Parliamentary Committees

Economic Development Bill 2012

Report No. 15

State Development, Infrastructure and Industry Committee

November 2012

State Development, Infrastructure and Industry Committee

Chair	Mr David Gibson MP, Member for Gympie (from 15 November 2012) Mr Ted Malone, MP, Member for Mirani (until 15 November 2012)
Deputy Chair	Mr Tim Mulherin MP, Member for Mackay
Members	Mr Scott Driscoll MP, Member for Redcliffe
	Mr Michael Hart MP, Member for Burleigh
	Ms Kerry Millard MP, Member for Sandgate
	Mr Robbie Katter MP, Member for Mount Isa
	Mr Seath Holswich MP, Member for Pine Rivers
	Mr Bruce Young MP, Member for Keppel
Staff	Dr Kathy Munro, Research Director
	Ms Bernice Watson, Research Director
	Ms Margaret Telford, Principal Research Officer
	Ms Mary Westcott, Principal Research Officer
	Ms Rhia Campillo, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	State Development, Infrastructure and Industry Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7230
Fax	+61 7 3406 7500
Email	sdiic@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/SDIIC

Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of State Development, Infrastructure and Planning and the Department of Environment and Heritage Protection.

Contents

Abbreviations ii

Recommendations iv

1 Introduction 1

Role of the committee 1

Process 1

Policy objectives of the Economic Development Bill 2012 1

2 Examination of the Economic Development Bill 2012 3

Consultation 3

Commence an Economic Development Act 4

South Bank Parklands 15

Powers of the Coordinator-General 18

Recommendations of the Queensland Floods Commission of Inquiry 23

3 Fundamental legislative principles 36

Rights and liberties of individuals 36

Natural justice 38

Reversal of the onus of proof in criminal proceedings 39

Powers to enter premises 39

Immunity from proceedings or prosecution without adequate justification 40

Aboriginal tradition and Island custom 40

Delegation of administrative power in appropriate circumstances to appropriate persons 40

Delegated legislative power subject to scrutiny by the Legislative Assembly 42

Appendices 45

Dissenting report 48

Abbreviations

BCC	Brisbane City Council
Cl.	Clause
QCC	Queensland Conservation Council
DSDIP	Department of State Development, Infrastructure and Planning
EIS	Environmental Impact Statement
EDO	Environmental Defenders Office
EPA	*Environmental Protection Act 1994*
FCoI	Floods Commission of Inquiry
IFS	Infrastructure Facility of Significance
LRC	Local Representative Committee
MEDQ	Minister for Economic Development Queensland
PDA	Priority Development Areas
QFF	Queensland Farmers' Federation
QMDC	Queensland Murray-Darling Committee
QRC	Queensland Resources Council
QUU	Queensland Urban Utilities
S.	Section
SBC	South Bank Corporation
SBC Act	*South Bank Corporation Act 1989*
SDPWO Act	*State Development and Public Works Organisation Act 1971*
TEL	Temporary Emissions Licence
ToR	Terms of Reference
UDA	Urban Development Area
UDIA	Urban Development Institute of Australia
ULDA	Urban Land Development Authority

Chair's foreword

This report presents a summary of the committee's examination of the Economic Development Bill 2012.

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

The public examination process allows the Parliament to hear the views of the public and stakeholders who may otherwise not be heard, which should make for better policy and legislation in Queensland.

On behalf of the committee I thank those individuals and organisations who lodged written submissions on this Bill or gave evidence at the public hearing, and others who have informed the committee's deliberations, including the committee's secretariat, officials from the Department of State Development, Infrastructure and Planning and the Department of Environment and Heritage Protection, the Technical Scrutiny secretariat and the Parliamentary Library. All have provided information within very tight timeframes and the committee appreciates your efforts.

I would also like to recognise the work of the former chair, Mr Ted Malone MP, in guiding the committee through the public hearings and the compilation of the report.

The committee was not able to address every issue raised in submissions but has attempted to highlight the key issues of concern to submitters, particularly where those issues were common to more than one submission. Where an issue raised in a submission is not canvassed in this report, submitters may wish to review the document 'Department response to submissions' on the committee's webpage at sdiic@parliament.qld.gov.au. The department's response also informed the extent to which the committee took up issues in the report. I would also refer Members of Parliament to the individual submissions made by stakeholders, also available on the committee's webpage, for additional information.

I commend the report to the House.

David Gibson MP
Chair

November 2012

Recommendations

Recommendation 1 **2**

The committee recommends that the Economic Development Bill 2012 be passed.

Recommendation 2 **10**

The committee recommends that the Minister provide additional briefings to local governments and other stakeholders, including all infrastructure providers, about the level of engagement they can expect throughout the PDA and Provisional PDA application, decision-making and management process.

Recommendation 3 **11**

The committee recommends that clause 158 of the Economic Development Bill 2012 be amended to require the Minister for Economic Development Queensland (MEDQ) to appoint a local government representative to a local representative committee.

Recommendation 4 **13**

The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning investigate and make any necessary legislative amendments to ensure that local governments are appropriately safeguarded against significant infrastructure costs resulting from infrastructure agreements.

Recommendation 5 **17**

The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning considers amending section 86 of the *South Bank Corporation Act 1989* to provide that the relevant entity for the security officer is empowered to seek court orders to exclude persons causing nuisance from the South Bank precinct.

Recommendation 6 **20**

The committee recommends that the Economic Development Bill 2012 be amended to ensure that developers who have lodged Environmental Impact Statement applications under Acts other than the *State Development and Public Works Organisation Act 1971* may apply for a Priority Infrastructure Facility status.

Recommendation 7 **21**

The committee recommends that clause 292 of the Economic Development Bill 2012 be omitted, and that the Coordinator-General must continue to advertise wherever an Environmental Impact Statement is required.

Recommendation 8 **23**

The committee recommends the Deputy Premier and Minister for State Development, Infrastructure and Planning consider whether an alternative term for 'pre-feasibility assessment' would be appropriate for inclusion in respect of clause 285.

Recommendation 9 **25**

The committee recommends that the Minister ensure a robust consultation process is held with all relevant stakeholders in the development of the guidelines to support decision-making around temporary emissions licences.

Recommendation 10 **28**

The committee recommends that fees for temporary emissions licences be set at a level that will operate as an incentive to preparedness.

Recommendation 11 **29**

The committee recommends that the Minister consider whether an amendment to the Bill is required to ensure that emergency directions override other requirements of the *Environmental Protection Act 1994*.

Recommendation 12 **30**

The committee recommends that the Minister consider a further amendment to the Bill to ensure that only senior officers are 'authorised officers' for the purposes of directing the release of contaminants into the environment during an emergency.

Recommendation 13 **30**

The committee recommends that the Bill be amended to ensure that emergency directions issued orally must be followed up by a written instruction within one hour.

Recommendation 14 **31**

The committee recommends that the Bill be amended to provide a term other than 'emergent' to describe when a TEL may be approved that more clearly reflects the intent and does not give rise to confusion.

Recommendation 15 **33**

The committee recommends that clause 232 of the Bill, proposed section 357D, be reworded to ensure that while broader economic considerations are a consideration in whether or not to grant a TEL, financial impacts on an individual applicant are not.

Recommendation 16 **35**

The committee recommends that the Bill be amended to provide that the department must notify potentially affected stakeholders of an application for, or approval of a TEL within one hour of the application being made, and immediately on approval of a TEL.

Recommendation 17 **35**

The committee recommends that the Bill be amended to provide for monitoring requirements in respect of temporary emissions licences.

Recommendation 18 **38**

The committee recommends that there be a right of appeal in respect of decisions to cancel a declaration of a coordinated project.

Recommendation 19 **42**

The committee recommends that the matters for which fees are payable be contained in the Act.

Recommendation 20 **43**

The committee recommends that clause 313 of the Bill be amended to provide that guidelines made under section 174 of the *State Development and Public Works Organisation Act 1971* are required to be tabled in the Legislative Assembly.

1 Introduction

Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012. It consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

The Economic Development Bill 2012 (the Bill) was referred to the committee on 1 November 2012 and the committee is required to report to the Legislative Assembly by 22 November 2012.

Process

The committee was briefed by the Department of State Development, Infrastructure and Planning on 3 November 2012. Following the briefing, the committee advertised on its webpage, calling for expressions of interest from stakeholders interested in making a verbal submission to the committee at a public hearing to be held on Friday 9 November 2012. On Monday 5 November, the committee also sent email correspondence to the same effect, to a number of stakeholders. Stakeholders were also given the option of providing a written submission by Friday, 9 November 2012.

Twenty-two submissions were received from stakeholders (see Appendix A). The committee held a public hearing on 9 November 2012 at Parliament House and heard from 11 witnesses (see Appendix D). Transcripts of proceedings, submissions received and accepted by the committee, and tabled documents are published on the committee's webpage at www.parliament.qld.gov.au/SDIIC.

Policy objectives of the Economic Development Bill 2012

The Deputy Premier and Minister for State Development, Infrastructure and Planning, the Hon Jeff Seeney MP in his introductory speech in respect of this Bill said that the Bill *is primarily a process bill... to facilitate economic development and development for community purposes in Queensland*.

The objectives of the Bill are to:

- Establish an *Economic Development Act* and the Minister for Economic Development Queensland (MEDQ), a corporation sole, to facilitate economic development and development for community purposes in Queensland;
- Establish the Commonwealth Games Infrastructure Authority (the authority) to assist the MEDQ in planning and development of the Gold Coast 2018 Commonwealth Games Village and other venues;
- Establish the Economic Development Board (the board) to support the performance of the MEDQ's broader functions;
- Repeal the *Industrial Development Act 1963* and the *Urban Land Development Authority Act 2007;*
- Amend the *South Bank Corporation Act 1989* to commence the transfer of planning powers of the South Bank Corporation (SBC) to the Brisbane City Council; to protect and confirm any existing approvals and pre-existing uses; to streamline the composition of the SBC board; to enable SBC to transfer a freehold interest in land or grant a lease of the parklands to BCC and

contract to it the management of the parklands; and to give parkland security officers engaged by BCC the same powers as SBC engaged security officers under the SBC Act;
- Amend the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to clarify and improve the powers of the Coordinator-General;
- Amend the *Environmental Protection Act 1994* (EPA) to allow holders of environmental approvals to apply for a temporary emissions licence for an emergent event; and allow for emergency directions to be issued orally; and
- Amend the *Disaster Management Act 2003* to enable appointment of an officer of Emergency Management Queensland to coordinate State Emergency Service operations in extraordinary circumstances.

The elements of the Bill of greatest interest to stakeholders who provided submissions to the committee were the establishment of the Economic Development Act and the functions of the MEDQ, the powers of the Coordinator-General, and the proposed amendments to the EPA to allow for temporary emissions licences, and the committee makes a number of recommendations in respect of issues raised on those elements. The committee also makes recommendations in respect of the proposal to allow emergency directions to be issued orally.

These areas are expanded upon in the following sections of the report.

Recommendation 1

The committee recommends that the Economic Development Bill 2012 be passed.

2 Examination of the Economic Development Bill 2012

To facilitate economic development and development for community purposes in Queensland, the Bill seeks to establish an entity called the Minister for Economic Development Queensland and to transfer many of the powers of the Urban Land Development Authority to this entity. It also seeks to amend the *Environmental Protection Act 1994* (EPA) in respect of release of water from mines in an emergency. Further, it amends the *Disaster Management Act 2003* (DMA) to improve coordination of the State Emergency Service during an emergency. The government has introduced the latter two policy changes to implement recommendations from the Queensland Floods Commission of Inquiry (FCoI).

From its examination of the Bill, the committee draws the House's attention to the following issues.

Consultation

Overwhelmingly, stakeholders were critical of both the lack of consultation undertaken by the government in the development of the Bill, given its interest to a range of stakeholder groups and the general public, and the very limited consultation allowed for in the timeframe set by the House for the committee's consideration of the Bill. Many stakeholders asked for more consultation, specifically for: briefings to further explain elements of the Bill; for the committee to seek additional time in which to table its report, so that more informed submissions could be made; and for ongoing consultation throughout implementation of the Bill's provisions (for example, development of guidelines).[1] Queensland Urban Utilities (QUU) points out that *despite it being QUU's sole responsibility for planning, constructing and maintaining QUU's water and wastewater networks within QUU's geographic service areas … QUU has not been afforded an adequate or reasonable opportunity consider the effect of the Bill on QUU's master planning and other business operations….. and consult appropriately and provide substantive input...* [2] and QUU further notes that *there are significant practical, legal and financial implications which enactment of the Bill will create for QUU.*[3]

AgForce, the peak representative body for broadacre agriculture in Queensland, raised its objection at not having been consulted in the development of the Bill and consequently not having seen a discussion paper on the proposed mine water discharge amendments. The Environmental Defenders Office (EDO) (Queensland) and the EDO - North Queensland (NQ) urged the rejection of the Bill in order to allow meaningful review and input from the public and affected stakeholders. Their main interest, too, was the element of the Bill relating to discharge of mine waters.

The Queensland Resources Council (QRC) *is disappointed with the level of consultation with stakeholders on this Bill. It seems that in trying to meet the ambitious target of having the legislation passed before Christmas 2012, consultation with QRC and other stakeholders has had to be jettisoned*.[4]

The department indicated that the Bill process was seen as part of any government consultation process: *the focus of consultation provisions to establish an economic development act was with government agencies, entities and statutory bodies, including central agencies such as the Department of the Premier and Cabinet, Queensland Treasury and Trade as well as the Property Services Group and the land development authority. This is pertinent, given the proposed new act*

[1] Wolter Consulting, UDIA, Unity Water, QUU.
[2] QUU submission, p.2.
[3] Ibid.
[4] QRC submission, p.6.

integrates existing legislative and operational arrangements and fulfils the government's election commitments relating to the winding back of the ULDA and the commitment to drive economic growth. The public hearing today and the submission processes for the Economic Development Bill are welcomed by the Department of State Development, Infrastructure and Planning as a further element in this consultation process. We are looking forward to hearing the views of witnesses and submitters on the proposals contained in the bill.[5]

Committee comment

A committee's consideration of a Bill referred to it by the House should not be seen as a substitute for, or an extension of government consultation with stakeholders during a bill's development. The Parliament is a separate institution from the government. A Parliamentary committee's role is to assist the Parliament fulfil its function of overseeing executive government. The distinction between the roles of a parliament and a government is fundamental to the Westminster tradition of the separation of powers. There is a risk of the quite distinct functions of each becoming blurred, and of the separate role of the Parliament becoming unclear, if the consideration of bills by the Parliament is seen as part of a government consultation process.

The very limited consultation in the development of this Bill has given rise to the large number of issues, both significant policy issues and technical issues, identified by stakeholders during the committee's consideration of the Bill. Many of the stakeholders who have made submissions to the committee have legitimate concerns that could perhaps have been allayed or addressed during the Bill's development, avoiding some possibly unnecessary alarm; and some suggestions for improvements which would increase the Bill's effectiveness in achieving the government's intended policy objectives.

