

# Building and Other Legislation Amendment Bill 2009

## Explanatory Notes

### Short Title

The short title of the Bill is the *Building and Other Legislation Amendment Act 2009*.

### Policy Objectives of the Bill

The objective of the *Building and Other Legislation Amendment Bill 2009* is to make amendments to a number of Acts relevant to sustainable building practices and other building and plumbing matters including amending the:

- *Building Act 1975* (BA) to:
  - “ban the banners” by stopping bodies corporate and developers from restricting the use of sustainable and affordable design features such as light coloured roofs, single garages, smaller houses and solar hot water systems;
  - introduce mandatory completion of a sustainability declaration at the point of sale for houses, townhouses (class 1a) and units (class 2);
  - introduce sections that support the implementation of a new part of the Queensland Development Code (QDC) to improve the current processes for mitigating the impacts of noise in identified transport corridors; and
  - expand the role of Building Surveying Technicians (BSTs) to improve career paths in the building sector and address the shortage of building certifiers and implement a number of minor improvements to the Act as part of the continuous improvement process.
- *Plumbing and Drainage Act 2002* (PDA) to replace the Plumbers and Drainers Board with a Plumbing Industry Council.

- *Body Corporate and Community Management Act 1997, Land Title Act 1994, Mixed Use Development Act 1993, Property Agents and Motor Dealers Act 2000, Sustainable Planning Act 2009, Integrated Resort Development Act 1987, Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984, Sanctuary Cove Resort Act 1985, South Bank Corporation Act 1989 and Transport Infrastructure Act 1994* to enact consequential legislative changes that are necessary to implement the aforementioned policies.
- *Fire and Rescue Service Act 1990 (FRSA)* to require the panel appointed under the new amalgamated Queensland Civil and Administrative Tribunal (QCAT) arrangements to be assisted by assessors who have appropriate knowledge and expertise about building, fire and liquor licensing matters.
- *Animal Management (Cats and Dogs) Act 2008 (AMA)* to allow dogs and cats under eight weeks old to be micro chipped by an authorised implanter who is a veterinary surgeon if the implanter is satisfied that the implantation is not likely to be a serious risk to the health of the cat or dog.
- *Sustainable Planning Act 2009 (SPA)* to require decision notices issued by a building certifier to state the classification or proposed classification of the building or parts of the building under the Building Code of Australia (BCA) and it adds transitional provisions stipulating that until the *Local Government Act 2009 (LGA 2009)* commences references in SPA relating to the LGA 2009 may be taken to be a reference to the *Local Government Act 1993 (LGA 1993)*.

## **Policy rationale**

### “Ban the banners”

The “ban the banners” policy aims to stop bodies corporate and developers from restricting the use of sustainable building elements and features. This will be achieved by rendering invalid new covenants and body corporate statements/by-laws which restrict owners or bodies corporate from using selected sustainable and affordable features such as light roof colours, smaller minimum floor areas, fewer bedrooms and bathrooms, types of materials and surface finishes to be used for external walls and roofs, single garages and the appropriate location for solar hot water systems and

photovoltaic cells. Other than for solar hot water systems and photovoltaic cells the provisions do not apply where a contract or other agreement, such as a lease / sublease, Community Management Statement (CMS) or by-law, is either in effect or entered into before the commencement of the relevant sections.

While the overriding provisions cannot be varied merely for the purpose of preserving or enhancing the external appearance of the building, a body corporate will remain able to apply appropriate operational controls over the use of sustainability features to reduce any adverse impacts on affected neighbours. For example, bodies corporate may require roof finishes to have low reflectivity in cases where neighbours may be affected by glare or they may require that split solar hot water systems be used where the weight of roof storage units may not be supported by the roof members.

#### Sustainability declaration

Mandating a sustainability declaration at the point of sale for houses, townhouses and units will:

- increase community awareness of sustainable building features and thereby over time help to improve the sustainability of our community;
- promote the relevance of sustainability features for the value of homes;
- encourage sellers to improve the value of homes by adding sustainable building features; and
- provide valuable information about how the features of an existing home compare to most of the mandatory minimum energy and water efficiency features of a new (or in some cases renovated) home.

#### QDC - Noise

The Department of Transport and Main Roads (DTMR) currently requires noise attenuation features in new residential buildings that are close to State-controlled roads using a system of statutory covenants between DTMR and property owners of noise-affected land. Under this system, each affected building development application (BDA) is forwarded to DTMR for approval, through a separate process to the usual building approval process. This is resource intensive for DTMR and applicants. It can significantly increase the time and cost involved in gaining final building approval.

The introduction of a new QDC, will streamline the current BDA assessment process and provide a more consistent approach to attenuation of transport noise across the State.

#### Other BA amendments

The Department of Infrastructure and Planning (DIP) hosts regular consultative groups for the building and plumbing industries. These groups identify and discuss potential improvements to legislation. Amendments include a range of minor changes that have resulted from this consultative process such as relaxing the requirements for building certifiers to withhold building approvals until they receive acknowledgement of payment of fees from the relevant Local Governments, specifying that any changes to a Building Code of Australia (BCA) classification applies prospectively and amending the definition of 'building' to include roofed structures without walls. Amendments also include allowing BSTs in the private sector to perform the same limited building certification functions without supervision as Local Government BSTs. This will apply where the BST with an approved qualification has completed one year of relevant experience under supervision. BSTs who practice as private certifiers will need to also have development approval endorsement. A development approval endorsement may be made only if the BST has satisfactorily completed the course, prescribed under section 52 of the *Building Regulation 2006*, about issuing building development approvals.

#### PDA amendment

The Plumbers and Drainers Board will be replaced with a Plumbing Industry Council (PIC). Under the direction of the Minister responsible for the PDA the membership of the PIC may be adjusted from time to time.

