

# Explanatory Notes

## Short title

The short title of the Bill is the *Building Queensland Bill 2015* (the Bill).

## Policy objectives and the reasons for them

The objective of the Bill is to provide for the establishment of a new independent statutory advisory body called Building Queensland. Building Queensland will:

- provide independent expert advice to government about infrastructure in Queensland;
- develop a robust and transparent framework for assessing infrastructure projects;
- evaluate proposals for new and existing infrastructure;
- assist or lead the preparation of certain business cases for infrastructure proposals;
- prepare an infrastructure priority pipeline document;
- lead the procurement and delivery of projects only when directed to do so by the Minister; and
- publish information and promote public awareness.

Building Queensland will not operate as an advocate for particular projects; rather it will ensure a consistent standard of cost-benefit analysis which, in turn, will allow it to make robust recommendations to government about infrastructure priorities.

The Bill details the functions of Building Queensland and provides it with the necessary powers it requires to effectively perform its functions. The Bill also provides the necessary head of power for the statutory appointments of the chairperson and members of the board by the Governor in Council and also the appointment of the chief executive officer by the board.

The Queensland Government announced its intention to create Building Queensland during the 2015 General State Election. The implementation of Building Queensland as an independent statutory body will be pivotal in ensuring a whole-of-government perspective is brought to major infrastructure planning and investment in Queensland, supported by, and in collaboration with, line agencies.

## Achievement of policy objectives

To achieve its objectives, the Bill will establish Building Queensland and define its powers and functions. Building Queensland will assist the Queensland Government by providing independent expert advice on infrastructure proposals and projects in Queensland based on rigorous analysis and comparison.

Building Queensland will achieve its objectives by:

- providing independent, expert advice on possible infrastructure priorities for the Queensland Government based on rigorous business cases including cost-benefit analysis taking into account:
  - forecast growth;
  - economic, social and environmental sustainability; and
  - community benefits.

- providing a whole-of-government framework for assessing the costs and benefits of infrastructure proposals including delivery;
- assisting agencies in preparing business cases for any infrastructure proposal with an estimated capital cost greater than \$50 million up to \$100 million or where the net present value of financial commitments entered by the State exceed \$50 million up to \$100 million;
- leading the preparation of business cases for all infrastructure proposals with an estimated capital cost exceeding \$100 million or where the net present value of financial commitments entered by the State is estimated to exceed \$100 million, including the public release of a cost-benefit analysis summary;
- providing advice on infrastructure matters, including clearly quantified productivity benefits for major projects;
- identifying any impediments to investment in infrastructure and strategies to remove the impediments;
- consulting widely, for example with all levels of government, academic and professional organisations and industry; and
- performing any other functions conferred by or under this legislation or any other law.

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

The establishment of Building Queensland is a key election commitment. Legislation is required to formally establish Building Queensland as an independent statutory body and provide the powers necessary to appoint the chairperson, members of the board and a chief executive officer. There are no alternative ways of achieving this policy.

## **Estimated cost for government implementation**

Building Queensland will be funded through a combination of base funding (in part through the re-allocation of existing government resources and associated funding) and fee-for-project for specific projects.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the Fundamental Legislative Principles as defined in section 4 of the *Legislative Standards Act 1992*. The proposed penalties in clauses 53 and 54 may raise an issue in relation to the rights and liberties of individuals. Justification is included in the note for the clauses.

## **Consultation**

### **Community**

No community consultation has occurred on the Bill as the Bill implements a clear election commitment.

## **Government**

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel and government agencies. Government agencies are generally supportive of the approach and policy direction of the Bill.

Exposure drafts of the Bill were released for targeted agency consultation in April and May 2015, together with exposure drafts of the explanatory notes. Government agencies were invited to provide comment.

Comments were addressed and incorporated into the legislation where possible, providing the intent was consistent with the policy objectives.

Briefings were also provided to key stakeholders to receive verbal feedback and to facilitate more informed written feedback.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, however has been generally modelled on the Commonwealth Government's independent statutory infrastructure body, Infrastructure Australia which is established under the *Infrastructure Australia Act 2008* (Cwlth).

# Notes on provisions

## Part 1 Preliminary

### Clause 1 Short title

*Clause 1* states that, if enacted, the Bill will be cited as the *Building Queensland Act 2015*.

### Clause 2 Commencement

*Clause 2* states that the Bill will commence by proclamation.

### Clause 3 Purpose

*Clause 3* details that the main purpose of the Act (once enacted) is to establish Building Queensland as an independent statutory body. Building Queensland will provide independent expert advice on infrastructure matters to the Queensland Government.