In the time allowed by the House, the committee has not been able to give adequate consideration to many of the very detailed issues raised in submissions – although it has attempted to convey those issues for the benefit of the House. Nor has it been able to undertake its own research into these matters. These details ought more properly to have been sought by, conveyed to and considered by the government during the development of this Bill. This is reflected in those of the committee's recommendations in this report which ask the government to provide additional information on the Bill and its implementation and the department advice received during the committee's inquiry process that it is reconsidering at this late stage, a number of aspects of the Bill in the light of submissions to the parliamentary committee.

Commence an Economic Development Act

The Economic Development Act would aim to facilitate economic development and development for community purposes in Queensland. To this end, the Bill would establish a Minister for Economic Development Queensland (MEDQ) as a corporation sole, with governance by a Board of up to six members including the Director-General, Department of State Development, Infrastructure and Planning (DSDIP) (Chair), the Director-General of the Department of the Premier and Cabinet, and the Under Treasurer of Queensland.

The MEDQ itself would be a statutory body and subject to the regulations applicable to statutory bodies. Economic Development Queensland will be a commercialised business unit of DSDIP, performing (under delegation) the functions of the MEDQ. The MEDQ will take on some of the powers the existing DSDIP Property Services Group has under the ID Act and some of the powers of

[5] Mr David Eades, Hansard Transcript, 9 November 2012, p.3.

the Urban Land Development Authority (ULDA) under the ULDA Act, but with a broader remit that could include all classes of land, infrastructure or building and not just housing as is the focus of the ULDA.

The Bill would repeal the ULDA Act and the ID Act. *By integrating and modernising key provisions of these Acts, the Bill will enable particular developments to be fast-tracked to meet the Government's priorities for economic development and development for community purposes*.[6]

The MEDQ would be able to deal commercially in land, property and infrastructure to encourage economic development and development for community purposes, and implement policy priorities. This would primarily be used: where there is some impediment to private sector involvement; on land adjacent to major infrastructure projects; or where there is an emerging or urgent government priority.

The Bill would abolish Urban Development Areas (UDAs) and in their place, enable the declaration of Priority Development Areas (PDAs). UDAs will progressively transition to local governments. The Bill mandates that the MEDQs functions include consulting with relevant local governments in planning for, or developing land in, PDAs.[7]

It also provides for the declaration of provisional PDAs, which would only apply in very limited circumstances and where the development can be brought to the market quickly. These would generally be small, single development sites, and would only be declared where they were consistent with the relevant local government authority's planning scheme.[8]

The Commonwealth Games Infrastructure Authority would be established by the Act. This will assist the MEDQ to plan and develop the 2018 Commonwealth Games village and other venues if necessary, by providing advice to the MEDQ and carrying out functions delegated to it by the MEDQ.
Stakeholders who lodged submissions with the committee on this aspect of the Bill included local government, environmental, and property and planning industry organisations. Key issues raised included:

- Priority development areas (PDAs) and development schemes – decision making
- Delegation of powers by the MEDQ
- Infrastructure costs
- Local Reference Committees –
    - membership
    - non-compulsory nature
    - requirement for consultation through the planning and development process
- Transitional arrangements
- Appeals and jurisdiction
- A number of technical matters, including
    - Adequacy of definitions: 'economic development' and 'development for community purposes'
    - Status of development schemes
    - Plans of a subdivision
    - Consistency of terminology across planning and development legislation
    - Revocation of PDAs

[6] Mr David Eades, DDG, DSDIP, Hansard 9 November 2012, p.1.
[7] Economic Development Bill 2012, cl. 13.
[8] Ibid, cl. 34; Mr David Eades, DDG, DSDIP, Hansard 9 November 2012, p. 3.

As context for the discussion of these issues, it should be noted that the broad planning legislation applicable in Queensland is the *Sustainable Planning Act 2009* (SPA). The Economic Development Act (the Act), in establishing the MEDQ would be to nominate as PDAs particular parcels of land, and in so doing remove them from that broad planning regime, and regulate its development under a different, more streamlined regime – one aimed at facilitating economic development and development for community purposes. This is also the key function of the current ULDA Act and Urban Land Development Authority (ULDA), and it is an important distinction from the SPA.

Several submissions did point out that the terms 'economic development' and 'development for community purposes' were not adequately defined in the Bill. It was suggested that this would lead to a risk that current developments approved under the SPA would be 'called in' under the EPA[9] (a process whereby the Minister can decide a development request, taking it out of the hands of the local government, and allowed only in respect of existing decisions on current Urban Development Area (UDA) not started at the time of the Act's commencement); while the broader concern was that the overall objectives of the Act would need to be perfectly clear in order to implement the Act (including developing guidelines or any other supporting material).[10]

Advice from the department was that *it is simply a broad-based definition and broad-based series of land uses….one of the difficulties is predicting what the Bill may need to do to stimulate economic activity in the future*.[11] Further, *the purpose of the Bill has been left deliberately broad in order to ensure that economic development in Queensland grows. It is not intended that developments under SPA be overtaken by the Bill and the government is committed to reforms under SPA that provide for efficiencies under that process. It is noted that PDAs will comprise a small area of Queensland and that SPA is the predominant planning and development framework.*[12]

Many submissions compared aspects of the Bill with the SPA and the existing ULDA Act (which would be replaced by the Economic Development Act), one asking why the SPA could not contain the same efficiency principles as under the proposed Economic Development Act, seeing that they give a strong competitive advantage to development in PDA areas.[13]

The LGAQ specifically sought clarity around the relationship between a 'state interest 'as defined by the Bill, and a state interest under review by the SPA reforms with reference to the draft single State Planning Policy. The department's advice is:

- *The Government intends to introduce a single State Planning Policy as identified to simplify and clarify the state's interests in the planning and development system. A draft proposal has been prepared and is currently in the consultation phase. By contrast the Bill identifies a state interest as relating to the main purpose of the Bill and an interest that affects an economic, community or environmental interest of the State or a region and provides that the MEDQ has discretion about these. The application of a state interest has relevance when deciding development applications.*
- *The ULDA Act provided the ULDA discretion in determining what might be a state interest in preparing development instruments and deciding applications. In practice the ULDA consulted with state agencies about specific state interests in the preparation of land use plans and development schemes and these were front loaded into the development scheme.*

[9] LGAQ submission, p.3 and Economic Development Bill 2012, clauses 200 & 201.
[10] Find reference.
[11] Mr David Eades, Hansard, 9 November 2012, p.4.
[12] Department response to submissions, p.37.
[13] Wolter Consulting Group submission, p.3.

- *It is intended that this practice will continue under the proposed Bill and state interests will be front loaded into development schemes. This is also consistent with the preparation of planning schemes under the SPA which is to front load state interests into the strategic component of planning schemes. The identification of state interests relevant to the PDA can be identified in an Instrument of delegation if required.*[14]

Committee comment

The primary planning legislation in Queensland is the *Sustainable Planning Act 2009*. The purpose of the MEDQ, like the ULDA before it, is to 'carve out' from the general planning scheme, land to be developed for the specific purpose of progressing the state's objectives of economic development and development for community purposes. It is the 'special' nature of approved PDAs that warrant them being treated under a different process from those that generally apply for developments.
The committee notes that SPA processes are being reformed with a view to increasing efficiencies for planning and development more broadly.

Priority development areas (PDAs) and development schemes

The Queensland Murray Darling Committee (QMDC) made a number of suggestions aimed at ensuring a 'quadruple bottom line' focus within planning schemes. The matters to be considered in deciding a PDA relate primarily to economic development and development for community purposes, along with the context of relevant existing development schemes or land use plans for the area. The QMDC has provided a very detailed submission highlighting where in the Bill an increased focus on environmental, social and governance priorities could be incorporated. For example, declarations of Provisional PDAs should have regard to risks of environmental harm and adequacy of public consultation periods.[15] It points out the lack of any requirement to coordinate PDA processes with other regional plans such as those around natural resource management. The QMDC argues that any economic objectives need to incorporate natural and social considerations to be sustainable and that the obligation of the state to act in the public interest will be undermined by the Bill's commercial focus.[16]

In response to this, the department advises that:

- *Land deals will be undertaken on a commercial basis and in accordance with governance arrangements provided for under the Bill.*
- *MEDQ will be bound by a range of legislation and policies (e.g. strategic cropping land and state planning policies) designed to protect these assets.*[17]

The Council of Mayors (South East Queensland) (CoM) submitted that local governments want meaningful engagement in determining PDAs. Brisbane City Council (BCC) expresses this by recommending that the MEDQ be *required to consult with the relevant local government, and/or consider the relevant local government planning scheme/instrument before declaring a PDA*.[18]

Section 13(3) of the proposed new Act provides that it is a function of the MEDQ to consult with local governments in the planning and development of land in PDAs, cl. 57 of the Bill, provided for the

[14] Department response to submissions, p.10.
[15] Economic Development Bill 2012, cl. 34.
[16] QMDC submission, p.1.
[17] Department response to submissions, p.51.
[18] BCC submission, p.2.

MEDQ to consider a local government's planning instruments in the making of a development scheme. The department notes, though, that *on occasion it may be that the MEDQ proposes development that is not consistent with the local government planning instruments in order to achieve the purpose of the Bill…*[19]

BCC submitted that cl. 42 around revoking or reducing PDAs should be amended to require that agreement be reached with the local government to do so and a dispute resolution process enacted. The department advises that *under the ULDA Act there was no power for a local government to prepare the planning instrument change when a UDA was revoked. The Bill provides that a local government may prepare the planning instrument change and the MEDQ approve it for insertion into the planning scheme without the need to go through the process laid out in the Sustainable Planning Act 2009. Due to greater flexibility given to local government by this change, it is not proposed that dispute resolution processes be enshrined in the legislation at this point.*[20]

BCC also sought to have included in the Bill that land use plans and development schemes should be consistent with the relevant local government planning instrument or that the MEDQ may consider the relevant local government planning instrument in the preparation of a land use plan.

The department advises that the Bill provides for the MEDQ to consider a local government's planning instrument in the making of a development scheme. On occasion it may be that the MEDQ proposes development that is not consistent with the local government planning instruments in order to achieve the purpose of the Bill - that is, to facilitate economic development and development for community purposes.

Committee comment

The committee is satisfied that the extent of consultation that will be required with, and regard that must be given to, local governments and their planning instruments, is significantly increased from the requirements under current legislation.

Provisional PDAs

The Bill's provision for Provisional PDAs is a new measure that is not contained within the existing ULDA schema. The department has advised the committee that Provisional PDA declarations are designed to apply in circumstances where there is an overriding economic or community need to start development quickly, and where the proposed development is consistent with the local government's planning scheme. It is envisaged that Provisional PDAs would expire after three years, with the development in the community interest and capable of being brought to market within that timeframe. At the end of the three years, the planning for the area is subsumed into the local planning instrument.[21]

CoM and the LGAQ request more information from the government about the purpose of Provisional PDAs and when and how they would operate[22], and specifically seek advice on whether Provisional PDAs would have to be consistent with the local government's priority infrastructure plan and adopted infrastructure charges resolutions. This relates to the local government concerns about infrastructure costs.

[19] Department response to submissions, p.12.
[20] Department response to submissions, p.11.
[21] Mr David Eades, Hansard, 9 November 2012, p.3.
[22] Council of Mayors (SEQ) submission, p.4.

The department has provided the following advice in response to the request for further information about Provisional PDAs:

- *The role of Provisional PDAs is limited to circumstances where there is an imperative to start development quickly and where the proposed development aligns with community expectations for the area. It is expected that local government would have a significant role in determining whether these sites would be contenders for such a declaration having intimate knowledge of the local area. When considering making a declaration of a Provisional PDA the Bill provides that the MEDQ must have regard to the SPA processes that have contributed to the delay of the development and the MEDQ would seek the local government's advice in this regard.*
- *Development in a Provisional PDA must be consistent with a local governments planning scheme. For example where residential development is proposed by a planning scheme the development is consistent with that use.*
- *The declaration of Provisional PDAs offers local government an additional planning tool to move development swiftly to market. For example, where a planning scheme does not reflect rapid population growth, as in resource regions, a Provisional PDA provides an opportunity to kick start development that can be brought forward from the sequencing envisaged by the planning scheme when it was drafted.*[23]

Submissions from the property industry on the other hand, suggest that *requiring consistency with the local government's planning scheme is restrictive and limits the incentive to seek a Provisional PDA declaration…..it is proposed that …the Bill be amended to replace the words is consistent with the relevant local government's planning scheme for the area with is consistent with the strategic outcomes of the relevant local government's planning scheme for the area.*[24]

Committee comment

The committee notes the comments of the QMDC and appreciates the detailed consideration given by that organisation to the Bill. It is important to note the different objectives of EDA and the SPA – the developments under the scheme proposed by this Bill are 'out of the ordinary' developments designed to meet broader state objectives rather than private commercial objectives, and this, as with the current ULDA scheme, warrants different processes. The government has made clear its intent that local governments be given greater involvement in the process than has been the case under the ULDA Act, in recognition of the strong role of local government in promoting the interests of the local community, and as the usual manager of planning and development within its area. The Bill mandates a requirement that the MEDQ consults with local governments when proposing a PDA and preparing a land use plan for the declaration of a PDA. In fact, consultation with local government will be an explicit function of the MEDQ.[25]

Further, the Bill allows the MEDQ to delegate some of its functions to a local government – for example, preparing a land use plan, development scheme or a by-law, and even deciding development applications. Local governments are also able to initiate PDA applications and could manage the development instruments and approvals within the area itself.

The Bill provides for significantly increased engagement and coordination with local governments and their planning regimes in respect of specific developments fast-tracked in the broader public interest. The committee is of the view that this increased engagement will ensure that social and

[23] Department response to submissions, pp.8-9.
[24] UDIA submission.
[25] Economic Development Bill, clause 13.

environmental and a range of other considerations will be taken into account in the planning and development process.

The committee notes, however, that the concerns of local governments may reflect the very limited consultation that has occurred in the development of this Bill and so a concerted effort to increase the understanding of local governments may be required.

Recommendation 2

The committee recommends that the Minister provide additional briefings to local governments and other stakeholders, including all infrastructure providers, about the level of engagement they can expect throughout the PDA and Provisional PDA application, decision-making and management process.

Local Reference Committees

The Bill provides that the MEDQ may establish a local representative committee (LRC) in an area, to help it or its delegates to perform MEDQ's functions in that area.[26] Submitters generally sought more information about LRCs and how they might operate including: when they might be established, given that they are not compulsory; what level of 'representativeness' they should have; how members might be selected; and what qualifications they might have.[27] In particular, the UDIA noted a potential for a conflict of interest to arise where a committee member has a special interest in a particular development.

