Minister), introduced the Sustainable Planning and Other Legislation Amendment Bill 2011 (the bill) into the Queensland Legislative Assembly on 11 October 2011. The bill was referred to the

¹ s.88 *Parliament of Queensland Act 2001* and 194 of the *Standing Rules and Orders of the Legislative Assembly* as at 15 November 2011.

² The committee was originally established as the Transport, Local Government and Infrastructure Committee. On 15 November 2011, the committee's name was changed to the Transport and Local Government Committee.

³ Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly* as at 15 November 2011.

⁴ 132(1) of the *Standing Rules and Orders of the Legislative Assembly* as at 15 November 2011.

⁵ 133 of the *Standing Rules and Orders of the Legislative Assembly* as at 15 November 2011.

committee at this time.⁶ On 13 October 2011, the House was advised that the Committee of the Legislative Assembly had decided that the 6 February 2012 was the date that the committee was required to report back to the Queensland Legislative Assembly on the bill.⁷

1.2.2 Public submissions

The committee advertised its inquiry into the bill in *The Courier-Mail* on 29 October 2011. As shown in Appendix A, the committee accepted 56 submissions to the inquiry. Copies of the submissions are available from the committee's website. The Department of Local Government and Planning (DLGP) commented on the public submissions at a public briefing held on 14 December 2011. A copy of the transcript of this briefing is also available from the committee's website. A list of departmental officers assisting the committee is provided in Appendix B.

1.2.3 Public briefings

The DLGP is responsible for the policy area contained in the bill and the committee therefore sought the assistance of the department regarding the bill. The department provided the committee with written material regarding the bill including a summary of consultation undertaken on the bill.

In addition to the public briefing on submissions mentioned above, the committee received two public briefings on the bill on 30 November 2011 and 14 December 2011. Copies of the transcript of these briefings are available from the committee's website.

1.2.4 Public hearing

The committee held a public hearing on 14 December 2011 in Brisbane. Witnesses who gave evidence at the public hearing are listed in Appendix C.

1.3 Overview of the bill

The bill, which has been prepared as an omnibus bill, amends several Acts including the *Animal Management (Cats and Dogs) Act 2008*, the *Building Act 1975*, the *Coastal Protection and Management Act 1995*, the *Local Government Act 2009*, the *Plumbing and Drainage Act 2002*, the *Sustainable Planning Act 2009* and the *Urban Land Development Authority Act 2007*.⁸ All of the Acts being amended, with the exception of the *Coastal Protection and Management Act 1995*, are administered by the DLGP. The *Coastal Protection and Management Act 1995* is administered by the Department of Environment and Resource Management.⁹

The amendments to the *Coastal Protection and Management Act 1995* address an inequity for applicants in an Urban Development Area under the *Urban Land Development Authority Act 2007* with regard to obtaining the right to use and occupy land where a development permit for operational works that is tidal works has been obtained. The amendment ensures that the *Coastal Protection and Management Act 1995* recognises an Urban Development Area development permit for the works. The bill also corrects an unintended conflict in the operation of the *Coastal Protection*

⁶ Queensland Parliament. 2011, *Record of Proceedings*, Brisbane, 11 October, p. 3013.

⁷ Queensland Parliament. 2011, *Record of Proceedings*, Brisbane, 13 October, p. 3171.

⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

⁹ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

and Management Act 1995, resulting from recent amendments to the Act under the *Environmental and Other Legislation Amendment Act 2011*.¹⁰

Many of the amendments proposed in the bill are administrative and technical in nature but are nevertheless designed to ensure that portfolio legislation is clear, achieves its policy intent and continues to provide an effective framework for sustainable planning and infrastructure development in Queensland.¹¹

This report discusses the planned amendments to each Act separately. Amendments to the *Animal Management (Cats and Dogs) Act 2008*, the *Building Act 1975*, the *Local Government Act 2009* and the *Plumbing and Drainage Act 2002* are discussed in chapter 2. Amendments to the *Sustainable Planning Act 2009* (SPA) and the *Urban Land Development Authority Act 2007* are discussed in chapter 3. The amendments to the *Coastal Protection and Management Act 1995* are minor and therefore not included in the consideration of the bill below. In cases where an issue is not directly discussed within the report, the committee has not identified any concerns regarding that issue or believes that the concerns have been adequately addressed throughout the inquiry process.

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

This report discusses the fundamental legislative principles in conjunction with the policy aims of the bill throughout this report.

The bill introduces a number of new offence provisions. A list of these is contained in Appendix D.

1.3.1 Committee comments on omnibus bills

This bill is an omnibus bill amending a number of pieces of legislation that fall within the local government portfolio. The committee wishes to comment on how this affected its consideration of the bill. The omnibus nature of the bill made it difficult to scrutinise all policy issues within the bill, particularly given the truncated reporting timeline. It also made it possible that substantive and important issues could be missed given the size and complexity of the bill. The committee notes that, in certain cases, omnibus bills may be a fundamental legislative principle issue, particularly if there are a number of large policy changes within the one bill. In these cases, the bill may not have sufficient regard to the institution of Parliament, as required under section 4(2)(b) of the *Legislative Standards Act 1992*. However, the committee notes that this bill does contain recognition of the omnibus nature in the short title by containing the phrase ‘and Other Legislation Amendment Bill’. This phrase alerts the Parliament (and others) to the fact that the bill contains amendments often unrelated to the main subject area or purpose of the bill. It is the committee’s view that this omnibus bill may have resulted in unnecessary delays on urgent matters such as the hardship provision superannuation standardisation of the *Local Government Act 2009*. The committee believes that the introduction of a new parliamentary committee system should decrease the need for large omnibus bills as committees are able to perform efficient scrutiny of smaller bills.

¹⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1.

¹¹ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

1.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include a bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by section 23 and a reasonable level of background information and commentary to facilitate understanding of the bill's genesis and objectives.

Recommendation 1

The committee recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be passed subject to the Queensland Legislative Assembly agreeing to the amendments recommended in this report.

2 Amendments to the Animal Management (Cats and Dogs) Act 2008, Building Act 1975, Local Government Act 2009 and the Plumbing and Drainage Act 2002

2.1 Amendments to the Animal Management (Cats and Dogs) Act 2008

The amendments within the bill for the *Animal Management (Cats and Dogs) Act 2008* will allow authorised local government officers to access the Queensland Motor Vehicle Registry in order to use the information in an investigation to identify the owner of, or the responsible person for, a dog that is the subject of a serious dog attack complaint where an alleged attack causes death, grievous bodily harm or bodily harm to a person or animal under the *Animal Management (Cats and Dogs) Act 2008*.¹²

The DLGP consulted the Local Government Association of Queensland (LGAQ), Brisbane City Council and the Department of Transport and Main Roads during May and June 2011 regarding these proposed amendments. The LGAQ was consulted on behalf of other local governments.¹³

Initially, the Brisbane City Council requested wider powers to investigate any type of dog attack, including those that do not cause injury. The Brisbane City Council raised concerns about the practicalities regarding having to apply to the Chief Executive of the Department of Transport and Main Roads to investigate an alleged attack. However, the Brisbane City Council accepted that powers to access the Queensland Motor Vehicle Registry for a wider range of attacks would be too broad.¹⁴

The DLGP and Brisbane City Council agreed that access to the Queensland Motor Vehicle Registry should only occur when investigating alleged offences contained in Table 1 below and where investigation of the alleged offender relies on a motor vehicle registration number.¹⁵

¹² Explanatory Notes for the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 1; Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

¹³ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 2.

¹⁴ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 2.

¹⁵ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 2.

Table 1: Alleged offences where it would be possible for authorised local government officers to access the Queensland Motor Vehicle Registry

	Penalty Units
s 194 (1) A relevant person for a dog must take reasonable steps to ensure that the dog does not attack, or act in a way that causes fear to, someone else or another animal	
(a) if the attack causes the death of, or grievous bodily harm, to the person	300
(b) if the attack causes the death of, or grievous bodily harm, to the animal	100
(c) if the attack causes bodily harm to the person or animal	50
s 195 (1) A person must not allow, or encourage a dog to attack, or act in a way that causes fear to, a person or another animal	
(a) if the attack causes the death of, or grievous bodily harm, to the person	300
(b) if the attack causes the death of, or grievous bodily harm, to the animal	100
(c) if the attack causes bodily harm to the person or animal	50

Source: Adapted from s 194(1) (a)-(c) and s 195(1) (a)-(c) of the *Animal Management (Cats and Dogs) Act 2008*

The DLGP, Brisbane City Council and Department of Transport and Main Roads agreed that the process for accessing the Queensland Motor Vehicle Registry could be modelled on the existing processes used by council officers when investigating vehicle littering offences under the *Environmental Protection Act 1994*.¹⁶ This access is provided for by administrative arrangements between the Department of Transport and Main Roads and each local government.

In their submission, the LGAQ indicated their support for these amendments and advised that local government animal management officers have been lobbying for such changes for some time.¹⁷ The Brisbane City Council also indicated their support for this amendment and stated that it will assist council officers investigating attacks where the complainant and/or a witness has not been able to provide details of the dog's owner or carer but does have registration details of a vehicle. However, the Brisbane City Council within their submission suggests that there may be implementation issues with these provisions. They state that the Department of Transport and Main Roads are proposing that councils will need to make an Application for the Release of Information, including supporting documentation to obtain the registration details. The Brisbane City Council claim that this approach would be time consuming for officers and this information may be urgently needed for an investigation. The Brisbane City Council suggest that an alternative is to use the same processes used when investigating littering from vehicle offences. This would make council responsible for using the information appropriately.¹⁸

The Logan City Council highlighted that the inability of council officers to seize and destroy dogs that are involved in a serious dog attack prevents an effective response to dog attacks and asked the committee to consider the issue as part of their inquiry. The committee has not considered this issue during their inquiry and therefore makes no comments or recommendations regarding this issue.¹⁹

The committee observes that this amendment raises an issue as to whether the bill has sufficient regard to the rights and liberties of individuals, in particular the privacy of those individuals whose personal information may be disclosed by the Queensland Motor Vehicle Registry. However, the

¹⁶ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 3.

¹⁷ Local Government Association of Queensland, 2011, *Submission No. 45*, p. 3.

¹⁸ Brisbane City Council, 2011, *Submission No. 56*, p. 4.

¹⁹ Logan City Council, 2011, *Submission No. 2*, p. 1.

committee notes that such disclosure is only permitted for the limited purpose of investigating complaints of serious dog attacks.

The committee considers that this amendment to the *Animal Management (Cats and Dogs) Act 2008* is appropriate and supports its passage through the Parliament. Due to the truncated reporting timelines, the committee has not had sufficient time to consider the processes used to access the information from the Queensland Motor Vehicle Registry and Department of Transport and Main Roads and is therefore unable to provide an informed recommendation regarding this issue. However, the committee notes that the statements from the DLGP and the Brisbane City Council regarding modelling access processes on those currently used when investigating vehicle littering offences under the *Environmental Protection Act 1994*.

2.2 Amendments to the Building Act 1975

The proposed amendments to the *Building Act 1975* will align the terminology used in the *Building Act 1975* more closely with the National Accreditation Framework for Building Surveyors while maintaining three levels of building certifiers in Queensland, and make other minor amendments to the *Building Act 1975*.²⁰ During August and October 2011, the DLGP consulted a range of stakeholders including:

- Australian Institute of Building Surveyors
- Royal Institution of Chartered Surveyors
- Queensland Building Services Authority
- Housing Industry Association
- Society of Fire Safety
- Urban Land Development Authority
- Royal Australian Institute of Architects
- Board of Professional Engineers
- Local Government Association of Queensland
- Institute of Engineers
- Queensland Fire and Rescue Service
- Department of Public Works
- Building Designers Association of Queensland
- Building Industry Consultative Group
- Queensland Master Builders Association
- Queensland Law Society²¹

Evidence provided to the committee suggests that the relationship between land use and building matters is a long standing arrangement in Queensland that is widely accepted and ensures that there is consistency across the state. The amendments are intended to provide further clarity about this relationship.²²

²⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1.