### Clause 4 Act binds all persons

*Clause 4* states that the Act (when enacted) will bind all persons, including the State. Nothing in the Bill makes the State liable to be prosecuted for an offence.

### Clause 5 Definitions

*Clause 5* sets out that the dictionary in schedule 1 defines particular words used in the Bill. The definitions are to be used as an aid to the interpretation of the legislation.

## Part 2 Building Queensland

### Division 1 Establishment of Building Queensland

#### Clause 6 Establishment

*Clause 6* provides for the establishment of Building Queensland when this Bill is proclaimed into force.

#### Clause 7 Legal status

*Clause 7* sets the legal status of Building Queensland as a body corporate that can sue and be sued in its name.

#### Clause 8 Relationship with State

*Clause 8* makes it clear that Building Queensland is an independent body which does not represent the State – it is intended that Building Queensland will provide advice to the State (see clause 10).

### Division 2 Functions

#### Clause 9 Functions generally

*Clause 9* provides that subject to any Ministerial direction (see clause 18), Building Queensland has the functions set out in this division.

It is envisaged that Building Queensland will become a centre of excellence to provide contemporary and relevant advice to the Queensland Government as part of the government's decision-making about infrastructure investment. The intent is to ensure that Building Queensland plays a key role in the preparation of certain business cases for infrastructure proposals, and is able to provide independent advice to government about infrastructure priorities.

Building Queensland will provide advice to the State on all business cases that intend to seek government funding or endorsement in some way from the Cabinet Budget Review Committee. In practice, the Cabinet Budget Review Committee will consider all infrastructure investment proposals, including the independent advice of Building Queensland regarding the business case and make the decisions on the timing and funding of projects that are to be included in the State Infrastructure Plan.

#### **Clause 10 Provision of advice**

*Clause 10* sets out that Building Queensland will provide independent expert advice to the State and government agencies about infrastructure in Queensland. The advice will be about, but not limited to:

- current and future needs and priorities;
- policies, pricing and regulatory issues;
- impediments;
- options and reforms;
- emerging trends, including trends about procurement and project finance;
- the needs of users;
- the delivery of a project.

The advice must be based on rigorous analysis taking into account:

- forecast growth;
- economic, social and environmental sustainability;
- cost benefit analysis;
- community benefits, including social return on investment.

Advice about the procurement or delivery of a project may include an evaluation of the delivery against any targets or relevant assumptions.

Advice may also be provided to stakeholders outside of State government where they have an interest (for example, a co-investor) in a project seeking State government investment. For example, if the State government is asked to invest in a local government project, it may be a requirement to involve Building Queensland as a condition of the funding.

For situations where the business case for an infrastructure proposal may explore private finance options, Building Queensland and/or the government agency will liaise with Queensland Treasury. Queensland Treasury will have responsibility for the procurement phase of projects that involve private finance.

#### **Clause 11 Development of framework for assessing costs and benefits of infrastructure projects**

*Clause 11* provides that Building Queensland is to develop a framework for assessing projects. It is envisaged this framework will be used across government to develop a

consistent whole-of-government approach to developing and progressing infrastructure proposals and projects.

It is anticipated that the framework will be consistent with other infrastructure policies that are administered by the State government for example, the Project Assurance Framework and the Gateway Review Process.

### **Clause 12 Evaluation of proposals about infrastructure**

*Clause 12* states Building Queensland has the function of evaluating proposals for investment in, or enhancements to, infrastructure. Building Queensland must make and approve a summary of each proposal evaluated in each six month period (within 28 days after the period ends) and provide the summary to the Minister administering this legislation and publish it on Building Queensland's website. The first six month period begins upon the commencement date of this Bill.

It is envisaged that in practice, a formal assessment or evaluation by Building Queensland will be a key requirement for consideration by the Cabinet Budget Review Committee at critical investment milestones.

### **Clause 13 Preparation of business cases for infrastructure proposals**

*Clause 13*, in recognising that Building Queensland has considerable expertise and knowledge about infrastructure, provides that Building Queensland will assist during the preparation of business cases for infrastructure proposals with an estimated capital cost over \$50 million but under \$100 million or where the net present value of financial commitments entered by the State exceed \$50 million up to \$100 million. For projects with an estimated capital cost over \$100 million or where the net present value of financial commitments entered by the State is estimated to exceed \$100 million, Building Queensland will take a larger role and lead the preparation of the business case. Building Queensland will also assist or lead in the preparation of a business case for an infrastructure project if directed by the Minister to do so.