The department advises that *s. 161 places lawful requirements on members of any board or committee to act honestly and exercise care and diligence and requires that a member may not use the position to gain advantages in the carrying out of their duties. Any committee established by the MEDQ has members who are knowledgeable and/or representative of the local area and proper administrative and operational arrangements will be put in place as requested.*[28]
Further, it advises that *representation of community will be at the discretion of the MEDQ and it is expected that MEDQ would select members to represent stakeholders who will best assist in achieving the purpose of the Bill*.[29]

While the Bill gives as an example that one of the members might include a CEO of a local government, BCC submits that this should be an explicit requirement.[30] The department points out that *the Board has three standing members with three other members appointed by Governor in Council. Guidance is provided about the qualities that these three members may have. The functions of the Board are outlined in cl. 131. The MEDQ will operate across the State and membership by a single local government on the Economic Development Board is not consistent with that broad landscape. The Local Representative Committees, however, do provide for local government representation and this is appropriate given the capacity to apply detailed local knowledge for PDAs.*[31]

Wolter Consulting seeks further information about how LRCs would operate.[32]

[26] Economic Development Bill, clauses 158-159.
[27] Eg. QMDC.
[28] Department response to submission, p.27.
[29] Department response to submissions, p.55.
[30] BCC submission, p.5.
[31] Department response to submissions, p.14.
[32] Wolter Consulting submission, p.4.

Committee comment

These are all valid questions, considering the possibility of the MEDQ delegating some of its functions to a LRC.[33]

BCC's recommendation that a local government representative should as a matter of course be a member of a local representative committee makes sense to the committee, on the basis that the development will eventually be the responsibility of the local government at the end of a PDA, the role of the democratically elected local government to promote the interests of the local area, and the potential for delegation by the MEDQ of some of its functions to either a local government or a LRC.

Recommendation 3

The committee recommends that clause 158 of the Economic Development Bill 2012 be amended to require the Minister for Economic Development Queensland (MEDQ) to appoint a local government representative to a local representative committee.

Delegation of powers by the MEDQ

BCC submits that, where the MEDQ delegates functions to a local government CEO, the CEO should be able to sub-delegate to an appropriately qualified officer or employee of the local government, as is proposed in respect of department CEOs.[34]

The department advises that the instrument of delegation should allow for this to occur.[35]

Committee comment

The committee supports the ability of a local government CEO to sub-delegate to an appropriately qualified officer or employee of the local government.

Point of clarification

The committee asks that the Minister explain how the instrument of delegation will enable a local government CEO to sub-delegate functions delegated to him or her by the MEDQ.

Infrastructure costs

The provision of essential infrastructure such as roads, water, sewerage and drainage is a local government responsibility. When a PDA is declared, the MEDQ may enter into an infrastructure agreement with the development proponent. Typically, the agreement will require contributions from proponents towards those costs.

When the PDA is complete, the area succeeds to the local government.

The Bill provides that the MEDQ may give a written direction to a local government to provide or maintain infrastructure in, or relating to, a stated PDA. *The LGAQ only supports this provision on the condition that council is fully consulted and is in agreement with any related PDA infrastructure*

[33] Economic Development Bill 2012, cl. 169(1)(f).
[34] Economic Development Bill 2012, cl. 169(2).
[35] Department response, p.14.

contributions, infrastructure agreements, special rates and charges, and plans for infrastructure. The potential impacts of these arrangements on a council's asset management obligations, rating arrangements and long-term financial sustainability are such that they must be consulted and agreement reached on these key elements of a PDA.[36]

BCC and the Council of Mayors (SEQ) (CoM) echoed this concern, asking that the Bill be amended to ensure MEDQ was required to consult with a superseding public entity where an infrastructure agreement could be in place after a PDA is revoked. BCC identifies that the *Sustainable Planning Act 2009* defines a public sector entity in a way that excludes a local government and recommends that cl. 122 be expanded to include 'and consult with a relevant local government.'

The department advises that *under cl. 13(3) the MEDQ is required to consult with a relevant local government in planning for or developing land in PDAs. The mandatory consultation would provide a mechanism for these matters to be discussed by a local government with the government.*[37] *Standard practice is that MEDQ will consult with entities, and use best endeavours to reach agreement. It should be noted that powers and functions of MEDQ in future PDAs can be delegated to the Local Representative Committee, which will include representation from local government.*[38]

The LGAQ advised that the issue of infrastructure costs has been the most difficult aspect of the current UDA/ULDA regime, with councils left unable to rate the proponents to recover any shortfalls in costs, or to levy any special rates or charges to recover infrastructure shortfalls.[39] The CoM raised the same issue, suggesting an amendment to the Bill to allow councils to apply special charges on a site for those purposes.[40] The issue is the cause of considerable tension between the state and local governments.[41]

The department advises *these provisions reflect the current provisions of the ULDA Act which allows for rates and charges to be applied to fund identified infrastructure requirements arising from development in the PDA. This Act covers MEDQ and not local authority infrastructure charging regime which is covered in SPA. The Bill's provisions should allow for these rates and charges to continue to be lawfully applied by a local authority after the revocation of a PDA*.[42]

However, the LGAQ provided to the committee a copy of legal advice it had sought relating to a local government potentially left with a shortfall of around $200M in providing the infrastructure necessary for a UDA property development. The LGAQ sought advice on whether the local government in question could levy a special charge under the *Local Government Act 2009* to recover the shortfall. The legal advice was that it would be unlawful for the council to do so.

Committee comment

The legal advice provided by the LGAQ to the committee seems to conflict with the Department's advice in response to that issue. The committee believes that it is reasonable for local governments to be able to levy charges to recover shortfalls in the provision of infrastructure when local governments are not party to, and may not have input into, the infrastructure agreement between the MEDQ and the developer.

[36] LGAQ submission, p.4.
[37] Department response to submissions, p.12.
[38] Department response to submissions, p.37.
[39] Mr Greg Hoffman, Hansard, 9 November 2012, p.7.
[40] Council of Mayors (SEQ) submission.
[41] Mr Greg Hoffman, Hansard, 9 November 2012, p.7.
[42] Department response to submissions.

Recommendation 4
The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning investigate and make any necessary legislative amendments to ensure that local governments are appropriately safeguarded against significant infrastructure costs resulting from infrastructure agreements.

The department has provided the following advice in response to LGAQ's request for additional information about the infrastructure charging arrangements particularly in relation to a local government's adopted infrastructure charges framework:

- *It is not proposed by the government that the contributions approach currently practised by the ULDA be significantly different under the proposed Bill. At present the Urban Land Development Authority operates in 17 urban development areas (UDA). Of these, 12 UDAs operate under the local governments infrastructure charging regime. Of the remaining, four UDAs are greenfield development sites and unique circumstances exist whereby the Infrastructure Funding Framework applies to capture gains and provide for costs in the provision of infrastructure to be returned to the developer. In the remaining two infrastructure costs are imposed to offset the provision of infrastructure to the ULDA where it has acted as developer.*
- *It is anticipated that MEDQ would align with local government charging arrangements. If there are reasons why the arrangements might not be applied to a PDA, MEDQ would consult with the local government.*
- *It should also be noted that the State government is undertaking a broader review of infrastructure charging, and MEDQ would have regard to this when determining charging arrangements.*[43]

Transitional arrangements

The Bill provides that development applications (DAs) commenced before a PDA is declared (i.e. made under the SPA) will continue to be decided under the SPA and the SPA continues to apply as if the land were not in a PDA.[44] Submissions from the property planning and development industry recommend that *opportunity should exist for the applicant to opt in to the PDA process and have the benefit of the significant efficiency improvements on offer*.[45]

The department advises that *this provision exists to protect the rights of applicants where a SPA application has not been decided when a PDA is declared. Applicants have the choice to withdraw and re lodge under the PDA planning and development regime and the Bill does not exclude this right*.[46]

Further, the Bill provides that existing SPA development approvals will continue to have effect as a SPA development approval. The UDIA seeks clarity from the government as to what will happen to existing compliance permits and compliance certificates, which are not caught by the 'development approval' definition. The UDIA position is that they should also continue to have effect under SPA. Clarity is also sought as to whether subsequent extensions or changes to developments approved under SPA would be made under SPA or the new Economic Development Act.

[43] Department response to submissions, p.9.
[44] Economic Development Bill 2012, cl. 44.
[45] Wolter Consulting submission, p.5, and UDIA submission, p.3.
[46] Department response to submissions, p. 27.

Committee comment

The committee notes the advice of the department in respect to the ability of development proponents to withdraw from the SPA process and make application under the PDA regime.

It also notes that the query from UDIA in respect of subsequent extensions and changes to developments approved under SPA has not been addressed through this inquiry.

Point for clarification

The committee asks that the Deputy Premier and Minister for State Development, Infrastructure and Planning explain the intent in respect of extensions and changes to developments approved under SPA.

Appeals and jurisdiction

Appeal rights under the new Economic Development Act would be the same as provided for in the ULDA Act. They differ from the broader SPA, which does provide appeal processes. This reflects the differing objectives of both UDAs and future PDAs from general developments. Both remove the land in question from the general planning scheme (the SPA), providing a fast-tracked process on the basis of the broader economic development or community development merits of the development. The *Judicial Review Act 1991* (JR Act), however, would be an option for review. Judicial reviews are heard by the Supreme Court. The MEDQ will be able to seek declarations in the Planning and Environment Court (PEC), a specialist court.

UDIA recommends that the Bill be amended so that the PEC is vested with jurisdiction to hear all matters relating to the new Economic Development Act.

The department's advice is that *this limitation is deliberate to provide jurisdiction to the Planning and Environment Court to make declarations about matters affecting the interpretation of this Act and related matters. The Bill provides that the MEDQ may bring an application for direction under this section. It is not intended by the Bill (as was the intention under the ULDA Act) that planning decisions be the subject of appeals to the PEC. Applications to the Supreme Court for review are made in relation to administrative decisions and not on a planning basis and certain criteria need to be satisfied in order for an application to be made.*[47]

The UDIA noted that the Bill does not provide for Ministerial 'call in' powers in respect of developments approved under the new Act – and suggests that this ability would provide an important check and balance, particularly important given the very limited rights of applicants to appeal; and the ability of the MEDQ to delegate its decision making powers.

Advice from the Department is that while the Bill provides that the MEDQ may delegate decision making to another entity or person, the decision is still technically made by the MEDQ. *The call in power is irrational in this regard. It is proposed that when making an Instrument of delegation the MEDQ retains the right to rescind the delegation for specific matters. The MEDQ may then rescind a delegation thereby exercising a call in for applications that are contentious or require intervention and assistance by MEDQ.*[48]

[47] Department response to submissions, p.27.
[48] Department response to submissions, p.27.

Committee comment

The committee notes the advice contained in the explanatory notes to the Bill, that the limited appeal rights are comparable to other *Acts about development in particular areas of the state in which there is a State interest…. for example the State Development and Public Works Organisations Act.*[49]

It should be remembered that approvals in PDAs must be consistent either with development schemes that are developed with public consultation, or with provisional land use plans, which must be consistent with local government planning schemes and these (made under the SPA) have been publicly notified. In addition, the purpose of PDAs is to 'fast-track' development to achieve economic development or development for community interests. In this context, the committee believes the limited appeal rights are reasonable.

The committee also notes the advice regarding call in powers and agrees with that position.

South Bank Parklands

The government's position is that the South Bank Corporation (SBC) has fulfilled its responsibilities in the delivery of the South Bank precinct and that its functions will now be transferred to other appropriate bodies.

The Bill would commence the process for the transfer of SBC's planning powers to the Brisbane City Council (BCC) and associated measures to ensure the ongoing operation of the South Bank parklands. The *South Bank Corporation Act 1989* would be amended to begin the transfer of SBC's statutory planning powers to the Brisbane City Council, in line with the government's commitment to give local government authorities greater control over planning for development (as evident also in the winding down of the ULDA).

The Bill would give SBC the ability to sell land assets to reduce debt and move the SBC into a transition phase in preparation for winding up. As part of this, it removes the obligation for SBC to manage the parklands itself and allows it to enter into a lease for management with BCC.

Brisbane City Council supports the proposed amendments in respect of planning powers and the development assessment manager function and supports the intent of transferring planning powers back to the Council. It does, however, suggest a number of changes to ensure that the Council can effectively operate as a development assessment manager (effectively, to give BCC more powers than is currently the case or proposed in the Bill).[50]

Composition of the Board

BCC submits that the amendments should enable greater BCC representation on the Board than two members. BCC recommends that the Minister and Council have equal rights to appoint a member (*no more than 5 members appointed on the Council's nomination* and *no more than five members appointed on the Minister's nomination).* The Department advises*:*

- *The purpose of the amendment of s 10 is to clarify that the Minister is able to appoint more than two public service officers that the board could be made up of less than 10 members if the*

[49] Explanatory Notes to the Economic Development Bill 2012, p.13.
[50] BCC submission, p.6.

Minister sees fit and that a public service officer is not prohibited from being a public service officer.

- *Following the passing of the amendments to s 10, there will be no prohibition on the Minister choosing to ask the council for additional nominees if he sees fit, provided if he chooses to nominate them himself and provided they meet the criteria for appointment contained in cl. 10(2).*
- *As advised in the Explanatory Notes to the Bill, the corporation is moving into a transition phase, it is appropriate that the Minister be given flexibility in determining the appropriate structure of the board at each stage of the transition.*
- *Following the proposed lease of the parklands to council and transfer of planning powers for all new applications, the matters remaining within the power of the corporation do not involve the council to any greater extent than is currently the case.*[51]

The approved development plan

BCC submits that the ability of the SBC to amend an approved development plan[52] should be delegated to Council, including the ability to create a new plan and amend Council's planning scheme. The department's response is:

The government has chosen not to transfer to the council the power to amend the approved development plan (ADP). The reasons include:

1) *The council is to be encouraged to develop its own planning scheme for the area through the City Plan. The government does not want a planning scheme for the area to continue under the SBC Act in the long term. The government wants the area to fall under City Plan and therefore to be governed, from a planning perspective, under the Sustainable Planning Act 2009 in the same way as other parts of the City of Brisbane.*
2) *The current framework for amendment of the ADP does not mirror the process for amendment of City Plan contained in the Sustainable Planning Act 2009.*
3) *The process for amendment as contained in s 35 requires consultation with council on any proposed amendment. In addition, council's input can be given at a board level through its nominees to the board.*
4) *Amendments to the ADP are considered and approved by the Minister and it is considered that during the transition phase this process should remain.*
5) *Council will not be given a role of development of the Corporation area, merely the planning assessment powers. The focus of s 37 is about the development of the corporation area from the vast vacant site that it was at the passing of this legislation into the planned and developed precinct that it now is. No amendment is considered necessary to s 37.*[53]

Powers in relation to land

BCC also suggests that the riverside parkland component of the South Bank precinct be excluded from any land the SBC is permitted to sell or otherwise dispose of and that the status quo in the SBC Act, that is, that this land can only be transferred to BCC, prevail. Further, any proposed amendments to that component of the precinct should be clearly specified in legislation, and not

[51] Ibid, pp.15-16.

[52] Section 35 *SBC Act* (Amendment of approved development plan) and Section 36 (Implementation of approved development plan) under the *SBC Act*.

