Parliamentary Committees



Economic Development and Other Legislation Amendment Bill 2018

Report No. 18, 56th Parliament
State Development, Natural Resources and Agricultural Industry Development Committee
November 2018

State Development, Natural Resources and Agricultural Industry Development Committee

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Abbreviations

Bill	Economic Development and Other Legislation Amendment Bill 2018
DSDMIP/the department	Department of State Development, Manufacturing, Infrastructure and Planning
ED Act	*Economic Development Act 2012*
EDOQ	Environmental Defenders Office Queensland
EDQ	Economic Development Queensland
ICN	Infrastructure Charges Notices
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
Minister	Minister for State Development, Manufacturing, Infrastructure and Planning
MEDQ	Minister for Economic Development Queensland
OSCAR	Organisation of Sunshine Coast Association of Residents
PBC	Sanctuary Cove Principal Body Corporate
PDA	Priority Development Area
PPDA	Provisional PDA
Planning Act	*Planning Act 2016*
P&E Court Act	*Planning and Environment Court Act 2016*
P&E Court	Planning and Environment Court
Property Council	Property Council of Australia
QRA	Queensland Reconstruction Authority
QRA Act	*Queensland Reconstruction Authority Act 2011*
OQPC	Office of the Queensland Parliamentary Counsel
SCR Act	*Sanctuary Cove Resort Act 1985*
SPA	*Sustainable Planning Act 2009*
resort	Sanctuary Cove Resort

Chair's foreword

This report presents the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Economic Development and Other Legislation Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and the Department of State Development, Manufacturing, Infrastructure and Planning for their assistance during the inquiry. I also thank members of the committee, our Parliamentary Service staff and Dr Jacqui Dewar, Ms Rachelle Stacey, and Mr Gregory Connolly from our secretariat.

I commend this report to the House.

Chris Whiting MP

Chair

Recommendations

The committee recommends the Economic Development and Other Legislation Amendment Bill 2018 be passed.

The committee recommends that the Government amend provisions relating to the making of a PPDA to include the establishment of a local consultative committee that includes a representative from local government to better support localised decision making.

The committee recommends that during the second reading speech the Minister for State Development, Manufacturing, Infrastructure and Planning clarify that PDA exemption certificates will not have a detrimental impact on the cultural heritage significance of Queensland heritage places.

The committee recommends that during the second reading speech the Minister for State Development, Manufacturing, Infrastructure and Planning clarify the powers for investigation and enforcement of PDA development offences under clause 102, and outline the need for such powers

The committee recommends that the department correct a typographical error in clause 190 of the Bill (amending section 79 of the *Planning and Environment Court Act 2016*). Proposed section 79(c) should read 'an appeal brought under the Planning Act 2016 about a decision on an application mentioned in section 288(1) of the Act'.

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

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

The Economic Development and Other Legislation Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 19 September 2018. The committee was required to report to the Legislative Assembly by 8 November 2018.

1.2 Inquiry process

On 21 September 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. Fifty-three submissions were received.

The committee received a public briefing about the Bill from the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP/the department) on 11 October 2018. Appendix B contains a list of officials who attended the public briefing. The committee also received written advice from the department in response to matters raised in submissions.

The submissions, correspondence from the department, the transcript of the briefing and other related evidence is available on the committee's webpage. [2]

1.3 Policy objectives of the Bill

The explanatory notes state that the objective of the Bill is to provide for increased operational efficiency of legislation under the administration of the Minister for State Development, Manufacturing, Infrastructure and Planning (Minister).

The Bill proposes to make a series of amendments to the following Acts:

- the *Building Queensland Act 2015*
- the *Economic Development Act 2012* and to a range of related acts, including:
  - *Body Corporate and Community Management Act 1997, Local Government Act 2009, Building Act 1975, Body Corporate and Community Management Act 1997, Environmental Protection Act 1994, Housing Act 2003, Liquor Act 1992, Exhibited Animals Act 2015, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009, Neighbourhood Disputes (Dividing Fences and Trees) Act 2011, Biosecurity Act 2014, Coastal Protection and Management Act 1995,* and *Land Valuation Act 2010.*

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1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 http://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC

- the *Planning Act 2016*
- the *Planning and Environment Court Act 2016*
- the *Queensland Reconstruction Authority Act 2011*
- the *Sanctuary Cove Resort Act 1985*, and
- the *South Bank Corporation Act 1989*.

The Bill will also repeal the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.[3]

1.4 Government consultation on the Bill

According to the explanatory notes, in preparing the Bill, the department consulted with other agencies and relevant stakeholders in the community and industry. An overview of departmental consultation that occurred in relation to the Bill is set out in the explanatory notes.[4]

The explanatory notes report that consulted stakeholders were generally supportive of the Bill's amendments, the consultation process and the opportunity to make amendments to the policy outcomes and specific provisions of the Bill.[5]

However, during the inquiry the Environmental Defenders Office Queensland (EDOQ) expressed disappointment and surprise at not being consulted in regard to the proposed amendments to the *Economic Development Act 2012* and that this:

> *…suggests a failure to adequately consider the interests of the community and environment in formulating the policies behind these amendments.*[6]

In response, the department advised that Economic Development Queensland (EDQ):

> *…conducted targeted consultation during the stages of policy development and Bill preparation. Consulted stakeholders included local governments, the LGAQ and industry peak bodies such as the Urban Land Development Institute, Property Council of Australia and Queensland Environmental Law Association.*[7]

The explanatory notes state:

> *Overall, there was genuine stakeholder engagement on the key issues and broad support for the proposed amendments…*[8]

The committee also received evidence in relation to the consultation process for the amendments to the *Sanctuary Cove Resort Act 1985* (SCR Act). Consultation on the intent of the amendments to the SCR Act occurred with the Sanctuary Cove Principal Body Corporate (PBC) and residents of the resort through the PBC. The explanatory notes states that:

> *Objections to the proposed amendments were received from a number of residents, on the basis that they believed that the legislation currently afforded them certainty of any future development, a retirement village would not be in keeping with the resort and could impact negatively on property values and the Sanctuary Cove community. Changes have not been made to the Bill as it is not the intent of the Bill to automatically entitle the development of a retirement*

3 Explanatory notes, p 1.

4 Explanatory notes, pp 12-15.

5 Explanatory notes, pp 12-15.

6 Submission 52, p 2.

7 Correspondence dated 22 October 2018, Attachment, p 5.

8 Explanatory notes, p 13.

village and/or residential care facility at the resort. Due process established under the SCR Act will still be required should a development application for these uses be proposed in the future.[9]

The committee notes the approach the department has taken regarding the development of this Bill and the opportunities presented to 'key' stakeholders as part of the process. The committee encourages a more robust and sincere dialogue with a broad range of stakeholders within the Queensland community.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Economic Development and Other Legislation Amendment Bill 2018 be passed.

[9] Explanatory notes, p 14.

2 Examination of the Bill

This section discusses some of the key issues raised during the committee's examination of this omnibus Bill. The committee acknowledges the significant number of issues raised in submissions, however notes that many of these concerns were outside the scope of the Bill.

2.1 Amendments to the *Sanctuary Cove Resort Act 1985*

The SCR Act will be amended to include a 'retirement facility' and 'residential care facility' as potential uses under the SCR Act and introduce the ability to approve a use on a site by site basis in the resort.