If Building Queensland leads the preparation of any business case, it must provide to the Minister the details of the expected productivity gains from the proposal, the time-frames for delivery of the project and a cost benefit analysis (a summary of this cost benefit analysis is also to be published under clause 16, on Building Queensland's website).

Business cases will consider the anticipated whole-of-life costs of the project and associated infrastructure, including, for example, operational costs.

The Bill is silent on projects with an estimated cost under \$50 million. It is expected the relevant government agency will manage these projects.

Building Queensland will prepare clear guidelines which will clarify how the thresholds will be interpreted and applied in practice in relation to agencies' programs of projects. The threshold amount will be reviewed over time to ensure it remains relevant. It is acknowledged that over time there may be a need to review thresholds as a result of inflation.

### **Clause 14 Preparation of infrastructure pipeline document**

*Clause 14* provides that Building Queensland will develop and maintain an infrastructure pipeline similar to that of Infrastructure Australia in that the pipeline will record proposals or

projects Building Queensland considers should be prioritised without indicating how one project should be prioritised relative to others.

The pipeline will record information regarding proposals or projects which Building Queensland considers should be a priority and that will deliver a productivity boost and/or economic return to the State. The information to be included in the pipeline document will be the stage of development and an estimate of the cost to deliver each proposal or project.

Infrastructure proposals or projects included on the list may be identified by Building Queensland through its research, as a consequence of providing advice to government agencies during the preliminary evaluation stages of infrastructure development or gathered when assisting or leading the preparation of business cases.

The infrastructure pipeline must be given to the Minister responsible for the administration of this legislation every six months after it is first prepared. It is envisaged that the State will use the infrastructure pipeline to inform the development of the State Infrastructure Plan.

#### **Clause 15     Lead procurement or delivery of particular infrastructure projects**

*Clause 15* states Building Queensland must lead the procurement or delivery of a particular infrastructure project if directed by the Minister. The Minister must consult with the responsible Minister before giving the direction to Building Queensland under this clause. The direction to lead the procurement or delivery of a project should be clear about the role of Building Queensland and the extent to which it will lead the project. Building Queensland will only lead to the extent directed by the Minister.

Subclause (3) provides a definition for this clause of a *responsible Minister* for an infrastructure project of a department or an administrative unit within a department, for a government owned corporation or a subsidiary of the corporation and for an entity that is established under an Act.

This will be an infrequent situation and typically the responsible department will lead and deliver their relevant projects. Where Building Queensland is directed to lead the delivery of a project, it will work cooperatively with a government agency or a specific delivery area for example, the Department of Transport and Main Roads or the Office of the Coordinator-General, drawing on the resources and expertise of these relevant government agencies.

Building Queensland will not exercise the statutory powers of delivery areas such as the Office of the Coordinator-General or Economic Development Queensland.

#### **Clause 16     Publishing information and promoting public awareness**

*Clause 16* states Building Queensland will publish a summary of the cost-benefit analysis (see clause 13(2)(c)) for infrastructure projects on its website.

Building Queensland may publish any information relevant to its functions.

Importantly, the section excludes confidential information (which is a defined term in the dictionary) from having to be published under this clause. This provision aims to strike a balance between providing transparency about Building Queensland functions, while still ensuring the protection of public safety and individuals' identity and financial or business matters (such as things that are commercial in confidence).

**Clause 17 Other functions**

*Clause 17* makes it clear that in addition to the specific functions outlined in this division, Building Queensland has any other function outlined in the Bill and also other legislation.

**Clause 18 Ministerial direction about performance of functions**

*Clause 18* states the Minister may give a written direction to Building Queensland about the performance of its functions. The direction must only be of a general nature and must not be about the particular content of any advice, policy or report prepared by Building Queensland.

However, the Minister may direct Building Queensland not to exercise its functions in relation to a particular infrastructure proposal or infrastructure project.

Building Queensland must comply with any written direction given by the Minister. Under clause 50, Building Queensland's annual report must include details of any Ministerial direction given during the financial year and the actions taken in relation to the direction.

See also clause 15 for a direction to lead the procurement or delivery of an infrastructure project.

Ministerial discretion to provide Building Queensland with a direction under these clauses is consistent with government policy and is intended to ensure the necessary flexibility for the Minister to take a 'best for project' approach where required.

**Division 3 Powers**

**Clause 19 Powers**

*Clause 19* is a standard provision for providing the necessary powers of an independent statutory body to enable it to perform its functions effectively. The clause clarifies that Building Queensland may exercise its powers inside and outside of Queensland. For example, Building Queensland may enter into a contract or engage a consultant whose business is located outside of Queensland.