²¹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 4.

²² Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to

There was support from stakeholders including the Australian Institute of Building Surveyors, Royal Institution of Chartered Surveyors and the Building Services Authority regarding the need for consistent terminology. The stakeholders of the Building Industry Consultative group generally supported the proposal to align terminologies. The Queensland Building Services Authority did indicate that some time would be needed to update their licensing systems to reflect the new terms.²³

In their submissions, the Ipswich City Council and the Logan City Council indicated some concerns regarding the amendments to the *Building Act 1975* contained within the bill. The Ipswich City Council has concerns regarding clauses 6, 7, 8 and 9 of the bill while the Logan City Council has concerns regarding clause 7.²⁴ The Ipswich City Council suggests there is a need to ensure appropriate checks are in place before these amendments are passed and that any necessary flexibility is included.²⁵ The Logan City Council is concerned about the interaction between the amendments that insert a new subsection 31(3) within the *Building Act 1975* and ensuring that there is an appropriate level of adaptable housing throughout Logan City.²⁶

The committee notes that clause 18 inserts a new chapter 11, part 15 into the *Building Act 1975*, although there is no chapter 11, part 14 in the *Building Act 1975* currently. Part 14 is proposed to be inserted by the Vocational Education and Training (Commonwealth Powers) and Other Acts Amendment Bill 2011 should that bill be passed. The committee considered the proposed amendments to the *Building Act 1975* and believes they are appropriate.

2.3 Amendments to the Local Government Act 2009

The bill plans to amend the *Local Government Act 2009* to enable superannuation contributions for LGsuper scheme members to be reduced from those prescribed in the *Local Government (Operations) Regulation 2010* in certain circumstances.²⁷ These circumstances include instances of financial hardship and if additional tax would be incurred by a member under the Commonwealth Government's concessional contributions cap.²⁸

The DLGP consulted from February to November 2011 regarding these proposed amendments to the *Local Government Act 2009*. The department consulted with the Australian Workers Union, Australian Services Union – Queensland, Brisbane City Council and LGAQ.²⁹

submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, p. 2.

²³ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, pp. 4-5.

²⁴ Logan City Council, 2011, *Submission No. 2*, p. 1; Ipswich City Council, 2011, *Submission No. 41*, p. 2.

²⁵ Ipswich City Council, 2011, *Submission No. 41*, pp. 1-3.

²⁶ Logan City Council, 2011, *Submission No. 2*, p. 1.

²⁷ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1.

²⁸ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

²⁹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 6.

In 2010, two super schemes for local government employees were combined.³⁰ LGsuper now administers superannuation arrangements for all council employees in Queensland.³¹ This amalgamation reduced the overall administration costs for the super schemes.³² The bill introduces two arrangements that have been sought by local government employees, the LGAQ and supported by the unions. Both amendments are for the benefit of employees.³³ Only after the employer and employee agree, will the amendments occur in practice.³⁴

Submissions to the inquiry supported these amendments.³⁵ Submissions also indicated that the passing of these amendments by the Queensland Parliament was urgent for the benefit of council employees.³⁶

2.3.1 Hardship

The financial hardship amendments only apply to employees of the Brisbane City Council and were a feature of the former City Super scheme.³⁷ Brisbane City Council employees were able to reduce the contribution that they made to the City Super scheme in times of hardship since 2009.³⁸ The capacity for the employer and employee to agree for financial hardship arrangements, which were previously possible through the trust deed of the City Super scheme, were lost during the merger of the super funds.³⁹ To reinstate these provisions requires legislative change.⁴⁰

This amendment will enable a Brisbane City Council employee, who is an accumulation benefit member, to enter into an agreement with the Brisbane City Council to reduce their own employee contribution into LGsuper. The employer contribution is not reduced.⁴¹ The proportion of the employee's contribution that is no longer being contributed to superannuation is then provided to the employee as salary. The employee's overall package is not reduced.⁴² The agreement is for a maximum of one year, although it can be renewed.⁴³

³⁰ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 5.

³¹ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

³² Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 5.

³³ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 3; Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

³⁴ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 3.

³⁵ LG Super, 2011, *Submission No. 1*, pp. 1-3; Queensland Services Union, 2011, *Submission No. 3*, p. 3; Gold Coast City Council, 2011, *Submission No. 48*, p. 2.

³⁶ LGsuper, 2011, *Submission No. 1*, pp. 1 & 3; Queensland Services Union, 2011, *Submission No. 3*, p. 2.

³⁷ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 5; Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, *Public Briefing Transcript*, 14 December, p. 7.

³⁸ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

³⁹ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14; LGsuper, 2011, *Submission No. 1*, p. 1; Queensland Services Union, 2011, *Submission No. 3*, p. 1.

⁴⁰ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

⁴¹ LGsuper, 2011, *Submission No. 1*, p. 2; Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, *Public Briefing Transcript*, 14 December, p. 7.

⁴² Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 6.

⁴³ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 7.

These amendments are consistent with what occurs in other workplaces. For instance, the New South Wales State Authorities Super Scheme, has a similar provision.⁴⁴ Queensland public servants, under QSuper, are able to reduce their contributions from five per cent to two per cent for any reason rather than just for hardship reasons.⁴⁵

If an employer and employee cannot agree on financial hardship arrangements, it is an industrial matter. Therefore, if an application is refused, and there are still issues after an internal review process, then it is an industrial matter which falls within the jurisdiction of the Industrial Relations Commission.⁴⁶

The committee investigated the definition of financial hardship. However, there is no precise definition available as this option is designed to be used in a wide variety of situations.⁴⁷ Currently, two people are affected by the hardship provision.⁴⁸

The DLGP indicates that these amendments are considered urgent to enable the entitlements that existed for Brisbane City Council accumulation benefit members, before the merger of City Super and LGsuper on 1 July 2011 to continue for these members.⁴⁹ The DLGP advised that the Brisbane City Council endorsed this proposed amendment on 16 September 2011.⁵⁰

The committee noted that, under the proposed section 220C in the *Local Government Act 2009*, eligible Brisbane City Council employees must make a written agreement with their employer agreeing that they are exempt from paying all or a stated part of their superannuation contributions on the grounds of the employee's financial hardship. Making such an agreement may require the employee to disclose personal financial information to their employer in order to establish that they are indeed suffering financial hardship to a degree that would justify their exemption from the normal requirement of making employee superannuation contributions. To a large extent the level of personal information that would need to be disclosed would depend on the financial hardship evidence-threshold (if any) set by the Brisbane City Council as the employer as a pre-condition of its entering into such an agreement. For example, if the Brisbane City Council accepts the employee's word or perhaps a statutory declaration that they are suffering financial hardship sufficient to warrant their exemption from normal superannuation requirements, the only personal financial information that would need to be disclosed is the mere fact that financial hardship is being experienced. If, however, the Brisbane City Council as employer requires some corroborating evidence that financial hardship is being experienced, the employee may be required to provide information such as bank statements, evidence of any regular payments or outlays, evidence of mortgage, credit card or other debt.

⁴⁴ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 7.

⁴⁵ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 7.

⁴⁶ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 7.

⁴⁷ Hastie, B. Acting Director, Office of Local Government, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 3.

⁴⁸ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

⁴⁹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 7.

⁵⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 7.

Potentially this involves a serious violation of that employee's right to keep their personal financial status information private. It must be noted, however, that other legislative schemes require evidence of financial hardship where exemptions from liability or access to subsidies or funding on the grounds of financial hardship are sought. It does not seem unduly onerous to expect an employee claiming that 'financial hardship' should make them exempt from normal superannuation contribution requirements to be expected to (in some manner) prove that they are experiencing such hardship. If employees are able to claim financial hardship without providing any evidence of such, there is significant scope for a large number of (possibly ineligible) claimants to claim financial hardship to avoid making superannuation contributions and enjoy that extra money immediately. If this was permitted to occur without fetter, however, it could jeopardise the entire foundation of the superannuation system as a provider of future financial security for the working population.

The committee supports the amendments to the *Local Government Act 2009* to allow Brisbane City Council employees access to financial hardship arrangements. The committee notes the support from the department and stakeholders for passing these amendments urgently and endorses the need for this to occur. The committee supports this amendment to the bill and the urgent passage of this amendment.

2.3.2 Concessional contributions cap

This bill also amends the *Local Government Act 2009* to allow local government employees to be exempted from making superannuation contributions where this results in an LGsuper member incurring additional tax under the Commonwealth Government's Concessional Contributions Cap.⁵¹ The bill inserts a new section that states that the amount of the reduction must be paid to the employee as salary.⁵²

The Commonwealth Government introduced the Concessional Contributions Cap approximately two years ago. It affects individuals on an income of \$138,800 or higher. In these cases, contributions are taxed at 15 per cent as they enter the fund and then, because it is considered excess, another 31.5 per cent. Therefore, the total tax paid on contributions that exceed the concessional contributions cap is 46.5 per cent.⁵³

Given that the total tax paid is 46.5 per cent on contributions in excess of the limit, and that this is equivalent to the highest marginal tax rate, there is little incentive to make contributions to a superannuation fund which are then unavailable until retirement. For employees of local governments with a salary between \$138,889 and \$180,000, who have a marginal tax rate of 38.5 per cent, they will be paying a higher rate of tax on their excess concessional contributions than they pay on their salary. Therefore, it is appropriate for the employee and employer to have the option to reduce the contribution to super down to the concessional contribution caps, provide the reduction in contribution to the employee as salary and then the employee is able to determine their own investment of their funds.⁵⁴

⁵¹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 7.

⁵² Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 7.

⁵³ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14; LGsuper, 2011, *Submission No. 1*, p. 1; Queensland Services Union, 2011, *Submission No. 3*, p. 1.

⁵⁴ LGsuper, 2011, *Submission No. 1*, p. 2.

LGsuper advise that the passage of this amendment is urgent, as approximately 800 council employees in Queensland are affected by this.⁵⁵ A number of LGsuper members have received notices from the Australian Taxation Office levying excess concessional contributions tax on them for contributions paid in 2009-10 and 2010-11. Super members have been unable to negotiate a lower rate of contributions due to provisions within the *Local Government Act 2009*.⁵⁶

The committee supports this amendment to the bill and the urgent passage of this amendment.

2.3.3 Other amendments

The bill also makes more minor amendments to the *Local Government Act 2009*. This includes clarifying the status of the Brisbane City Council as a local government under the *City of Brisbane Act 2010* and its local government area. The bill also amends the *Local Government Act 2009* to clarify that an authorised person, under the *Local Government Act 2009*, can enter a property to inspect work that is the subject of, or was carried out under, a permit or notice issued under the *Plumbing and Drainage Act 2002*.⁵⁷

The Brisbane City Council, in their submission, state that the same clarification should be made in the corresponding provision within the *City of Brisbane Act 2010*.⁵⁸ The committee supports this proposal and recommends that the Minister amend the bill to ensure this occurs.

Recommendation 2

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to ensure that the clarification in clause 25 of the Sustainable Planning and Other Legislation Amendment Bill 2011 to the *Local Government Act 2009*, is also made to the *City of Brisbane Act 2010*.