The explanatory notes state that the amendments to the SCR Act are to:

> *…further the State's interests in achieving liveable communities with diverse housing options, and to potentially provide for the development of a broader range of residential uses than is currently provided under the SCR Act, the Bill proposes amendments to the SCR Act to include a retirement village and/or residential care facility as a potential use at Sanctuary Cove Resort (the resort). While not providing for the use as-of-right anywhere at the resort now, including this use in the SCR Act will enable the resort to consider this use in the future and potentially bring forward development proposals of this nature for the State's consideration through due process under the SCR Act*.[10]

At the public briefing, the department provided the committee with some background for the changes:

> *The Sanctuary Cove Resort Act 1985 will be amended to enable diversity in the housing options available at the Sanctuary Cove resort consistent with state policies for ageing in place and housing diversity. Ageing in place is about caring for people and providing seniors with the ability to retire in the community they know in appropriate accommodation in an age-friendly environment. At the time it was written, the Sanctuary Cove Resort Act did not include either retirement facility or residential care facility use. This means that this type of development cannot currently occur at Sanctuary Cove resort. The proposed amendments ensure that residents at the Sanctuary Cove resort can access retirement and aged-care facilities in their community the same as other Queenslanders. The proposed amendments will not automatically approve such developments. A request for the use to be included in a zone will still be required to be made to the planning minister and consultation undertaken with the community as required under the act.*[11]

2.1.1 Community impact

The committee received a significant number of submissions from residents of Sanctuary Cove Resort (resort) who did not support the proposal to include retirement and aged-care facilities as potential uses under the SCR Act. Submitters were concerned about the potential impact that a development would have on their community, arguing that the legislation currently afforded them certainty of any future development, a retirement village would not be in keeping with the resort and could impact negatively on property values and the Sanctuary Cove community. For example:

Frank Cairns argued:

> *My family along with many hundreds of family's with in Sanctuary Cove have invested millions of Dollars to live in Sanctuary Cove because of its lifestyle and because the SCRA gave up protection on our investment and way of life.*[12]

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10 Explanatory notes, p 3.

11 Public briefing transcript, Brisbane, 11 October 2018, p 4.

12 Submission 2, p 1.

Robyn Coney argued:

> *The potential economic impact of the proposed legislation raised the spectre of massive property devaluations in Sanctuary Cove. I believe that a 50% devaluation on our property values is likely.*[13]

And, Dana Tingey argued:

> *The original Sanctuary Cove concept, embodied in SCRA [Act] allowed for a number and style of residences. Were this proposed development to receive DA approval it would significantly raise that original gazette number of properties. This will surely adversely impact on the value of existing properties.*[14]

In response, the department advised:

> *No evidence is presently available to DSDMIP to suggest that a retirement village would have a negative impact on property values.*[15]

The committee notes the submissions received from industry and related organisations in support of the proposal to provide for such facilities to accommodate an ageing population, including, for example, the Property Council of Australia (Property Council) who argued:

> *Retirement villages and residential care facilities will be increasingly needed over coming years to house an ageing population. It is estimated that by 2015, the demand for retirement living accommodation for people over 65 is expected to double, as such, it is imperative that both local and State Government make the necessary arrangements to prepare for this. Amendments that allow for an inclusion of seniors housing are strongly supported by the Property Council.*[16]

Committee comment

The committee acknowledges the concerns raised by submitters but also acknowledges the need to modernise the SCR Act and to provide a diversity of housing to accommodate an ageing population in Queensland.

2.1.2 Legislative amendment process and community consultation

A number of submissions were received from Sanctuary Cove residents which raised a concern that the legislative amendment process and community consultation for the proposal did not meet the required notification and voting processes under the SCR Act and was in their view unlawful. Submitters referenced the legislated requirements as stated by the then Minister at the Second Reading on the Sanctuary Cove Resort Bill 1985:

> *Any decisions made by the Principal Body Corporate which affects the interest of members must be carried by a special resolution, which requires at least 75% support by its members based on the voting entitlements mentioned previously.*[17]

In response to submitters' concerns that legislative amendment process and community consultation requirements under the SRC Act were not met, the department provided the following clarification:

> *The Sanctuary Cove Resort Act 1985 (the Act) provides that certain decisions of bodies corporate must be made by special resolution – that is, a resolution passed at a duly convened meeting by the members whose voting entitlements aggregate not less than 75% of the aggregate of all voting requirements on the relevant body corporate roll. The Act caps the number of voting entitlements at the Resort, and voting and decision making occurs through a hierarchy of bodies*

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13 Submission 16, p 1.

14 Submission 1, p 1.

15 Correspondence dated 22 October 2018, p 2.

16 Submission 37, p 3.

17 For example, submissions 1, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17, 18, 19, 20, 22, 25, 26, 27, 30, 41, and 42.

corporate under arrangements established in the Act. The Bill does not change these arrangements.

The Act does not specify that the relevant body corporate must submit development proposals to the Minister by special resolution (i.e. a resolution passed by not less than 75% of all voting requirements) and the Bill does not change this arrangement.

The potential new use must firstly be listed in the Act. As a residential care facility or retirement village is currently not permitted in the Resort, and the Bill proposes to list these uses as a possible use in the Resort. However, this does not provide the use as-of-right in the Resort. For the use to occur, the Act allows the Primary Thoroughfare Body Corporate (PTBC) to apply to the Minister to include a retirement facility or residential care facility use in the list of uses that can occur in a (nominated) zone of the Resort.

Before making such an application, the Act requires that the PBTC must provide written notice to members of the PBTC and the Principal Body Corporate about the proposal and invite written submissions with a minimum 30-day consultation period. The PTBC must provide a written statement about the notification requirements and a copy of all written submissions with its application to the Minister, which, under the Act, the Minister must consider.

The Act provides that prescribing a use to a zone at the Resort – such as adding a retirement facility or residential care facility to a nominated zone or part of a zone – rests with the Governor in Council.[18]

Committee comment

The committee notes the clarification of the legislative amendment process and community consultation requirements. The committee acknowledges the concerns raised by submitters but is assured by the department's response. The committee is satisfied that the amendments to the SCR Act do not provide for the use as-of-right anywhere at the resort and that the Principal Thoroughfare Body Corporate would still be required to submit an application for consideration that meets required notification and voting processes under the SCR Act and addresses any impacts of the proposal to the Minister.

2.2 Amendments to the *Planning Act 2016*

The explanatory notes state that a number of amendments are proposed to the *Planning Act 2016* (Planning Act):

A number of matters have arisen in the operation of the planning framework since commencement of the Planning Act on 3 July 2017. The Bill proposes to amend the Planning Act to restore certainty in the operation of the framework with respect to the issue of valid infrastructure charges notices (ICNs) under the repealed Sustainable Planning Act 2009 (SPA), and certain notification requirements for submitter appellants that have proven burdensome and ineffectual.

Improved accessibility and efficiencies in the operation of the Planning Act are proposed through the Bill that enable service of relevant documents by giving a document that refers to a stated website or other electronic medium where the relevant document can be viewed.

Other minor amendments are also proposed to clarify the policy intent of certain provisions and ensure the effective operation of the transitional arrangements from SPA to the Planning Act.[19]

A further amendment will correct the oversight in the transition of *Sustainable Planning Act 2009* (SPA) to the Planning Act by requiring Infrastructure Charges Notices (ICNs) to include the date of the notice,

18 Correspondence dated 24 October 2018, p 1.

19 Explanatory notes, p 2.

the appeal rights the recipient has in relation to the notice and include or be accompanied by any information as required by the Planning Regulation.

2.2.1 Validation of Infrastructure Charges Notices

Proposed amendments to the Planning Act will validate ICNs issued since July 2014 in response to a risk regarding the issuing of invalid ICNs by many local governments.[20] At the committee's public briefing, the department outlined why it was necessary to make the changes to validate ICNs:

> *A recent Planning and Environment Court decision which found certain infrastructure charges notices invalid prompted a departmental sampling of infrastructure charges notices issued by a number of other councils which were found to be potentially similarly deficient. The proposed amendments to the Planning Act respond to a risk that the issuing of invalid infrastructure charges notices may be systemic across many local governments. This may place the financial sustainability of local governments at risk and create significant uncertainty for councils, industry and the community as beneficiaries of the infrastructure.*[21]

Submitters Holding Redlich (acting on behalf of Sunland Group Limited) and the Property Council raised a concern regarding the potential retrospective effect of the amendments.