**Clause 20 Consultation by Building Queensland**

*Clause 20* states Building Queensland may consult with any entity, including the Commonwealth, the State or local governments and commercial, industrial, consumer, academic, professional or occupational bodies, organisations, investors, operators and owners of infrastructure.

This provision will allow Building Queensland to draw from a wealth of information across a wide range of fields to ensure its advice to the Queensland Government is the most contemporary, relevant and based on global best practice.

**Part 3 Building Queensland Board**

**Division 1 Establishment, functions and powers**

**Clause 21 Establishment**

*Clause 21* provides for the establishment of the Building Queensland Board.

**Clause 22 Functions**

*Clause 22* provides for the functions of the board, including ensuring the proper, efficient and effective performance of Building Queensland. The board will develop and decide the objectives, strategies and policies under which Building Queensland will operate. The board may also be given another function under this Bill.

**Clause 23 Powers**

*Clause 23* provides the power for the board to do anything necessary or convenient in the performance of Building Queensland's functions. It also states that the board may give written directions to the chief executive officer of Building Queensland about the performance of his or her responsibilities.

Additionally, any action done in the name of, or for, Building Queensland by the board, or with the authority of the board, is taken to have been done by Building Queensland. This is a standard provision for providing the necessary power for boards of independent statutory bodies to enable the independent operation of the body.

**Division 2 Membership****Clause 24 Membership of board**

*Clause 24* provides for membership of the board. The chairperson and four part-time members are appointed by the Governor in Council on the recommendation of the Minister.

On recommending the appointment, the Minister must be satisfied that the proposed appointee has the necessary qualifications or skills relevant to Building Queensland. For example the Minister may consider that the person has qualifications or experience in one or more of the following areas: economics, project management; infrastructure; major projects; urban planning and design; project finance; public private partnerships; business case development; engineering; construction; procurement; legal; resource sector (mining, energy and gas); transport/logistics sector (including ports and shipping); water; environment; and health infrastructure.

Three other members are chief executives (or a senior executive nominated by the chief executive) from Queensland Government departments relevant to the operation of Building Queensland. They are appointed to the board by virtue of their office.

The membership of the board will be made up of an appropriate mix of skills and experience which will enable Building Queensland to perform all of its functions effectively.

**Clause 25 Disqualification as board member**

*Clause 25* provides for conditions where a future or current board member may be disqualified. For example, such conditions include if the person has a conviction, other than a spent conviction for an indictable offence or is an insolvent under administration.

Paragraphs (a) to (c) are standard provisions which ensure board members remain appropriately qualified throughout their term of appointment. Paragraph (d) is specific to Building Queensland to ensure members could not have a possible conflict of interest between performing a role as an employee or contractor of Building Queensland and as a member of the board.

**Clause 26 Term of appointment**

*Clause 26* states that the term of appointment for board members to hold office is as stated in their instrument of appointment, but must not be longer than three years. There is nothing which prevents an appointed board member from being reappointed at the end of their three year term.

**Clause 27 Conditions of appointment**

*Clause 27* provides that the conditions and terms of appointment for Building Queensland board members are decided by the Governor in Council, if not provided for in this Bill. Board members are appointed under this Act (once enacted) and not the *Public Service Act 2008*.

Additionally, the chairperson may be appointed on a full-time or part-time basis which will be outlined in the instrument of appointment.

**Clause 28 Resignation**

*Clause 28* states that a board member may resign by signed notice to the Minister. This is a standard provision for independent statutory body board member's appointments.

**Clause 29 Leave of absence**

*Clause 29* provides for the approval of leave for the chairperson and board members. The Minister may approve the leave of the chairperson and may appoint someone else to act as the chairperson while the chairperson is absent.

Similarly, the chairperson may approve leave for another appointed member and may appoint someone else to act in the office of the member while the member is absent.

The permanent members of the board (the departmental chief executives or their nominees) leave arrangements are provided for under their relevant terms of appointment under the *Public Service Act 2008*.

**Clause 30 Register of interests**

*Clause 30* states that Building Queensland must keep a register of all members' pecuniary interests. Each appointed member must, as soon as practicable after appointment, give the Minister and integrity commissioner a written summary of their pecuniary interests at the time of the member's appointment.

Each permanent board member must also give the Minister and integrity commissioner a written summary of their pecuniary interests prior to acting in the office of board member.