2.4 Amendments to the Plumbing and Drainage Act 2002

The amendments to the *Plumbing and Drainage Act 2002* aim to achieve red tape reductions for plumbers by allowing more work to be self-certified by expanding the existing Notifiable Minor Works regime to include other routine plumbing work and to amend the Plumbing Code of Australia terminology and enable recovery of disciplinary monetary penalties imposed as debts. The amendments within the bill aim to ensure that businesses and the community are not burdened by unnecessary red tape or compliance costs related to routine plumbing work carried out under the *Plumbing and Drainage Act 2002*. Ultimately, these amendments should result in lower fees for the plumbing industry and consumers.⁵⁹

⁵⁵ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14

⁵⁶ Roebig, B. Chairman, LGsuper, 2011, *Public Hearing Transcript*, 14 December, p. 14.

⁵⁷ Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, pp. 29-30.

⁵⁸ Brisbane City Council, 2011, *Submission No. 56*, p. 4.

⁵⁹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

Between October and November 2011, the DLGP consulted with the following stakeholders:

- Master Plumbers Association of Queensland (MPAQ)
- Master Builders Association of Queensland
- Plumbers Union
- Local Government Association of Queensland
- Housing Industry Association of Australia
- Association of Hydraulic Services Consultants Australia
- SkillsTech
- Institute of Plumbing Inspectors Queensland
- Joint Industry Services Training
- Careers Australia
- Plumbing Industry Council
- Plumbing Industry Consultative Group
- Brisbane City Council
- Gold Coast City Council⁶⁰

There appears to be wide support for the amendments to the *Plumbing and Drainage Act 2002* from stakeholders, even if there are some concerns regarding the details.⁶¹ Evidence also suggests that several key stakeholders have larger concerns regarding the amendments and the consultation process.⁶²

These concerns included the possible loss of information on underground services,⁶³ the failure rate for self-certified work performed since the inception of the modified Form 4 process,⁶⁴ and the

⁶⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 8.

⁶¹ McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 9; Hunter, M. President, Institute of Plumbing Inspectors Qld Inc, 2011, *Public Hearing Transcript*, 14 December, pp. 9-10; Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 8; Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 2; Institute of Plumbing Inspectors, 2011, *Submission No. 38*, p. 1; Master Plumbers Association of Queensland, 2011, *Submission No. 52*, p. 3; Master Builders, 2011, *Submission No. 55*, p. 1.

⁶² Logan City Council, 2011, *Submission No. 2*, pp.2-3; O’Shea, J. 2011, *Submission No. 5*, p. 1; van Peperzeel, R. 2011, *Submission No. 6*, p. 1; Ackerman, P. 2011, *Submission No. 7*, p. 1; Watt, S. 2011, *Submission No. 8*, p. 1; Smith, J. 2011, *Submission No. 9*, p. 1; Thomas, M. 2011, *Submission No. 10*, p. 1; Postle, B. 2011, *Submission No. 11*, p. 1; Montgomery, C. 2011, *Submission No. 12*, p. 1; Phillips, G. 2011, *Submission No. 13*, p. 1; Sonner, R. 2011, *Submission No. 14*, p. 1; Butler, D. 2011, *Submission No. 15*, p. 1; Fairbanks, B. 2011, *Submission No. 16*, p. 1; Warren, B. 2011, *Submission No. 17*, p. 1; Campbell, M. 2011, *Submission No. 18*, p. 1; Parkowski, D. 2011, *Submission No. 19*, p. 1; Granland, C. 2011, *Submission No. 20*, p. 1; Stocker, A. 2011, *Submission No. 21*, p. 1; Bones Murray Plumbing. 2011, *Submission No. 22*, p. 1; Robson, B. 2011, *Submission No. 23*, p. 1; Gilbert, T. 2011, *Submission No. 24*, p. 1; Brad, 2011, *Submission No. 25*, p. 1; Perry, J. 2011, *Submission No. 26*, p. 1; McConnell, D. 2011, *Submission No. 27*, p. 1; Wool, D. 2011, *Submission No. 28*, p. 1; Male, R. 2011, *Submission No. 29*, p. 1; Aland, P. 2011, *Submission No. 30*, p. 1; Wilkinson, B. 2011, *Submission No. 31*, p. 1; Bradshaw, J. 2011, *Submission No. 32*, p. 1; Genge, R. 2011, *Submission No. 33*, p. 1; Liddel, A. 2011, *Submission No. 34*, p. 1; Pohlner, S. 2011, *Submission No. 35*, p. 1; Stocker, M. 2011, *Submission No. 36*, p. 1.

⁶³ Redland City Council, 2011, *Submission No. 44*, p. 2;

⁶⁴ Redland City Council, 2011, *Submission No. 44*, p. 2.

potentially overloading of current sewerage facilities⁶⁵ and that, if the audit program was not adequate, the quality of the plumbing and drainage work is at risk.⁶⁶ Additionally, the removal of renovation work from compliance assessment has the potential to create a dual standard.⁶⁷

The LGAQ has concerns regarding the lodgement of forms with the Plumbing Industry Council (PIC),⁶⁸ although they support the PIC having additional disciplinary provisions.⁶⁹ Both the Brisbane City Council and the Gold Coast City Council support the PIC receiving forms on behalf of local governments. Other local governments have indicated support for the PIC providing a free electronic register for local governments. This may help reduce the administrative burden experienced by local governments in building and maintaining electronic plumbing services.⁷⁰

The committee noted that clause 53 amends section 87(2) of the *Plumbing and Drainage Act 2002* by significantly increasing the fine for failing to give the PIC notice that certain notifiable work has been complete, from 10 penalty units (\$1000) to 60 penalty units (\$6000). The committee is concerned that this increase may not have sufficient regard to the rights and liberties of individuals. The DLGP advised that the increase in penalty units recognises the expanded scope of works that will now be classified as notifiable work. The penalty of 60 penalty units corresponds to the maximum amount the PIC can currently require a licensee to pay in disciplinary action under section 65(e) of the *Plumbing and Draining Act 2002*.⁷¹

The period of notice in which this notice can be given has been substantially reduced. Previously it was one year, or 40 business days, or 20 business days after completion of the work, with the period for notice depending on the type of work undertaken. This has been reduced to a standard 10 business days after the completion of the work. The DLGP advise that, under the notifiable work scheme, much of the work will be able to proceed without inspection. The reduction in the notice period to 10 business days after the completion of work facilitates effective and timely audit programs and allows early detection of defective plumbing work.⁷²

2.4.1 Notifiable work

Clause 53 of the bill renames notifiable minor work as notifiable work. This will allow work, that may not be minor and is not compliance assessable, to be undertaken using the notification process.⁷³ All members of the Plumbing Industry Consultative Group, with the exception of the LGAQ, support the proposal. The LGAQ, while supporting other aspects of the amendments, did not support the proposal to not limit the number of fixtures that were categorised as notifiable works. The LGAQ and

⁶⁵ Gladstone Regional Council, 2011, *Submission No. 51*, p. 1.

⁶⁶ Master Plumbers Association of Queensland, 2011, *Submission No. 52*, p. 3.

⁶⁷ Redland City Council, 2011, *Submission No. 44*, p. 2.

⁶⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁶⁹ Local Government Association of Queensland, 2011, *Submission No. 45*, p. 3.

⁷⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁷¹ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 2.

⁷² Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 3.

⁷³ Explanatory notes to the Sustainable Planning and Other Legislation Amendment Bill, p. 38.

other stakeholders also considered that underground drainage should not be included in the notifiable work category.⁷⁴ Logan City Council believes that the proposed amendments that change notifiable minor work to notifiable work have the potential to dramatically affect the outcomes of quality of work that would have previously been the subject of compliance assessment and inspected by local governments.⁷⁵

The identification of what is notifiable work will be included in a schedule within the regulation.⁷⁶ It is still a subject of consultation with the DLGP stating that they will continue to work closely with all stakeholders and other parties regarding what is included as notifiable work.⁷⁷

Regulatory amendments will identify what is included in the notifiable work category. However, all plumbing and drainage work on the plan of a new building will still operate under the current compliance assessment system. This means that the first connection of a new building and all the plumbing and drainage work associated with the new building will continue to need approval.⁷⁸

The committee notes that subordinate legislation will identify what is notifiable work and that this is still the subject of ongoing consultation. The committee does have some concerns that the bill will be passed by the Queensland Parliament before this is clarified, and while consultation is ongoing.

Point of clarification

The committee seeks clarification from the Attorney-General, Minister for Local Government and Special Minister of State on what is categorised as notifiable works.

2.4.2 Audits and fees

The amendments to the *Plumbing and Drainage Act 2002* will introduce a two-tiered audit system. The PIC will have strong compliance powers and will, in conjunction with local governments, undertake a proactive audit program. The PIC will maintain a strong compliance mechanism and has strong enforcement powers to have plumbers rectify any defective work. In addition to the audits and enforcement undertaken by the PIC, the DLGP proposes that local governments will audit approximately five per cent of all notifiable work undertaken in their area.⁷⁹ The MPAQ estimate,

⁷⁴ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁷⁵ Logan City Council, 2011, *Submission No. 2*, p. 2.

⁷⁶ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

⁷⁷ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10; Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9; Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, pp. 1 & 9.

⁷⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁷⁹ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

based on their current members, that 15,730 forms will be submitted each week if there is full compliance with the law.⁸⁰ This is a significant change. The LGAQ believes that it is inappropriate to require an auditing program to be implemented by local governments when they are not directly included with the notifiable work and Form 4 process.⁸¹

However, the objectives of the amendments will need sufficient resourcing if they are to be achieved.⁸² The proposed audit fee, at \$25, has been kept as low as possible while it still funds the auditing.⁸³ Of the \$25, \$15 is quarantined to fund local governments for the audits that they undertake. Given that the DLGP expects that local governments will inspect approximately five per cent of notifiable work undertaken, local governments will receive around \$300 per inspection. Currently many local governments charge \$100 for an inspection. However, the \$300 takes into account the need to sometimes write the owner a letter and undertake a follow-up inspection.⁸⁴ The proposed fee will also enable the PIC to audit plumbers.⁸⁵ The DLGP advised that local councils did agree that this was a reasonable fee.⁸⁶ The LGAQ also agreed that the fee was set at an appropriate level.⁸⁷ However, the committee noted that a number of local governments had written to the DLGP indicating that they believed that the proposed fees were too low to pay for auditing work.⁸⁸

The committee considered how the fee would increase in the future. The LGAQ considered that the initial fee was set an appropriate level, but that the indexation method was concerning.⁸⁹ The fees are contained within the regulation with increases generally advised on an annual basis. The DLGP generally tends to increase fees by the Consumer Price Index (CPI) and advise accordingly. The DLGP has an internal arrangement where the \$25 fee will be revisited on an annual basis. The DLGP, on the rare occasions where the fee increases by more than CPI, tends to consult with stakeholders.⁹⁰

Although, auditing is not mandatory for local governments, the DLGP is hoping that they will complete audits on five per cent of the notifiable work undertaken, targeting the areas that are of their greatest concern. The DLGP will routinely pay them the money that is quarantined for them to undertake audits.⁹¹ The MPAQ recommends that the audit program should be mandatory for local

⁸⁰ McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 9.

⁸¹ Local Government Association of Queensland, 2011, *Submission No. 45*, pp. 2-3.

⁸² Brisbane City Council, 2011, *Submission No. 56*, p. 4.

⁸³ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 3.

⁸⁴ Brumby, G. Executive Director, Planning Policy, Department of Local Government and Planning, *Public Briefing Transcript*, 30 November, p. 8.

⁸⁵ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

⁸⁶ Brumby, G. Executive Director, Planning Policy, Department of Local Government and Planning, *Public Briefing Transcript*, 30 November, p. 8.