Holding Redlich submitted it was an inappropriate use of legislative power to amend the Planning Act to retrospectively validate the 'challenged ICNS' (that is, those that have been declared invalid by the Planning and Environment Court), arguing:

> *Any legislative amendment of general application to validate ICNs which do not include reasons for decision should exclude from its operation specific ICNs which have already been declared invalid by the Courts (that is, the Challenged ICNs).*[22]

In its submission, the Property Council expressed a similar view:

> *…we accept there are reasons that ICNs (that have been issued with reasons) may need to be validated through an amendment. However, any amendment should exclude specific ICN's which have already been challenged and declared invalid by the Courts.*[23]

The committee asked the department about the potential retrospective effect of the proposed amendment at the public briefing, the department provided a detailed response:

> *Infrastructure charges notices are part of a charging framework that was introduced into the planning framework about four years ago. It enables a council to have a developer make a contribution to certain infrastructure that needs to be provided in communities—trunk infrastructure largely—and the developer makes a contribution. The contribution has a set of rules sitting around it based on the local government's infrastructure plan … and a set of financial limits to how much a council can charge. When a developer has its permit from the council, the council must issue it a charges notice if a charge applies to that type of development. There is really no discretion around a council issuing a notice.*
>
> *That led to the question that the legislation currently, under the Sustainable Planning Act, required that that notice provide reasons, which is an interesting question to face when a council is required to provide the notice and does not really have much discretion around what it issues... The framework has been in place for four years. It is an accepted part of development.*

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[20] Infrastructure charges contribute to the provision of providing trunk infrastructure for development. Local government levies charges for certain type of development as part of the assessment process. An Infrastructure Charge Notice is issued after the decision permit is made by council.

[21] Public briefing transcript, Brisbane, 11 October 2018, p 3.

[22] Submission 47, pp 1-2.

[23] Submission 37, p 2.

Developers know and understand the framework. They know and understand that they are required to pay charges for certain types of development. That led to a question: if there is going to be some concern around the fact that reasons, as required very specifically under the Sustainable Planning Act, are not provided, what would that mean more broadly?

You are probably aware local governments accrue significant charge amounts each year and our larger councils are obviously receiving significant amounts through those frameworks. If there was to be some degree of escalation in developers challenging infrastructure charges notices because they may not have met a technical requirement, that leads to questions around the impact of all of those charges coming before the courts and the costs that may be involved to council, to developers and to the community of those challenges being continued to be brought.

Retrospectivity is an issue … but that was considered to be a way of putting back some certainty in the system that indicates to everybody that the charges that were issued, to the extent that they may not have provided reasons, are valid to that extent. That is the focus of the amendment—to say that those infrastructure charges notices that were issued cannot be considered to be invalid because they did not provide those reasons. [24]

As an alternative to the amendment proposed, the Property Council suggested a moratorium period be set, explaining how it would work:

…a set moratorium period [would] *be established to allow a recipient of an ICN to request that the relevant Council provide the reasons for the decision. This moratorium would also allow the recipient to retain the right to appeal the decision from when the reasons are given. If a recipient doesn't take up this opportunity during the period of the moratorium than the validity of the ICN will be permanent.* [25]

The department responded:

The financial risks and uncertainty for local governments, industry and community are considered too great not to progress the proposed amendment or to provide that the ICN provisions be inconsistently applied to all issued ICNs.[26]

Committee comment

The committee appreciates the requirement for validation provisions to restore certainty in the operation of the infrastructure charging framework. However, the committee is concerned that this action is required.

The committee supports the proposed amendment to correct an oversight in the transition of SPA to the Planning Act to require ICNs to also state any other matter prescribed by regulation.

The issues of fundamental legislative principle regarding the potential retrospectivity effect of the proposed amendments are addressed in more detail in Section 3 of this report.

[24] Public briefing transcript, Brisbane, 11 October 2018, pp 10-11.

[25] Submission 37, p 2.

[26] Correspondence dated 22 October 2018, p 4.

2.2.2 Application of validation provisions to similar frameworks

In its submission Unitywater suggested similar validation provisions be applied to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* (SEQ Water Act) for consistency between frameworks.[27] Unitywater argued:

> *The SEQ Water Act provides a framework for Unitywater to determine applications for approval for connection to its water and sewerage networks and to charge and collect infrastructure charges for the construction, operation, upgrade and renewals of new and existing water and sewerage infrastructure networks within its region* [like the local government framework].[28]

The department has advised that "matters relating to validating certain ICNs under similar frameworks have been raised with relevant responsible portfolios for consideration".[29]

Committee comment

The committee notes the department's response and sees merit in developing consistency between infrastructure frameworks.

2.2.3 Notification requirements for submitter appellants

The Bill proposes to improve accessibility and efficiencies in the operation of the Planning Act through the removal of the requirement for a submitter appellant to serve a notice of appeal to all other submitters to the development application. Appeals that have already been filed where there has been non-compliance with the requirement to notify other submitters of the appeal will be validated. An option to serve a relevant document via a document containing a stated website or other electronic medium which may be viewed or downloaded will also be introduced.[30]

In their submission, the Organisation of Sunshine Coast Association of Residents (OSCAR) argued that in relation to the service of documents under the Planning Act, requested documents should be provided at no cost to the receiver. OSCAR referenced a recent occurrence whereby a local council was required to provide a copy of a Notification of Decision for a development to submitters, however, the council sought an exemption based on the size and cost of compliance, which was granted. Instead, the council provided a link to the document and made a hard copy available on request at no cost. OSCAR argued that section 275B(1)(b) be amended to include "at no cost to the receiver".[31]

The department provided the following response:

> *Whether further amendments are needed in relation to costs for providing hard copy documents requested under the proposed amendments to the service of documents arrangements, will be worked through with a view to ensuring current arrangements continue.*[32]

Committee comment

The committee considers that the use of electronic forms of communication in planning and development assessment which states the website or other electronic medium, where the document can be viewed or downloaded is appropriate. However, the committee is of the view that the electronic service of documents must be available for viewing or downloading on the website or other medium for a reasonable period of time and must be of a size and format which is readily downloadable.

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27 Submission 34.

28 Submission 34, p 1.

29 Correspondence dated 22 October 2018, p 4.

30 Explanatory notes, p 4.

31 Submission 23, p 1.

32 Correspondence dated 22 October 2018, Attachment, p 4.

2.3 Amendments to the *Economic Development Act 2012* and other Acts

The explanatory notes state that:

> *To achieve its objectives for increased operational efficiency of legislation, the Bill will include a series of amendments to the ED Act [Economic Development Act 2012] and related Acts that will:*
>
> - *optimise consistency between the ED Act and Planning Act in recognition of the need for the community and government to operate effectively in the respective planning systems;*
> - *clarify current provisions to improve certainty and consistency of their application, for example in relation to PDA development applications and approvals;*
> - *refine and enhance current provisions to improve flexibility in identifying and planning for both provisional PDAs and other PDAs in different and changing circumstances, improve implementation of development assessment (including in relation to the application process, enforcement, water infrastructure and other agreements), improve the transition of PDA cessations, and improve administrative matters in relation to consumer disclosure statements under the Body Corporate and Community Management Act 1997 and the application of the Land Titles Act 1994, Local Government Act 2009 and City of Brisbane Act 2010 to public thoroughfare easements; and*
> - *amend other related Acts to recognise PDA development instruments in the same way as equivalent instruments under the Planning Act.* [33]

In submissions to the inquiry the Local Government Association of Queensland (LGAQ) and a number of local governments raised concerns with the proposed amendments to the *Economic Development Act 2012* (ED Act) submitting that it would reduce control by local government in planning matters, particularly in relation to Priority Development Areas (PDA).[34]

2.3.1 Declaration of PDA and PDA associated development

The LGAQ suggested that full agreement by the local government should be obtained before declaring a PDA, explaining:

> *The LGAQ understands there is a general requirement for the Minister for Economic Development Queensland to consult with each relevant local government in planning for, or developing in, PDAs (ED Act, section 13(3)) generally, but is disappointed that the proposed legislative amendments have not extended to provide for obtaining full agreement by a local government in planning for, or developing in, a PDA.* [35]

LGAQ opposed the removal of section 34(3) of the ED Act that limits the Minister for Economic Development Queensland's (MEDQ) ability to declare a provisional PDA (PPDA) to circumstances where:

> *…the type, scale, intensity and location of proposed development for land in the area does not compromise the implementation of any planning instrument applying to the area, and there is an overriding economic or community need to start the proposed development quickly.*[36]

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33 Explanatory notes, p 3.