The amendment to the PDA establishes the PIC and its reporting functions. The PIC will report to and provide advice to the Minister responsible for the PDA on licensing issues affecting the plumbing trades sector. The PIC will act impartially and in the public interest. DIP, through Building Codes Queensland, will provide the secretariat functions, issue licences and undertake investigations and disciplinary action on behalf of the PIC.

#### AMA amendment

Amendments to the AMA are proposed to enable a prescribed permanent identification device (PPID) to be implanted in a cat or dog at an age earlier than eight weeks by an authorised implanter who is a veterinary surgeon if the implanter is satisfied that the implantation is not likely to be a serious

risk to the health of the cat or dog. If the authorised implanter is not a veterinary surgeon, there must be a signed veterinary surgeon's certificate for the cat or dog stating that implanting the PPID is not likely to be a serious risk to the health of the animal.

#### FRSA amendment

Amendments to the FRSA require the panel appointed under the new amalgamated QCAT arrangements to be required to be assisted by assessors who have appropriate knowledge and expertise about building, fire and liquor licensing matters.

#### SPA Amendment

Amendments to the SPA require decision notices issued by a building certifier to state the classification or proposed classification of the building or parts of the building under the BCA and it adds transitional provisions stipulating that until the LGA 2009 commences references in SPA relating to the LGA 2009 may be taken to be a reference to the LGA 1993.

### **How objectives are achieved**

Passage of the Bill will achieve the Government's policy objectives by amending the relevant legislation.

### **Alternative method of achieving the policy objectives**

There are no other viable alternatives that would achieve the Government's policy objectives.

### **Estimated Cost for Implementation**

There are no additional anticipated financial costs for Government arising from the amendments and implementation will be absorbed within existing departmental budgets.

### **Consultation**

#### **Community and Government**

The community and industry were consulted between 16 June 2008 and 12 September 2008 on the *Improving Sustainable Housing in Queensland* discussion paper which included the sustainability declaration and the "ban the banners" policies. Consultation was conducted through State-wide

community forums and shopping centre visits in 12 locations across Queensland and an online survey.

In August 2008, the former Department of Main Roads released the *Addressing Noise from Transport Corridors* discussion paper for government and stakeholder consultation. The paper proposed regulating noise attenuation for properties affected by transport noise through the QDC and there was support from stakeholders for this approach.

Consultation on the Bill amendments was undertaken with all relevant Departments.

Key industry stakeholders were consulted in relation to the BA amendments through the Queensland Building Industry Consulting Group (BICG). The Plumbing Industry Consultative Group (PICG) was consulted in relation to the PDA amendments. There was support from the consultation groups for the proposed amendments apart from the expansion of the BST role. The Australian Institute of Building Surveyors did not support allowing BSTs to work in private certification without supervision.

Consultation was also conducted with the Queensland Law Society and the Real Estate Institute of Queensland in relation to the sustainability declaration.

## Notes on Provisions

### Part 1 Preliminary

#### Clause 1 Short Title

Clause 1 establishes the short title of the Act as the *Building and Other Legislation Amendment Act 2009*.

#### Clause 2 Commencement

Clause 2 provides for which provisions of the *Building and Other Legislation Amendment Act 2009* commence on day to be fixed by

proclamation and which provisions commence on 1 January 2010 and the remainder commencing upon assent.

## **Part 2                      Amendment of *Building Act 1975***

### **Clause 3 Act amended**

Clause 3 provides that this part amends the BA.

### **Clause 4 Amendment of long title**

Clause 4 amends the long title of the BA to provide a reference to sustainable buildings.

### **Clause 5 Amendment of s 3 (Simplified outline of main provisions of Act)**

Clause 5 amends subsection 3(4)(c) acknowledging that BCA classification changes include use changes to complement the amendments made to chapter 5 to improve the operation of the classification system for building uses.

The clause also inserts new subsections 3(8) and 3(9) as additions to the outline of the main provisions of the Act. Subsection 3(8) provides for a new chapter 8A which includes sustainability declarations for the sale of class 1a and 2 residential buildings such as detached and attached houses, town houses, units, duplexes and apartments, and regulates the effect of particular instruments in relation to stated housing affordability and sustainability measures for residential buildings and attached enclosed 10a buildings such as garages and class 10b such as swimming pools, spas and pool fencing.

Section 3(9) inserts chapter 8B which provides for the designation of land as a transport noise corridor.

### **Clause 6 Amendment of s 20 (Building work that is assessable development for the Planning Act)**

Clause 6 amends section 20 to specify that self-assessable building work for the BA includes building work that is made self-assessable by the

*Sustainable Planning Act 2009* (SPA) such as building work carried out by or on behalf of the State, a public sector entity or a Local Government.

### **Clause 7 Amendment of s 21 (Building work that is self-assessable for the Planning Act)**

Clause 7 amends section 21 to ensure that persons carrying out self-assessable development (building work) can only comply with the relevant building assessment provisions by using deemed-to-satisfy provisions of the BCA or acceptable solutions of the QDC. When carrying out self-assessable development a person cannot use an alternative solution to meet the performance criteria of the BCA or QDC.

Alternative provisions of the QDC about boundary clearances and site cover continue to remain as assessable development.

All building work that is listed as self-assessable development in schedule 1 of the *Building Regulation 2006* becomes assessable development if an alternative solution is proposed to meet the performance criteria of the BCA or QDC. An assessment must be made by a building certifier about the alternative solution. However, the changes are not intended to affect work undertaken for or by Crown as this work remains self-assessable for all performance, deemed-to-satisfy and acceptable solutions.

### **Clause 8 Amendment of s 37 (Provision for changes to building assessment provisions)**

Clause 8 amends section 37(1)(d) to provide a simplified process for building certifiers where a building assessment provision is amended after substantial design has been undertaken for the carrying out of building work.