Every member must, within 30 days after any substantial change in their pecuniary interests, give the Minister and integrity commissioner notice of the change and a revised written summary. The register must be reviewed and updated at least once during each 12 month period of a board member's term.

This clause provides transparency and mitigates the potential for conflict of interests to arise while a board member is performing a function of Building Queensland.

## **Division 3      Board meetings**

### **Clause 31      Board meetings**

*Clause 31* provides that the chairperson may convene a board meeting, but must convene one at least three times each year and also if requested in writing by three or more board members or the Minister.

### **Clause 32      Presiding at board meetings**

*Clause 32* states that the chairperson presides at all board meetings at which they are present. If the chairperson is absent from a meeting, another member chosen by the board members present must preside.

### **Clause 33      Quorum at board meetings**

*Clause 33* explains that a quorum for a board meeting is five board members. However, if a board member cannot be present during deliberations, or should not take part in any decisions of the board for a particular matter because, for example, they have a conflict of interest, the remaining members present at the meeting constitute a quorum for the meeting.

Despite this, there is not a quorum if the majority of members present are permanent board members (chief executives of government departments or their nominees).

This section balances the need to have a quorum at board meetings with maintaining Building Queensland's independent status.

### **Clause 34      Voting at board meetings**

*Clause 34* provides that a question arising at a meeting is decided by a majority of votes of the board members present and able to vote on the question. If there is an equality of votes, the board member presiding has the casting vote.

### **Clause 35      Disclosure of interests at board meetings**

*Clause 35* provides for conditions of disclosure of interests at board meetings. This applies to a board member if the member or a close relative of the member has a material personal interest in a matter being considered and the interest could conflict, or be perceived to conflict, with the proper and honest performance of the member's duties regarding the consideration of the matter.

As soon as practicable after the facts come to the board member's knowledge, they must disclose the nature of the interest to the other members at the meeting. The board member may further participate in the meeting if a majority of the other members agree. However, the board member cannot participate in any vote on the matter the subject of the interest, at the meeting. The disclosure must be recorded in the minutes of the board meeting; however, of itself, failure to do so does not invalidate a decision of the board. For clarity, this section defines *material personal interest* as the board member or their close family standing to benefit or suffer a loss because of the outcome of the consideration of the matter.

This clause seeks to maintain transparency and openness of the board's decisions.

### **Clause 36      Minutes**

*Clause 36* states that the board is to keep minutes of all board meetings.

**Clause 37 Conduct of meetings generally**

*Clause 37* states the board may conduct board meetings in a way it considers appropriate. This is subject to the requirements outlined in this Bill.

**Clause 38 Decisions of the board without board meetings**

*Clause 38* states the board may make a decision without having a board meeting if the board has previously decided the decision, or decision of that type, can be made without a board meeting, a majority of members who are entitled to vote on the decision indicate agreement with the decision and all board members were informed of the proposed decisions, or reasonable efforts were made to inform them. The board must keep a record of the decision.

This provision seeks to limit operational and administrative red-tape for Building Queensland by allowing the board to make certain decisions and types of decisions in between meetings.

## **Part 4 Chief executive officer**

**Clause 39 Chief executive officer**

*Clause 39* provides that Building Queensland must have a chief executive officer, who is appointed in consultation with the Minister. The clause makes it clear that the chief executive officer is employed under this Act (once enacted), and not the *Public Service Act 2008*.

**Clause 40 Role of chief executive officer**

*Clause 40* outlines the responsibilities of the chief executive officer, including the day to day administration and staffing matters. The section makes it clear that the chief executive officer must act in accordance with the written policies and directions of the board. The chief executive officer will be held accountable to the board.

**Clause 41 Disqualification as chief executive officer**

*Clause 41* outlines the conditions disqualifying a person from becoming, or continuing as the chief executive officer.

Paragraphs (a) to (c) are standard provisions which ensure the chief executive officers of independent statutory bodies remain appropriately qualified throughout their term of appointment.

Paragraph (d) is specific to Building Queensland to ensure chief executive officer could not have a possible conflict of interest between performing a role as a contractor as well as their role as chief executive officer of Building Queensland.

Paragraph (e) is also specific to Building Queensland to ensure the chief executive officer could not have a possible conflict of interest between performing a role as another paid worker or taking part in a business as well as their role as chief executive officer of Building Queensland.

Paragraph (e) also ensures the chief executive officer is disqualified from that office if they do not disclose a conflict of interest to the board and acts, or takes part in, any action on a matter which is the subject of the conflict without the authorisation of the board.