34 Priority Development Areas (PDAs) are parcels of land within Queensland, identified for specific accelerated development, with a focus on economic growth.

35 Submission 44, pp 6-7.

36 Submission 44, p 4.

LGAQ provided the following justification:

> *…the removal of these additional requirements, broadens the powers of the MEDQ and could result in a PPDA being used or implemented inappropriately to circumvent local government planning scheme requirements and would also override State planning instrument.*[37]

LGAQ also opposed the removal of section 35(2)(b) requiring that a provisional land use plan must "not compromise the implementation of any planning instrument applying to the area".[38]

At the committee's public briefing, the department commented on the concern around the exercise of MEDQ powers under the ED Act:

> *Some local governments would prefer the MEDQ's powers to be constrained by consulting and seeking local government approval before the MEDQ exercises the power or function under the ED Act both inside and outside PDAs. However, current arrangements and consultation are considered appropriate, and comprehensive consultation with stakeholders, including local governments, will continue to occur as part of achieving the ED Act's purpose.*[39]

At this public briefing, in response to a committee question on the matter, the department stated:

> *I suppose it is a government policy decision in that regard, but at state level legislation the minister needs to have as much ability as possible to respond to situations that require quick decisions. That is what was required for the Parklands priority development area. We certainly worked very closely with the Gold Coast council. There is a general provision in section 13(3) of the act that says in planning for a PDA the MEDQ is required to consult with local government, so we do consult and get their views before a declaration happens. Sometimes the local government that we are working with will actually write and request the PDA. That is certainly a good thing, because we try to work in partnership with them. It would be a constraint if the minister needed a local government's approval to exercise the powers that are in the act, so that has not been included in this bill and is not in the act at the moment.*[40]

In written correspondence to the committee, the department advised that requests for PDA declarations were primarily requested by local government:

> *Of the 14 PDAs declared under the ED Act, nine were at the request of the local government. EDQ will continue to consult with local governments as appropriate prior to declaration and during the plan making process as required under section 13(3) and section 58 of the Act.*[41]

The department provided the following advice in response to LGAQ's concerns regarding the provisions under sections 34(3) and 35(2)(b) of the ED Act:

> *The provisions under section 34(3) and 35(2)(b) of the ED Act have proven overly restrictive in declaring a PPDA in circumstances where the PPDA proposes an alternative outcome to that sought by the local planning instrument. To ensure that the planning for PPDAs adequately accounts for community and local government interests, the Bill includes provisions requiring mandatory consultation for a draft provisional land use plan and limitation on what development can be approved during the mandatory consultation period.*[42]

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37 Submission 44, p 5.

38 Submission 44, p 6.

39 Public briefing transcript, Brisbane, 11 October 2018, p 3.

40 Public briefing transcript, Brisbane, 11 October 2018, p 10.

41 Correspondence dated 22 October 2018, p 7.

42 Submission 44, pp 7-8.

2.3.2 Infrastructure planning and funding

2.3.2.1 Adequate funding for infrastructure in PDAs

LGAQ raised a concern that new section 51AQ in the ED Act, which will address ICNs for Planning Act approvals (i.e. converted PDA development approvals), will "restrict local government from imposing infrastructure charges where the infrastructure funding framework is no longer maintained for a former PDA" and sought reassurance "that the Bill will ensure adequate funding for the provision of infrastructure necessary to support the development of PDAs".[43]

In a written response to the committee, the department provided the following clarification:

> *The Bill makes no changes to the MEDQ's current infrastructure planning and charges framework. This framework provides for the MEDQ to undertake detailed infrastructure planning on a PDA by PDA basis and to set infrastructure charges to ensure adequate funding for a PDA.*[44]

2.3.2.2 Infrastructure agreement

Section 122 which refers to consultation with public sector entities before entering into particular infrastructure agreements will be amended to refer more accurately to the entity for the infrastructure rather than for the land. The LGAQ argued that:

> *…given the land in a PDA is ultimately returned to a local government to manage, the LGAQ maintains its position that local government should be afforded the opportunity in these circumstances, to agree to the terms of an infrastructure agreement and if necessary, request amendments to the infrastructure agreement before it is entered into by the MEDQ.*[45]

LGAQ suggested:

> *That section 122 of the ED Act, or similar, is amended to require the Minister for Economic Development Queensland to obtain the full agreement of each relevant local government, on the terms of an infrastructure agreement for a PDA, before the agreement is established.*[46]

In response, the department advised:

> *The MEDQ is the planning authority for PDAs. To be able to adequately undertake this role, full discretion on the terms of infrastructure agreements is critical. However, the MEDQ actively engages and involves the relevant superseding public sector entities while drafting an infrastructure agreement.*[47]

2.3.3 MEDQ consultation

LGAQ questioned the adequacy of provisions requiring the MEDQ to consult with local governments when identifying development categories for assessment under regulation:

> *Providing for a regulation to categorise development is a new feature for the ED Act and could result in a local government not being afforded the opportunity to review and provide comment on the proposed regulation that categorises development for land that is in its local government area. Local government is not merely 'another stakeholder' and must be regarded as a genuine partner and level of government when considering the operation of the regulation.*[48]

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43 Submission 44, p 8.

44 Correspondence dated 22 October 2018, p 8.

45 Submission 44, p 9.

46 Submission 44, p 9.

47 Correspondence dated 22 October 2018, p 12.

48 Submission 44, p 5.

To address its concerns, LGAQ suggested:

> *…that Economic Development Queensland genuinely engage with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including the types of development that are proposed to be prescribed as PDA accepted development and PDA assessable development.*[49]

LGAQ also raised a similar concern around the adequacy of provisions requiring the MEDQ to consult with and obtain the agreement of local governments in relation to PDA exemption certificates, and made the following suggestion:

> *… that the proposed new section 71A of the ED Act be amended to require the Minister for Economic Development Queensland to both consult and obtain agreement with local government prior to issuing a PDA exemption certificate.* [50]

The department provided the following response regarding MEDQ consultation:

> *Administrative arrangements exist to ensure local governments areas are consulted regarding decisions which impact on their local government area. Consultation will be extended in relation to new processes and instruments. Consultation with the relevant local government can also be expected to practically determine the appropriate details of a cessation regulation applicable to individual converted PDA development approvals. Regulations also have their own requirements for consultation. However, with respect to PDA exemption certificates, considering the low impact nature of development that may be given a certificate, the impact on a local government area of the development is likely to be minimal.*[51]

2.3.4 Effect of cessation of PDA

Cessation provisions proposed in the Bill introduce the ability for a regulation to prescribe a number of items (see clause 39 of the Bill). The explanatory notes state:

> *The amendments also introduce a new power to make a cessation regulation for each individual PDA. This acknowledges that the ED Act establishes its own planning and development assessment system, and the arrangements established in PDA development approvals (for example, for further assessment and approvals, consideration of State interests, provision and funding of infrastructure within a PDA) may be different from approvals under the Planning Act. PDA development approvals may also be bespoke and complex, and incorporate different aspects for different PDAs. A cessation regulation for each individual PDA will allow for fine-tuned and relevant transitional provisions necessary to provide for the proper and orderly cessation of a PDA, including the preservation of rights and responsibilities established under individual PDA development approvals.*[52]

LGAQ noted that the new power is intended to allow the making of cessation arrangements for individual PDAs. However, LGAQ is of the view that consultation with local government be undertaken before making such a regulation, arguing:

> *…that Economic Development Queensland commit to engaging with local government and the LGAQ in the drafting of the revised Economic Development Regulation requirements, including provisions related to the making of cessation arrangements for individual PDAs.*[53]

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49 Submission 44, p 5.

