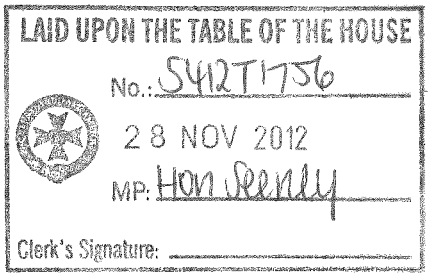
29/11/12

Economic Development Bill 2012

Explanatory Notes for amendments to be moved during consideration in detail by the Deputy Premier and Minister for State Development, Infrastructure and Planning



Title of the Bill

Economic Development Bill 2012

Objectives of the amendments

The amendments will amend the Economic Development Bill 2012 (the Bill) to clarify and improve provisions of the Bill.

They will amend clause 169 of the Bill to put beyond doubt that a delegation to a local government by the Minister for Economic Development Queensland (MEDQ) may be sub-delegated to an officer or employee of the local government and provide that the MEDQ may identify functions and powers that can not be sub-delegated by a local government.

The amendments will effect changes to the *Environmental Protection Act 1994* in the Bill in response to State Development, Infrastructure and Industry Committee recommendations.

The amendments will also extend the right to apply to the court for an order excluding persons from the South Bank parklands, because of their behaviour, to the Brisbane City Council and amend the definition of "operational work" to ensure that the erection of signage in the Corporation Area does not require a development approval under the *South Bank Corporation Act 1989*.

Finally, the amendments to the Bill will amend the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to improve the process for notices for prescribed projects and private infrastructure facility applications, and to clarify the head of power to impose fees in a regulation.

Achievement of the objectives

The objectives are achieved by way of amendments to the Bill as described in the notes on provisions.

Alternative ways of achieving policy objectives

Legislative amendments are the only means of achieving the policy objectives.

Estimated cost for government implementation

The amendments to the SDPWO Act will result in a potential reduction in the costs to government due to the reduced resource requirements arising from reduced timeframes and increased efficiencies in the prescribed project process and automatic fee adjustments.

Consistency with fundamental legislative principles

Whether legislation is consistent with the principles of natural justice – LSA s 4(3)(b)

The amended section 76L of the SDPWO Act provides that the Coordinator-General can elect to move immediately to a step in notice, rather than having to first issue a notice to progress or notice to decide.

Although the SDPWO Act does not provide an opportunity for the proponent to make a submission on the step in notice, it is considered that sufficient regard is had to the rights and liberties of individuals given that, in practice, the Coordinator-General would consult with affected parties to ensure that natural justice would be afforded.

Whether legislation is subject to appropriate review – LSA s 4(3)(a)

The amended section 153AA of the SDPWO Act provides for a proponent to apply for a private infrastructure facility (PIF) if the Coordinator-General is satisfied that the project in question has been subject to an adequate environmental assessment process under an Act other than the SDPWO Act. Amendments to clause 310 expand the current drafting of the circumstances under which a proponent can apply for a PIF.

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 through the *Judicial Review Act 1991*.

Consultation

The amendments are primarily made as a result of the report from the State Development, Infrastructure and Industry Committee (the SDIIC report), which considered submissions from the community and industry.

The amendments have been prepared in consultation with the Office of the Queensland Parliamentary Counsel and the Department of the Premier and Cabinet.

Notes on Provisions

Establishing an Economic Development Act

Amendments 1 and 2 amend clause 169 of the Bill to include new subclauses to clarify that a local government can sub-delegate powers and functions delegated to the local government by the Minister for Economic Development Queensland (MEDQ).

The MEDQ functions and powers delegated to a local government (under 169(1)(h)) may be sub-delegated to an appropriately qualified employee of the local government. This includes the chief executive officer. The MEDQ may identify that a function or power cannot be sub-delegated by the local government.

The amendment to clause 169 is consistent with the policy intent of section 136 of the *Urban Land Development Authority Act 2007.*

Amendments to the *Environmental Protection Act 1994* and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*

Amendments 3 and 4 amend clause 232 of the Bill which inserts new part 4A into chapter 7 of the *Environmental Protection Act 1994.* This amendment relates to section 357A (What is an emergent event) and changes the term 'emergent event' to 'applicable event'. This amendment is made in response to recommendation 14 of the State Development, Infrastructure and Industry Committee report that the Bill be amended to provide a term other than 'emergent' to describe when a temporary emissions licence may be approved that more clearly reflects the intent and does not give rise to confusion.