**Clause 42 Term of appointment**

*Clause 42* provides that a chief executive officer is appointed for a term, not longer than five years, stated in the officer's instrument of appointment. A chief executive officer may be reappointed at the end of their five year term.

**Clause 43 Conditions of employment**

*Clause 43* outlines that a chief executive officer is to be paid the remuneration and allowances decided by the board and holds office on terms and conditions not provided for by this Bill, that are decided by the board.

**Clause 44 Resignation**

*Clause 44* provides that a chief executive officer may resign by signed notice given to the board. This is a standard provision for the chief executive officer's appointment to an independent statutory body.

**Clause 45 Chief executive officer not to engage in other paid employment**

*Clause 45* states a chief executive officer must not, without the board's prior written approval, engage in paid employment outside the duties of the office of the chief executive officer or actively take part in the activities or a business or management of a corporation carrying on business.

**Clause 46 Conflicts of interest**

*Clause 46* sets out the procedure if the chief executive officer has a conflict of interest. A chief executive officer must disclose the nature of the interest and possible conflict to the board, as soon as practicable after relevant facts come to the officer's knowledge. Unless authorised by the board, the officer must not take further action concerning a matter affected by the conflict.

## **Part 5 Other staff**

**Clause 47 Building Queensland staff**

*Clause 47* states that Building Queensland may employ other staff it considers appropriate to perform its functions. The clause makes it clear that staff are employed under the *Public Service Act 2008*.

**Clause 48 Alternative staffing arrangements**

*Clause 48* provides that Building Queensland may arrange with the chief executive of a government department, for the services of officers or employees of the department to be made available to Building Queensland. Subclause (2) clarifies the employment arrangements of an officer or employee whose services are made available.

## **Part 6 Administration**

**Clause 49 Annual budgets and financial management policies**

*Clause 49* outlines the timeframe and approval requirements for Building Queensland's annual budget. The clause provides that Building Queensland must prepare a budget of estimated costs for the next financial year, consistent with its strategic priorities, before each

31 March. The board members must approve the budget and financial management policies and then the budget and policies must be given to the Minister.

The Minister must approve (or refuse to approve) a budget by each 30 April. However, if the Minister does not meet this deadline, it does not prevent the Minister from approving (or refusing to approve) the budget at a later time. A budget will have no effect until it has been approved by the Minister.

During a financial year, Building Queensland may prepare amendments to the budget for that year. An amendment of a budget has no effect until it has been approved by the chairperson in consultation with the board members in the case of a minor amendment; or otherwise, the Minister on the recommendation of the chairperson in consultation with the board members. If the chairperson and the board members differ about the recommendation to the Minister, the Minister may still give the approval. This section defines *financial management policies* and a *minor amendment*.

### **Clause 50 Annual report**

*Clause 50* provides the requirements of Building Queensland regarding its annual report. Building Queensland must provide the Minister with a written report about its operations during each financial year.

The report must be approved by the board before it's given to the Minister, Building Queensland must include in the report, for example, details of the functions performed by Building Queensland, including details of infrastructure proposals and projects and how efficiently and effectively these functions were performed. The report must include details about any Ministerial directions given, and any subsequent action taken by Building Queensland in relation to the directions.

The clause provides that the report may include statistics and that it must not disclose confidential information (see the definition of confidential information in the dictionary).

This clause is in addition to the annual report requirements under section 63 of the *Financial Accountability Act 2009*. For example, the *Financial Accountability Act 2009* sets out the timeframe for giving the report to the Minister: as soon as practicable after the end of the financial year within a period that will allow the report to be tabled in the Legislative Assembly within three months after the end of the financial year to which the report relates.

### **Clause 51 Fee for services**

*Clause 51* provides that if Building Queensland charges a fee to a government agency for any service provided, it must only apply the amounts in payment of:

- the costs, expenses and other obligations incurred by Building Queensland in the performance of its functions and the exercise of its powers; or
- any remuneration or allowance payable under this Bill (including staff seconded from government agencies under clause 48); or
- for the case of staff employed under the *Public Service Act 2008*, payment under that Act.

The specific fee structure will be formalised through Building Queensland's guidelines and put in place prior to its establishment.

**Clause 52 Delegations**

*Clause 52* allows Building Queensland to delegate any of its functions to a board member or the chief executive officer. It also allows the board to delegate any of its functions to a board member to the chief executive officer that are considered appropriate to delegate.

The clause also allows the chief executive officer to delegate any of his or her responsibilities to appropriately qualified staff of Building Queensland.

In this clause, a function includes a power.