50 Submission 44, p 9.

51 Correspondence dated 22 October 2018, p 13.

52 Explanatory notes, p 35.

53 Submission 44, p 8.

The department addressed this concern as follows:

> *Administrative arrangements exist to ensure local governments and distributor-retailers are consulted regarding decisions which impact on their local government area and area of administration respectively. Consultation will be extended in relation to new processes and instruments. Consultation with the relevant local governments and distributor-retailers can also be expected to practically determine the appropriate details of the regulation applicable to individual converted PDA development approvals. Regulations also have their own requirements for consultation.*[54]

2.3.5 Impact of PDA exemption certificates on cultural heritage

Clause 78 of the Bill introduces exemption certificates for PDA assessable development. The circumstances in which the MEDQ may give an exemption certificate is equivalent to those identified in the Planning Act for a local government. PDA exemption certificates will be introduced to allow PDA assessable development to proceed without a development approval in limited circumstances.[55]

The Queensland Heritage Council raised concerns regarding the potential detrimental impact of exemption certificates on the cultural heritage significance of Queensland heritage places:

> *The circumstances under which exemption certificates can be given under the new provisions are similar to exemption certificates in the Planning Act 2016 (Planning Act). These circumstances include where '… the effects of the development would be minor or inconsequential having regard to the circumstances under which the development was categorised as PDA assessable development …'*
>
> *The Heritage Council is concerned about these new PDA exemption certificates, in that they are another avenue in the Queensland planning system for proponents to obtain approval for development which may have a detrimental impact on the cultural heritage significance of Queensland heritage places. Given the relative weakness of categorisation of assessable development in PDA development schemes, which already make much development exempt if consistent with an approved plan of development, the new exemption certificates increase the potential for harm to Queensland heritage places located in PDAs.*
>
> *The Planning Act exemption certificate system took as a model the exemption certificate system operating since 2003 under the Queensland Heritage Act 1992 (Heritage Act). The Heritage Act exemption certificate provisions assist owners manage their Queensland heritage places when development will have no more than a minimal detrimental impact on their cultural heritage significance.*
>
> *While it is not concerned about PDA exemption certificates being used to resolve a categorisation error or when circumstances no longer apply, the Heritage Council strongly recommends that the EDOLA Bill 2018 be revised to ensure it does not duplicate the Heritage Act exemption certificate system in relation to the minor or inconsequential effects of development.*[56]

Committee comment

The committee notes the responses provided by the department given that PDAs are parcels of land identified for specific accelerated development and therefore require greater flexibility and efficiency of development.

The committee acknowledges the diverse range of concerns raised by local government and LGAQ with the common theme around the need for local government consultation and agreement in the declaration, funding and cessation of a PDA.

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54 Correspondence dated 22 October 2018, p 14.

55 Explanatory note, p 61.

56 Submission 53, pp 1-2.

The committee believes there is value in enhancing local government and community participation in the PDA process. Given this, the committee recommends that local consultative processes be formalised in regard to establishment of PDAs.

Recommendation 2

The committee recommends that the Government amend provisions relating to the making of a PPDA to include the establishment of a local consultative committee that includes a representative from local government to better support localised decision making.

The committee acknowledges the concerns raised by the Queensland Heritage Council that PDA exemption certificates may increase the potential for harm to Queensland heritage places located in PDAs. Therefore the committee seeks further clarification from the Minister that exemption certificate for PDA assessable development will have no unintended consequences.

Recommendation 3

The committee recommends that during the second reading speech the Minister for State Development, Manufacturing, Infrastructure and Planning clarify that PDA exemption certificates will not have a detrimental impact on the cultural heritage significance of Queensland heritage places.

2.4 Amendments to the *Planning and Environment Court Act 2016*

Changes to the *Planning and Environment Court Act 2016* (P&E Court Act) will allow the Planning and Environment Court (P&E Court) to refer matters for private mediation, in addition to the referral of matters to the Alternative Dispute Resolution Registrar.

Moreton Bay Regional Council submitted that there should be minimum qualifications requirements for mediators:

> *Council would have no concern with this expanded ADR* [Alternative Dispute Resolution] *process provided that the "mediators" are appropriately qualified. To this end, the proposed definition of "mediator" needs to be expanded to include minimum qualification requirements.*[57]

In its submission, the Queensland Law Society suggested:

> *QLS* [Queensland Law Society] *recommends that there be no limitations on when the Court may refer a matter to a private mediator. The Court should be the ultimate arbiter of this matter based on the facts and circumstances before it.*[58]

The department provided the following response:

> *Referral to private mediation has been requested by the Planning and Environment Court. The proposed amendments will provide the Court with an alternative to the ADR registrar and enable the Court to use private mediators where circumstances arise, ensuring the efficiency and responsiveness of the Court. The Court has the discretion to appoint suitably qualified mediators. The proposed amendments do not establish limitations on the matters that can be referred to a mediator.*[59]

Committee comment

The committee satisfied with the response provided by the department.

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57 Submission 39, p 4.

58 Submission, 51, p 3.

59 Correspondence dated 22 October 2018, Attachment, p 5.

2.5 Amendments to the *Queensland Reconstruction Authority Act 2011*

The explanatory notes state that:

> *The Queensland Reconstruction Authority (QRA), through the QRA Act, is responsible for coordinating and managing the rebuilding and recovery of communities affected by disaster events. In April 2016, Government endorsed the appointment of QRA as the State's lead agency responsible for disaster recovery, resilience and mitigation policy in Queensland. Consequently, QRA's role has expanded beyond what it was when it was established as a temporary entity. A review of the QRA Act identified amendments required to reflect QRA's revised role. The proposed amendments to the QRA Act will ensure QRA can undertake resilience, mitigation and betterment activities outside of post-disaster events.*[60]

In its submission, LGAQ raised a concern regarding clarity in roles and responsibilities between the Queensland Reconstruction Authority (QRA) and the *Disaster Management Act 2003*:

> *The broadening of the QRA powers has the potential to result in confusion and a lack of clarity about the relationship between the QRA Act and the Disaster Management Act 2003, particularly with regard to the roles and responsibilities of various State Government departments in disaster management. There is a need to ensure a clear distinction between the primary roles/responsibilities of the QRA, Queensland Fire and Emergency Services and Inspector-General Emergency Management. If roles and responsibilities are not appropriately managed at a State level, it will create issues for local government and its communities.*[61]

A further concern of LGAQ was raised regarding consultation by the QRA:

> *Furthermore, section 4A(c) of the Disaster Management Act 2003 makes local government "primarily responsible" for managing events in their area. The Disaster Management Act 2003 defines an event as including all stages of the comprehensive approach to disaster management (prevention, preparedness, response and recovery). Given their primary role in managing disaster events, there is a need to ensure local governments are consulted by the QRA in the carrying out of its functions.* [62]

LGAQ proposed the following solution:

> *…that section 10 of the QRA Act be amended to include an explicit requirement for the QRA to consult with each relevant local government in undertaking its main functions.* [63]

In addressing the concerns of LGAQ, the department provided the following detailed response:

> *On 15 February 2016, Government considered and endorsed its response to recommendations from 11 reviews relating to disaster management arrangements in Queensland. Government also endorsed a further review, to be undertaken by the Department of the Premier and Cabinet, of disaster management roles and responsibilities within Queensland Government agencies.*
>
> *On 26 April 2016, Government considered the outcomes of the review and endorsed the clarification of disaster management roles and responsibilities in Queensland and, in particular, that QRA is the responsible lead agency for disaster recovery, resilience and mitigation policy in Queensland.*
>
> *Therefore, the definition of roles and responsibilities of state agencies in relation to disaster management has already been defined, with the proposed amendments to the QRA Act*

60 Explanatory notes, p 2.

61 Submission 44, p 9.

62 Submission 44, p 9.

63 Submission 44, p 9.

reflecting these decisions. The roles of each state government department, including the QRA are also captured in the Queensland State Disaster Management Plan.