⁸⁷ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 21.

⁸⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁸⁹ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 21.

⁹⁰ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 3.

⁹¹ Brumby, G. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 8.

government in order to provide certainty for the plumbing industry.⁹² The Brisbane City Council advises that local governments will rely on plumbers to submit the Form 4 in order to undertake effective audit and inspection work.⁹³

Evidence provided to the committee suggests that the five per cent audit inspection rate is considered sufficient at the moment. However, depending on the compliance rate identified through the auditing regime, a different audit rate may be required. Therefore, close monitoring is required during the initial implementation of the changes. If a greater level of auditing is required, a greater level of funding will also be needed.⁹⁴ Other stakeholders considered the five per cent inspection rate unacceptable and suggested increasing it to 25 per cent.⁹⁵

While a number of local governments have indicated to the DLGP that they are concerned that the proposed fees are too low to pay for auditing work, the Brisbane City Council and the Gold Coast City Council believe that \$300 per inspection is reasonable when based on auditing 5 per cent of all notifiable work.⁹⁶ Currently most councils charge less than \$300 per inspection.⁹⁷ The Brisbane City Council estimate that each audit inspection will cost an average of \$175 which includes conducting the auditing inspection and the associated administration. However, this figure does not include the ongoing costs associated with compliance action.⁹⁸

If an inspector identifies that the work is not compliant, the Brisbane City Council estimates the average cost to be \$375. This is because there are additional costs associated with re-inspection of a failed installation, notification defect letter to a licensed plumbing contractor advising of the failed audit inspection, defects required to be rectified, process to rebook inspection and legislated timeframe to address recorded defects and make re-inspection booking and administration costs to administer the re-inspection process (for example, booking of inspection requires Brisbane City Council to telephone home owner to arrange access for a Brisbane City Council plumbing inspector to attend their property).⁹⁹

The Brisbane City Council calculates that if only 25 per cent of audits find work that is non-compliant, then the process will be self-funding. If the number of non-compliant audits is higher than 25 per cent, then the Brisbane City Council will incur an ongoing additional cost. The Brisbane City Council

⁹² McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 9.

⁹³ Brisbane City Council, 2011, *Submission No. 56*, pp. 1 & 4.

⁹⁴ Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 1.

⁹⁵ McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 9.

⁹⁶ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 9.

⁹⁷ Brumby, G. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 8.

⁹⁸ Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 1.

⁹⁹ Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 2.

advise that the current non-compliance rate for domestic installations under the mandatory inspection regime subject to the proposed new Form 4 audit process is 14 per cent. It is difficult to predict whether this rate will change if mandatory inspections are removed.¹⁰⁰

If required, the Brisbane City Council suggest the following options could be considered if there is a need to increase revenue to fund audits:

- Legislating that local governments can apply a re-inspection fee to failed audit inspections, payable by the plumber
- Increase the lodgement fee from \$25 to \$30, with local governments receiving \$20 and the State retaining \$10
- Reducing the audit rate from 5 per cent to 4 per cent.¹⁰¹

The Brisbane City Council recommend that a re-inspection fee is provided for, as it acts as an incentive to increase initial compliance.¹⁰²

The committee considered the practicality of undertaking audit inspections in remote areas. The committee noted that there are currently provisions within the regulation for not having an inspection if the travel time is significant. They also noted that there are different ways of managing compliance in rural areas with plumbers and inspectors frequently working more collaboratively.¹⁰³

The committee notes that the DLGP has undertaken work to identify the most appropriate level of fee in order to ensure that local governments are funded appropriately for the audits that they may choose to do. However, the committee believes that the number of audits undertaken and the financial impact on local governments requires monitoring. It therefore recommends that the DLGP monitor the number of audits undertaken by local governments, the level of compliance and the financial impacts on local governments in order to identify if there is a need to adjust the fee or take other action to increase the revenue available to fund audits.

Recommendation 3

The committee recommends that the Department of Local Government and Planning monitor the number of audits undertaken by local governments, the level of compliance and the financial impacts on local governments, particularly noting any impacts on remote and regional councils, in order to identify if there is a need to adjust the fee or take other action to increase the revenue available to fund audits.

¹⁰⁰ Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 2.

¹⁰¹ Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 2.

¹⁰² Jensen, C. Chief Executive Officer, Brisbane City Council, 2011, Letter to Lyndel Bates, Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 December, p. 2.

¹⁰³ Brumby, G. Executive Director, Building Codes Queensland, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, pp. 2-3.

2.4.3 Implementation and professional development

The MPAQ stated that a staged approach is essential to ensure that there is a successful implementation of the measures within the bill. It also recommends a mandatory continuing professional development program to enhance the achievement of the reforms.¹⁰⁴ The Institute of Plumbing Inspectors Queensland also supports ongoing professional development training.¹⁰⁵

The PIC would be able to determine, through their complaints investigation and compliance processes, where the plumbing industry requires further skilling or reskilling. It could monitor licensees against a predetermined professional development program to ensure individuals had completed the required elements.¹⁰⁶

2.4.4 Self-incrimination

The bill inserts a new part 2, division 8, subdivision 3A into the *Plumbing and Drainage Act 2002*. Within subdivision 3A, section 33TD facilitates investigations of both those licensees selected to be audited under an approved audit program and those being investigated because of concerns that they are not complying with part 4 of the *Plumbing and Drainage Act 2002*. Any employer of an investigated licensee is also subject to section 33TD.

Section 33TD will allow the PIC or an investigator to give written notice to the licensee/employer requiring them to give copies of, access to, or information about, documents described in the notice (e.g. invoices, receipts, bookkeeping records and financial statements). The section 33TD notice will also state that the licensee/employer must comply with the notice even though complying might tend to incriminate them or expose them to a penalty. Under section 33TF, however, there is some immunity against the future/derivative use of information/documents given in compliance with a section 33TD notice.

A person receiving a section 33TD notice must comply within 10 business days of receiving the notice, unless they have a reasonable excuse. It is not a reasonable excuse to fail to comply with the notice because complying might tend to incriminate the person or expose them to a penalty. Failure to give a notice or document as required under the Act will also expose the licensee/licensed employer to a potential disciplinary action with the PIC.

Whilst a licensee or their employer cannot fail to provide the requested documents because doing so might incriminate them, evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the person in any proceeding to the extent it tends to incriminate them or expose them to a penalty in the proceeding. This protection against self-incrimination is removed for a proceeding about the false or misleading information of the information/something in the document, or in which the false or misleading nature of the information or document is relevant evidence, or for a proceeding against the licensee for an offence under part 4 of the *Plumbing and Drainage Act 2002*.

Arguably the removal under proposed section 33TF(4)(a) of the protection against self-incrimination is justified for a proceeding for an offence such as 'providing false/misleading information in a document', because in such cases the document would be the main piece of evidence needed to prove that charge. Removing the privilege in respect of disciplinary action may also be justified because of the less serious nature of disciplinary action when compared with criminal sanction and because it would still enable some enforcement action to be taken against an offending licensee

¹⁰⁴ McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, pp. 9-10.

¹⁰⁵ Hunter, M. President, Institute of Plumbing Inspectors Qld Inc, 2011, *Public Hearing Transcript*, 14 December, p. 11.

¹⁰⁶ McGuinness, M. Chief Executive Officer, Master Plumbers Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 10.

even if (because of the derivative use immunity for incriminating documents) there is insufficient evidence available to prosecute them for offending conduct. The DLGP argue that the construction of clause 34 is appropriate for a number of reasons including:

- Compliance with audit requirements and cooperation with requests for information is critical to the effectiveness of the audit programs
- The information being sought in a notifiable works audit is within the control of the licensee completing the plumbing work
- Potential harm associated with non-compliance is significant, as the health and safety impacts relating to plumbing work are considerable.¹⁰⁷

The DLGP also advise that the incriminating evidence can only be used against the person providing it in limited circumstances relating to public health and safety.¹⁰⁸ The committee is satisfied with the department's response.

2.4.5 *Minor issues*

The committee noted some minor issues with amendments to the *Plumbing and Drainage Act 2002*. The committee notes that clause 59 of the bill inserts a new part 10, division 9 into the *Plumbing and Drainage Act 2002*. However, there is no part 10, division 8 in that Act currently. Part 8 will be inserted by the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011 should that bill be passed.

Additionally, the committee notes that clause 60 amends the schedule (dictionary) in the *Plumbing and Drainage Act 2002* in respect of the definition of 'SEQ water work'. Currently, there is no definition of 'SEQ water work' in the schedule of the *Plumbing and Drainage Act 2002*, although, the definition is proposed to be incorporated into the *Plumbing and Drainage Act 2002* by the South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Bill 2011 should that bill be passed.

¹⁰⁷ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 2.

¹⁰⁸ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 2.

3 Amendments to the Sustainable Planning Act 2009 and the Urban Land Development Authority Act 2007

3.1 Amendments to the Sustainable Planning Act 2009

The bill will amend the SPA to clarify or improve operational arrangements.¹⁰⁹ The amendments to the SPA aim to improve the efficiency and effectiveness of the framework and continue the roll-out of the planning reform agenda; to clarify the relationship between building assessment provisions and local planning instruments, local government resolutions and local laws; to clarify the effect of recent amendments under the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011* to better reflect the policy intent; and to repeal the *Planning (Urban encroachment – Milton Brewery) Act 2009* and to provide for the state-wide expansion of the urban encroachment policy under the SPA.¹¹⁰ The amendments aim to ensure that the SPA remains effective, contemporary and relevant to stakeholders.¹¹¹ These amendments fall into three major categories: ministerial consultation on call-ins, infrastructure charges and urban encroachment.

During 2011, the DLGP consulted with a number of stakeholders regarding these amendments including:

- Planning Institute of Australia
- Property Council of Australia
- Urban Development Institute of Australia
- Local Government Association of Queensland
- Lion Nathan
- Brisbane Airport Corporation
- Department of Environment and Resource Management
- Department of Justice and Attorney-General
- Sunshine Coast Regional Council
- Queensland Water Commission and distributor-retailers
- Australian Institute of Building Surveyors
- Royal Institution of Chartered Surveyors
- Queensland Building Services Authority
- Housing Industry Association
- Royal Australian Institute of Architects
- Board of Professional Engineers
- Institute of Engineers
- Department of Public Works
- Building Designers Association of Queensland
- Queensland Master Builders Association
- Queensland Law Society¹¹²

¹⁰⁹ Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 10.

¹¹⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 1.

¹¹¹ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

¹¹² Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee

3.1.1 Ministerial consultation on call ins

The bill amends the SPA to clarify the ministerial call in and direction powers to ensure procedural fairness with a particular focus on providing greater guidance to the Minister on when consultation is required.¹¹³ The bill, in order to achieve natural justice, amends the SPA to require the minister to consult with affected parties prior to deciding to call in a development application. Affected parties have an opportunity to make representations to the Minister about the call in, for consideration by the Minister in deciding whether to call in the application. The application is called in, the Minister determines the point in the Integrated Development Assessment System process where the assessment of the application will restart.¹¹⁴

These amendments are in accordance with the findings of the Supreme Court of Queensland in *Landel Pty Ltd v Hinchliffe & Anor*. In this 2009 case, Fryberg J found that the rules of natural justice and procedural fairness applied when the Minister was making his or her decision to call in an application.¹¹⁵

The Queensland Law Society strongly supports the introduction of provisions giving notice to applicants, submitters and government agencies about a proposed call in and providing them with an opportunity to lodge submissions. Despite this, the Queensland Law Society opposes the Minister's wide discretion about the re-starting point in the Integrated Development Assessment System, the provision of five business days for people to make submissions about the proposed call in (subject to extensions at the absolute discretion of the Minister) and the omission of normal decision criteria.¹¹⁶ The Brisbane City Council also supported the clarification of the ministerial call in procedures while stating that the five business days to make representations regarding the call in was too short. The Brisbane City Council would prefer a period of 20 business days to allow councils to consider the ramifications of proposals.¹¹⁷

The committee considered whether the bill allowed the delegation of administrative power only in appropriate cases and to appropriate persons. Clauses 65, 67, 68 and 74 allow the Minister to take action or give a direction under the various sections without being required to consult with anyone. Clause 77 of the bill amends the SPA to allow the Minister to decide the point in the Integrated Development Assessment System process that is different to the restarting point mention in the proposed call-in notice for the application that was given to the applicant.