[53] Department response to submissions, p.16.

refer to the Approved Development Plan. *This land should be consistent with the land currently nominated under S18 in the SBC Act*.[54]

The department advises that *amendments to s 18 do not make any amendment to the description of area dealt with in s18. The change to the definition of parkland precinct is merely a change of its location within the Act; it has been moved from s3 to s18, as it is only used as a term in s18. The definition itself has not been changed. The ADP is made under the SBC Act (s34) and has legislative effect. It is appropriate for it to be the referenced identifier of the parkland precinct for the purposes of s .18.*[55]

Security

The SBC Act currently allows the corporation or a police officer authorised by the corporation to seek a court order excluding certain persons from the precinct.[56] BCC seeks to be nominated in that section as well, so that it could also apply for such an order or authorise a police officer to seek such an order. The department advice is that s. *83 of the SBC Act gives specified security officers the power to exclude persons from "the site" for up to 24 hours. S. 86 deals with an order for a more permanent exclusion from "the site". Section 86(5) provides that the order can be for a period of up to one year. The provision is drafted with regard to fundamental legislative principles under the Legislative Standards Act 1992.*[57]

Committee comment

The Department response does not appear to address the recommendation of BCC, that it also be allowed to seek court orders to exclude people from the South Bank precinct, unless the intent of the Department's advice is to show that such powers are not necessary. It seems reasonable that if BCC is to manage the site, and to employ security guards, it should be empowered in the same way.

Recommendation 5

The committee recommends that the Deputy Premier and Minister for State Development, Infrastructure and Planning considers amending section 86 of the *South Bank Corporation Act 1989* to provide that the relevant entity for the security officer is empowered to seek court orders to exclude persons causing nuisance from the South Bank precinct.

Power to make by-laws

BCC seeks delegation of the current powers of the SBC[58] to make by-laws governing the precinct. This will ensure consistency with BCC's by-laws, including around advertising signage allowed within the precinct. The department advises that *the effect of s 155 is that council local laws will apply to the extent there isn't a South Bank Corporation By-law which is inconsistent. The issue of By-laws and a review of those By-laws has not been the subject of this Bill. The By-laws for the corporation are contained in regulations to the SBC Act and as such do not require amendment by legislation. It is intended that a review of those By-laws will be carried out in consultation with council prior to proclamation of the amendments to the SBC Act contained in the Bill*.[59]

[54] BCC submission, p.6.
[55] Department response to submissions, p.18.
[56] SBC Act, s. 86.
[57] Department response to submissions, p.18.
[58] Under s. 115 of the SBC Act.
[59] Department response to submissions, p.19.

Committee comment

As a general comment, the committee notes that the purpose of the proposed amendments is to commence the process of transferring the management of South Bank Parklands from SBC to BCC. In this context, the committee accepts that the transfer of all relevant powers is a phased approach and that the Government has decided not to transfer all of the powers requested by BCC at this point.

Powers of the Coordinator-General

Under the SDPWO Act, the Coordinator-General has wide-ranging powers to plan, deliver and coordinate large-scale infrastructure projects, while ensuring their environmental impacts are properly managed.[60]

These powers at present include declaring a project to be a 'significant project' – to be known as a 'coordinated project' as a result of this Bill – which then sets in train the Coordinator-General's powers to manage the environmental impact assessment process for the project and the ability for a project be declared an 'infrastructure facility of significance'[61] - to be known as a priority infrastructure facility (PIF) as a result of this Bill. A PIF approval sets in train the Coordinator-General's power to compulsorily acquire land.

The Bill aims to clarify and improve the powers of the Coordinator-General to: fast-track projects; better reflect Government policies and priorities; streamline assessment; and prevent proponents from misusing the intent of the Coordinator-General's powers to promote their individual projects, divert limited government resources or cause confusion for landowners and industry. To do this the Bill will amend the SDPWO Act. The key amendments will:

- rename 'significant projects' as'coordinated projects'. This will remove any perception that these development projects have any level of approval or support from the government
- adopt more robust criteria to assess when a project should become a coordinated project
- rename and restructure the process for consideration of an infrastructure facility of significance (IFS) to protect landowners
- enable the Coordinator-General to streamline environmental impact statement (EIS) assessment processes and approve short-term leases for land held by the Coordinator-General in state development areas
- allow for fees associated with the development process to be amended through regulation, rather than within the SDPWO Act[62]; and allow the Coordinator-General to waive or reduce fees applied for in respect of evaluating environmental effects of a proposed change to a project's status.[63]

Submissions on this aspect of the Bill were varied, with both industry groups and environmental groups recommending changes. It is noteworthy that the Queensland Resources Council (QRC) stated that while it was supportive of the changes to processes that have been implemented in

[60] Queensland Government webpage, http://www.dlg.qld.gov.au/our-department/coordinator-general.html.
[61] An infrastructure facility of significance (IFS) is a facility assessed by the Coordinator-General and approved by the Governor in Council as being of significance economically or socially to Australia, Queensland or the region in which the facility is to be constructed. http://www.dlg.qld.gov.au/assessments-and-approvals/infrastructure-facilities-of-significance.html.
[62] Economic Development Bill 2012, cl. 284.
[63] *SDPWO Act* s. 35 (c) ie: t*he proponent may apply to the Coordinator-General to evaluate, under this division, the environmental effects of the proposed change, its effects on the project and any other related matters.*

respect of the Coordinator-General's role, *the pace of these reforms has caused some consternation amongst QRC membership. As with all legislative change, many devils lurk in the detail and the risk of unintended consequences can be very high.*[64]

Priority Infrastructure Facility (PIF) projects (cl. 310)

The department's advice is that a PIF approval allows the Coordinator-General to use the powers of that position to *compulsorily acquire land for the benefit of a private sector party.*[65]
QRC has identified an issue with respect to developers who have lodged Environmental Impact Statement (EIS) applications under the EPA. Under the changes proposed by the Bill, they would no longer be able to apply for a PIF status because their EIS are not made under the SDPWO Act.[66]
The department has advised that the Coordinator-General is willing to consider amendments to address the issue.[67]

At the public hearing, QRC argued that the fact that a PIF cannot be applied for before an EIS is completed, might run counter to the intent of the Bill to streamline processes for development. On the other hand, QMDC submitted that the assessment process for a PIF[68] should explicitly include environmental compliance clauses. As the department advises, this is a given because the EIS process must have been completed before a PIF can be declared.[69]

Committee comment

The committee considers that the continuing requirement that an Environmental Impact Statement must be completed before a Priority Infrastructure Facility application can be made is an important environmental safeguard.

The committee would suggest that declaration of a Priority Infrastructure Facility must not be solely 'for the benefit of a private sector party' but for the significant economic or social benefit of the nation, the state or the region. It is only in that context that the ability to compulsorily acquire land come into play and, even then, only after the proponent has consulted and negotiated with landowners and/or native title holders to acquire the land on commercial terms or enter into an Indigenous land use agreement.

It is a serious and significant power to compulsorily acquire land. This is reflected in the fact that the decision-making power is elevated to the Governor-in-Council. However, it would seem that the logic and process which will apply to the potential activation of that power – the granting of a Priority Infrastructure Facility status – should apply also to projects which, by virtue of the timing of their commencement, may have commenced their Environmental Impact Statement processes under another Act, such as the EPA, should not be excluded from the ability to apply for a PIF declaration.

[64] QRC submission, p.6.
[65] Department response to submissions, p.64.
[66] QRC submission, pp.8-9.
[67] Ibid.
[68] Clause 310, new s. 153AC (2).
[69] Department response to submissions, p.55.

Recommendation 6

The committee recommends that the Economic Development Bill 2012 be amended to ensure that developers who have lodged Environmental Impact Statement applications under Acts other than the *State Development and Public Works Organisation Act 1971* may apply for a Priority Infrastructure Facility status.

Advertising EIS requirement

Clause 292 of the Bill would remove the mandated requirement that the Coordinator-General give a public notice that an EIS is required for a coordinated project and invite comments on the draft terms of reference (ToR). While the explanatory notes claim that the reason for the removal of the requirement is that public consultation results in increased time and advertising costs for the proponent and there is little benefit from it because ToR are increasingly generic, it is pointed out by the EDO and EDO-NQ that *the opportunity to comment on proposed ToR is vital to ensuring the potential environmental impacts [for a specific project in a specific locale], are properly assessed*.[70]

These views are shared by other submitters.[71]

QMDC also supports advertising where EIS processes are required.[72]

The department's advice in response to the concerns of the QMDC and QRC was that *the SDPWO Act already requires the CG to publicly notify that an EIS is required for a project.*[73] While in response to what reads as the same concern by the EDO, it advised that *the TOR for projects are comprehensive and have become increasingly generic. The intention of providing the CG with the discretion to publicly notify and invite comment on a draft TOR is to allow projects to proceed directly to the preparation of the EIS when, in the CG's opinion, the impacts of the project are relatively known and can be addressed through the generic TOR. The draft TOR will be publicly notified for more complex projects and also for projects that are 'controlled actions' under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)and being assessed through the bilateral agreement with the Commonwealth*.[74]

LGAQ supported in general the move towards standardised terms of reference (ToR) on the basis that they had faith they would be consulted on the development of these TOR and could therefore have comfort that matters relevant to local governments would be addressed. [75]

LGAQ suggests that local government be informed and invited to comment when there are substantial variations from these generic ToR and the department advises that the Office of the Coordinator-General (CG) will aim to consult with LGAQ on any substantial variations.

Committee comment

The committee understands from its reading of the Bill and explanatory notes that the current requirement that the Coordinator-General advertise when Environmental Impact Statements are required will be removed and become discretionary.

[70] EDO Qld and NQ submission, p.6.
[71] Fitzroy Basin, EDO, QMDC.
[72] QMDC submission, p.16.
[73] Department response to submissions, p.63.
[74] Ibid, p.45.
[75] Mr Greg Hoffman, Hansard, 9 November 2012.

The explanatory notes indicate that the rationale for removal is to streamline processes and that public consultation results unnecessarily in increased time and advertising costs for proponents, given that terms of reference are increasingly generic.

The committee agrees with the Environmental Defenders Office (Qld and NQ) that the opportunity to comment on draft terms of reference for an Environmental Impact Statement is an important means by which any person potentially affected by a project can have a say, particularly given the potential implications of a project being declared a coordinated project or a Priority Infrastructure Facility. It also notes the government's commitments to increasing openness and transparency, including providing greater access to government information, and suggests that all projects requiring Environmental Impact Statements at any point in time should be publicly available. The committee suggests that the Coordinator-General could consider advertising by means that do not incur significant costs, such as via the Department's website.

Recommendation 7

The committee recommends that clause 292 of the Economic Development Bill 2012 be omitted, and that the Coordinator-General must continue to advertise wherever an Environmental Impact Statement is required.

Waiving of fees for environmental evaluations

On the basis that the fee for environmental evaluations is currently only $990, the scale and economic value of coordinated projects and the financial capacity of proponents, some submitters have contended that the fees should not be waived.[76] The explanatory notes explain that the amendments to the report can be for very minor issues and that if waiving fees, the Coordinator-General must have regard to the complexity of the proposed change and the extent of public consultation required.

However, the department advises that *an application under s35C can accumulate fees amounting to over $50,000 before a decision is made. As amendments to the Coordinator-General's report can be for very minor issues, this amendment will provide the Coordinator-General with the ability to vary or waive the fee so that it is proportionate to the change required.*

Often changes to the Coordinator-General's report are required to address administrative provisions, such as those that relate to timing linked to events beyond the proponent's control. An example may be where the issue of an environmental authority takes significantly longer than predicted, and therefore the associated timeframes included in the Coordinator-General's report will need to be changed.

The Coordinator-General will have regard to the complexity of the proposed change and the extent of public consultation required. The Coordinator-General will continue to assess all applications for evaluation of environmental effects of proposed changes to a coordinated project with the same necessary rigour, regardless of whether the fee has been reduced or waived.[77]

[76] EDO Qld and NQ submission, p.5; Hansard, 9 November 2012, p.23.
[77] Department response to submissions, p. 43.

Committee comment

Given the department's advice that fees can run up to $50,000, it must be assumed that this would be in the case of more complex issues. It should be within the discretion of the Coordinator-General to waive fees for those more minor issues that require little Department effort to evaluate.

It would be disturbing, however, if fees for the more complex matters were waived given the considerable benefit which must be expected by a proponent willing to invest in an environmental evaluation.

Matters Coordinator-General considers before making a declaration that a project is a coordinated project.

The amendments proposed to s. 27 of the SDPWO Act would appear to make optional, or remove all together, a number of considerations that are currently mandatory for the Coordinator-General to consider when determining whether to declare a project a 'coordinated project'. These are the:

- project's potential effect on relevant infrastructure
- employment opportunities that will be provided by the project
- potential environmental effects of the project
- complexity of local, state and commonwealth requirements for the project
- level of investment necessary for the proponent to carry out the project
- strategic significant of the project to the locality, region or state.

Environmental organisations note that these are significant matters that should remain mandated considerations.[78]

Departmental advice is that the current Act requires the Coordinator-General to have regard to 'one or more' of the listed factors and so it is inaccurate to say the matters listed are mandatory considerations now.

The amendment to s. 27 is designed to separate the matters that relate to a project's attributes (for example, significant environmental effects) from the matters that could influence the decision (for example, relevant State policies). If the project satisfies one or more of the project attributes listed in s27(2) then the Coordinator-General may decide whether or not to declare it a coordinated project having regard, and giving the weight considered appropriate, to the matters listed in s27(1).
The intention of the amendment is to ensure that only projects that are regarded as truly significant, are consistent with government policies and plans and are likely to happen are declared.[79]

The QRC raises concern that the new requirement for a pre-feasibility assessment[80] may be misunderstood[81]. Pre-feasibility statements have a particular meaning in the industry, typically involving extensive financial information, which would be highly commercially sensitive, and the QRC recommends the terms be deleted, and that a clear definition be added, confirming that there is no expectation that such detailed financial information would be required. The Department did not comment on this in its response to submissions.

[78] EDO submission, p.5.
[79] Department response to submissions, p.44.
[80] Economic Development Bill, cl. 285, new s. 27(1)(d) and new s27AB(d).
[81] QRC submission, p.7. and Hansard, 9 November 2012.

Recommendation 8

The committee recommends the Deputy Premier and Minister for State Development, Infrastructure and Planning consider whether an alternative term for 'pre-feasibility assessment' would be appropriate for inclusion in respect of clause 285.