Amendments 5 to 9 amend clause 232 of the Bill which inserts new part 4A into chapter 7 of the *Environmental Protection Act 1994.* This amendment relates to section 357B (Who may apply for temporary emissions licence) and changes the term 'emergent event' to 'applicable event'. This amendment is made in response to recommendation 14 of the State Development, Infrastructure and Industry Committee report that the Bill be amended to provide a term other than 'emergent' to describe when a temporary emissions licence may be approved that more clearly reflects the intent and does not give rise to confusion.

Amendment 10 amends clause 232 of the Bill which inserts new part 4A into chapter 7 of the *Environmental Protection Act 1994.* This amendment relates to section 357D (Criteria for decision) and rewords subsection (b) in response to recommendation 15 of the State Development, Infrastructure and Industry Committee report that the proposed section 357D be reworded to ensure that while broader economic considerations are a consideration in whether or not to grant a temporary emissions licence, financial impacts on an individual applicant are not.

In accordance with the Committee's recommendation, the consideration of "the financial impacts on the applicant if the licence is not granted" is removed and replaced with "the potential economic impacts". The committee was of the view that the broad 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 environmental authority 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 temporary emissions licence.

Amendments 11 to 13 amend clause 232 of the Bill which inserts new part 4A into chapter 7 of the *Environmental Protection Act 1994*. This amendment relates to section 357D (Criteria for decision) and changes the term 'emergent event' to 'applicable event'. This amendment is made in response to recommendation 14 of the State Development, Infrastructure and Industry Committee report that the Bill be amended to provide a term other than 'emergent' to describe when a temporary emissions licence may be approved that more clearly reflects the intent and does not give rise to confusion.

Amendment 14 amends clause 232 of the Bill which inserts new part 4A into chapter 7 of the *Environmental Protection Act 1994*. This amendment relates to section 357G (Temporary emissions licence) and amends section 357G(2)(c) to specify that the temporary emissions licence approves the activity despite both the transitional environmental program itself as well as a condition of a transitional environmental program.

Transitional environmental programs can be approved with or without conditions. In some cases, the requirements that must be met are specified in the program itself, rather than in the conditions of the approval of the program.

Amendment 15 amends clause 234 of the Bill which amended section 467 of the *Environmental Protection Act 1994*. This amendment inserts a new subsection (11) which specifies the effect of the emergency direction in response to recommendation 11 of the State Development, Infrastructure and Industry Committee report 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*.

This situation is covered for most offences under the *Environmental Protection Act 1994* through section 493A, which defines the term "unlawfully" for the purposes of the offence provisions. However, the offences for failing to comply with the above tools, do not have an element of "unlawfully" failing to comply. The intention is that the emergency tools override the other requirements of the *Environmental Protection Act 1994*. Consequently, this section specifies that in taking action in compliance with an emergency direction, a person does not commit an offence under the *Environmental Protection Act 1994*. This would not apply to section 473 (which is the offence of failing to help an authorised person in an emergency) and section 478 (which is the offence of failing to comply with the emergency direction), since these offences are about non-compliance with the emergency direction.

Amendment 16 amends a new clause 238A into the Bill which amends section 540 of the *Environmental Protection Act 1994*. Section 540 of the *Environmental Protection Act 1994* specifies registers that the administering authority must keep for its own administration under the Act. Some of the registers currently required include development approvals for environmentally relevant activities, environmental authorities, transitional environmental programs, environmental protection orders, and direction notices. This amendment inserts a

new subparagraph which refers to temporary emissions licences so that public registers must also be kept of these approvals.

Amendment 17 amends clause 240 of the Bill which amends the Dictionary of the *Environmental Protection Act 1994* to insert a definition of 'emergent event' (amongst other things). This amendment changes the term 'emergent event' to 'applicable event'. This amendment is made in response to recommendation 14 of the State Development, Infrastructure and Industry Committee report that the Bill be amended to provide a term other than 'emergent' to describe when a temporary emissions licence may be approved that more clearly reflects the intent and does not give rise to confusion.

Amendments 18 to 20 amend clause 243 of the Bill which inserts new sections 24A to 24C into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to ultimately amend the *Environmental Protection Act 1994*. These amendments remove references to 'development approvals' and 'registered operators' which are no longer required after commencement of the new approvals process introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

This amendment relates to section 357A (What is an emergent event) and changes the term 'emergent event' to 'applicable event'. This amendment is made in response to recommendation 14 of the State Development, Infrastructure and Industry Committee report that the Bill be amended to provide a term other than 'emergent' to describe when a temporary emissions licence may be approved that more clearly reflects the intent and does not give rise to confusion.