Consultation with stakeholders has revealed that the financial hardship test is difficult to apply in practice as the certifier can only rely upon financial information provided by the person for whom the work is carried out and making determinations based on financial hardship is problematic in the complex circumstances of building approvals.

To simplify the process for certifiers, section 37 has been amended to remove the financial hardship test. Instead, the building certifier will need to certify in writing that substantial progress in the design of the building has occurred and that more than a minor change to the design would be

needed to comply with the new provisions in order to use the provisions prior to the amendment.

To allow use of an earlier provision the certifier will need to require the owner/applicant to provide evidence of substantial progress in the design of the building or evidence that the building design was completed prior to the amendment of a building assessment provision to enable the certifier to make the decision.

In addition, the certifier will need to consider that changing the design is impractical in the context of the proposed building and the nature of the new provisions. Extensive new provisions may not require any significant reworking of design and owners should comply if possible. For example, new standards for smoke detector heads or hydrant piping standards may easily be accommodated without significantly reworking design plans.

However, a relatively small change to BCA provisions may require a significant amount of rework. For example, where new requirements for indoor air quality standards would require changes to ducting sizes throughout a multi-storey building as the most practical method of complying, a building certifier may consider that the earlier provisions should apply in the circumstances. In this instance, the design and layout of each level may need to be reworked, along with material quantities and sizings.

A further example of a change to design that is not a minor change is given in the provision.

### **Clause 9 Amendment of s 61 (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)**

Clause 9 amends section 61 to provide guidance on the use of discretions for alterations to safe existing work in instances where the BCA has been amended to alter a building classification or introduce a new classification. The new subsection (3) is intended to allow building certifiers to use the discretion set out in subsection (4) where the new BCA classification may potentially affect the application of the building code to the proposed work. The new provisions are intended to ensure changes to the BCA classification have minimal disruption to lawful existing uses. Where the changes to the BCA occur after a certificate of classification has been given for a building, building certifiers may carry out building assessment work for an application made to alter safe existing work by using building

assessment provisions applying for the BCA classification shown on the certificate of classification.

For example, a building was approved for construction in 2000 as a class 9a building and a new BCA classification for aged care buildings (class 9c) was added to the BCA in 2002. The building is used to provide ongoing care to infirm aged persons. An application is made to convert an existing six person shared ward into three private bedrooms, with one occupant per bedroom. The building certifier may consider that the building's use aligns more closely with the class 9c classification as no ongoing medical treatment is provided. However, in these circumstances, the certifier may use the relevant class 9a provisions for the work provided that the proposal is considered safe. As the occupancy numbers of the building have been reduced and travel distances and the like are not affected, the certifier may decide assessment, can be carried out using the class 9a provisions rather than the class 9c provisions.

### **Clause 10 Amendment of s 65 (Land subject to registered easement or statutory covenant)**

Clause 10 amends section 65 to remove the need for obtaining consent from the registered holder of the noise covenant if a relevant building assessment provision is in place.

Currently the DTMR places covenants on vacant residential land affected by traffic noise from a State-controlled road. These covenants enable the State to assess residential building applications to determine if the design adequately mitigates the impact of the road traffic noise, before giving consent to the application.

Once the QDC part 'Buildings in Transport Noise Corridors' (QDC noise code) comes into effect it will provide mandatory standards for residential buildings built or renovated in designated transport noise corridors. This code will outline suitable building standards including the type of building materials which must be used to reduce the level of traffic noise from the outside to the inside of the building. Such standards would have otherwise been conditioned by the State through the covenant process, whereas the intention is to place the standards in the building code where it becomes a building certification matter.

For land subject to an existing noise covenant, the section specifies that where a building assessment provision is expressed to apply to reduce the noise coming from outside proposed building work, the assessment

manager need not seek consent from the registered holder of the covenant for the building work. This is because the building work for the residential building is intended to comply with the relevant building assessment provisions for mitigating noise from outside the building.

It should be noted that requirements for mitigating internal noise within buildings, such as between floors or apartment and townhouse shared walls, are currently outlined in Part F5 (Volume 1) and Part 3.8.6 (Volume 2) of the BCA and are not within the scope of the proposed QDC noise code. Further, the provisions in section 65 and the proposed code are only intended to cover noise emanating from outside the building or relevant part of the building from a designated transport noise corridor, whether designated by the State or Local Government. For example, the provisions are not intended to be used for mitigation of noise that may be generated within buildings such as walls separating apartments or from other wings of the complex. The provisions are intended to be used to assist in mitigating outside noise emanating from the relevant transport noise corridor.

### **Clause 11 Replacement of s 88 (When applicant is to be given the approval documents)**

Clause 11 omits and inserts a new section 88 about the giving of approval documents to the applicant by the private building certifier. The section has been replaced to remove impediments to issuing timely building approvals and to address concerns about the length of time it takes in some instances for Local Governments to issue acknowledgement of payment when a private certifier submits approval documents to a Local Government.

The new provision gives a private certifier two options for releasing a building approval to the applicant.

The private certifier may give the applicant the approval documents once the Local Government has acknowledged receipt of the documents and payment.

Alternatively, a private certifier may give the applicant the approval documents if the certifier has reliable records kept on file that the approved documents have been sent to the Local Government along with the correct forms and appropriate fee. For example, a private certifier may have sent the approval documents by registered post or by electronic delivery and kept copies on file of posting receipts, payment amounts and methods.

Penalties and discipline provisions still apply in circumstances where the private certifier has not sent the documents and correct fees.

Written evidence that the fee mentioned in section 86(1)(c) for the submission of the approval documents to the Local Government must be kept by the private building certifier for at least five years.