In relation to recommendation 11 in LGAQ's submission, the QRA Act already includes explicit requirements in relation to consulting with, informing of and giving information to local government through enacting the QRA's various functions. Further, section 10 of the QRA Act currently includes a function where the QRA is to work closely with affected communities to ensure each community's needs are recognised in rebuilding and recovery processes. This function is not being amended as part of the Bill and will continue to ensure the QRA works closely with local government and their communities.[64]

Committee comment

The committee is satisfied with the department's detailed response in regard to the proposed amendments to the QRA Act.

64 Correspondence dated 22 October 2018, pp 15-16.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly in relation to clauses 23, 24, 48, 51, 79, 80, 81, 95, 102, 165, 182 and 208.

The Bill also includes 6 offence provisions which are set out at Appendix C. Some of these provisions are also considered in the body of this brief.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause	**79, 80, 81 and 95**
FLP issue	**Rights and liberties of individuals** - Section 4(2)(a) LSA Does the Bill have sufficient regard to the rights and liberties of individuals?
Comment	Summary of provisions *Increase in penalty units* Clauses 79, 80 and 81 increase penalties in the ED Act from 1,665 penalty units to 4,500 penalty units (from $217,365.75 to $587,475.00).[65] The offences relate to: • carrying out PDA assessable development without a PDA development permit (section 73 ED Act) • contravening a PDA development approval (section 75 PD Act), and • unlawful use of premises in a PDA (section 76 PD Act). Potential fundamental legislative principle issue *Proportion and relevance* Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The OQPC Notebook states: *the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*[66]

[65] 1 penalty unit = $130.55

[66] Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles*: *The OQPC Notebook*, p 120.

Penalties

A penalty should be proportionate to the offence. The OQPC Notebook states:

> *Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[67]

Committee comment

According to the explanatory notes, the approach taken in the Bill is justified:

> *The increases bring the penalties under the Act into line with equivalent offences under the Planning Act, as well as the Regional Planning Interests Act 2014 and the Environmental Protection Act 1994. The current penalties were introduced under the Urban Land Development Authority (ULDA Act) and were aligned with the planning legislation in place at the time, the now repealed Integrated Planning Act 1997 (IPA Act). They have not been reviewed or contemporised to take into account the increase in market demands, property values and inflation over that period.*[68]

Further, the explanatory notes state that the increase in penalties is required to ensure that the integrity of the ED Act is maintained:

> *The development offences are integral for ensuring compliance with the development assessment regulatory system established under the ED Act and will ultimately uphold the integrity of the planning system established under the ED Act. Accordingly, the maximum penalties must adequately deter potential offenders from causing significant and potentially irreparable damage to the State's economic, social and environmental qualities.*[69]

The committee considers on balance, the penalties in the Bill are proportionate and relevant to the objective of maintaining the integrity of the ED Act and providing a deterrent from committing offences under the ED Act.

Summary of provisions

Show cause and enforcement notice

Clause 95 incorporates into the ED Act the show cause and enforcement notice mechanisms contained in chapter 5, part 3 of the Planning Act.[70]

These provisions of the Planning Act operate by providing for:

- an enforcement authority to issue a show cause notice to a person in relation to a development offence and the authority is considering giving an enforcement notice (section 167)
- an enforcement authority to issue an enforcement notice requiring a person to refrain from committing a development offence or to remedy the effect of a development offence in a stated way (subsection 168(2)), and

67 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 120.

68 Explanatory notes, p 7.

69 Explanatory notes, p 7.

70 Note that the explanatory notes at page 8 incorrectly refer to chapter 3, part 5.

	• an offence is committed if the enforcement notice is contravened, with a penalty imposed of up to 4,500 penalty units (subsection 168(4)). An enforcement notice may require a person to do any of a number of things including: • stopping the carrying out of a development • demolishing or removing a development • restoring a premises to a condition prior to the development • rectifying, repairing or securing dangerous works, and • stopping a stated use of premises. <u>Potential fundamental legislative principle issue</u> This clause raises the issue of proportionality as set out above. <u>Committee comment</u> In relation to the show cause and enforcement notices, the explanatory notes state: *The show cause and enforcement notice mechanism has been in place in the planning legislation of the State since the introduction of the IPA* [Integrated Planning Act 1997]. *A number of provisions in this Bill, including those relating to enforcement, have been inserted to achieve, to the extent practicable, equivalence with the Planning Act. The ED Act and Planning Act are comparable planning and development systems. While the ED Act system is intentionally streamlined for the particular purposes of the Act, to the extent provided for, it applies in place of the Planning Act in the declared areas. Accordingly, the enforcement tools available under the Planning Act are as appropriate for the ED Act. The penalties to be imposed for enforcement-related offences under the ED Act are consistent with the updated penalties for development offences and court orders in the Bill and are the same as those under the Planning Act.*[71] The offences and powers provided for are as for those contained in the Planning Act. In these circumstances, the committee is satisfied that they are justified as being proportionate and for an appropriate purpose and, in turn, that sufficient regard has been given to fundamental legislative principles.

Clause	**102 (sections 122A and 122B ED Act)**
FLP issue	**Power to enter premises** – Section 4(3)(e) LSA Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
Comment	<u>Summary of provisions</u> Clause 102 inserts sections 122A and 122B in the ED Act. These provisions provide for investigation and enforcement powers for MEDQ officers. These powers are as currently contained in parts 6, 7 and 8 of the Planning Act. The Planning Act provides for a number of powers. Part 6 relates to appointment and qualifications of inspectors and requires that an inspector has the necessary expertise or experience for the appointment.

[71] Explanatory notes, p 9.

Part 7 includes a general power to enter places, including by consent or on warrant. Part 8 sets out various powers exercisable when an inspector exercises a power of entry. These include powers to search, inspect, film, and other general powers associated with entry and inspection (section 198). Part 8 sets out other powers of inspectors, including powers to:

- stop or move vehicles (section 201)
- seize and to forfeit seized things (section 204, 212)
- dispose of things (section 214), and
- require information and documents (sections 215, 216 and 218).

Potential fundamental legislative principle issue

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[72] The OQPC handbook notes that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.

Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. Previous committees have expressed concern regarding the range of additional powers that become exercisable after entry without a warrant or consent.[73] The OQPC Notebook states:

> *FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals*.[74]

Committee comment

The explanatory notes state:

> *Applying the entry powers from the Planning Act to the ED Act is appropriate because of the similarity of the development regimes and issues under the two Acts. The Planning Act provisions are contemporary, appropriate and fit for purpose. The provisions contain the normal powers and the usual accepted safeguards for the exercise of the relevant functions under the Act.*[75]

The committee is concerned that beyond this reference to the similarity in the two legislative schemes, the explanatory notes do not provide much material to justify the extensive powers and how these powers are required to meet the objectives of the ED Act.

As noted, the amendments give significant powers to inspectors, including powers to enter into premises, stop vehicles, seize and dispose of things, and require information and documents.

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72 *Legislative Standards Act 1992*, s 4(3)(e).

73 Alert Digest 2004/5, p 31, paras 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 45.

74 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 45.

75 Explanatory notes, p 9.

	The committee believes that given there is limited justification in the explanatory notes for the grant of the powers and for the breach of fundamental legislative principle, the committee seeks clarification from the Minister for State Development, Manufacturing, Infrastructure and Planning in regard to the investigation and enforcement powers for MEDQ officers.

Recommendation 4

The committee recommends that during the second reading speech the Minister for State Development, Manufacturing, Infrastructure and Planning clarify the powers for investigation and enforcement of PDA development offences under clause 102, and outline the need for such powers.