Amendment 21 amends a new clause 244A into the Bill which ultimately amends section 540 of the *Environmental Protection Act 1994*. Section 540 of the *Environmental Protection Act 1994* specifies registers that the administering authority must keep for its own administration under the Act. Some of the registers currently required include: development approvals for environmentally relevant activities, environmental authorities, transitional environmental programs, environmental protection orders, and direction notices. This amendment inserts a new subparagraph which refers to temporary emissions licences so that public registers must also be kept of these approvals.

The existing section 540 is replaced under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to remove references to documents which will no longer need to be kept after the commencement of that Act. Consequently, the amendment to section 540 of the *Environmental Protection Act 1994* made by amendment number 16 of these amendments also needs to be made to clause 47 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* in order to continue the effect of the amendment.

Amendments to the *South Bank Corporation Act 1989*

Amendments 22 and 23 amend clause 250 to include an amendment to the definition of "operational work". Although the definition will continue to cross refer to the definition of "operational work" under the *Sustainable Planning Act 2009*, that definition will be changed to remove from the definition "placing an advertising device on buildings".

The purpose of the amendment is to ensure the erection or affixing of advertising signage within the Corporation area, will not require development approval under the *South Bank Corporation Act 1989*.

This amendment is consistent with the intent of the amendments to transfer planning powers to the Brisbane City Council, where advertising and signage approvals are dealt with pursuant to Brisbane City Council local laws, rather than as development approvals.

Amendment 24 includes new amendments to section 86 (1) and (3) of the *South Bank Corporation Act 1989*. Section 86 (1) of the *South Bank Corporation Act 1989* empowers the South Bank Corporation (the Corporation) or a police officer authorised by the Corporation to apply to the Court for an order excluding a person from the site because of a person's behaviour on the site.

Amendments in clause 273 of this Bill include empowering security guards engaged by the Brisbane City Council to issue 24 hour exclusion notices, in the same way Corporation engaged officers do already. Section 86 deals with applications to the court to extend the period of the exclusion for a longer period. In the circumstances where the power of short term exclusion has been given to Council security guards, Council should similarly be empowered to make application for long term exclusions.

Amendments to the *State Development and Public Works Organisation Act 1971*

Amendment 25 introduces a new clause 300A that provides for the amendment of section 76L (When step in notice may be given) of the *State Development and Public Works Organisation Act 1971*. In order to allow the Coordinator-General to step in at any time (after the Minister has approved the giving of a step in notice), this amendment removes the restriction that a step in notice may only be given after a progression notice and a notice to decide has been given.

This amendment will ensure timely decision making and assist to prevent unreasonable delays in the progression of prescribed projects by providing the Coordinator-General with an opportunity to take early action to prevent delays in the making of prescribed decisions.

The amendment is to apply to both existing and future prescribed projects.

Amendment 26 amends clause 310 of the Bill to allow a proponent to apply for approval of a project as a private infrastructure facility (PIF) if the Coordinator-General is satisfied that the project in question has been subject to an environmental assessment under an Act other than the *State Development and Public Works Organisation Act 1971* and that the assessment process has been adequate.

The purpose of this amendment is to provide that projects that may be suitable for approval as a PIF, but have completed an adequate environmental assessment process under another Act, are not precluded from applying.

Amendment 27 amends clause 310 of the Bill to require the proponent to negotiate with the landowners for a minimum of six months and take reasonable steps to purchase the land before seeking approval as a PIF. The Bill currently requires a four month negation period

The purpose of this amendment is to ensure further fairness to landowners and encourage the earliest practical notification of an intent to acquire land.

Amendment 28 amends clause 312 of the Bill to include a head of power to automatically index fees made in a regulation in accordance with the consumer price index (CPI).

Currently, the fees included in the *State Development and Public Works Organisation Act 1971* are automatically indexed by CPI each year.

The current drafting of the amended section 173 does not provide for the ability to continue the practice of indexing the fees by CPI if they are contained in a regulation.

As it is unlikely that the fees made under the *State Development and Public Works Organisation Act 1971* will regularly change beyond CPI, it is deemed inefficient to require that the regulation be amended each year to reflect the new fees.