### **Clause 12 Amendment of s 103 (Certificate requirements)**

Clause 12 amends section 103 to vary the requirements of a certificate of classification to have regard for the classification of the building stated in the relevant decision notice (as amended if changes are made after the original application and decision, including negotiated decision notices) and also to briefly describe the intended use for which the building was designed. Generally, the classification of the building that is stated in the building's certificate of classification must align with the approval documents and the relevant building codes requirements for that classification of building.

The new subsection 103(2)(c) aligns with amendments made in 2008 to further explain the application of the building code's requirements as changes to a building's use occur within a classification. For example, changes of use within a classification, such as changing from storing low hazard materials, storing larger volumes of materials or storing goods or materials in high racks in a class 7 warehouse can trigger a range of complementary extra BCA safety and other requirements.

Restrictions on uses relating to performance solutions are stated in the building's certificate of classification, however, relevant restrictions are not always recorded by building certifiers where deemed-to-satisfy or acceptable solutions are used. Section 103 now requires that the certificates should clearly state any specific use within a classification and any relevant building code limits on uses within the stated classification.

For example, a class 6 building that is intended for use as a retail showroom (shop) should not be used as a restaurant within the same class without a building approval, and the building's certificate of classification should clearly specify the building's intended use. Further, for a manufacturing plant the certificate may indicate the hazard level of the materials that are intended to be produced. Where different and more hazardous materials are proposed to be produced, such as foam plastic, an automatic sprinkler system may need to be installed in the building. In this instance a building

certifier must be engaged to assess and approve the new use of the building and issue a revised certificate of classification.

A further example of a restriction about the use of the building has been used in the provision.

### **Clause 13 Amendment of ch 5, pt 3 (Changes to BCA classification)**

Clause 13 amends the heading of chapter 5, part 3 to include the changes of use of a building within a classification.

### **Clause 14 Amendment of s 109 (What is a *BCA classification change* to a building)**

Clause 14 amends section 109 to provide for circumstances where the BCA classification changes or where a building's use changes. Section 109 sets out how Part 3 applies to trigger reassessment of an existing building's compliance with the BCA, including the QDC. The changes to section 109 are intended to complement changes to section 103 and other consequential changes in Part 3, to ensure changes to a building's use that would attract additional building code requirements trigger a reassessment of the building's compliance by a building certifier under section 110.

Also, as changes to the classification provisions in the BCA occur from time to time it is necessary to specify how these changes apply to, and affect, existing building uses, whether lawful or not. The change of classification provisions provide for offences. Therefore, where the provisions themselves are altered the new versions of the classifications should not apply to actions by the responsible persons that occurred prior to the changes.

The amendment is intended to specify that any changes to a BCA classification are to take effect prospectively by applying only to new building development applications and changes of use for existing buildings that first took place after the new classification came into effect. In considering whether existing buildings were being used illegally or otherwise contrary to the building's classification, as stated in the latest version of the relevant certificate of classification, prior to the introduction of a new BCA classification, compliance should be considered under the version of the BCA classifications in place when the use first began. Where, a building does not have a certificate of classification, compliance

should be considered against the laws or development conditions in place when the building was approved for construction.

The new subsection is not intended as a general exception to the application of the latest building assessment provisions for new work done in existing buildings to allow alterations to comply with earlier classifications. The new subsection is only intended to specify that the application of Part 3 does not include re-assessment of any uses that have already occurred against new versions of the classifications in the BCA. The existing allowable discretions available for assessing alterations to existing buildings under Chapter 4 are intended to apply to any new work. For example, where alterations are proposed to an existing building the work may be assessed against the building code's requirements for the class of building that is stated in the building's certificate of classification in line with discretions available under sections 61, 80 and 81. In this example, in considering the compliance of the proposed alterations, it is not intended that the existing use be compared against the new version of the BCA classification, rather the use, including its lawfulness, should be considered against the applicable earlier version of the BCA classifications.

Where a building is found to be used contrary to its classification and building work is to be undertaken to bring the building's use into compliance with the relevant code requirements, the provisions of the code in place on the date of the building development approval for the remedial works must be used, subject to any relevant discretions provided in the Act.

### **Clause 15 Amendment of s 110 (Restriction on making BCA classification change)**

Clause 15 amends section 110 to complement changes made to sections 103 and 109 specifying that an owner of a building cannot make a relevant use change to the building unless a building certifier has approved the change and the change complies with the building assessment provisions. Similar requirements are triggered when a building owner makes a BCA classification change.

For example, a class 6 hair dressing salon can not be converted to a class 6 restaurant use unless a building certifier has approved the change of use and the building as changed complies with the building assessment provisions. This section is also intended to apply to other restrictions on uses covered in the building's certificate of classification. In addition, similar requirements will apply where, for example, a building owner

proposes to change the use of a building from a class 7 warehouse to a class 9a health care building.

**Clause 16 Amendment of s 111 (Provision for applying to local government to obtain approval for BCA classification change)**

Clause 16 amends section 111 to complement changes made to section 110.

**Clause 17 Amendment of s 112 (Concessional approval for particular existing buildings)**

Clause 17 amends section 112 to complement sections 109 to 111 about the building's BCA classification or use change.

**Clause 18 Amendment of s 113 (Obligation of a building certifier approving BCA classification change to give new certificate of classification)**

Clause 18 amends section 113 to complement the new wording of sections 109 to 112 about the building's BCA classification or use change.

**Clause 19 Amendment of s 114A (Owner's obligation to comply with certificate of classification)**

Clause 19 amends section 114A to reflect the renumbering of section 103.

**Clause 20 Amendment of s 115 (Occupation and use of building must comply with relevant BCA and QDC provisions)**

Clause 20 amends the heading of section 115 to 'Compliance with relevant BCA and QDC provisions for occupation and use of building'.

This section is intended to require occupiers or users of a building such as the building owner or tenant to comply with any relevant BCA or QDC requirements for use or ongoing occupation. These requirements could include ongoing maintenance or subsequent building work requirements.