Clause	**182 (section 344 *Planning Act 2016*)**
FLP issue	**Rights and liberties** – Section 4(3)(g) LSA Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
Comment	Summary of provisions Clause 182 aims to validate ICNs issued under the repealed SPA since 4 July 2014, to the extent that they did not comply with the requirement to state reasons for the decision as required under the repealed SPA. This will be contained in new section 344 of the Planning Act. Potential fundamental legislative principle issue Section 4(3)(g) of the LSA provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively. Committee comment In submissions to the committee, both Holding Redlich (acting on behalf of Sunland Group Limited) and the Property Council opposed the validating of ICNs which did not include reasons for decision. The submissions further stated that this amendment should not extend to specific ICNs which have already been declared invalid by the Courts.[76] The department responded to these submissions: *The financial risks and uncertainty for local governments, industry and community are considered too great not to progress the proposed amendment or to provide that the ICN provisions be consistently applied to all issued ICNS.* *Matters relating to validating certain ICNs under similar frameworks have been raised with relevant responsible portfolios for consideration.*[77]

[76] Submission 47, p 2; Submission 37, p 2.

[77] Correspondence dated 22 October 2018, p 4.

	The explanatory notes state that this amendment is not considered to have an adverse effect on rights and liberties or the imposition of obligations: *The infrastructure charges framework has been in place for some years and is a known and anticipated aspect of development… The financial risks and uncertainty for local governments, industry and community are considered too great to not progress the proposed amendment.*[78] The Queensland Law Society also commented on the potential breach of fundamental legislative principle and concluded: *… these amendments will ensure certainty for councils and industry who have relied on ICNs issued without reasons and will avoid placing at risk the financial sustainability of local governments who utilise the infrastructure charging framework* *…* *In these specific and limited circumstances, the proposed retrospectivity appears appropriate.*[79] The committee notes that a retrospective application of a law involves a breach of fundamental legislative principle, however it considers the breach is justified in these circumstances.

Clause	**208**
FLP issue	**Compulsory acquisition of property** – Section 4(3)(i) LSA Does the Bill provide for the compulsory acquisition of property only with fair compensation?
Comment	<u>Summary of provisions</u> Clause 208 amends section 43 of the QRA Act which relates to the declaration of a reconstruction area. This amendment broadens the situations in which an area of the State can be declared to be a reconstruction area beyond flood affected only. Under subsection 43(4), land may be declared to be acquisition land. The land is acquired under either section 99 or 100 and is subject to the *Acquisition of Land Act 1967.* The provisions in relation to acquisition of land are not new and have not been amended. Rather, the proposed amendment broadens the circumstances in which the QRA may acquire land. <u>Potential fundamental legislative principle issue</u> Legislation should provide for the compulsory acquisition of property only with fair compensation.[80]

78 Explanatory notes, p 11.

79 Submission 51, p 2.

80 *Legislative Standards Act 1992*, s 4(3)(i).

	A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason.[81] Former committees have noted that it is generally acknowledged that compulsory acquisition of property must only be made with compensation.[82] Committee comment The explanatory notes state that the acquisition powers are used for the purposes of carrying out the authority's reconstruction functions, and *In all circumstances, the Acquisition of Land Act 1967 applies and compensation must be paid, ensuring there are no issues against fundamental legislative principal (sic) relating to the rights and liberties of individuals.*[83] *Further, a declaration regulation for a reconstruction area may declare that land in a part of the area is acquisition land only if the Minister is satisfied the declaration is necessary for the carrying out of the authority's reconstruction function. The Minister must not recommend … the making of a regulation, unless the Minister is satisfied the part of the State has been directly or indirectly affected by a disaster event, and the declaration is necessary to facilitate mitigation for affected communities, or the protection, rebuilding and recovery of affected communities.*[84] Given the objectives of the provisions and the safeguards, including the applicability of the *Acquisition of Land Act 1967* and the need for a Ministerial determination as outlined above, the committee is satisfied that sufficient regard has been given to fundamental legislative principles.

3.1.2 Institution of Parliament

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

Clause	**23, 24, 48, 51 and 165**
FLP issue	**Scrutiny of the Legislative Assembly** – Section 4(4)(b) LSA Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?
Comment	Summary of provisions Clause 23 replaces sections 35 and 36 of the ED Act. New section 36A requires the MEDQ to publish a draft provisional land use plan on the department's website. Clause 24 introduces new sections that deal with the amendment of a provisional land use plan. Under the new section 36H, the MEDQ must publish a gazette notice stating that the minor administrative amendment and the amended provisional land use plan are published on the department's website.

81 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 73.

82 See for example, Scrutiny of legislation Committee, Alert Digest 1996/7, pp 27-28, para 7.13.

83 Explanatory notes, p 12.

84 Explanatory notes, p 12.

	Clause 48 replaces section 64 of the ED Act and sets out when a proposed scheme takes effect. It states that the development scheme takes effect at the beginning of the day the gazette notice is published. Clause 51 replaces sections 68 and 69 of the ED Act. It relates to the amendment of a development scheme. New section 69 sets out the requirements of the MEDQ to publish notice of an amendment and requires the amended scheme to be published on the department's website. Clause 165 amends section 121 of the Planning Act and provides that an ICN must state the date of the notice, the appeal rights the recipient has in relation to the notice and include or be accompanied by any information as required by the Planning Regulation. <u>Potential fundamental legislative principle issue</u> *Appropriate delegation of legislation* Legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[85] The OQPC Notebook states: *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation*.[86] One aspect for consideration is whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance. The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.[87] Past committees commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, past committees considered: • the importance of the subject dealt with • the practicality or otherwise of including those matters entirely in subordinate legislation • the commercial or technical nature of the subject matter, and • whether the provisions were mandatory rules or merely to be had regard to.[88]

85 *Legislative Standards Act 1992*, section 4(4)(b).

86 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 154.

87 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 155.

88 OQPC, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 155.

	Past committees also considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less concern raised.[89] Former committees also determined if a document that is not subordinate legislation is intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.[90] Similar considerations apply when a non-legislative document is required to be approved by an instrument of subordinate legislation.[91] Committee comment Clauses 23, 24, 48 and 51 provide for a gazette notice to state that a new or amended development scheme or provisional land use plan is published on the department's website. Currently, a development scheme or development scheme amendment does not take effect until it has been approved under a regulation. The committee might be concerned by the shifting of the notification requirement from regulation to the department's website, as this could be seen to be reducing the capacity of the Parliament to scrutinise the notifications. The explanatory notes provide this justification, stating that the current scheme: *… is a legacy of the repealed UDLA Act when functions under the Act were exercised by the former Urban Land Development Authority. Given the powers and functions of the MEDQ are executed within government and not undertaken by a statutory authority, the extra oversight is no longer relevant.*[92] In relation to clauses 23, 24, 48 and 51, in considering the circumstances outlined, the committee is satisfied the clauses have sufficient regard to the institution of Parliament. In relation to clause 165, the committee notes the information that is required to be set out in an ICN to be as prescribed by regulation. At this stage, there is no detail as to what will be contained in the regulations, and therefore it is difficult to know if these matters are appropriate for inclusion in subordinate legislation. The committee will bear this in mind when reviewing the relevant subordinate legislation when it is provided. In light of this, the committee is satisfied the clause has sufficient regard to the institution of Parliament.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

89 Alert Digest 2004/3, pp 5-6, paras 30-40; Alert Digest 2000/9, pp 24-25, paras 47-56.

90 Alert Digest 2001/8, p 16, para 7; Alert Digest 1996/5, p 9, para 3.8.

91 Alert Digest 2003/11, p 23, paras 33-40.

92 Explanatory notes, p 10.

Recommendation 5

The committee recommends that the department correct a typographical error in clause 190 of the Bill (amending section 79 of the *Planning and Environment Court Act 2016*). Proposed section 79(c) should read 'an appeal brought under the Planning Act 2016 about a decision on an application mentioned in section 288(1) of the Act'.