The Ipswich City Council objected to clauses 65, 67, 68, 74 and 99 as the amendments provide that the Minister is not required to consult with anyone before giving a direction or taking an action under the relevant section. The Ipswich City Council does not support enabling the Minister to make decisions which can significantly affect council without prior consultation. These types of decisions may conflict with council's works program, resolutions made by council and generate unreasonable financial and human resource implications.¹¹⁸ The Sunshine Coast Council and the Brisbane City

relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, pp. 10 - 11.

¹¹³ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2 Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

¹¹⁴ Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 10.

¹¹⁵ Dixon, N. 2011, *Amendment to Call in Powers under the Sustainable Planning and Other Legislation Amendment Bill 2011*, November, pp. 1-2; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

¹¹⁶ Queensland Law Society. 2011, *Submission No. 54*, pp. 1-2.

¹¹⁷ Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 14.

¹¹⁸ Ipswich City Council. 2011, *Submission No. 41*, p. 4.

Council also object to these clauses.¹¹⁹ The Queensland Law Society indicated, that while they did not have strong views regarding clauses 67, 68 and 74 which expressly rule out a right to consultation, they consider that the amendments are moving in the wrong direction.¹²⁰

The DLGP advised that clauses 65, 67, 68 and 74 relate to the Minister's power to require the relevant power, such as local government, assessment manager, applicant or concurrence agency, to remedy an outstanding action within a reasonable period or where urgent action is required in relation to a State interest. The Minister's power to issue a direction is designed to expedite completion of the overdue or outstanding action, or urgently address a State interest. Consulting on a direction would undermine this objective. The DLGP advise that the direction does not affect a council's decision making power, it requires council or other entities to make the decision or take the action within the timeframe required under the Act or as directed by the Minister if outstanding to ensure the Integrated Development Assessment System process works efficiently as intended.¹²¹

After consideration, the committee deemed that, in these situations, the Minister was the appropriate delegate for these powers.

3.1.2 Infrastructure charges

The bill clarifies the policy intent of certain amendments under the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*. This includes clarifying that an adopted infrastructure charge may be recovered as a rate for the purposes of the *City of Brisbane Act 2010*, removing a legislative oversight that prevented a local government charging an amount 'equal' to the maximum adopted charge and amendments to clarify the definition of 'pre-SPRP amount'.¹²²

The bill also clarifies that indexing of infrastructure charges by local governments and distributor-retailers is permitted after the issue of an adopted infrastructure charges notice. Indexing beyond the maximum cap as established through the State planning regulatory provision (adopted charges) is not permitted.¹²³

The committee noted that the DLGP has been meeting fortnightly with the Queensland Water Commission since 15 August 2011. The bill was discussed generally, including the indexing provisions for distributor-retailers (Unity Water, Queensland Urban Utilities and Allconnex Water). An information session was also held on the 20 September with distributor-retailers to keep them informed of their obligations and rights under the new charges framework.¹²⁴

¹¹⁹ Sunshine Coast Council. 2011, *Submission No. 43*, pp. 1-3; Brisbane City Council. 2011, *Submission No. 56*, p. 2; Piper, R. Project Director, Urban Development, Sunshine Coast Regional Council, 2011, *Public Hearing Transcript*, 14 December, p. 12; Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 14.

¹²⁰ Queensland Law Society. 2011, *Submission No. 54*, p. 1.

¹²¹ Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, p. 3.

¹²² Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 10.

¹²³ Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 11; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

¹²⁴ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 13.

The committee noted that there were differing views on the methodology used to index the infrastructure charges. A minister, at his or her discretion, may increase the charges by the Roads and Bridges Index.¹²⁵ In contrast, councils use CPI. The LGAQ would prefer the methods to be identical.¹²⁶ The legislation currently states that, regarding the increasing of the maximum infrastructure charge values by the road and bridges index, the Minister 'may' increase that amount. The LGAQ state that a commitment was given both to the LGAQ and publicly that the Minister would increase the amount by the road and bridges index. They would like the legislation to reflect that arrangement by saying 'shall' instead of 'may' making it automatic that those charges would be indexed by the roads and bridges index.¹²⁷ The Redland City Council indicated that they preferred local government to have the discretion to apply the greater of CPI or the Roads and Bridges Index on whatever fractional basis the council selects.¹²⁸ The Brisbane City Council would prefer to use the roads and bridges index.¹²⁹ The LGAQ would prefer if the charge was not limited by an identified maximum.¹³⁰

The DLGP advised that CPI was included in the legislation to ensure consistency across the SPA. Additionally, it will mean that all participants in the development sector, including mum and dad developers, will have a common understanding of the increase that will occur over the life of the development.¹³¹

The Sunshine Coast Council stated that limiting the amount of an increase to an adopted infrastructure charge to the maximum adopted charge at the time the charge is paid, the value of the an adopted infrastructure charge levied by a local government is not preserved from the date it is levied to the date it is paid. This limits a local government's ability to collect the real value of an adopted infrastructure charge by the local government at the time the charge is paid.¹³² The Moreton Bay Regional Council stated that no system of escalation of charges should put a constructing authority in a continually deteriorating funding position.¹³³ The Brisbane City Council suggested that the index should not be limited to the lesser of CPI or the maximum charge. The charge should be the greater of or at least equivalent to CPI.¹³⁴

The committee notes that clause 88 of the bill inserts a new provision into the SPA to 'provide for an adopted charge, for particular development, to be increased after the charge is levied and before it is paid to the local government.' However, it requires an 'adopted infrastructure charges resolution' to have been made by the local government and it appears that the increase is tied to CPI although it does mean that the amount required to be paid will be higher than the original levy notice stated. Similarly, clause 96 of the bill inserts a provision into the SPA to allow a charge adopted by a

¹²⁵ Curthoys, A. Acting Executive Director, Infrastructure and Regional Futures, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 10.

¹²⁶ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 13.

¹²⁷ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 13.

¹²⁸ Redland City Council. *Submission No. 44*, p. 3.

¹²⁹ Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 14.

¹³⁰ Local Government Association of Queensland. 2011, *Submission No. 45*, p. 3.

¹³¹ Curthoys, A. Acting Executive Director, Infrastructure and Regional Futures, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 9; Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, p. 10.

¹³² Sunshine Coast Council. 2011, *Submission No. 43*, p. 4.

¹³³ Moreton Bay Regional Council. 2011, *Submission No. 53*, p. 1.

¹³⁴ Brisbane City Council. 2011, *Submission No. 56*, p. 3.

distributor-retailer for particular water services or wastewater services to be increased after the charge is levied and before it is paid to the distributor-retailer. The committee was concerned that these clauses may not have sufficient regard to the rights and liberties of individuals.

The DLGP advised that clauses 88 and 96 have regard to the rights and liberties of individuals as these clauses establish clear criteria for the ability of local governments and distributor-retailers to index an adopted infrastructure charge. Indexation of an adopted infrastructure charge is limited to the lesser of the maximum adopted infrastructure charge at the time of payment or the amount reflecting the increase in the CPI between the time the charge is levied and when it is paid. The indexation must be calculated using the methodology outlined in the relevant adopted infrastructure charges resolution or board decision and must be referenced in an adopted infrastructure charge notice. The DLGP advises that the indexation of charges cannot be applied retrospectively. Indexation of charges can commence following the inclusion of details on how the charge is worked out in an adopted infrastructure charges resolution or board decision.¹³⁵

The DLGP also advises that there are two avenues available for appealing a charge which is subject to indexation. An appeal in regard to an error in the calculation of a charge can be made to a Building and Development Dispute Resolution Committee under section 535 of the SPA. Section 478 of the SPA provides for an appeal to be made to the Environment and Planning Court in regard to an error in the calculation of a charge or whether a charge is so unreasonable that no reasonable local government, state infrastructure provider or coordinating agency could have imposed it.¹³⁶

3.1.3 Urban encroachment

Amendments to the SPA will expand the urban encroachment policy state-wide. This is based on the Milton Brewery model currently in place under the *Planning (Urban Encroachment – Milton Brewery) Act 2009*. This will allow affected industry or businesses to opt in to receive protection from urban encroachment nuisance actions. The *Planning (Urban Encroachment – Milton Brewery) Act 2009* will be repealed.¹³⁷

The urban encroachment policy is not a stand alone document. It is the proposed chapter that will be added to SPA by the bill. The policy is very close to the provisions contained within the *Planning (Urban Encroachment – Milton Brewery) Act 2009* but will apply more broadly than to the Milton area.¹³⁸ The DLGP will prepare further material to assist people in their use of the process that will be

¹³⁵ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, pp. 4 - 5.

¹³⁶ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 5.

¹³⁷ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 8.

¹³⁸ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 8.

established if the bill passes.¹³⁹ These provisions are an innovative way of addressing the issue of reverse amenity where individuals move close to a legal activity that may be a nuisance.¹⁴⁰

Given that these provisions are innovative, the DLGP has been very cautious about transferring them from the Milton area to other areas. The DLGP has done this for two reasons. Firstly, they want to integrate planning policy and they are achieving this by bringing the provisions within the *Planning (Urban Encroachment – Milton Brewery) Act 2009* into the SPA. Secondly, the DLGP are being cautious given that these provisions intrude on the rights of individuals.¹⁴¹

However, the Sunshine Coast Council argue in its submission that these provisions should be extended to apply to Urban Development Area development applications made under the *Urban Land Development Authority Act 2007*. The council believe that this is appropriate given new development that is located in an affected area may also be in an urban development area. This is of particular relevance to the council's local government area given that the Urban Land Development Authority has granted approvals in respect of the applications made for the Caloundra South urban development area adjoining the Caloundra Aerodrome which have the potential to encroach on the operations of the Caloundra Aerodrome.¹⁴²

The Ipswich City Council, in their submission, highlighted that several of the urban encroachment amendments impacted on local councils. The amendments to the SPA, if passed, will require the Minister to advise the local government that a registered premises is within their area. The local government must then note the registration in its planning scheme and any new planning scheme while the premises is registered. This note is not an amendment of the planning scheme. The Ipswich City Council suggested that clarification within the Act is required to identify if the local government is responsible for including in planning and development certificates information relating to the registered premises noted on the planning scheme. They also noted that there does not appear to be a provision for notifying the local government of the removal or renewal of a premise on the register. The Ipswich City Council also requested that provisions be included in the bill to make it explicit that consultation must be undertaken with the council responsible for the local government area in which a registration of premises is proposed.¹⁴³ The Gold Coast City Council believe that the bill needs to clarify if the amendments to the SPA limit a local government's ability to prosecute its local laws.¹⁴⁴

The Queensland Law Society indicated that it is not opposed in principle to legislation that tries to protect existing industrial uses from inappropriate urban encroachment, or from unreasonable complaints as a result of people choosing to 'move to a nuisance'. However, they believe that the provisions are not as flexible and nuanced as existing case law dealing with similar issues which may create difficulties in the future. The Queensland Law Society suggests that the bill appears to be creating significant additional paperwork for both the existing industrial developments and the residential encroachments without achieving either the prevention of the residential encroachment

¹³⁹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 4.