Some of the BCA and QDC requirements can only be the responsibility of the owner who may not always be the occupier or user. The intent of section 115 is to provide for the responsibility of either the owner or occupier/user if they are not one and the same, depending on whether the owner or occupier/user has responsibility for the building work or

maintenance under the relevant BCA, QDC or regulation requirements. Also the section is to continue to apply to prevent an occupier or owner from deliberately or inadvertently changing a building or the building's installations so that the building no longer complies with the BCA or QDC.

A maximum penalty of 165 penalty units applies for non-compliance.

### **Clause 21 Amendment of s 116 (Exception for use of government buildings for emergency)**

Clause 21 amends section 116 to complement the new the wording of sections 114 and 115.

### **Clause 22 Amendment of s 124 (Building certifier's obligation to give information notice about particular decisions)**

Clause 22 amends section 124 to complement the new wording of sections 109 to 113 about a building's BCA classification or use change.

### **Clause 23 Insertion of new s133A**

Clause 23 introduces section 133A to provide that a building certifier must have regard to any guidelines made under section 258 of the BA which are relevant to the building certifier's functions. For example, a building certifier must have regard to the 'Guideline for assessment of competent persons' when assessing competent persons for design and inspection help.

### **Clause 24 Replacement of s 154 (Role of building surveying technician)**

Clause 24 amends section 154 to allow any BSTs not employed by a Local Government, after completing one year of relevant experience under supervision, and BSTs employed by a Local Government to perform building certifying functions for any class 1 or 10 building or structure.

Following consultation with industry about addressing the shortage of building certifiers and improving the career path for building industry professionals, section 154 is amended to allow for BSTs in the private sector to perform the same limited building certification functions without supervision as Local Government BSTs. A BST with an approved qualification may perform the limited building certification functions after they have completed one year of relevant experience under supervision.

The BSTs must also complete the mandatory course on issuing development approvals and hold accreditation issued by an accreditation standards body under section 186 before endorsement to become a private certifier can be given.

### **Clause 25 Amendment of s 155 (Who may apply)**

Clause 25 amends section 155 to outline that an individual may apply to the BSA for a license at the level of BST providing the individual holds a current accreditation issued by an accreditation standards body and has at least one years experience as a BST employed by a local government or under the supervision of a private certifier.

### **Clause 26 Amendment of s 163 (Restrictions on making endorsement)**

Clause 26 complements the changes made to section 154 regarding the expanded role of BSTs for private certification.

Subsection (1) allows for endorsement to be made providing that the applicant has the insurance for private certification. Subsection (2) makes it clear that private certification endorsement does not extend to a BST who has not completed 1 year's experience under supervision of a private certifier or Local Government.

A development approval endorsement may be made only if the BST has satisfactorily completed the mandatory course on issuing development approvals.

### **Clause 27 Amendment of s 185 (Function of accreditation standards body)**

Clause 27 has also been amended to complement the new section 154 as the subsections are now consolidated into one subsection.

### **Clause 28 Amendment of s 220 (Owner must ensure building conforms with fire safety standard)**

Clause 28 inserts a note to guide readers to the application of the building assessment provisions, other than the fire safety standard, for budget accommodation buildings to which the fire safety standard does not apply.

Where the fire safety standard does not apply the building assessment provisions apply to the building work in line with the relevant approval.

### **Clause 29 Insertion of new chs 8A and 8B**

Clause 29 inserts new chapters 8A and 8B in the BA.

## **Chapter 8A Sustainability declarations and provisions to support sustainable housing**

### **Part 1 Sustainability declaration for sale of class 1a and 2 buildings**

This part supports the introduction of the sustainability declaration at point of sale for all class 1a buildings (houses, townhouses and duplexes), class 2 buildings (residential apartments), attached enclosed class 10a buildings (for example, garages) and class 10b structures (for example, swimming pools, spas and pool fencing) associated with a class 1a or 2 building.

#### **Section 246A Definitions for pt 1**

Section 246A introduces new definitions in the BA to support the sustainability declaration provisions.

The “current sustainability declaration” is the declaration required to be prepared under section 246B or an amended or replaced declaration under section 246C.

The term “publish” includes taking action to publish to ensure that the act of publishing and the person responsible for instigating publication are both covered.

The term “relevant advertisement” does not include an advertisement published in a newspaper or magazine or a sign that was not prepared

specifically to advertise the sale of a particular building. This limits the advertising material required to be placed in these publications to minimise compliance costs for sellers and agents. For example, a generic sign designed for reuse that states a property is for sale and contact details but does not include specific property details such as property identification, photos or the like would not be a relevant advertisement for the purposes of this chapter. Similarly, a reusable generic sign that contains minimal details (such as two bedrooms, two bathrooms) that can apply to large numbers of properties would not be a relevant advertisement for the purposes of this chapter. A sign that is prepared specifically for a particular class 1a or class 2 building would need to comply with this chapter, including any advertising material that is affixed to a generic sign, if the advertising material is prepared specifically for the property.

The term “seller” does not include a real estate agent or auctioneer selling a property on behalf of a property owner.

### **Section 246B Form and content of sustainability declaration**

Section 246B outlines that a sustainability declaration for a class 1a or 2 building must be in the approved form. The approved form must make provision for information about the sustainable features of a class 1a or 2 building, class 10a buildings (for example, garages) attached to class 1a or 2 buildings and class 10b structures associated with a class 1a or 2 building. The term “sustainability” is used in a broad sense to include any features that will assist in promoting the sustainability of communities. For example, while a key focus of sustainability is on features that reduce energy and water use, other features that increase the adaptability of homes and units to meet the needs of disabled or aging residents, promote safety or help in meeting our community’s changing demographic needs are also sustainable outcomes that are important for Queensland communities. In addition, sustainable homes will have features and designs that suit Queensland’s unique climate and lifestyle and the sustainability declaration will promote housing designs that are suitable for each of our regions.