Changes to and cancellation of declarations

The Bill proposes to insert a new s27AE (Notice of change of proponent, contact details or registered office) into the SDPWO Act. The EDO / EDO-NQ submission supports the amendment however, to the extent the proposed section is intended to give the Coordinator-General (and the public) confidence in the identity and integrity of the proponent, it believes the section does not go far enough. The EDO/EDO-NQ would like the committee to recommend adding to this section the requirement that a proponent also give notice to the Coordinator-General of material changes in the proponent's financial condition or funding for development of the project. It states that *inclusion of these changes would enable the Coordinator-General to remain confident that the proponent indeed retains the financial and material resources to go forward with the project*.[82]

The Department advises that it is not necessary to requirement a proponent to give notice of material changes to the proponent's financial conditions or funding for the project given that the final investment decision usually takes place after the Coordinator-General's report and therefore should not be used as a reason for cancellation of the declaration.

It should be noted that the proposed amendments to s27AB require the proponent to demonstrate it has the financial and technical capability to complete the EIS process in its application for approval as a coordinated project.[83]

Committee comment

The committee accepts the Department's advice on this matter.

Recommendations of the Queensland Floods Commission of Inquiry

In the 2010-11 wet season, huge volumes of water flooded mine pits and leaked into underground areas, with water storage facilities becoming so full that mine operators had to pump water into pits. Access to mines, equipment, monitoring points was cut, and 85 per cent of Queensland coal mines had to either limit production or close. There were significant economic repercussions: a loss of 2.2 per cent or $5.7bn in gross state product for the year ending June 2011, and a reduction in mining royalties for the government.

To give effect to recommendations of the Queensland Floods Commission of Inquiry (FCoI) in respect of allowing temporary water emissions in the event of an emergency, the Bill would amend the *Environmental Protection Act 1994* to allow for a temporary emissions licence (TEL) to be granted in emergency situations, allowing for the release of water from mines into the environment.

The proposed temporary emissions licence could be applied for where conditions of an environmental authority or conditions of a development approval need to be temporarily relaxed or modified to respond to an emergency.

[82] EDO Qld and NQ submission, p.6.
[83] Department response to submissions, p.45.

Water that has been in a coal mine becomes contaminated with sodium from the earth, and hydrocarbons from coal product. In the Fitzroy Basin, which was the subject of the FCoI report, water pumped out goes into streams and rivers, including through waterways from which townwater is sourced, and ultimately out to sea and into the Great Barrier Reef Marine Park.

This highlights the fundamental tensions within and between economic objectives (including between industries) and environmental objectives (including public health).

The other recommendation of the FCoI that this Bill addresses is that the CEO of the Department of Community Safety should have the authority to appoint an Emergency Management Queensland officer to coordinate SES operations in extraordinary circumstances. This would address the identified need for better command and control arrangements above the level of the local controller. The Bill amends the *Disaster Management Act 2003* so that this can occur.

The current mine water management regime

Often, an EIS and environmental management plan have to be prepared in order to manage the potential impact of a mining project before it commences. An 'environmental authority' is then required to carry out mining activities. The authority will usually set conditions, and it is an offence to breach any of the conditions. 'Transitional environmental programs' were the mechanism used for dealing with discharge of excess water from mines when the environmental authority was insufficient in 2010-11. A transitional environmental program is a program of actions that aims to move toward compliance with the EPA by either reducing environmental harm caused by an activity, or detailing the transition of the activity to compliance.[84] A person can apply for a transitional environmental program or the department can require one. The department has 20 days to make a decision on approval. If approved, the program authorises any action done in compliance with it despite any regulation or environmental authority. They are a mechanism applicable to the whole EPA, and not specific to mine activities.

In 2010-11, the cumulative environmental impact of releases from a number of mines was the key consideration in determining whether or not to approve transitional environmental programs to allow the release of water from mines. The department took an overall monitoring role, ensuring that water quality measurements downstream remained appropriate. While the FCoI found that this worked quite well, it did identify that this would not be an effective way of managing pre-emptive water releases because the cumulative impact could not be determined in advance, in the absence of applications from other mine operators. It also found that it worked well when used this way despite the legislation, not because of it. The transitional environmental program approach was not specifically designed to address mine water issues, and there was inadequate guidance material.
The FCoI report noted the Department's approach to approving transitional environmental programs had been to balance environmental harm against economic benefits, with a proviso that unacceptable levels of environmental harm could not be permitted.[85]

There are concerns expressed by some stakeholders (see submissions from Capricorn Conservation Council, Queensland Conservation) that the current assessment criteria for temporary emissions licences, as contained in the Bill, do not achieve that balance and prioritise economic interests over environmental and public health interests, which was not part of the FCoI's recommendations.[86]

[84] EPA, Part 3, s. 330.
[85] Ibid, p.362.
[86] See, for example, http://www.brisbanetimes.com.au/queensland/fears-over-toxic-leaks-from-mine-sites-20121104-28s0y.html;http://www.themorningbulletin.com.au/news/newman-government-accused-

Committee comment

Both this government and the previous government committed to adopting all of the recommendations of the FCoI, although the recommendations of the FCoI in respect of emergency release of water from mines in a flood situation did not explicitly refer to the mechanism which might be used, nor to many of the procedural details that now appear in this Bill. Given this, the committee considers this Bill to be more than a procedural Bill to implement recommendations already accepted by the Government.

Having had time for only a preliminary scan of regulatory environments in other jurisdictions with regard to emergency release of water from mines, it appears to the committee that Queensland's proposed approach is more stringent that that within other jurisdictions. This creates an opportunity to create a 'best practice' approach and hence, it is important to get it right.

The committee notes the Department's advice that guidance material is being developed to support TEL decision making, and that many of the issues raised in submissions could be addressed at the procedural level. The production of guidance material to support consistent decision making was also a FCoI recommendation.[87]

The committee would also like to raise the question of liability- namely, who would be liable for any environmental damage caused by the actions authorised under a TEL?

Recommendation 9

The committee recommends that the Minister ensure a robust consultation process is held with all relevant stakeholders in the development of the guidelines to support decision-making around temporary emissions licences.

Point for clarification

The committee asks the Minister to advise the House on the question of who would be liable for environmental damage caused by the actions authorised under a temporary emissions licence.

Temporary emissions licences

The Bill would amend the *Environmental Protection Act 1994* (EPA) to allow for a temporary emissions licence to be granted in emergency situations, allowing for the release of water from mines. A temporary emissions licence could be applied for where conditions of an environmental authority or conditions of a development approval need to be temporarily relaxed or modified to respond to an emergency.

The relevant FCoI recommendations are:

> *13.10 The Queensland Government should refine the criteria which must be considered in assessment of applications for relaxation of environmental authority conditions, by transitional environmental program or otherwise, in response to flood.*

endangering-cq-water-sup/1608367/;http://www.abc.net.au/news/2012-11-05/government-defends-new-laws-for-mine-water-release/4353406.

[87] FCoI final report, p.363.

> *13.11 The Queensland Government should consider amending the EPA 1994 so that it allows for the relaxation of environmental authority conditions, by transitional environmental program or otherwise, as to discharge of water:*
>
> - *pre-emptively, in advance of rainfall or flooding events, or*
> - *for all mines in a catchment that is flooding*.[88]

In essence, the recommendations are that the criteria used at present to allow relaxation of environmental authority conditions in the midst of an emergency situation (such as the transitional environmental program (TEP) used in the 2010-11 floods) be refined; and that further, environmental authority conditions should be able to be relaxed to allow discharge of water from mines pre-emptively, or for all mines in a catchment that is flooding.

Currently, an 'environmental authority' is required to carry out mining activities. The authority will usually set conditions for the mine, and it is an offence to breach any of the conditions. Often, an EIS and environmental management plan has to be prepared in order to manage the potential impact of the project, before it commences. In Fitzroy Basin, the 'Fitzroy model conditions' have been developed and adopted by all mines. They include standardised conditions on the quality and quantity of water that can be released from mines across the region. In August 2011 new Fitzroy model conditions were approved by the then government, following the difficulties experienced by mines in the 2010-11 floods. The benefits for mining companies of the new conditions are that they allow a relaxation of monitoring requirements during wet weather events if monitoring points are unsafe or inaccessible, and give a narrower definition of mine affected water, which excludes some discharges from the conditions. It also provides for a stepped approach to discharge of mine water into watercourses, depending on the flow.[89]

It was because of the rapid nature of flood events that the FCoI recommended that pre-emptive relaxation of a mine's environmental authorities should be possible in advance of flooding events.[90] It also noted that *quick approvals would be required, some in less than 24 hours*.

The government has stated that the FCoI found there is a legislative gap when it comes to dealing with emergencies - *the kind of emergencies we're talking about are those instances over the last few years when it comes to extraordinary amounts of rainfall and natural disasters like flooding* .[91]

The temporary emissions licence proposed in the Bill would aim to implement both of the relevant FCoI recommendations. A TEL would be a mechanism for pre-emptive relaxation, and the criteria for assessing applications for TELs is refined from those used to assess TEPs. There are views, though, that the way the Bill is worded greatly broadens the conditions under which water releases above those normally allowed can occur under the current regime of TEPs, and goes beyond the refinements suggested by the FCoI report.[92] While the government has referred to TELs being approved only as part of a response to "emergency" circumstances, the Bill refers instead to

[88] FCoI final report p.366.
[89] FCoI final report p.360.
[90] FCoI final report, p.363.
[91] Hon Andrew Powell MP, Minister for Environment and Heritage Protection – ABC news, 5 November 2012. http://www.abc.net.au/news/2012-11-05/government-defends-new-laws-for-mine-water-release/4353406
[92] See, for example, http://www.brisbanetimes.com.au/queensland/fears-over-toxic-leaks-from-mine-sites-20121104-28s0y.html;http://www.themorningbulletin.com.au/news/newman-government-accused-endangering-cq-water-sup/1608367/;http://www.abc.net.au/news/2012-11-05/government-defends-new-laws-for-mine-water-release/4353406.

'emergent' circumstances. This has quite a different meaning to emergency, emergent simply meaning 'unforeseen', and this is causing considerable consternation for stakeholders who submitted to the committee's inquiry.

The TEL process is being seen as both broadening the allowable reasons for greater water releases than normally allowed within the environmental authority, and weakening the assessment and planning process around granting environmental authorities in the first place. A fundamental concern is that the availability of TELs will promote a less stringent approach to planning ahead and prevention of emergencies arising.[93]

The FCoI was mindful of the need for conservative relaxations, to ensure no environmental harm resulted.[94] It suggested the Department could provide each mine with quality and quantity limits as part of the TEL approval process. If a mine needed to release more water, it could apply again. The FCoI report is mindful of the fact that discharge should occur into what will be high flowing rivers (presumably, minimising environmental damage). The FCoI actually suggests that approval of any relaxation of authorities could include a requirement that a particular rainfall level or water flow rate existed before discharge occurs[95]. AgForce makes this recommendation as well.

The Department response to that submission was that *the TEL is not designed for pre-emptive releases, rather the licence can be granted pre-emptively in anticipation of an event. The TEL would only licence releases of water where this is appropriate – for example, during peak flow conditions during a flood*. Further, it advises that as an additional safeguard, particularly in the event that other mines in the catchment apply for a TEL, potentially greatly increasing the total amount of water to be released, *the licence is fully flexible. It can be immediately amended, cancelled or suspended without receiving and considering submissions from the operator. This includes where other applications are made for TELs which would, if granted, affect the same environmental values as the issued licence*.[96]

Committee comment

The committee understands that preparation for flooding at a mine site begins well before a wet season, with mine operators required to produce water management plans for the Department's approval.[97]

The concerns about a lack of foresight are understandable, but the committee is satisfied that there are satisfactory processes in place to prevent emergencies such as floods in the Fitzroy Basin leading to the need for discharge of mine waters – that is, an increasing focus on prevention. This includes the EA itself, which should have general provision for the discharge of water in flood events given that this cannot now be an unforeseen event; the revised Fitzroy Model Conditions; and a TEL approval operating as a trigger for a review of an EA.

Many of the concerns about the TEL seem to arise from the fact that the TEL has been deliberately designed to apply more broadly than in a flood situation. It might apply to a range of other 'emergent' situations, such as fires, or cyclones.[98] The concerns, which relate very much to the use of the TEL to respond to floods, are not at all surprising given the TEL is being presented squarely in the context of the FCoI. It is of some concern to the committee that this may mean other potential

[93] Queensland Conservation (QCC) submission, p.1.
[94] FCoI final report, p.363.
[95] FCoI final report, p.363.
[96] Department response to submissions, p.30.
[97] Queensland Floods Commission of Inquiry, Final Report, p.352.
[98] Ms Elissa Nichols, Hansard, 9 November, p.14.

stakeholders are not alerted to the proposal or afforded the opportunity for input (for example, fire response services), believing that the amendments relate only to floods.

The FCoI suggestion that the Department could provide each mine with quality and quantity limits as part of the TEL approval process does not appear to have been addressed in the Bill. While the Department has advised that the TEL must state the 'timing, duration, volume and location of the released permitted by the licence", it sees that this also addresses the recommendation of AgForce that "a TEL must state the boundaries within which concentrations of the contaminants being released into the environment should fall within to minimise impacts.99 The committee does not concur with that view and queries whether there is any plan to specify upper limits for concentrations of contaminants allowed to be released.

The concern that planning provisions currently in place are weakened because this gives an 'out' clause, is a valid point. While noting the Department's advice about the strong focus on prevention through the EA process and other elements of the EPA requirements, it is worth considering the suggestion from AgForce that fees for TEL applications should act as a disincentive for poor planning.[100]

The committee suggests that releases not be allowed until water in the catchment is observed to be at a specified level, and notes the advice that this is the intent. The committee queries where these levels will be specified.

Point for clarification

The committee asks that the Minister explain where the department will specify the level at which water in a catchment must be flowing before mine water can be released under a temporary emissions licence.

Recommendation 10

The committee recommends that fees for temporary emissions licences be set at a level that will operate as an incentive to preparedness.

Emergency directions

Emergency direction powers allow an authorised officer of the department to direct a release of contaminants in an emergency. It is here that the definition of 'emergency' is provided, as a situation where:

(a) either –
  (i) human health or safety is threatened; or
  (ii) serious or material environmental harm has been or is likely to be caused; and

(b) urgent action is necessary to -
  (i) protect the health or safety of persons; or
  (ii) prevent or minimise the harm; or
  (iii) rehabilitate or restore the environment because of the harm.[101]

[99] AgForce submission, in/with Department response to submissions, p.34.
[100] AgForce submission, p.3.
[101] EPA, s. 466B.

This definition has changed as a result of a FCoI recommendation.[102] This definition does not relate to TELs, it relates only to emergency direction powers. The definition of emergency changes only from the current EPA in that it provides for a threat to human health or safety.[103]

The Department has advised the intention is that the emergency direction would override the other requirements of the EPA, including EAs, TEPs, or following passage of this Bill, TELs.

The QRC has queried whether this is sufficiently clear, and claims that the Department had advised (privately) that it *did not make this correction because (it was) under the impression that Section 493A already covers this. Section 493A does not include such a provision. Section 493A(1) clearly restricts the section only to charges of 'serious or material environmental harm', contravention of a noise standard or a deposit of a contaminant or release of stormwater run-off under Section 440ZG. Section 493(1) does not cover the unrelated offences of non-compliance with a development condition, a condition of an environmental authority, TEP, TEL, site management plan, plan of operations or EPO*.[104]

Recommendation 11

The committee recommends that the Minister consider whether an amendment to the Bill is required to ensure that emergency directions override other requirements of the *Environmental Protection Act 1994*.