**Part 7 Offences and legal proceedings****Division 1 Offences****Clause 53 Duty to act honestly**

*Clause 53* provides that a person who is a member of the board, the chief executive officer or staff member or a contractor of Building Queensland, must at all times act honestly in the performance of a function or exercise of a power. A contravention of this provision may incur a maximum penalty of 200 penalty units.

The penalty is justified in relation to the fundamental legislative principle, rights and liberties of individuals, given the potential for significant financial gain or loss that could be made from the kind of information Building Queensland will have access to, or the type of recommendations that may be made, by Building Queensland.

**Clause 54 Use of confidential information**

*Clause 54* applies to a person who is or has been, a board member, the chief executive officer, a staff member or a contractor of Building Queensland and obtains confidential information while administering or performing a function in that role. The person must not, whether directly or indirectly, disclose the information unless the disclosure is in the performance of a function or exercise of a power under this Bill or with the consent of the person to whom the information relates or otherwise required or permitted by the law. A contravention of this provision may incur a maximum penalty of 200 penalty units.

The penalty is justified in relation to the fundamental legislative principle, rights and liberties of individuals, given the potential for significant financial gain or loss that could be made from the kind of information Building Queensland will have access to, or the type of recommendations that may be made, by Building Queensland.

**Division 2 Evidentiary provisions****Clause 55 Summary offences**

*Clause 55* states that an offence against the Act (once enacted) is a summary offence.

**Clause 56 Limitation on time for starting proceeding for summary offence**

*Clause 56* states that a summary proceeding under the *Justices Act 1886* for a summary offence against this Act (once enacted) must start within one year after the commission of the

offence or six months after the offence comes to the complainant's knowledge, but within two years after the commission of the offence, whichever is longer.

**Clause 57 Appointments and authority**

*Clause 57* provides that in a proceeding, the appointment under this Bill of a board member or the chief executive officer and the authority of a board member, the chief executive officer or staff or a contractor of Building Queensland to do anything under this Bill, must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

**Clause 58 Signatures**

*Clause 58* states that a signature purporting to be the signature of a board member or the chief executive officer is evidence of the signature it purports to be.

**Clause 59 Other evidentiary aids**

*Clause 59* states that in a proceeding, a certificate purporting to be that of the chairperson stating certain matters is evidence of the matter. A statement of complaint for an offence against this Bill that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

## **Part 8 Other matters**

**Clause 60 Application of other Acts to Building Queensland**

*Clause 60* states Building Queensland is a unit of public administration under the *Crime and Corruption Act 2001* and a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of the *Statutory Bodies Financial Arrangements Act 1982* sets out the way it affects Building Queensland's powers.

**Clause 61 Regulation-making power**

*Clause 61* provides a head of power for the Governor in Council to make regulations under this Act (once enacted), if required.

## **Part 9 Amendments of Legislation**

### **Division 1 Amendment of this Act**

**Clause 62 Act amended**

*Clause 62* provides that this division amends this Act (once enacted).

**Clause 63 Amendment of long title**

*Clause 63* amends the long title to remove the reference to the amendments of the *Industrial Relations Regulation 2011* and the *Public Service Act 2008* when the consequential amendments to that legislation have been removed in the first reprint of this Act as required under the *Reprints Act 1992*.

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## Division 2      Amendment      of      Industrial      Relations Regulation 2011

### Clause 64      Regulation amended

*Clause 64* provides that this division amends the *Industrial Relations Regulation 2011*.

### Clause 65      Insertion of new s 145J

*Clause 65* inserts a new section 145J into the *Industrial Relations Regulation 2011* to declare that once established, Building Queensland will not be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

This means, if endorsed by the Commonwealth, the State industrial relations regime applies to employees of Building Queensland.

## Division 3      Amendment of Public Service Act 2008

### Clause 66      Act amended

*Clause 66* provides that this division amends the *Public Service Act 2008*.

### Clause 67      Amendment of sch 1 (Public service offices and their heads)

*Clause 67* inserts a reference to Building Queensland and the chief executive officer (as the head of Building Queensland) into Schedule 1 of the *Public Service Act 2008*. This will ensure the chief executive officer can employ and engage the services of public servants under the *Public Service Act 2008* (see clauses 47 and 48).

## Schedule 1      Dictionary

Schedule 1 is the dictionary which defines particular words used in the Bill to aid in interpretation of the legislation.

An *appointed board member* is the chairperson or one of the part-time members of the Building Queensland Board (refer to clause 24(2)).

The Building Queensland Board is referred to throughout the legislation as the *board*.

A *board meeting* is a meeting of the board members convened by the chairperson.