Appendix A – Submitters

Sub #	Submitter
001	Dana Tingey
002	Frank Cairns
003	Spring Hill Community Group
004	Ian and Lyn Duncan
005	Elli Housden
006	Harriet Altass
007	Louise Bruce
008	RB Mining Disposals
009	Harry and Brenda Malone
010	Joseph and Elizabeth Stanley-Hunt
011	Kathy Davis
012	Richard Sherman
013	Norma Hale
014	Dr William Rowe
015	France C Clark
016	Robyn Coney
017	James Panthin
018	Margi Sherman
019	Lai Yi Mak
020	Paul and Josephine Shewen
021	John Kennedy
022	John S Moderate
023	Organisation Sunshine Coast Association of Residents
024	Ross Wharton
025	Rosemary Allen
026	John Allen

027	Roy Wharton
028	UDIA Queensland
029	Brisbane City Council
030	Lindsay and Lucky Sidwell
031	Mavie Pearce
032	Judy Grimsey
033	CONFIDENTIAL
034	Unity Water
035	Central Highlands Regional Council
036	Redlands2030
037	Property Council of Australia
038	Sunshine Coast Council
039	Moreton Bay Regional Council
040	Cairns Regional Council
041	Lee Bennett
042	D Graham and B Kerr-Graham
043	Gecko Environment Council
044	LGAQ
045	Brisbane Residents United
046	Logan City Council
047	Holding Redlich
048	Queensland Urban Utilities
049	Pine Rivers Koala Care Association
050	Brisbane Region Environment Council
051	Queensland Law Society
052	Environmental Defenders Office
053	Queensland Heritage Council

Appendix B – Officials at public departmental briefing

Department of State Development, Manufacturing, Infrastructure and Planning

- Mr Simon Banfield, Project Director, Economic Development Queensland
- Ms Megan Bayntun, A/Executive Director, Planning Group
- Ms Lisa Pollard, Deputy Director-General, Infrastructure Policy and Planning
- Ms Kate Watkins, Manager, Infrastructure Policy and Planning

Queensland Reconstruction Authority

- Mr Brendan Moon, Chief Executive Officer

Appendix C – Proposed new or amended offence provisions

[NOTE: ONE PENALTY UNIT = $130.55]

Clause	Offence	Proposed maximum penalty
8	**Amendment of s 84 (Approval must not be inconsistent with particular earlier approvals or accepted development)** (1) Section 84(1), 'application if'— *omit, insert—* building development application if (2) Section 84(1)(a)— *omit, insert—* (a) the application relates to either or both of the following approvals (each an ***earlier approval***)— (i) a development approval given by the local government; (ii) a PDA development approval under the *Economic Development Act 2012*; and (3) Section 84(2)— *omit, insert—* (2) Also, the private certifier must not approve the building development application if— (a) the application relates to— (i) development categorised as accepted development under a local planning instrument; or (ii) PDA-related development that is PDA accepted development under the *Economic Development Act 2012*; and (b) the development may affect the position, height or form of the building work; and (c) the building work is inconsistent with— (i) for an application in relation to development mentioned in paragraph (a)(i)—the provisions of the local planning instrument that apply to the development; or (ii) for an application in relation to development mentioned in paragraph (a)(ii)—the provisions of the relevant development instrument for the priority development area that apply to the development. Maximum penalty—165 penalty units. (4) Section 84— *insert—* (4) In this section— ***relevant development instrument*** see the *Economic Development Act 2012*, schedule 1.	165 penalty units

79	**Amendment of s 73 (Carrying out PDA assessable development without PDA development permit)** (1) Section 73(1), penalty, '1,665 penalty units'— *omit, insert—* 4,500 penalty units (2) Section 73— *insert—* (1A) However, a person does not commit an offence against subsection (1) if the PDA assessable development is carried out under a PDA exemption certificate for the development. (3) Section 73(1A) and (2)— *renumber* as section 73(2) and (3).	4,500 penalty units
80	**Amendment of s 75 (Compliance with PDA development approval)** Section 75, penalty, '1,665 penalty units'— *omit, insert—* 4,500 penalty units	4,500 penalty units
81	**Amendment of s 76 (Offence about use of premises)** Section 76, penalty, '1,665 penalty units'— *omit, insert—* 4,500 penalty units	4,500 penalty units
97	**Amendment of s 110 (Offence to contravene enforcement order)** Section 110, penalty, '3,000 penalty units'— *omit, insert—* 4,500 penalty units	4,500 penalty units
99	**Amendment of s 112 (Offence to contravene Magistrates Court order)** Section 112, penalty, '1,665 penalty units or 1 year's imprisonment'— *omit, insert—* 4,500 penalty units or 2 years imprisonment	4,500 penalty units or 2 years imprisonment

Pat WEIR MP
Member for Condamine

STATEMENT OF RESERVATION

ECONOMIC DEVELOPMENT AND OTHER LEGISLATION AMENDMENT BILL 2018

The Palaszczuk Labor Government's style of governing is epitomised by the Economic Development and Other Legislation Amendment Bill 2018 (Bill). As the Queensland Law Society raised in their submission, it is a deeply regrettable decision to take such a wide-ranging legislative agenda that seeks to amend eight different Acts and ram it into one omnibus bill. Once again the Palaszczuk Labor Government is seeking to minimise scrutiny to further drive their own agenda.

In yet another example of the Palaszczuk Government saying one thing and doing another, this Bill looks to further water down the transparency and accountability of Building Queensland. In direct contrast to Premier Palaszczuk's commitment to open and accountable government, this Bill will see reporting requirements for Building Queensland halved.

This latest reduction in transparency will only amplify the difficulty for communities to hold the Labor Government to account on the infrastructure delivery times they've been promised. Concerningly, it is already common practice for Building Queensland to consistently change the format of the pipeline report making longitudinal comparisons difficult at best. Halving the publication frequency of the pipeline report will do nothing but make it harder for Queensland communities to track the Labor Government's promised project delivery dates.

Not only does the Bill propose to decrease the community's ability to hold the Labor Government to account, it also further restricts localised decision-making. Leaving no doubt as to what the Labor Government's underlying agenda is, the Chief Executive Officer of the Local Government Association of Queensland (LGAQ) stated:

> *…the LGAQ is concerned this legislation further erodes the ability of councils and their communities to have a say in the size, shape and pace of development in their region*.
>
> (Submission 44, page 1)

A common theme of the legislation introduced over the past four years by the Palaszczuk Government is the consolidation of their own power at the expense of local decision making. The proposed removal of the 'overriding economic or community need' test and the requirement for Provisional Priority Development Areas and Provisional Land Use Plans to 'not compromise the implementation of a planning instrument' (clauses 22 and 23 of the Bill) is a direct dilution of localised decision making.

In addition, the failure to include a requirement for the Minister to consult with, and obtain the agreement of, each relevant local government area in planning for, or developing in a PDA, establishing an infrastructure agreement and issuing a PDA exemption certificate is either a considerable drafting oversight or a deliberate attempt to circumnavigate local community development concerns.

Pat WEIR MP

Member for Condamine

Hidden within the 224 pages of the Bill are some of the most concerning amendments that seek to provide substantial increases in the powers of investigation and enforcement that can only be exercised by the Queensland Police under the authority of a warrant. The Bill's explanatory notes provide no outline of why such amendments are necessary or how they are in the public interests. Powers for inspectors to enter premises, stop vehicles, seize and dispose of information are considerable and should be only granted under the most serious of cases.

While the LNP does not oppose this Bill, the Opposition Members of the Committee raise considerable reservations with the agenda being driven by the Palaszczuk Labor Government. It is deeply concerning that the Palaszczuk Labor Government continues to ignore the concerns, wishes and rights of local Queensland communities.

Yours sincerely,

Pat Weir MP

Member for Condamine

Deputy Chair

State Development, Natural Resources and Agricultural Industry Development Committee

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