Both AgForce and the QRC have suggested that section 466B of the EPA which defines 'emergency' for the purposes of issuing an emergency direction, be further amended than is proposed by the Bill. The suggestion is that social and economic conditions should be considered part of the environment. The Department response is that the TEL is designed to be the response to a social or economic emergency.[105]

Committee comment

The committee agrees that the TEL is the more appropriate mechanism for considering and/or responding to a social or economic emergency, and discusses how this can be strengthened in the 'Criteria for assessment' section of this report.

While not an issue raised in submissions, the committee would like to raise its concern about which officers would be 'authorised officers' and thus able to issue emergency directions. At the public hearing held as part of this inquiry, the committee heard evidence from the Department that authorised officers *tend to be our regional, on-the-ground staff who are out working with the companies on a regular basis as well as the more senior staff who supervise those regional staff*.[106]

Section 445 of the EPA provides that an authorised person is:
(a) an appropriately qualified public service officer;
(b) an employee of the department;
(c) a person included in a class of persons declared by regulation to be an approved class of persons for this section.

[102] FCoI final report, recommendation 13.14, p.368.
[103] EPA, s. 467.
[104] QRC submission, pp.3-4.
[105] Department response, p.36.
[106] Ms Elisa Nichols, Hansard, 9 November 2012, p.16.

Given the level of exposure potentially faced by staff making decisions in emergency situations, as we have seen in respect of the 2010-11 floods, it would seem that only very senior and experienced officers should be making such decisions.

The committee is also concerned that emergency directions can be made orally. As well as the issue of exposure, without a paper trail (or electronic trail) there is little protection for a person who acts on an oral direction of this significant nature. It suggests that emergency directions, if made orally, must be followed up in writing within one hour. This could be via text message, email , or signed handwritten note.

Recommendation 12

The committee recommends that the Minister consider a further amendment to the Bill to ensure that only senior officers are 'authorised officers' for the purposes of directing the release of contaminants into the environment during an emergency.

Recommendation 13

The committee recommends that the Bill be amended to ensure that emergency directions issued orally must be followed up by a written instruction within one hour.

Definition of emergency / emergent

A FCoI recommendation is that the government should consider amending the EPA to provide a definition for the term 'emergency' for the purposes of clarifying when emergency directions can be issued under the EPA.

This Bill provides that a temporary emissions licence can be issued in an 'emergent' event, which is *"an event, or series of events, either natural or caused by sabotage, that was not foreseen when –*

(a) particular conditions were imposed on an environmental authority; or
(b) particular development conditions were imposed on a development approval."[107]

As pointed out by the Capricorn Conservation Council Inc.[108] and others, 'emergent' is not the same as 'emergency'. The concern is that 'emergent' suggests any issue that has emerged since approval of an EA, whether they are emergency issues or not; and that this could result in mines releasing larger volumes of contaminated water than are allowed under the EA without good cause. That could include, despite assurances that the Bill will not apply retrospectively, the existing water held in mines from previous flood events. That matter was raised by the FCoI, as well as several stakeholders, as an ongoing issue.[109]

The Department advises that TELs are for "emergent" situations, as distinct from emergency, on the basis that *the term 'emergency' is more narrowly defined, and can imply that the scope of the event needs to be broader than the site of the activity*. However, localised, site specific events such as flash flooding could also create the need for a TEL, and the term 'emergent' allows for that.[110]
QRC is seriously concerned about linking the granting of a TEL to a lack of foresight.

[107] Economic Development Bill, cl. 232, in new s. 357A of the EPA 1994).
[108] Insert best reference – written submission, p.1.
[109] FCoI final report, p.361.
[110] Department response to submissions, p.47 and elsewhere.

Section 357A currently restricts the jurisdiction to grant TELs to events 'that were not foreseen' when conditions were imposed. QRC has a serious concern that a definition which relies on an assumption that events such as natural disasters must have been not foreseen would have fairly obvious unintended consequences during the EIS process and conditioning process for projects, so as to avoid creating later evidentiary grounds for DEHP being prevented from having jurisdiction to grant TELs if a natural disaster occurs.

It is normal for the EIS process (for resources projects) and the development application process (for other projects) to include modelling and consider impacts in scenarios which are reasonably unlikely to occur during the life of the project but where, if the events occurred, there would be a moderate or high hazard for some reason. In practice, conditions for normal operations have not tended to be based on such unlikely but possible disaster scenarios, unless there is a particularly high hazard notwithstanding the low risk (e.g., emergency management conditions for dangerous goods plants and the like). Similarly, we would be concerned if a definitional threshold of failure to foresee an event could lead businesses to avoid putting in place infrastructure, so as not to lose DEHP's jurisdiction to grant a TEL.

There would be numerous options for better definitions of the circumstances triggering a TEL jurisdiction. A good starting point would be to look at the circumstances mentioned by the Floods Commission of Inquiry in Chapter 13, which certainly did not encourage linking natural disasters to lack of foresight. Indeed, the overall thrust of the report was to encourage better planning and foresight.[111]

QRC also queried the terminology 'emergent event' and suggested that a more neutral term such as 'applicable event' would be simpler and less likely to create confusion with the term 'emergency'.[112]

Committee comment

This issue remains a concern. The committee is not convinced that the conditions under which emergency directions can be issued need to be different from conditions under which a TEL can be issued. The rationale for this given by the department was that the definition of 'emergency' implies a broad scope while 'emergent' can apply in a more localised event. Amending the definition of emergency in proposed S466B could allow for it to include situations where a TEL would apply, perhaps using a graduated approach to when the various emergency responses are appropriate – for example, when a TEL is appropriate, when emergency directions can be made, and when they can be made orally.

Public discussion about when TELs might be granted suggest strongly that they would only be used in emergency situations, given the common usage of the word.[113] The concern expressed by stakeholders about the potential for TELs to be approved in situations that are not 'emergency' but simply unforeseen, is understandable.

Recommendation 14

The committee recommends that the Bill be amended to provide a term other than 'emergent' to describe when a TEL may be approved that more clearly reflects the intent and does not give rise to confusion.

[111] QRC submission, p.3.
[112] Ms Leanne Bowie, Hansard, 9 November 2012, p.21.
[113] For example, Ms Elisa Nichols, Hansard, 9 November 2012, p.15.

Criteria for assessment

The Bill would require the following criteria be considered in assessing when to grant a TEL:

a. *the application;*
b. *the extent and impact of the emergent event, including the financial impacts on the applicant if the licence is not granted;*
c. *if the application is for a licence in anticipation of an emergent event –*
    i. *the likelihood of the emergent event happening;*
    ii. *when the emergent event is likely to happen; and*
    iii. *what circumstances need to exist before the licence takes effect;*
d. *the character, resilience and values of the receiving environment;*
e. *the likelihood of environmental harm and any measures necessary to minimise the harm;*
f. *the likelihood that the release will adversely impact the health, safety or wellbeing of another person*
    Example of a release that adversely impacts another person –
    A release of an emission that could affect the quality of downstream drinking water
g. *the cumulative impacts of all releases authorised or directed under this Act, including releases under other temporary emissions licences that have been issued or applied for;*
h. *the public interest.*[114]

Capricorn Conservation Council Inc. (CCC) states that (b) above, the financial impacts on a company, ought not to appear in the list of criteria, a concern shared by QCC, the Fitzroy Basin Association Inc, It is not consistent with the criteria for the issue of a Transitional Environmental Program, which is the current mechanism for dealing with emergency situations, and creates a risk that financial considerations are considered ahead of environmental and public health considerations. It has potential for misuse, particularly in the context of a 24 hour turnaround time for a decision on when to grant a TEL, with many mines applying for same. "*A mine that is marginally profitable could argue for more relaxed conditions than other mines*".[115]

The Department's advice on this matter is that *departmental decisions are made objectively based on the information provided. Guidance material will assist departmental officers to weigh the criteria in the specific circumstances of the application being considered.*[116] *The 'standard criteria' contained in the Dictionary of the Environmental Protection Act 1994 must be considered when issuing a Transitional Environmental Program (TEP) or an environmental authority or development application for an environmentally relevant activity. Item (h) of the standard criteria is: the financial implications of the requirements under an instrument, or proposed instrument, mentioned in paragraph (g) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument.*

The limited criteria contained in the proposed s.357(D) reflect the standard criteria, including the financial and environmental considerations.

There is no ranking of criteria and financial considerations do not have precedence over environmental and public health concerns. Accordingly, the inclusion of financial considerations is consistent with the current law relating to decisions under the Environmental Protection Act 1994.[117]
Queensland Conservation suggests the following additional criteria:

[114] Economic Development Bill, cl. 232, in new s. 357D.
[115] CCC submission, p.1.
[116] Department response to submission, p.32.
[117] Ibid, p.40.

- Complies with all relevant water quality guidelines – particularly the Envinormental Values and Water Quality Objectives for the Fitzroy Basin established under the *Environmental Protection (Water) Policy 2009*.
- Causes any adverse economic impacts to downstream water allocation holders
- Causes any adverse impacts to town water supply sources
- Causes any adverse impacts to the Matters of National Environmental Significance such as the Great Barrier Reef.[118]

The Department response is that the proposed criteria already encompass these.[119]

Committee comment

Despite the Department's advice that *the limited criteria contained in the proposed s.357(D) reflect the standard criteria, including the financial and environmental considerations,* it is the committee's assessment that proposed s.357D is in fact focused on the financial impacts on the applicant, not financial impacts more broadly. The section requires that the administering authority have regard to the extent and impact of the emergent event, 'including the financial impacts on the applicant if the licence is not granted'.

The committee is of the view that broad economic considerations are relevant when determining whether to grant a TEL, but that financial impacts on an applicant ought not to be a consideration. Economic considerations could include financial impacts on an applicant if, say, the applicant was a major employer in the region and financial impost would result in a significant loss of employment. They would also include the impact on a local or state economy of not allowing a relaxation of the EA to allow a release of a contaminant (including contaminated mine water); and the economic impact of (for example) agriculture being adversely affected by the granting of the TEL. The committee does not believe the amendment is appropriately worded, particularly given the government objective this Bill aims to contribute to achieving is to promote economic development in the state.

Recommendation 15

The committee recommends that clause 232 of the Bill, proposed section 357D, be reworded to ensure that while broader economic considerations are a consideration in whether or not to grant a TEL, financial impacts on an individual applicant are not.

Timeframe for assessment

The 20 day timeframe that applies in respect of transitional environmental program approvals, as used to manage emergency releases of mine water in the 2010-11 floods, is considered by the FCoI as being too long to enable a response to what can be very rapid flood flows.

The Bill proposes that an application for a TEL must be approved *as soon as practicable, but no later than 24 hours after receiving it*.[120] The FCoI report makes it clear that action within 24 hours will often be necessary to effectively respond to a particular rainfall forecast.[121] A number of submissions believe that 24 hours is insufficient time to make the required assessment, given the criteria to which a decision maker must have regard in proposed s.357D.

[118] QCC submission p.2.
[119] Department response to submissions, p.1.
[120] Economic Development Bill, cl. 232, new s. 357C.
[121] FCoI final report, p.363.

The Department response includes:
...to balance the quick decision timeframe, the licence is fully flexible. It can be immediately amended, cancelled or suspended without receiving and considering submissions from the operator if, for example, downstream drinking water is adversely affected by the release. This provides for the community to be protected where decisions have to be made quickly and on limited information.[122]

Committee comment

The committee accepts the advice of both the FCoI and the Department that a 24 hour decision time is appropriate in emergency situations. This is another argument for amending the description of when a TEL may be approved, to cover emergency situations rather than emergent.
It also notes that the ability to immediately amend, cancel or suspend a TEL in the event of a serious environmental and/or public health consequence of the release, acknowledges implicitly that monitoring and notification of approved TELs is a critical issue.

Monitoring and notification

EDO/EDO-NQ and others note that the Bill contains no provision for public notification of applications for, or approval of, TELs that have the potential for serious impacts on their local community or environment.

The Department, in response, refers to sections 320-320G of the EPA which deal with the duty to provide notification of environmental harm.
The Bill does not appear legislate the monitoring requirements that would relate to TELs.

Committee comment

The committee believes there are duties that stem from the granting of a TEL. These include to ensure potentially affected stakeholders are notified and can prepare for any potential negative impacts of that TEL.

Sections 320 – 320G of the EPA provide for a range of circumstances, none of which specify TELs. Further, the EPA specifically excludes the duty to notify where the event is authorised to be caused under—
(a) an environmental protection policy; or
(b) a transitional environmental program; or
(c) an environmental protection order; or
(d) an environmental authority; or
(e) a development condition of a development approval; or
(f) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or
(g) an emergency direction; or
(h) an accredited ERMP.[123]

Consequently the committee is concerned that the requirement to notify is not adequately addressed by the Bill.

If TEL applications must be decided within 24 hours because they are an emergency response, and if emergency directions can be issued orally in the interests of time imperatives, then potentially

[122] P.66.
[123] EPA, ss. 320 – 320G.

affected stakeholders should also be notified quickly – say within one hour – of an application for or approval of a TEL. This could be via telephone, email, or text message.

While the Bill states that the monitoring conditions should be contained within a TEL[124], the committee further suggests that the general monitoring requirements (or factors to which the monitoring conditions must have regard) should be stated in broad terms in the EPA. Detail could be provided in the TEL guidelines and then in the TEL itself.

Recommendation 16

The committee recommends that the Bill be amended to provide that the department must notify potentially affected stakeholders of an application for, or approval of a TEL within one hour of the application being made, and immediately on approval of a TEL.

Recommendation 17

The committee recommends that the Bill be amended to provide for monitoring requirements in respect of temporary emissions licences.

SES coordination

The Bill amends the *Disaster Management Act 2003* so that the CEO of the Department of Community Safety would have the authority to appoint an Emergency Management Queensland officer to coordinate SES operations in extraordinary circumstances.
BCC indicates in its submission that it accepts the general purpose of the amendment, however suggests alternative drafting.[125]

Committee comment

The committee agrees that the BCC wording is more readable than is proposed in the Bill, and while not making a formal recommendation on this matter, suggests that the Department consider adopting some of the BCC suggestions where the intent is the same.

[124] Economic Development Bill, cl. 232, proposed s. 357G of EPA.
[125] BCC submission, pp.7-8.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) 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.

Rights and liberties of individuals

Administrative powers are sufficiently defined and subject to review

The committee considered whether the administrative power potentially affecting the rights, obligations and liberties of individuals are sufficiently defined and subject to appropriate review. Clauses 200(5) and 201(5) of the Bill both declare that no right of appeal applies under s61 of the proposed to be repealed ULDA Act, or s90 of the proposed Economic Development Act, in relation to the Minister's decision to 'call in' a development application for which a decision notice had been given by what would be the former ULDA.