A *board member* includes the appointed board members and permanent board members identified in clause 24(1).

*Building Queensland* means the independent statutory body established under this Act when enacted, to provide expert advice to the State government on infrastructure in Queensland. Building Queensland consists of the board, the chief executive officer and other staff of Building Queensland.

*Building Queensland Board* is the board of management established under clause 21.

**Chairperson** is the chair of the Building Queensland Board as appointed by the Governor in Council on the recommendation of the Minister.

**Chief executive officer** is the head of Building Queensland appointed as the chief executive officer. Building Queensland appoints the chief executive officer in consultation with the Minister.

**Confidential information** is any information that could identify a person or is about a person's financial position or could damage a person's commercial activities. Confidential information is also information that could compromise the security of a public facility.

Under this Bill, Building Queensland cannot publish any confidential information; include any confidential information in its annual report; or disclose confidential information unless the disclosure is in the performance of functions and exercise of powers under this Bill or with the consent of the person to whom the information relates or otherwise required or permitted by the law.

**Contractor** is a person, other than a staff member, who performs services for Building Queensland under a contract or an arrangement between the person and Building Queensland.

Under this Bill, **delivery** of an infrastructure project includes construction and commissioning.

The dictionary defines **government agency** to be a government department including an administrative unit of the department, a government owned corporation or its subsidiary, an entity established under an Act that represents the State. An entity that is established under an Act and does not represent the State must be specifically prescribed by a regulation to be a **government agency** for the purposes of this Bill.

The definition also lists three entities that are taken to be a **government agency** for the purposes of this legislation:

- Stadiums Queensland;
- Queensland Rail Transit Authority (or its subsidiary); and
- Queensland Bulk Water Supply Authority (or its subsidiary).

Despite the above, the definition provides that a regulation may declare a government department including an administrative unit of the department, a government owned corporation or its subsidiary, an entity established under an Act that represents the State not to be a **government agency** for the particular purposes under this Bill.

For this legislation, **infrastructure** means any infrastructure in which initial or further investment is likely to have a significant economic, social or environmental impact on Queensland or any region of Queensland.

**Infrastructure project** means a government agency's project for establishing infrastructure and an **infrastructure proposal** means a proposal for an infrastructure project.

**Insolvent under administration** means:

*(a) under the Bankruptcy Act 1966 or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or*

(b) *under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt;*  
and includes:

(c) *a person any of whose property is subject to control under:*

(i) *section 50 or Division 2 of Part X of the Bankruptcy Act 1966; or*

(ii) *a corresponding provision of the law of an external Territory or the law of a foreign country; or*

(d) *a person who has executed a personal insolvency agreement under:*

(i) *Part X of the Bankruptcy Act 1966; or*

(ii) *the corresponding provisions of the law of an external Territory or the law of a foreign country;*

*where the terms of the agreement have not been fully complied with.*<sup>1</sup>

A member of the board or the chief executive officer of Building Queensland is not qualified to hold that position if they are insolvent under administration.

A **Ministerial direction** is a written direction given by the Minister who administers this legislation to Building Queensland (see clause 18 for the types of directions the Minister can and cannot give).

A **permanent board member** is a member of the Building Queensland Board who is appointed by virtue of their position as chief executive of one of the government departments that administers the legislation identified in clause 24(1). A permanent board member may also be a senior executive of one of those departments if nominated by the chief executive.

**Procurement** for the delivery of infrastructure means the process of obtaining the necessary goods and services.

**Queensland Rail Transit Authority** is the entity established under the *Queensland Rail Transit Authority Act 2013* more commonly known as Queensland Rail.

**Spent conviction** is a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived. A member of the board or the chief executive officer of Building Queensland is not qualified to hold that position if they have a conviction, other than a spent conviction.

**Subsidiary** of a government owned corporation means a **subsidiary** under the *Government Owned Corporations Act 1993*. The *Government Owned Corporations Act 1993* goes on to rely on the Commonwealth definition of **subsidiary** under the *Corporations Act 2001* (Cwlth) which reads:

*'A body corporate (in this section called the first body) is a subsidiary of another body corporate if, and only if:*

(a) *the other body:*

(i) *controls the composition of the first body's board; or*

(ii) *is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or*

<sup>1</sup> Corporations Act 2001 (Cwlth), section 9.

- (iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or*
- (b) the first body is a subsidiary of a subsidiary of the other body.'*

A **subsidiary** of Queensland Rail means a body corporate that would be a subsidiary under the *Corporations Act 2001* (Cwlth) if it were a 'body corporate' within the meaning of that Act.