¹⁴⁰ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2; Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 8.

¹⁴¹ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 8.

¹⁴² Sunshine Coast Council. 2011, *Submission No. 43*, p. 5.

¹⁴³ Ipswich City Council. 2011, *Submission No. 41*, pp. 4-5.

¹⁴⁴ Gold Coast City Council. 2011, *Submission No. 48*, p. 1.

or the protection of the existing development from being closed down as a result of people moving to the nuisance.¹⁴⁵

The committee considered whether clause 94 of the bill, which inserts a new chapter 8A into the SPA, is consistent with the principles of natural justice. Subsection 680C(2) of this chapter states that its purpose is to be achieved mainly by restricting particular civil proceedings, and criminal proceedings, relating to a local law, in connection with activities involving the emission of aerosols, fumes, light, noise, odour, particles or smoke where the registered premises are operating within their registration conditions. The DLGP advised that the common law rights of residents of existing development is not overridden as the limitation only applies to owners and occupiers of new, intensifying encroaching development, who will be aware of the limitation through the 'buyer-beware' mechanisms under the provisions, prior to making decisions to purchase, develop or reside in the affected area.¹⁴⁶

New part 2 of chapter 8A contains subsection 680E(2) which restricts a person's ability to seek legal redress. It prohibits an affected person from taking a civil proceeding for nuisance, or a criminal proceeding relating to a local law, against any person in relation to the claim if the development approval for the registered premises or any relevant code of environmental compliance have been complied with. The DLGP advised that this protection is in place for a period of 10 years, after which time a renewal of the protection must be sought. This proposed subsection works with other provisions to ensure that owners, potential purchasers, residents and occupiers of relevant properties are made fully aware of the pre-existence of the registered premises and the limitation on their rights to take nuisance action against the premises prior to purchasing or occupying the property. The draft provisions require the owner of registered premises to notify the Registrar of Titles about the registration and the effect of the legislation on all lots in the affected area and place a notice about the registration in the newspaper. Thus, existing owners are aware of the provisions and potential purchasers made aware of the limitation of their rights should intensification of development be proposed. The common law rights of residents of existing development is not overridden as the limitation applies only to owners and occupiers of new, intensifying encroaching development who will be aware of the limitation through the 'buyer-beware' mechanisms under the provisions, prior to making decisions to purchase, develop or reside in the affected area.¹⁴⁷

3.1.3.1 Royal National Agricultural and Industrial Association of Queensland (RNA)

The RNA is in partnership with Lend Lease for the \$2.9 billion redevelopment of the RNA showgrounds. However, the RNA is part of the Bowen Hills Urban Development Area and therefore falls under the Urban Land Development Authority meaning that it will not be subject to the urban encroachment policy.¹⁴⁸ The RNA are concerned that, if the bill is passed in its current form, individuals would complain about the activities, which have been occurring for 136 years, that take place on the RNA site. This would, not only jeopardise the RNA business but also other business that use the show to use their trade, sell their rides or undertake other legitimate business activities.¹⁴⁹

¹⁴⁵ Queensland Law Society. 2011, *Submission No. 54*, pp. 2-3.

¹⁴⁶ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 5.

¹⁴⁷ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, pp. 5 - 6.

¹⁴⁸ Tunny, J. Chief Executive Officer, Royal National Agricultural and Industrial Association of Queensland (RNA), 2011, *Public Hearing Transcript*, 14 December, p. 2; RNA. 2011, *Submission No. 46*, p. 1.

¹⁴⁹ Tunny, J. Chief Executive Officer, Royal National Agricultural and Industrial Association of Queensland (RNA), 2011, *Public Hearing Transcript*, 14 December, p. 6.

The RNA believe that broader protection is required for iconic Queensland institutions such as the RNA.¹⁵⁰

The DLGP had been consulting with the RNA over the past 18 months regarding urban encroachment issues.¹⁵¹ The Minister and the DLGP will continue to work with the RNA to address these concerns.¹⁵²

The committee notes the concerns of the RNA regarding urban encroachment issues. It agrees that the broader protection is required for the RNA due to its iconic status to protect existing uses from inappropriate urban encroachment, or from unreasonable complaints. The committee recommends the Minister include the RNA in its urban encroachment policy once the RNA ceases to be part of the Bowen Hills Urban Development Area and no longer falls under the Urban Land Development Authority.

Recommendation 4

The committee recommends that the Attorney-General, Minister for Local Government and Special Minister of State include the Royal National Agricultural and Industrial Association of Queensland (RNA) in its urban encroachment policy once the RNA ceases to be part of the Bowen Hills Urban Development Area and no longer falls under the Urban Land Development Authority.

3.1.3.2 Registration

The bill allows organisations to register every 10 years under the urban encroachment provisions. After 10 years, the owner of the premises may seek to renew the registration.¹⁵³ This was not a requirement in the *Planning (Urban Encroachment – Milton Brewery) Act 2009*.¹⁵⁴ Both the RNA and Lion indicated that they would prefer a registration period that is longer than 10 years.

Lion indicated that, given the level of capital investment and the term over which that capital investment is spread, Lion would be looking at 25 year plus registration term to give them confidence when they consider the types of capital projects that they would be undertaking.¹⁵⁵ The RNA indicated that they would prefer 50 years or more as re-registration term.¹⁵⁶ Lion indicated that they would support a 50 years plus timeframe.¹⁵⁷

¹⁵⁰ Tunny, J. Chief Executive Officer, Royal National Agricultural and Industrial Association of Queensland (RNA), 2011, *Public Hearing Transcript*, 14 December, p. 2.

¹⁵¹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 4.

¹⁵² Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 4.

¹⁵³ Explanatory Notes to the Sustainable Planning and Other Legislation Amendment Bill 2011, p. 12.

¹⁵⁴ Lion. 2011, *Submission No. 40*, p. 1.

¹⁵⁵ Lindsay, C. Executive Manager, Lion, 2011, *Public Hearing Transcript*, 14 December, p. 5.

¹⁵⁶ Tunny, J. Chief Executive Officer, Royal National Agricultural and Industrial Association of Queensland (RNA), 2011, *Public Hearing Transcript*, 14 December, p. 5; RNA. 2011, *Submission No. 46*, p. 4.

¹⁵⁷ Lindsay, C. Executive Manager, Lion, 2011, *Public Hearing Transcript*, 14 December, p. 5.

Additionally, the bill lists the criteria for registration and re-registration of a premises. Lion believe that the economic criteria should have regard to matters such as jobs, investment and tourism. They suggest that this could be added, as a non-exhaustive list in the bill.¹⁵⁸ The committee notes that one criterion for registration is that the activity undertaken at the premises is significant for the economy. They do not believe that it is necessary to further define this criterion. The DLGP confirm that matters relating to the economic value of the Milton Brewery will be considered by the minister in the assessment of any future proposed renewal of registration.¹⁵⁹

The committee noted that clause 81 of the bill reverses the usual onus of proof by imposing an evidential burden on a respondent. The bill inserts a new provision into the SPA to state that, in an appeal by a person dissatisfied with a decision to register or renew registration of premises, it is for the owner of the registered premises to establish that the appeal should be dismissed. The DLGP advised that this clause is included in the bill because a relevant person would be affected by the registration or renewal of registration because it restricts their rights to make a nuisance complaint about lawful emissions from the registered premises. Consequently, the onus is on the owner of the registered premises to establish that the emissions are or remain within that which has been approved and that the appeal should be dismissed. The construction of the clause is considered appropriate as the owner of the registered premise receives the benefit of the registration, which is a restriction on other people's civil rights.¹⁶⁰

The committee notes the concerns of stakeholders regarding the period of registration. The committee agrees that a period of 10 years is too short for businesses that need to plan for longer periods of time, or make decisions that involve a very large capital outlay. The committee believes that the bill needs to be amended to provide greater flexibility and long-term certainty in unique situations. The committee recommends that the bill be amended to provide the Minister with greater flexibility to extend the period of registration up to, but not exceeding, 25 years in unique circumstances at the Minister's discretion.

Recommendation 5

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to extend the length of time an owner of premises may seek registration from 10 years to up to, but not exceeding, 25 years at the Minister's discretion.

3.1.3.3 Rights of individuals

Several submissions to the inquiry indicated that they did not support the urban encroachment provisions.¹⁶¹ Evidence provided to the committee suggested that the bill denies the rights of

¹⁵⁸ Grayson, N. Director, External Relations, Beer, Spirits and Wine, Lion, 2011, *Public Hearing Transcript*, 14 December, p. 4.

¹⁵⁹ Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, p. 2.

¹⁶⁰ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 3.

¹⁶¹ Daghli, L. & Daghli, J. 2011, *Submission No. 4*, p. 1; Thomasson, G., Thomasson, H. & Tomasson, D. 2011, *Submission No. 37*, p. 1; Baltais, S. 2011, *Submission No. 39*, pp. 1-2; Baxter, D. 2011, *Submission No. 47*, p. 1.

individuals to have a quality of life. The committee heard that the bill will encourage low-grade, high-density housing development adjoining industrial areas.¹⁶²

However, the main concern is around new developments and if developments are intensified around areas where it is an existing problem.¹⁶³ However, the bill does make allowances for intensification. Businesses would not be excluded from community action, for example, if they intensified the pollutants coming from that site.¹⁶⁴ The committee notes the concerns regarding the rights of individuals and believes that setting a registration period is one way to manage this issue.

3.2 Amendments to the Urban Land Development Authority Act 2007

The proposed amendments to the *Urban Land Development Authority Act 2007* aim to improve the Act's efficiency and effectiveness, including enabling the Planning Minister to amend a 'submitted' development scheme prior to approval by regulation and to provide certainty to applicants entering into Infrastructure Agreements with the Urban Land Development Authority; and to effect related minor consequential amendments to the *Coastal Protection and Management Act 1995*. The amendments to the *Urban Land Development Authority Act 2007* are primarily aimed at improving the efficiency and effectiveness of the Act. These operational matters have become apparent since the *Urban Land Development Authority Act 2007* came into effect and have mostly been raised by the Urban Land Development Authority.¹⁶⁵

The DLGP, between February and August 2011 consulted with a range of stakeholders regarding these amendments including:

- Urban Land Development Authority
- State Government agencies
- Local governments
- Developers
- Infrastructure providers/entities¹⁶⁶

The DLGP advised that stakeholders were supportive of the proposed amendments regarding building assessment provisions and local planning instrument amendments as they are expected to reduce confusion about whether a local planning instrument or building assessment provision prevails in the event of any conflict between the two. However, several stakeholders also suggested that it is undesirable for building matters to be included in local planning instruments.¹⁶⁷

The issues associated with a lack of parity between urban development areas and local government areas with regard to penalty units for by-law offences has been raised by Brisbane City Council in a

¹⁶² Baxter, D. President, Birkdale Progress Association, 2011, *Public Hearing Transcript*, 14 December, p. 4.

¹⁶³ Baltais, S. 2011, *Public Hearing Transcript*, 14 December, p. 5.

¹⁶⁴ Baltais, S. 2011, *Public Hearing Transcript*, 14 December, p. 6.

¹⁶⁵ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, pp. 8 & 15; Saunders, M. Acting Executive Director, Transit Oriented Development and Design, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 4.

¹⁶⁶ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 14.