A number of provisions relating to the amendments to the SDPWO Act are also identified in the Explanatory Notes as potentially failing to provide for appropriate review. These are outlined below:

Use of land in a state development area

- The new section 84AA (SDPWO Act) provides for an application for approval for a use of land in a State development area. This is a potential FLP issue as the section does not include a merits based review or criteria for deciding an application. The Explanatory Notes point out that this is justified as *the approval process for these applications is specified in an approved development scheme which is publicly available. The criteria against which an application is weighed are also contained in the relevant development scheme. The process contains five stages namely: an application; referral; public consultation; review (if required); and decision. There are two opportunities for information requests. The development scheme contains objectives and precincts within which certain uses are either compatible, may be compatible or are not likely to be compatible. Each precinct also contains preferred development intents or purposes.*[126]

Approval of a PIF

- The new section 153AA provides that a proponent may apply to the Coordinator-General for approval of a project as a private infrastructure facility (PIF) and to take land required for the facility. There is no provision for a merits-based review process. The Explanatory Notes justify this lack on the basis *that rigorous processes already apply, including seeking public submissions on the application, undertaking consultation with affected landowners and seeking external expert advice where necessary. A merits-based review process is inconsistent with the balance of the SDPWO Act and including such a process will likely result in unnecessary and inefficient time and cost implications for both the State and proponent. The Coordinator-General is not the sole decision-maker on this application as the Governor in*

[126] Explanatory Notes, p.16.

Council decides to approve or not approve the project as a private infrastructure facility (for the purpose of enabling the Coordinator-General to take land) and this decision is not subject to a merits-based review. As the Governor in Council is designated as the final decision maker on whether a project should be approved as a private infrastructure facility, it is not considered appropriate for a third party to review these decisions. It is considered that sufficient regard is had to the rights and liberties of individuals as the opportunity for a process/natural justice review will still be available to aggrieved parties through the Judicial Review Act 1991. This process has been used in the past. The taking of land process for a project for the purpose of a private infrastructure facility also includes an opportunity for affected interest holders to lodge objections and be heard in relation to their objections under the Acquisition of Land Act 1967.[127]

Extension of PIF approval

- The new section 153AF provides for the extension of the approval of a PIF. The Explanatory Notes state that it is justifiable to not include criteria for making a decision to extend the expiry date of an approval in the Act due to the varied nature of projects that can be declared a private infrastructure facility and the difficulty in predicting what could cause time delays to these projects. One of the considerations for approval as a PIF is a demonstrated ability by the proponent for timely completion of the project. A proponent applying for an extension would need to provide well justified reasons for extending the expiry date. These reasons would then be rigorously assessed on a case by case basis and verified by the Coordinator-General, including seeking external expert advice where necessary. Including criteria for the Coordinator-General to consider in the Act could result in a lack of flexibility to deal with unforeseen circumstances and unnecessary and inefficient time and cost implications for both the State and proponent. It is also considered justified to not include a merits-based review process, as this would be inconsistent with the rest of the SDPWO Act. The opportunity for a process/natural justice review will still be available to aggrieved parties through the *Judicial Review Act 1991*.[128]

- The new section 153AG provides the Governor in Council the power to amend or revoke an approval of a project as a private infrastructure facility. No provision is made for a merits-based review process. The Explanatory Notes advise this is justifiable on the basis that such a decision is made in the *same way that the approval was made, including undertaking consultation with the proponent and owner of the land*, as well as additional assessments. *A merits-based review process is inconsistent with the balance of the SDPWO Act and will have unnecessary and inefficient time and cost implications for both the State and proponent. This section is considered justified as the Coordinator-General is not the sole decision-maker, it is the Governor in Council who makes the final decision to amend or revoke an approval as a private infrastructure facility. It is not considered appropriate for a third party to review the merits of these decisions. The opportunity for a process/natural justice review will still be available to aggrieved parties through the Judicial Review Act 1991.*[129]

Committee comment

The committee accepts the advice provided in the explanatory notes and identifies no major concerns.

[127] Explanatory Notes, p.16.
[128] Ibid, p.17.
[129] Ibid, p.18.

Natural justice

Clause 289 inserts a new s.27AF into the *SDPWO Act* which allows the Coordinator-General to cancel a declaration made under s.26(1) for a coordinated project if one of several situations occurs. If the Coordinator-General decides to cancel a declaration under ss.27AF(1), the Coordinator-General must give the proponent written notice of the decision and the reasons for it (ss.27AF(2)). A decision to cancel the declaration takes effect on the later of the day the written notice is given or the day of effect stated in the notice (ss.27AF(3)).

There is no provision made for the proponent to make a submission on the cancellation decision. In respect of this the Explanatory Notes state:

Although the SDPWO Act does not provide an opportunity for the proponent to make a submission on the proposed cancellation, it is considered that sufficient regard is had to the rights and liberties of individuals given that before making his decision, the Coordinator-General will rigorously assess each application on a case by case basis and verify information where appropriate, including seeking external expert advice if necessary. This will involve the Coordinator-General consulting with the proponent to seek clarification or further information.

Committee comment

One of the key tenets of natural justice is the right to be heard. The Queensland Legislation Handbook provides that '*Unless there is sufficient justification, legislation should not provide for the immediate suspension of a person's licence or other authority without receiving and considering submissions from the person, even if the suspension is subject to subsequent review and appeal processes.'* The committee believes that the Explanatory Notes do not sufficiently justify this breach of fundamental legislative principle.

Recommendation 18

The committee recommends that there be a right of appeal in respect of decisions to cancel a declaration of a coordinated project.

In respect of the proposed Economic Development Act, the Explanatory Notes acknowledge that there is a general absence of appeal rights in priority development areas, including provisional priority development areas.

Appeal rights under the new Act would be the same as provided for in the current ULDA Act. They differ from the broader SPA, which does provide for appeals. This reflects the differing objectives of both UDAs and future PDAs, from general development projects. The UDA/PDA process removes the land in question from the general planning scheme (the SPA), providing a fast tracked process on the basis of the broader economic development or community development merits of the development. The JR Act, however, would be an option for a review of process. Judicial reviews are heard by the Supreme Court. The MEDQ will be able to seek declarations in the Planning and Environment Court (PEC), a specialist court.

Committee comment

The committee acknowledges the Department's advice that the Bill allows for an applicant to appeal conditions imposed by a nominated assessing entity, and that this is consistent with the ULDA Act. It does not see that the purpose of this Bill is to make significant changes to the status quo with regard to generally accepted rights of appeal in respect of land planning matters.
In respect of the proposed TEL, the committee notes the TEL will be a short term emergency response tool, and so providing for appeals would be impractical.

The committee has no major concerns in this regard.

Reversal of the onus of proof in criminal proceedings

Clause 164 requires the executive officers of a corporation to ensure the corporation complies with each executive liability provision of the proposed Economic Development Act. If a corporation commits an offence against an executive liability provision, each of the corporation's executive officers also commits an offence (of failing to ensure the corporation's compliance with the provision) if the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence (ss.164(1)(b)). In deciding whether reasonable steps were taken the court may have regard to whether the officer knew or ought reasonably to have known of the corporation's conduct that constituted the executive liability offence; whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and any other relevant matter.

Committee comment

There were a number of occasions where the former Scrutiny of Legislation committee examined provisions that required executive officers of a corporation to ensure that the corporation complied with the legislation and which provided that if the corporation committed an offence, each executive officer also committed an offence. These provisions effectively reversed the onus of proof since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent and is a party to the offence. Similar considerations apply for a provision effectively declaring persons (including corporations) to be guilty of offences committed by their representatives. In the provisions examined there were defences if the person took reasonable steps to ensure compliance or to prevent the offending act or omission, or if the person was not in a position to influence the others' conduct.

The Scrutiny Committee expressed the view that while it appreciated the difficulties of determining liability in certain circumstances (for example, corporations), as a general rule it did not condone such provisions (*Alert Digest* 2006/8, pp. 6–7).

This provision does not directly reverse the onus of proof (ie. it is not expressly couched as putting the onus on the accused executive officer to prove they took reasonable steps, as occurs in some pieces of legislation) and it appears to still be for the prosecution to establish to the criminal standard of proof (beyond reasonable doubt) that reasonable steps were not taken by the officer.
The committee is satisfied that this fundamental legislative principle is upheld in the legislation.

Powers to enter premises

Entry powers for priority development (and adjoining) areas are provided for in cl.123 and under that provision, local government entry powers under the *Local Government Act 2009* and the *City of Brisbane Act 2012* apply to MEDQ and each authorised employee or agent of MEDQ as if MEDQ were a local government. Entry may be affected without a warrant however the entry powers do not extend to homes on entered properties.

The applied provisions provide for compensation for damage done to a property because of the exercise of the power.

Committee comment

These entry powers are not unusual in their scope or the matters they authorise. The Explanatory Notes express the view that because a number of the MEDQ's functions and powers are similar to

those of a local government, the inclusion of these provisions in the Bill is considered suitable. The committee agrees with this.

Immunity from proceedings or prosecution without adequate justification

The proposed Economic Development Act (ss.171(1)) provides that a member is not civilly liable to someone for an act done, or omission made, honestly and without negligence under the Act. Subsection 171(2) states that if subsection (1) prevents a civil liability attaching to the member, the liability attaches instead to the State.

Committee comment

While this does confer some limited immunity from prosecution (which is technically a fundamental legislative principle concern) it is a fairly standard provision designed to allow officers to undertake their statutory duties without fear of personal liability (absent dishonesty and negligence). Attaching civil liability to the State preserves an appropriate remedy for aggrieved persons.

The committee is satisfied with this clause.

Aboriginal tradition and Island custom

Regard is had to native title under new ss.153AC(2)(g)(ii) of the SDPWO Act which provides that where native title exists in relation to land identified under ss.153AA(2) for a private infrastructure facility, the Governor in Council may approve the project if satisfied (inter alia) that the applicant/proponent has taken reasonable steps to enter into an indigenous land use agreement for the land.[130] Section 153AH(1)(c) has similar requirements. Clause 306 of this Bill, however, omits s.126 of the SDPWO Act which provided for a similar scenario as new ss.153AA(2) but had what appears to be an additional safeguard that where, if the land being taken contained native title, the Governor in Council had to be satisfied that reasonable steps had been taken to enter into an indigenous land use agreement *that provided for the non-extinguishment [of NT] principle to apply to the taking of the land*.

Point for clarification

The committee seeks assurance from the Minister that the former s126 protections will still apply in respect of new sections 153AA and 153AH.

Delegation of administrative power in appropriate circumstances to appropriate persons

Clause 215 contains a proposed new ss.215(1)(b) which will allow a transitional regulation to make provision about a matter for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the repealed *Industrial Development Act 1963* or the repealed *Urban Land Development Authority Act 2007*, to this Act, and *for which this Act does not make provision or sufficient provision.*

Both s.215 and any transitional regulation made under it expire 1 year after commencement of s.215 and the transitional regulation can *have retrospective operation to a day that is not earlier than the day s.215 commences* (ss.215(2), (4)).

[130] ILUA - under the *Native Title Act 1993* (Cth), s. 24BA, 24CA or 24DA.

Committee comment

Former Scrutiny of Legislation Committees have reported that it was an 'inappropriate delegation' to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or sufficient provision' because it anticipates that the Bill may be inadequate and that a matter which otherwise would have been of sufficient importance to be dealt with in the Act will now be dealt with by regulation.[131] The Scrutiny committees also considered that matters about which transitional regulations may be made should be stated in the Bill.

Of the power in s. 215, the Explanatory Notes state:

Given the complexity of the matters dealt with in the Industrial Development Act 1963 *and the* Urban Land Development Authority Act 2007 *it is considered appropriate that the Bill contains a transitional regulation-making power. The transitional regulation-making power ceases after 1 year. The former Scrutiny Committee found transitional regulation-making powers with sunset provisions to be less objectionable. In addition, Parliament has an opportunity to consider the transitional regulation and disallow it if unsuitable.*

Given that the application of s.215 is limited in its subject scope to provisions necessary to facilitate transition from the repealed legislation to the (proposed) new legislation, and the transitional regulation making power ceases after one year, it is arguable that it can be distinguished from the broader regulations of this nature that were found to be objectionable by former Scrutiny Committees.

Clause 312 amends s. 173 'Regulation-making power' in the *SDPWO Act* to remove the setting of fees from the Act and state that a regulation may provide for '*the matters for which fees are payable under this Act, the amounts of the fees, the persons who are liable to pay fees, when the fees are payable, the recovery of unpaid amounts of fees and the refund of fees'* (ss.173(1)(h)).

Of the amendments to s. 173, the Explanatory Notes advise:

Given the quantum of the fees, this amendment may raise an FLP issue in regards to whether there has been an appropriate delegation of legislative power.

This delegated power is justified on the basis that it will be exercised to facilitate the timely and efficient revision of fees or introduction of new fees. The fees would only apply to a proponent who has voluntarily sought the services for which the fees apply.

The committee suggests that it is preferable that the basis on which a fee is to be charged (*the matters for which fees are payable*) be contained in an Act, even if the amount of that fee is then prescribed by regulation. This is because when the subject matters for which fees may be set are not specified in the Act, it confers a very broad discretion on the Executive to impose fees by regulation for any function performed or service rendered under authority of the legislative scheme (although fees generally have to be reasonable and appropriate and in keeping with announced government policy to be 'authorised fees').

[131] See SLC *Alert Digest* 1996/3, p.10, p.19.

Recommendation 19

The committee recommends that the matters for which fees are payable be contained in the Act.

Delegated legislative power subject to scrutiny by the Legislative Assembly

Clause 36 applies where a declaration regulation makes a provisional land use plan for a provisional priority development area by adopting, applying or incorporating all or part of another document (the adopted provisions); and the adopted provisions are not part of, or attached to, the regulation, the Minister must, when the regulation is tabled, also table in the Legislative Assembly a copy of the adopted provisions. **Clause 40** provides for essentially the same thing in respect of interim land use plans and adopted provisions. **Clause 196** similarly requires that adopted provisions that are not part of, or attached to a regulation, be tabled with the regulation.

Clause 70 provides that if a regulation under Chapter 3 Part 3 approves a development scheme or its amendment, and the development scheme or amendment is not part of, or attached to, the regulation, the Minister must, when the regulation is tabled in the Assembly, also table a copy of the development scheme or amendment. Amendments to development schemes can be made under cl. 66(1) if the amendment is a minor administrative amendment, or does not change the land use plan for the relevant priority development area in the scheme. Amendments can also be made under cl. 66(2) by MEDQ to amend a development scheme to change the land use plan for the relevant priority development area if MEDQ considers it necessary to ensure the scheme is compliant or to prevent or minimise a significant risk of serious environmental harm or serious adverse cultural, economic, or social conditions occurring in the relevant priority development area. An amendment may be made under cl. 66(2) even if it is materially detrimental to someone's interests (66(3)). Pursuant to cl. 68, an amendment of a development scheme by MEDQ does not take effect until it has been approved under a regulation.