### **Section 246C Requirement for sustainability declaration**

Section 246C requires sellers of a class 1a or 2 building to prepare (or have another person prepare) and sign a sustainability declaration prior to offering a residential property for sale either privately or through an agent. An offence against the section is a strict liability offence with a maximum penalty of 20 penalty units.

The requirement to prepare a sustainability declaration is taken to be satisfied if a person completes the declaration to the best of the person's ability and knowledge. For example, a seller may not reasonably be able to ascertain a home's star rating, whether insulation is installed in wall cavities, the energy efficiency rating of air-conditioners or the efficiency rating of windows installed in the home. It is intended that sellers would make reasonable efforts to consider each of the sustainable features listed on the declaration and record their findings in good faith.

### **Section 246D Amending or replacing sustainability declaration**

This section applies if the seller of a class 1a or 2 building becomes aware that the declaration about a feature of the building or structure included on the sustainability declaration is no longer correct or not correct due to a mistake. The sustainability declaration will no longer be correct and will need updating, for example, if a seller changes any of the sustainability features whilst the home is marketed. Where the home has been upgraded with additional sustainability features during the marketing period, it will be in the seller's interest to amend or replace the sustainability declaration to claim the benefit of the additional sustainability features. Where sellers become aware of a need to update the sustainability declaration or of an error in the sustainability declaration, the seller or another person on behalf of the seller must, as soon as practicable, amend or replace the sustainability declaration. For example, where a seller becomes aware that the percentage of the home's energy efficient lighting has been incorrectly calculated and overstated the seller must amend the sustainability declaration accordingly and initial and date the amendment.

Where the seller opts for a replacement sustainability declaration to be made the seller must sign and date the replacement declaration.

## **Division 3                    Requirements about advertising sale, and inspection, of buildings**

### **Section 246E Application of div 3**

This division applies when the seller of a class 1a or 2 building proposes to sell, or invite an offer to buy the building without engaging another person, such as an agent, to conduct the sale.

The obligations of the seller in relation to the sustainability declaration continue until the building is sold, or withdrawn from sale. Sold includes the contract becoming “unconditional” where conditions that are attached to the contract have been satisfied.

### **Section 246F Requirements about advertising sale of building**

Section 246F makes it an offence for a seller of a class 1a or 2 building to publish an advertisement for a building for sale unless it includes information about where a person may obtain a copy of the completed and current sustainability declaration for that building.

Subsection (2) provides two options for the seller to inform buyers about the sustainable features of the building when advertising material for the building is provided. It is an offence if the seller does not comply with at least one of these options. However, subsection (2) does not apply to the seller if the document is given to the person at the building and at a time it is generally open to the public for inspection by potential buyers of the building. This is because, at open inspections a copy of the declaration needs to be conspicuously displayed and therefore potential buyers need not be given a copy unless they request one. Requirements for the inspection of a building are outlined in section 246G.

Where a seller has not already given a potential buyer a copy of the sustainability declaration the seller may choose to give a copy to the person prior to supplying any advertising material for the building or may attach a copy to the advertising material. This obligation is not intended to extend to requiring that the seller is responsible for giving the same person a copy each time an advertising document is given to the person. Also, the seller does not need to ensure that a person who is offered a copy of the declaration accepts possession. The obligation to give a copy to a person is satisfied if the seller makes a reasonable effort to give a copy to the person with the other document advertising the sale.

Obligations for agents, where they are employed by sellers, are included in amendments to the *Property Agents and Motor Dealers Act 2002* (PAMDA).

### **Section 246G Requirements about inspection of building**

Section 246G provides that the seller must conspicuously display the sustainability declaration for the building so that it can be easily read by potential buyers at any time the building is open to the public for

inspection. For example, sellers may place it in a clearly visible location where persons entering the building would reasonably be expected to notice it, such as on a kitchen top or adjacent to the visitor's register or on a sign on or near the site in a location it is likely to be seen by potential buyers.

Subsection (2) applies where a potential buyer inspects the building at a privately arranged showing. The seller may give the sustainability declaration to prospective purchasers prior to them entering the building if they had not already received or had been offered a copy at an earlier visit. Alternatively, the seller may display the declaration in a clearly visible location where potential buyers entering the site, building or dwelling would reasonably be expected to notice it. Alternatively, the seller could have a copy with them ready to show the potential purchaser and advise the person of its availability.

### **Section 246H Requirements to give a copy of sustainability declaration**

Section 246H creates an obligation on the seller to give a person a copy of the declaration if requested. This must be done as soon as practicable. The section recognises that there may be many interested persons who take copies of the sustainability declaration and sellers may not have adequate numbers of copies in certain circumstances. The seller may choose to post or e-mail a copy to the person, or make it available later in the day or at another agreed time.

### **Section 246I Compensation for false or misleading sustainability declaration**

Section 246I applies in instances where a seller provides a sustainability declaration which is false or misleading or where a declaration has been completed without the exercise of reasonable skill and care. Where the buyer incurs a loss or expense as a result of a false or misleading declaration, the seller of the building is liable to compensate the buyer for any loss or expense.

A compensation claim may be made through a court.

### **Section 246J No right to terminate contract for publishing or giving false or misleading sustainability declaration**

Section 246J states that the buyer has no right to terminate a contract of sale when a seller of a building provides false or misleading information on a sustainability declaration. The sustainability declaration does not complicate the sale as it does not affect the validity of a sale contract when a sustainability declaration has not been completed or when it contains false or misleading information. However, a possible remedy is provided by section 246I.