¹⁶⁷ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 13.

letter to the Planning Minister. The amendment to the *Urban Land Development Authority Act 2007* is in response to Brisbane City Council's concern.¹⁶⁸ The committee notes that the major concern raised by stakeholders regarding the amendments to the *Urban Land Development Act 2007* relates to the transitioning of infrastructure agreements.

3.2.1 Transitioning of infrastructure agreements

The intention of the *Urban Land Development Authority Act 2007* is that urban development areas will at some time be revoked and cease to be the responsibility of the Urban Land Development Authority and handed back to the relevant local government and subject to the SPA. A number of existing provisions under the *Urban Land Development Authority Act 2007* deal with transitional arrangements if it is proposed to amend or revoke an urban development area declaration regulation so that land in an urban development area will no longer be in an urban development area including:

- Section 11: Revocation or reduction of urban development area
- Section 12: Interim local laws
- Section 16: Conversion of an Urban Development Area development approval to SPA development approval¹⁶⁹

These provisions provide local governments with the opportunity to raise matters of concern regarding how the land will be dealt with in their planning instruments or clarify how ongoing matters such as Urban Land Development Authority by-laws or appeals against urban development area development approval conditions are to be dealt with.¹⁷⁰ The amendments to the *Urban Land Development Authority Act 2007* will provide certainty to those entering into infrastructure agreements with the Urban Land Development Authority under the Act. The proposed changes will ensure that infrastructure agreements entered into with the Urban Land Development Authority provide the same certainty as provisions contained in SPA and are carried through transitioning arrangements when the authority withdraws from an urban development area or once all or part of the urban development area is revoked and the land falls back to the responsibility of the relevant local government.¹⁷¹

The *Urban Land Development Authority Act 2007* does not provide any avenue for a local government or another 'superseding public entity' to appeal against the transfer to them of the ULDA's rights and responsibilities under an infrastructure agreement over land to be removed from an UDA.¹⁷² This is considered appropriate because:

¹⁶⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 15.

¹⁶⁹ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, pp. 2 - 3.

¹⁷⁰ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 3.

¹⁷¹ Papageorgiou, M. Executive Director, Planning Policy, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 30 November, p. 2.

¹⁷² Saunders, M. Acting Executive Director, Transit Oriented Development and Design, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 6; Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, pp. 3 - 4.

- The purpose of an infrastructure agreement is to provide a high level of certainty for parties to the agreement as to their financial obligations over the life of the agreement (potentially decades). As an infrastructure agreement is a contract at law, its terms can only be varied by agreement of the parties to it. This certainly allows developers and public sector entities to move forward with a clear understanding of who is responsible for delivering what infrastructure and when.
- In the case of developers, securing capital to undertake development is almost always contingent on financial institutions being satisfied that there is enough certainty around the total return on investment of a project to meet their standards for establishing loans.
- Including a provision that allows responsibilities for obligations under an existing infrastructure agreement to be appealed once land subject to the agreement is removed from the urban development area would effectively eliminate the certainty that the agreement is meant to establish.
- In addition, if an urban development area is dissolved or an area of land is cut from an urban development area, this will not remove the need for infrastructure to be provided to that area. The public sector entity, like a council, that would then have responsibility for that area would need to renegotiate any infrastructure agreement over that land, simply to achieve the same outcome that the previous agreement sought. It is noted that Logan City Council supported the proposed amendment on this basis.
- The Urban Land Development Authority has established an Infrastructure Funding Framework that identifies the total cost of infrastructure required in urban development areas and the means by which these costs will be recovered from infrastructure contributions and other innovative means over the life of the development of the urban development areas. The Infrastructure Funding Framework has been prepared in consultation with local governments and infrastructure service providers, and independently reviewed to ensure that appropriate level of infrastructure can be provided.
- Infrastructure agreements are simply one means of achieving developer contributions under the Infrastructure Funding Framework towards the provision of infrastructure to support the development of new communities. Another means is through development approval conditions.
- Conditioning and infrastructure requirements are not unique to urban development areas being fundamental to the SPA framework. The predominant means of achieving this outcome in urban development areas has been, and will continue to be, through the conditioning of development approvals through the Urban Land Development Authority's development application framework. It is expected that infrastructure agreements are only likely to be used in more limited circumstances in large master planned communities.
- Development approvals under the *Urban Land Development Authority Act 2007*, SPA and virtually every other planning framework 'run with the land'. An existing approval is not made invalid because, for example, the urban development area land becomes the responsibility becomes the responsibility of the local council.
- Having one instrument that provides clarity, transparency and certainty between development rights and infrastructure obligations (a conditioned Development Approval), and another that does provide certainty because it may be subject to appeal at some stage would be an inconsistent approach.¹⁷³

¹⁷³ Noye, J. Director-General, Department of Local Government and Planning, 2011, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, pp. 3-4.

The committee notes that several local councils have concerns regarding the transitioning of infrastructure agreements from the Urban Land Development Authority to local councils.¹⁷⁴ Several suggest that councils should be involved in the development of infrastructure agreements if they are to take later responsibility for them.¹⁷⁵ Additionally, local councils have concerns regarding the need to fund the maintenance of infrastructure when it is not accompanied by an on-going revenue stream.¹⁷⁶ The level of debt within the local council will also be affected.¹⁷⁷

For instance, the Sunshine Coast Council have modelled two scenarios, based on the limited information available to them regarding the impact of the infrastructure agreements being transitioned to their local council. The worst case scenario would involve the transition of \$560 million liability while the best case scenario is the transition of a \$360 million liability. These scenarios would result in general rate increases of between 12 per cent and 28 per cent which would need to remain for a period of 10 to 15 years.¹⁷⁸

There is also an impact on local council budget processes and other statutory obligations. The *City of Brisbane Act 2010* requires that the Brisbane City Council not enter into a contract, such as an infrastructure agreement, unless they have allowed for that in the budget or a special resolution of council is sought. Therefore, in order to adopt infrastructure agreements that the Brisbane City Council has not been party to, the Brisbane City Council would need to, upon receiving notice that the requirements of that infrastructure agreement were being transitioned to the council, either seek a special resolution of the council to take that into account or include the matters in the quarterly budget review cycle. That would make it more likely that other items that had funding allocated would no longer be funded.¹⁷⁹

¹⁷⁴ Piper, R. Project Director – Urban Development, Sunshine Coast Council, 2011, Letter to Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 1; Ipswich City Council. 2011, *Submission No. 41*, p. 6; Townsville City Council. 2011, *Submission No. 42*, p. 1; Sunshine Coast Council. 2011, *Submission No. 43*, p. 6; Local Government Association of Queensland. 2011, *Submission No. 45*, p. 5; Gladstone Regional Council. 2011, *Submission No. 51*, p. 2; Moreton Bay Regional Council. 2011, *Submission No. 53*, p. 3; Brisbane City Council. 2011, *Submission No. 56*, p. 3.

¹⁷⁵ Piper, R. Project Director, Urban Development, Sunshine Coast Regional Council, 2011, *Public Hearing Transcript*, 14 December, p. 12; Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 13; Ipswich City Council. 2011, *Submission No. 41*, p. 6; Local Government Association of Queensland. 2011, *Submission No. 45*, p. 5; Gladstone Regional Council. 2011, *Submission No. 51*, p. 2; Moreton Bay Regional Council. 2011, *Submission No. 53*, p. 3; Brisbane City Council. 2011, *Submission No. 56*, p. 3.

¹⁷⁶ Piper, R. Project Director – Urban Development, Sunshine Coast Council, 2011, Letter to Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 1; Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 13; Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 14; Ipswich City Council. 2011, *Submission No. 41*, p. 6; Local Government Association of Queensland. 2011, *Submission No. 45*, p. 5.

¹⁷⁷ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 15.

¹⁷⁸ Piper, R. Project Director – Urban Development, Sunshine Coast Council, 2011, Letter to Research Director, Transport and Local Government Committee relating to the questions taken on notice on 14 December 2011 for the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 21 December, p. 1.

¹⁷⁹ Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, pp. 13 - 15.

Councils also have concerns regarding the types of infrastructure agreements that may be entered into. It is unclear within the *Urban Land Development Authority Act 2007* as to whether general contracts, such as lawn mowing, will also pass back to the council.¹⁸⁰

Water suppliers also have some concerns regarding the transitioning of infrastructure agreements.¹⁸¹ The amendments make clear that the Urban Land Development Authority may make binding, long-term infrastructure funding and supply decisions for a succeeding public sector entity through infrastructure agreements.¹⁸² The public sector entity could be a local government or it could be, as an example, a water service provider.¹⁸³ Unitywater also believe that they should be involved in the negotiation of infrastructure agreements, particularly given that it will be ultimately responsible for funding and supply the infrastructure. Ideally, Unitywater believe that the developer and the water entity could be allowed to enter into an agreement independently subject to the policy position that is established through the development scheme in an urban development area.¹⁸⁴

It appears to the committee as if there is a lack of clear communication regarding infrastructure agreements. Some councils and agencies stated that had not been consulted about the bill and that they were aware of what infrastructure agreements the Urban Land Development Authority has in place.¹⁸⁵ However, some councils have not raised their concerns directly with the DLGP.¹⁸⁶ The DLGP advised the committee that the Urban Land Development Authority is holding ongoing consultations regarding the divestment of infrastructure.¹⁸⁷ The DLGP is also consulting with the LGAQ regarding infrastructure agreements. Officers from the Ipswich City Council and the Logan City Council were also consulted.¹⁸⁸ The LGAQ advise that the Urban Land Development Authority have advised that they will negotiate individually with each council involved.¹⁸⁹

¹⁸⁰ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 13; Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 14.

¹⁸¹ Ballard, G. Project Consultant, Unitywater, 2011, *Public Hearing Transcript*, 14 December, p. 3; Unitywater. 2011, *Submission No. 49*, pp. 2 – 3.

¹⁸² Ballard, G. Project Consultant, Unitywater, 2011, *Public Hearing Transcript*, 14 December, p. 3.

¹⁸³ Saunders, M. Acting Executive Director, Transit Oriented Development and Design, Department of Local Government and Planning, 2011, *Public Briefing Transcript*, 14 December, p. 5.

¹⁸⁴ Ballard, G. Project Consultant, Unitywater, 2011, *Public Hearing Transcript*, 14 December, p. 7.

¹⁸⁵ Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 15; Ballard, G. Project Consultant, Unitywater, 2011, *Public Hearing Transcript*, 14 December, p. 8.

¹⁸⁶ Doss, K. Manager, City Planning and Economic Development Branch, Brisbane City Council, 2011, *Public Hearing Transcript*, 14 December, p. 15.

¹⁸⁷ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 14; Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, pp. 4-5.

¹⁸⁸ Noye, J. Director-General, Department of Local Government and Planning, 2011, Consultation summary attached to a letter to Jo-Ann Miller MP, Chair Transport, Local Government and Infrastructure Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 29 November, p. 15.

¹⁸⁹ Hallam, G. Chief Executive Officer, Local Government Association of Queensland, 2011, *Public Hearing Transcript*, 14 December, p. 15.

The DLGP advise that the amendments to the *Urban Land Development Act 2007* will provide local governments with a greater level of certainty as they will not need to renegotiate infrastructure agreements with developers when the urban development area is revoked.¹⁹⁰

The committee notes the concerns of local councils and other public sector entities regarding the transitioning of infrastructure agreements. The committee believes that it is appropriate for these organisations to be involved in the negotiation of infrastructure agreements. Therefore, the committee recommends that the bill be amended to require the Urban Land Development Authority to consult with the public sector entities who are likely to be involved with the infrastructure agreement after the Urban Land Development Authority withdraws from all or part of an urban development area, when negotiating the infrastructure agreement.