Committee comment

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation.

In this case the adopted provisions do not form part of the subordinate legislation, but are required to be tabled.

As this ensures they are available for public scrutiny, and it does not seem practical include the provisions in subordinate legislation giving regard to the extent to which the state plays a role in their development or amendment, the committee is satisfied with the proposed approaches.

Clause 313 amends the existing power in s. 174 of the SDPWO Act about a range of matters relating to the PIF approval process and the making of an application to the Coordinator-General to take land for a project approved as a private infrastructure facility. These matters include how consultation occurs, time periods for negotiations, arrangements about payment of costs and compensation, and guidance on native title matters.

The Explanatory Notes advise that:

Some of the matters… are significant but are consistent with the current guidelines. It is noted that section 130 of the SDPWO Act already provides that the Governor in Council may require the payment by a specified person of the costs of taking land and the compensation by Gazette notice.

The existing guidelines have not been prepared as subordinate legislation and this amendment is deemed necessary as the subject matter of the guidelines is generally not readily dealt with by regulation. The Bill also provides that public notice of the guidelines must be given.[132]

Recommendation 20

The committee recommends that clause 313 of the Bill be amended to provide that guidelines made under section 174 of the *State Development and Public Works Organisation Act 1971* are required to be tabled in the Legislative Assembly.
Given that there is no appeal process, and the significant implications of PIF process and acquisition of land, the committee considers that the guidelines should be available for scrutiny by the Legislative Assembly.

PROPOSED NEW OFFENCE PROVISIONS

Clause	Proposed offence	Proposed maximum penalty
32	Failure (absent reasonable excuse) to return an MEDQ identity card within 20 business days after ceasing to be an authorised agent/employee.	20 penalty units ($2,200)
73(1)	Carrying out a PDA assessable development in a priority development area without a PDA development permit.	1665 penalty units ($183,150)
73(2)	Carrying out a PDA assessable development in a priority development area without a PDA development permit if the PDA assessable development is the demolition of a building with cultural heritage significance or development on a Queensland heritage place.	17000 penalty units ($1,870,000)
74	Failure to comply with the PDA self-assessable development requirements for a priority development area when carrying out PDA self assessable development in the area.	165 penalty units ($18,150)
75	Contravention of a PDA development approval.	1665 penalty units ($183,150)
76	Unlawful use of premises in a priority development area.	1665 penalty units ($183,150)
110	Contravention of an enforcement order.	3000 penalty units ($330,000) or 2 year's imprisonment
112	Contravention of a Magistrates Court order in respect of a PDA development offence.	1665 penalty units ($183,150) or 1 year's imprisonment

[132] Explanatory Notes, p. 148

135(2)	Failure of a board member to disclose a direct or indirect pecuniary interest that is a potential conflict of interest with a matter before the board.	100 penalty units ($11,000)
135(3)	Participation by a board member in the board's consideration of a matter in which the member has disclosed a direct or indirect pecuniary interest.	100 penalty units ($11,000)
149(2)	Failure of an authority member to disclose a direct or indirect pecuniary interest that is a potential conflict of interest with a matter before the authority.	100 penalty units ($11,000)
149(3)	Participation by an authority member in the authority's consideration of a matter in which the member has disclosed a direct or indirect pecuniary interest.	100 penalty units ($11,000)
163(2)	Recording, divulging, communicating, or using for the benefit of any person, personal or confidential information that is not publicly available, that was obtained in the course of performing a function or exercising a power under this Act, unless the use is by consent, required by law, or for a function of MEDQ.	100 penalty units ($11,000)
164(1)	Failure by an executive officer of a corporation to take all reasonable steps to stop the corporation engaging in conduct that constitutes an offence against an executive liability provision.	The penalty for a contravention of the executive liability provision by an individual
165	Knowingly giving MEDQ a document containing information that is false or misleading in a material particular.	1665 penalty units ($183,150)
357I of the *State Development and Public Works Organisation Act*	Failure to comply with the conditions of a temporary emissions licence.	1665 penalty units ($183,150)
35N(7) of the *State Development and Public Works Organisation Act*	Failure to comply with a requirement under ss.35N(4)(b).	1665 penalty units ($183,150)
157OA(4) of the *State Development and Public Works Organisation Act*	Failure (absent reasonable excuse) to comply with a s.1570A notice from the Coordinator-General requesting information.	50 penalty units ($5,500)

Appendices

Appendix A – List of Submissions

No.	Submitter
1	Queensland Conservation Council
2	Capricorn Conservation Council
3	Property Council of Australia
4	Local Government Association of Queensland
5	Brisbane City Council
6	Redland City Council
7	Save the Reef
8	Fitzroy Basin Association Inc.
9	Lend Lease Communities (Australia) Limited
10	Urban Development Institute of Australia (Queensland)
11	AgForce Queensland Industrial Union of Employers
12	Council of Mayors South East Queensland
13	Environmental Defenders Office (Qld and NQ)
14	Confidential
15	Wolter Consulting Group Pty Ltd
16	Unitywater
17	Coast and Country Association of Queensland
18	Queensland Murray-Darling Committee Inc.
19	Queensland Urban Utilities
20	Queensland Resources Council
21	Queensland Farmers' Federation
22	Central Highlands Cotton Growers and Irrigators Association

Appendix C – Witnesses at private briefing – 2 November 2012

Mr David Eades, Deputy Director-General, Major Projects Office. *Department of State Development, Infrastructure and Planning*

Mr Paul Eagles, Deputy Director-General, Planning. *Department of State Development, Infrastructure and Planning*

Mr Barry Broe, Coordinator-General. *Department of State Development, Infrastructure and Planning*

Mr Ross Alcorn, Policy Manager. *Department of State Development, Infrastructure and Planning*

Mr Bruce Grady, Assistant Director-General. *Emergency Management Queensland*

Ms Elisa Nichols, Executive Director, Reform and Innovation. *Department of Environment and Heritage Protection*

Appendix D – Witnesses at public hearing – 9 November 2012

Mr David Eades, Deputy Director-General – Major Projects Office. *Department of State Development, Infrastructure and Planning*

Mr Paul Eagles, Deputy Director-General, Planning. *Department of State Development, Infrastructure and Planning*

Ms Elisa Nichols, Executive Director, Reform and Innovation. *Department of Environment and Heritage Protection*

Mr Greg Hoffman, General Manager, Advocacy. *Local Government Association of Queensland*

Mr Andrew Barger, Director of Resources Policy. *Queensland Resources Council*

Ms Leanne Bowie. *Leanne Bowie Lawyers* on behalf of *Queensland Resources Council*

Dr Libby Connors, Representative. *Save the Reef*

Mr Michael McCabe, Coordinator. *Capricorn Conservation Council*

Mr Patrick Pearlman, Principal Solicitor. *Environmental Defenders Office (NQ)*

Mr Dale Miller, Senior Policy Adviser. *AgForce Queensland Industrial Union of Employers*

Ms Lauren Hewitt, General Manager. *AgForce Queensland Industrial Union of Employers*

Dissenting report

I write to lodge a dissenting report on the State Development, Infrastructure and Industry Committee report on the *Economic Development Bill 2012.*

The Committee report in its current form responds to some of the concerns of public submissions and acknowledges at page 6 that:

"In the time allowed by the House, the committee has not been able to give adequate consideration to many of the very detailed issues raised in submissions – although it has attempted to convey those issues for the benefit of the House. Nor has it been able to undertake its own research into these matters. These details ought more properly to have been sought by, conveyed to and considered by the government during the development of this Bill."

Changes to Temporary Emissions Licences and Untreated Mine Water:

It was of particular concern to the Opposition that the Government has only consulted with one interested party on this legislation prior to introduction.

At the public hearing on 9 November 2012 the Queensland Resources Council advised that it had received drafts of the legislation *"perhaps a month ago".*

Other stakeholders were disappointed with such a one-sided consultation process including Mr Greg Hallam Executive Director of the Local Government Association of Queensland who said:

"We are asking for guaranteed consultation so that our input to the conditioning can be provided to ensure the protection of essential urban water supplies."

The lack of consultation was also poorly received by AgForce who stated in relation to this legislation that:

"we do not support it in its current form. We cannot support it without the addition of that information that we have not seen."

The Opposition is supportive of recommendations 15 and 16 in particular to consider changing the definition from the use of the word 'emergent' before event, and to exclude consideration of financial impacts on an individual applicant.

Recommendation 10 does not go far enough in only recommending consultation on guidelines after legislation is passed. This legislation should not be considered in isolation from the guidelines for decision making on TELs that will make explicit how this legislation will work in practice.

On too many occasions this Government has introduced amendments literally minutes before debate on a bill and then told the Opposition and the community they just have to accept them with no further consultation or proper time to consider them.

It would be disappointing if the Government once again proceeded with this approach which has been used previously to put up a façade that it is listening to the concerns of community organisations. A recent example from this Committee was in the debate on the *Sustainable Planning and Other Legislation Amendment Bill 2012* where the Opposition was lectured on how the Government had listened to the community in relation to their amendments to the

Planning and Environment court. Following these amendments it has been raised publically that not all community groups were supportive and in fact there was support for not making any changes at all.

The Committee report also fails to properly respond to the issue of the 24 hour timeframe for the issuing of Temporary Emissions Licences (TELs).

While the Committee report rightly points out that there may be some cases where a 24 hour timeframe is desirable it does not seem to take into account that this legislation will mandate a 24 hour timeframe for considering the grant of a TEL.

The Committee report disregards many of the concerns raised in submissions, outlined briefly below:

Queensland Conservation Council:

"As the proposed 24 hour turn around to decide applications will not enable full and detailed assessment of the decision making criteria, there is a very high risk and likelihood that a wide range of 'unforeseen' adverse social, economic as well as environmental impacts will occur as a result"

Capricorn Conservation Council:

"A 24 hour turnaround does not allow the administrating authority sufficient time to properly assess an application."

Fitzroy Basin Association:

"This time period subjects departmental staff to undue pressure to approve such applications given economic imperatives, whilst not allowing for the decision maker to gain a comprehensive understanding of the current environmental conditions and whether a TEL will cause environmental damage if approved".

AgForce Queensland:

A 24-hour period would appear to be too short to robustly undertake the considerations required.

Environmental Defenders Office:

This is simply an unreasonable and inadequate length of time within which the Department is obligated to approve, approve with conditions, or reject an application for a TEL.

Coast and Country Association of Queensland:

Coast and Country Association of Queensland also note the Department must decide the application within 24 hours (presumably even if received on a weekend) which leaves no opportunity for meaningful fact checking or review

The concerns around a mandatory 24 hour timeframe are not properly responded to in the Committee report or consideration provided to circumstances where it is not practical to make a considered decision within this timeframe.

Priority Development Areas (PDAs):

The LGAQ has advised in relation to Priority Development Areas that they want clarification on the underlying purposes and assurance on the instances in which they will be used. There is a concern that Priority Development Areas could be used broadly to override *Sustainable Planning Act* appeal rights.

Greg Hoffman Executive Director of the LGAQ advised the Committee that:

I believe as a result of the presentation by the department's representatives, an apparent intention—that developments currently assessed under the Sustainable Planning Act will be effectively called in under the economic development act. So the ULDA has been reconstituted with a broader remit seemingly at odds with the government's empowering Queensland local government policy.

The Council of Mayors South East Queensland raise similar concerns stating that:

"The Economic Development Bill expands the scope of the ULDA Act and the Industrial Development Act that it replaces. It would appear that the ULDA has been re-constituted with a broader mandate inconsistent with the government's "Empowering Queensland Local Government Policy"".

"There are no specific definitions of "economic development" and "development for community purposes" meaning they may be interpreted broadly in line with their ordinary meaning. As a result there is the possibility that developments currently assessed under the Sustainable Planning Act will be "called in" under the Economic Development Act."

The Opposition notes the Department's advice in relation to the intent for Provisional PDAs however this does not go to the issue of the broad definition in legislation raised by stakeholders.

For all the Government's rhetoric about empowering Local Government the Committee has accepted the Department's advice that the corporation sole Minister for Economic Development Queensland should be able to consider the relevant local government planning instrument and propose a development that is not consistent with it.

The proposal for Brisbane City Council to have a dispute resolution process for Priority Development Areas was rejected in favour of the existing legislative requirements of consultation.

Despite a lot of bluster and words from this Government all this legislation will do (even on the Committee's recommendations), is expand upon consultation mechanisms that were within the *Urban Land Development Authority Act 1997* while significantly broadening the scope for where the Government can remove appeal rights in the *Sustainable Planning Act* through a Priority Development Area.

If anything this will broaden the scope for disempowering local governments rather than 'empower' them.

While the Committee's recommendation 3 to require a local government representative on the local committee for the Minister for Economic Development Queensland is welcome it does not go far enough considering the significantly broadened scope of instances where Priority Development Areas can be declared compared with Urban Development Areas.

It is also worth noting that while there are requirements for consultation there are no requirements for the Minister for Economic Development Queensland to consider the outcome of this consultation in a decision to declare a Priority Development Area.

The explanation for the powers of the corporation sole Minister for Economic Development Queensland is also lacking in substance.

It is not sufficient to justify these powers by saying that "*the purpose of the Bill has been left deliberately broad in order to ensure that economic development in Queensland grows".*

Queensland's economy is currently growing faster than the nation at 4% and was doing so last financial year without Priority Development Areas. Late last year and earlier this year Queensland recorded record levels of private infrastructure investment. There is also no explanation of how Priority Development Areas will increase gross state product or assist to set new records for private infrastructure investment.

Matters of consideration for Coordinator-General before declaring a coordinated project:

The Committee report is correct in stating that Section 27 requirements under the *State Development and Public Works Organisation Act 1971* are not currently all mandatory.

However, it still appears to be the case that this legislation removes the following from being subject to consideration:

- project's potential effect on relevant infrastructure
- employment opportunities that will be provided by the project
- level of investment necessary for the proponent to carry out the project
- strategic significance of the project to the locality, region or state.

The advice from the Department in justifying these changes is that:

"The intention of the amendment is to ensure that only projects that are regarded as truly significant, are consistent with government policies and plans and are likely to happen are declared."

Without some clear examples or further detail the Opposition has reservations about this response and believe this amendment should be subject to further consultation and consideration.

Summary:

The reservations outlined above are not a comprehensive reflection of the position of the Opposition and more will be raised during the debate on this legislation.

"It is telling that the Committee report has stated at page 27 that "*the committee considers this Bill to be more than a procedural Bill to implement recommendations already accepted by the Government."*

These statements stand in stark contrast to the second reading speech of the Deputy Premier when introducing this legislation stating that:

"The bill I present today is primarily a process bill."

While we acknowledge the efforts of the Committee to ameliorate community concerns the Opposition will not be supporting the *Economic Development Bill 2012* in its current form and with the limited timeframe for consultation that has been allowed.

Yours sincerely,

Tim Mulherin MP

Deputy Leader of the Opposition