### **Section 246K Breach of obligation does not give rise to particular action**

Section 246K has been inserted to ensure the sustainability declaration requirements do not affect contract formation between the seller and the buyer and it is limited in application to the obligations imposed on the part. The section does not relate to, or exclude any action for breach of statutory duty or other civil right or remedy between the seller and anyone paid by the seller to complete the sustainability declaration on the seller's behalf.

## **Part 2 Provisions to support sustainable housing**

### **Division 1 Preliminary**

#### **Section 246L Purposes of pt 2**

The purpose of this part is to regulate the effect of particular instruments on stated activities or measures likely to support the sustainability of houses, units and attached enclosed garages associated with houses (class 1a, 2 and 10a buildings).

#### **Section 246M Definitions for pt 2**

Section 246M includes new definitions for the BA to support sustainable housing provisions. It specifically references other Acts which are defined as "relevant instruments" to which the provisions of part 2 apply.

## **Section 246N Application of pt 2**

Section 246N sets out the intended application of part 2. Part 2 does not apply for sustainable aspects of buildings specified as a prescribed matter for the part where a relevant instrument affecting a residential lot, including body corporate by-laws or a contract or agreement, had been entered into prior to commencement. For example, this section ensures the part's provisions apply regardless of the by-laws made by the body corporate for the Sanctuary Cove Resort that may restrict or prohibit the installation of solar hot water systems and photovoltaic cells. However, for other sustainable features covered, the part would not override any Sanctuary Cove Resort by-laws that were in force and binding for a lot and affected the use of these features prior to commencement.

The section states that the part applies despite the instrument being registered on the certificate of title or recorded pursuant to the *Land Act 1994*.

## **Division 2            Limiting effect of prohibitions etc. for particular sustainable housing measures**

### **Section 246O Prohibitions or requirements that have no force or effect**

Section 246O renders relevant instruments which prohibit or require specified design options for certain buildings of no effect or force to the extent of the prohibition or requirement. The intent of this section is to increase sustainable and affordable building options available to a lot or building owner. The section specifically applies to render invalid any provisions of a relevant instrument to the extent that they prohibit:

- the selection of light roof colours;
- energy efficient windows or treatment of a window for energy efficiency;
- a person from occupying a class 1a building before landscaping, fencing, driveways and the like are completed;
- the use of specific material or type of surface finish for the roof or external walls of a class 1a building or enclosed class 10a

building attached to the class 1a building to the extent that the prohibition applies merely for the purposes of preserving or enhancing the external appearance of the building. For example, a building covenant cannot prohibit buildings in a new residential estate from having face brick walls or metal roofs; and

- the installation of a solar hot water system or photovoltaic cells on the roof of a building for the purpose of preserving the external appearance of the building.

The section also applies to render invalid any provisions of a relevant instrument to the extent that they require:

- minimum floor areas;
- a minimum number of bedrooms and bathrooms;
- the construction of a class 1a building or any landscaping, driveways or similar work to be completed within a stated period. However, this section does not remove obligations to complete building work before a development approval has lapsed;
- more than one garage;
- minimum roof pitches for the purpose of preserving the external appearance of the building; and
- a building to be orientated on a block in a certain way for the purpose of preserving the external appearance of the building. For example a building covenant cannot require only habitable rooms to face the street frontage for aesthetic purposes. A lot owner must have the choice of orientating a building for solar access. That is, the lot owner should have the right to locate non-habitable rooms such as garages and carports on the western side of the building.

This section is not intended to apply to a relevant instrument that has provisions affecting the listed sustainable features in place and binding owners of a lot or building prior to the commencement of section 246N. For example, where a building covenant requires that a dwelling to be built on a lot must have a minimum floor area of two hundred and fifty square metres and an attached two car garage and the covenant is included in a contract between an initial buyer of the lot and a developer before the commencement of section 246N, the contract is not affected by Division 2

of this part. It is intended that the Division will also not affect subsequent contracts between the initial buyer and later buyers if the lot is sold with the covenants passed on in the new contract. However, nothing in this Division requires the initial buyer to include any such obligations in contracts for sale of the relevant lot.

### **Section 246P Restrictions that have no force or effect– roof colours and windows**

Section 246P invalidates any restrictions in a relevant instrument for the design options for building work on a lot to which this part applies to the extent that they restrict the selection of light roof colours, energy efficient windows or treatment of windows to make windows energy efficient.

However, some restrictions in a relevant instrument may have force or effect if the design option adversely affects the external appearance of the building and unreasonably prevents or interferes with a person's use or enjoyment of the building or another building. For example, a body corporate by-law may specify a particular light roof colour from the range of possible light roof colours (that achieves a solar absorbance value according to the BCA of not more than 0.55) be used for aesthetic, uniformity purposes or to ensure the roof finish has low reflectivity in cases where neighbours may be affected by glare.

Section 246P does not apply in relation to a relevant instrument that was made or entered into before the commencement of the section.

### **Section 246Q Restrictions that have no force or effect – other restrictions**

Section 246Q invalidates any restrictions in the design options for building work on a lot to which this part applies to the extent that they restrict:

- a person from occupying a class 1a building before landscaping, fencing, driveways or similar work associated with the construction of the building is completed;
- the use of a specific material or type of surface finish for the roof or external walls of a house (class 1a) or enclosed garage (class 10a) to a house; or
- the location of a solar hot water system or photovoltaic cells.

A relevant instrument has no force or effect if the restriction merely applies for the purpose of preserving or enhancing the external appearance of the building and prevents a person from installing a solar hot water system or photovoltaic cells on the roof of the building. An example is provided in section 246Q.

### **Section 246R When requirement to obtain consent for particular activities can not be withheld – roof colours and windows**

Section 246R states that under a relevant instrument, the consent of an entity, can not be withheld for an activity merely for the purpose of preserving or enhancing the external appearance of the building. Roof colour, energy efficient windows or the treatment of windows to make windows energy efficient can be selected providing the selection is made in a way that minimises any adverse effects on the external appearance of the building and the selections do not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.