Recommendation 6

The committee unanimously recommends that the Sustainable Planning and Other Legislation Amendment Bill 2011 be amended to require the Urban Land Development Authority to consult with the public sector entities who are likely to be involved with the infrastructure agreement after the Urban Land Development Authority withdraws from all or part of an urban development area, when negotiating an infrastructure agreement.

¹⁹⁰ Kinnane, M. Acting Director-General, Department of Local Government and Planning, 2011, Attachment 1 to a letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to response to submissions received on the Sustainable Planning and Other Legislation Amendment Bill 2011, 13 January, pp. 5 - 6.

3.2.2 Other issues

Clause 109 of the bill replaces the existing section 31 of the *Urban Land Development Authority Act 2007* to allow the Minister to, within 45 business days after the submitted scheme is given to the Minister, amend the submitted scheme in the way the Minister considers appropriate. This is broader than the previous section 31, which allowed the Minister to amend the submitted scheme in a way the Minister considers appropriate 'to protect an affected owner's interests'. While the minister may amend the submitted scheme to protect an affected owner's interests under subsection 31(2)(a), subsection 31(2)(a) does not limit the unfettered discretion given to the Minister in subsection 31(1). The committee considered whether this was a delegation of administrative power in appropriate cases and to an appropriate person. The committee decided that the Minister was the appropriate person to exercise this administrative power.

The committee considered clause 111 of the bill which limits the timeframe for public consultation or making a submission on a proposed amendment to a development scheme to half the time given for public consultation or making a submission about the entire proposed scheme. The committee was particularly concerned with ensuring that this provision was consistent with the principles of natural justice. However, the committee considered this to be an appropriate compromise as it is anticipated that the proposed amendments would be lesser in number than the original scheme provisions and hence the time needed to properly make a submission could reasonably be expected to be less.

The committee notes that under section 105A of the *Urban Land Development Authority Act 2007* as inserted by clause 127 of the bill, if the chairperson of the Urban Land Development Authority resigns the office of chairperson they also stop being an appointed member of the Urban Land Development Authority. However, if the deputy chairperson resigns that office they may continue to be a member. The DLGP advised that section 105 of the *Urban Land Development Authority Act 2007* states that the board consists of two ex officio members and appointed members including a chairperson and six other appointed members. The chairperson and the appointed members are appointed into that role by the Governor in Council. From the appointed members, under new section 105A, the minister appoints a member as deputy chairperson.¹⁹¹

The role of the deputy chairperson supports the role of the chairperson when the chairperson is unavailable, by allowing the deputy chairperson to fulfil the role of the chairperson when certain functions need to be undertaken within short timeframes. It is only intended to be an arrangement to assist in improving the operational efficiency and effectiveness of the board in emergent circumstances. It is proposed that resignation from the role of deputy chairperson will be given to the minister, and will not affect that member's existing appointment to the board by the Governor in Council.¹⁹² The committee considered this was appropriate.

¹⁹¹ Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 6.

¹⁹² Noye, J. Director-General, Department of Local Government and Planning, 2012, Letter to Jo-Ann Miller MP, Chair Transport and Local Government Committee relating to the inquiry into the Sustainable Planning and Other Legislation Amendment Bill, 20 January, p. 6.

Appendices

Appendix A–List of submissions

Sub #	Submitter
1	Brian Roebig, Chairman and David Todd, Chief Executive Officer, LGsuper
2	Mr Simon Benham, Governance Manager, Logan City Council
3	Ms Kathrine Nelson, State Secretary, Queensland Services Union
4	Luke and Jean DGLISH
5	Mr John O'Shea
6	R Van Peperzeel
7	Mr Philip Ackerman
8	Mr Stuart Watt
9	Mr Joel Smith
10	Mr Mal Thomas
11	Mr Barry Postle
12	C Montgomery
13	Mr Greg Phillips
14	Mr Reuben Sonner
15	D Butler
16	Mr Brett Fairbanks
17	Mr Bruce Warren
18	Mr M Campbell
19	Mr Daniel Pankowski
20	Mr Craig Granland
21	Mr Andrew Stocker
22	Mr David Treagus
23	Mr Ben Robson
24	Mr T C Gilbert
25	Brad
26	Mr John Perry
27	Mr Darren McConnell

Sub #	Submitter
28	Mr Darren Wool
29	R F Male
30	Mr Phil Aland
31	Mr Brett Wilkinson
32	J Bradshaw
33	Mr Reg George
34	Mr Adam Liddell
35	Mr Sean Pohlner
36	Mr Mick Stocker
37	Gary, Helen and Dean Thomasson
38	Mr Max Hunter, President IPIQ, The Institute of Plumbing Inspectors, QLD. Inc
39	Mr Simon Baltais
40	Ms Nicola Grayson, Director, External Relations, Lion
41	Mr Nick Vass-Bowen, Strategic Planning Manager, Ipswich City Council
42	Mr Stewart Pentland, Director of Planning and Development, Townsville City Council
43	Mr John Knaggs, Chief Executive Officer, Sunshine Coast Council
44	Mr Gary Stevenson PSM, Chief Executive Officer, Redland City Council
45	Ms Tracy Haynes, Principal Advisor – Planning and Development
46	Mr Jonathan Tunny, Chief Executive, RNA
47	Mr Don Baxter, President, The Birkdale Progress Association Inc
48	Mr Joe McCabe, Director, City Governance, Gold Coast City Council
49	Mr George Theo, Chief Operating Officer, Unity Water
50	Mr Keith Farrelly, Coordinator Plumbing and Drainage, Gold Coast City Council
51	Mr Russell Schuler, Manager Regional Strategy, Gladstone Regional Council
52	Mr Michael McGuinness , Chief Executive Officer, MPAQ
53	Mr John Rauber, Chief Executive Officer, Moreton Bay Regional Council
54	Mr Bruce Doyle, President, Queensland Law Society
55	Mr Paul Bidwell, Director – Housing Policy, Master Builders
56	Cr Graham Quirk, Lord Mayor, Brisbane City Council

Appendix B—Departmental officers assisting the committee

Departmental officers at public briefing – 30 November 2011
Mr Glen Brumby, Executive Director, Planning Policy, Department of Local Government and Planning
Mr Andrew Curthoys, Acting Executive Director, Infrastructure and Regional Futures, Department of Local Government and Planning
Mr Bill Hastie, Acting Director, Office of Local Government, Department of Local Government and Planning
Mr Michael Papageorgiou, Executive Director, Planning Policy, Department of Local Government and Planning
Mr Mark Saunders, Acting Executive Director, Transit Oriented Development and Design, Department of Local Government and Planning

Departmental officers at public briefing – 14 December 2011
Mr Glen Brumby, Executive Director, Planning Policy, Department of Local Government and Planning
Mr Andrew Curthoys, Acting Executive Director, Infrastructure and Regional Futures, Department of Local Government and Planning
Mr Bill Hastie, Acting Director, Office of Local Government, Department of Local Government and Planning
Ms Josie Hawthorne, Acting Manager, Legislation, Office of Local Government, Department of Local Government and Planning
Mr Michael Papageorgiou, Executive Director, Planning Policy, Department of Local Government and Planning
Mr Mark Saunders, Acting Executive Director, Transit Oriented Development and Design, Department of Local Government and Planning
Mr Clinton Hanney, ULDA Representative, Urban Land Development Authority

Appendix C—Witnesses at public hearing—14 December 2011

Mr Graeme Ballard, Project Consultant, Unitywater
Mr Simon Baltais, Private capacity
Mr Don Baxter, President, Birkdale Progress Association
Ms Nicola Grayson, Director, External Relations, Beer, Spirits and Wine, Lion
Ms Antra Hood, Partner, Minter Ellison Lawyers
Mr Craig Lindsay, Executive Manager, Lion
Mr Jonathan Tunny, Chief Executive Officer, Royal National Agricultural and Industrial
Mr Max Hunter, President, Institute of Plumbing Inspectors Qld Inc.
Mr Michael McGuinness, Chief Executive Officer, Master Plumbers Association of Queensland
Mr Kerry Doss, Manager, City Planning and Economic Development Branch, Brisbane City Council
Mr Greg Hallam, Chief Executive Officer, Local Government Association of Queensland
Mr Ron Piper, Project Director, Urban Development, Sunshine Coast Regional Council
Mr Brian Roebig, Chairman, LGsuper
Mr Tony Symons, Policy Research Officer, Moreton Bay Regional Council
Mr David Todd, Chief Executive Officer, LGsuper

Appendix D—Proposed new offences contained within the bill

Clause	Proposed offence	Proposed maximum penalty
33TE (1)	A licensee or relevant person who receives a notice under section 33TD must comply with the notice within 10 business days after receiving it, unless the licensee or person has a reasonable excuse	100 penalty units (\$10,000)
57 ins.128RA	A person must not state anything to an investigator, inspector, local government or the council that the person knows is false or misleading in a material particular.	40 penalty units (\$4,000)
94 ins.680X (1)	The owner of registered premises must, within 20 business days after the premises are registered, give the registrar notice, in the approved form asking to keep a record (an <i>affected area notation</i>) that this chapter applies to all lots within the affected area for the premises.	200 penalty units (\$20,000)
94 ins. 680X(3)	If the registration of the premises ends and the registrar was given a notice under subsection (1) the owner of the premises must give the registrar notice, in the approved form, asking the registrar to remove the record of the affected area notation from the register.	20 penalty units (\$2,000)
94 ins. 680Y(1)	The owner of registered premises must, within 20 business days after the premises are registered, or registration of the premises is renewed, publish notice in compliance with subsection (2) about the registration or renewal in a newspaper circulating generally in the affected area for the premises.	50 penalty units (\$5,000)
94 ins.680Y (4)	The owner must, while the premises are registered, keep the information mentioned in subsection (3) reasonably available for inspection, free of charge, by members of the public.	50 penalty units (\$5,000)
94 ins.680Y (5)	As soon as practicable after complying with subsection (1), the owner of the registered premises must give the Minister notice of the compliance.	20 penalty units (\$2,000)
94 ins.680Z (1)	The applicant for a relevant development application must, with 20 business days after making the application, give the registrar notice, in the approved form asking the registrar to keep a record (an <i>affected area notation</i>) that this chapter applies to the premises or lot the subject of the application.	200 penalty units (\$20,000)
94 ins.680Z (3)	If the relevant development application is refused, or lapses or is withdrawn before the application is decided and notice has been given under subsection (1) the applicant must give the registrar notice, in the form approved by the registrar, asking the registrar to remove the record of the affected area notation from the register.	20 penalty units (\$2,000)
94 ins.680ZA (1)	The owner of registered premises must, if there is a website for the premises, publish a map showing details of the affected area for the premises and details of the levels of emissions of aerosols, fumes, light, noise, odour, particles or smoke from the carrying out of the activity for which the premises are registered.	50 penalty units (\$5,000)
94 ins.680ZB (1)	A relevant person for premises in an affected area must, before entering into a letting agreement for the premises with someone else (a lessee), give to the lessee a notice stating the premises is in an affected area and restrictions under section 680E may apply to the lessee in relation to taking a civil proceeding or a criminal proceeding about the emission or aerosols, fumes, lights, noise, odour, particles or smoke from registered premises in the affected area.	30 penalty units (\$3,000)
94 ins.680ZC (4)	If the buyer ends the contract, the applicant must, within 14 days, refund to the buyer any deposit paid to the seller under the contract.	200 penalty units (\$20,000)
102 ins.888 (6)	If the prospective buyer ends the contract, the seller must, within 14 days, refund to the prospective buyer any deposit paid to the seller under the contract.	200 penalty units (\$20,000)