### **Section 246S When requirement to obtain consent for particular activities can not be withheld – other matters**

Section 246S outlines that under a relevant instrument, the consent of an entity, can not be withheld for an activity merely for the purpose of preserving or enhancing the external appearance of the building. These activities include the occupation of a house (class 1a), the type of material or surface finish for on a roof or external wall of a building and the location and installation of solar hot water systems or photovoltaic cells.

## **Division 3            Miscellaneous provisions**

### **Section 246T Particular limitation on operation of pt 2**

Section 246T applies where residents could be affected by the installation of a solar hot water system or photovoltaic panels in a way that the installation interferes with the use or enjoyment of any part of the building. For example, a lot owner might be affected by the installation of a solar hot water system if a pump and/or pipes are positioned and in constant use nearby their window.

This section is intended to guide the application of the part, particularly in situations where the installation of a solar hot water system or photovoltaic panel has the potential to affect other uses of the building. For example, in multi-unit residential buildings there may be limited roof space and it may not be practical for all lot owners to install solar hot water systems and photovoltaic panels. In addition, there may be competing priorities for roof space and it may in some circumstances be used, or be planned to be used, as an entertainment area or for barbeque facilities. A similar scenario might occur where a body corporate proposes to convert an existing roof into a common roof terrace and therefore withholds consent for the installation of solar hot water systems or photovoltaic panels until such time the terrace design and layout is finalised.

There may also be instances where the roof of an apartment building is owned by one or a few lot owners such as a building with a penthouse or penthouses. Where a roof is privately owned and not common property the operation of this part does not apply to the extent of voiding a lot owner's right to withhold consent for another lot owner to install solar hot water systems or photovoltaic panels on privately owned parts of a building or areas assigned for the exclusive use of a particular lot owner. Also proposals for the installation of solar hot water systems and photovoltaic panels are subject to usual body corporate oversight.

### **Section 246U No compensation payable**

Section 246U prohibits a party from claiming compensation from the State or another person for loss or damage incurred as a result of the operation of this part.

## **Chapter 8B Transport noise corridors**

### **Part 1 Preliminary**

#### **Section 246V Purpose of ch 8B**

Section 246V explains the purpose of chapter 8B is to enable areas of land to be identified as transport noise corridors in order for any relevant building assessment provisions to apply.

#### **Section 246W Definitions for ch 8B**

Section 246W inserts new definitions for chapter 8B to support the amending provisions.

### **Part 2 Designations by local governments**

#### **Section 246X Designation of transport noise corridor – local governments**

Section 246X outlines the powers and process by which Local Government can designate land along Local Government roads as being affected by road traffic noise. To ensure there is consistency in how corridors are identified by Local Government, the process for designation, as well as characteristics of a transport noise corridor, such as width and traffic volume, have been provided. The width of the corridor can be up to 100 metres in any direction, measured horizontally, from the edge of the Local Government road. For the purposes of this section, the term “road” means any part of the surface of the road on which motor vehicles ordinarily travel. This is not intended to include additional sections of adjoining pavement, bitumen or land, such as road shoulders or verges, emergency or parking lanes, bicycle paths or gutters. In cases where there may be a service road or the like next to a Local Government road, this is not

intended to be considered as part of the relevant “road”, unless the service road itself carried annual average daily traffic of at least 3000 vehicles.

For the purposes of designating a transport noise corridor under this section, measurements can be taken from the outside edge of the section of the road that is typically used by motorists for travel, i.e. the usual traffic lanes. In instances where the noise is higher due to factors such as vehicle speed, pavement type, topography or a higher proportion of heavy vehicles, the distance may be increased above 100 metres but to a distance of no more than 200 metres providing the noise level at those locations has been measured to be at least 58 dB(A).

Subsection (2) outlines the maximum distance from the Local Government road that can be designated as a transport noise corridor by a Local Government. Where reference is made to a distance that has been measured, in a way approved by the chief executive, it is not intended that individual approvals will need to be provided. Rather, the building assessment provisions will outline an approved method of measuring traffic noise in cases where the Local Government seeks to extend the boundary of the transport noise corridor beyond the default distance of 100m.

Subsections (3) and (4) specify the requirement for the Local Government to give written notice about its intention to designate land as a transport noise corridor, including the proposed gazettal date and details of the proposed designation, to the chief executive of the department responsible for planning and building legislation at least 20 business days prior to the proposed designation date. The information provided in this notice will be used to update the State Government information systems once the designation has occurred.

Subsection (5) states that the information contained within the notice must be in the form required by the chief executive. This will ensure that the required information is in an appropriate format to allow the State Government information system to be updated.

Subsection (6) details that once a Local Government has designated land as a transport noise corridor, it must publish the results of the decision in the gazette. The gazette notice must include either the details of each parcel of land affected by the designation, or it must state general information regarding the designation. The detailed information is to be included in nominated documents held by Local Government offices.

Subsection (7) provides a formula to calculate the annual average daily traffic rate for a road.

## **Section 246Y Notification about designation of transport noise corridor**

Section 246Y requires a Local Government to notify the chief executive as soon as practicable after designating a transport noise corridor. This fulfils the administrative functions of enabling the State Government information system to be updated to maintain a consistent and accurate source of information, and allowing a record to be kept for the designation of land for building assessment purposes. The record must contain information about the levels of noise from traffic so that the appropriate building standards may be applied. Section 246Y also requires a Local Government to include a reference to the transport noise corridor in its planning scheme as soon as practicable after the designation has occurred.

## **Part 3                      Designation by transport chief executive**

### **Section 246Z Designation of transport noise corridor – transport chief executive**

Section 246Z outlines the powers and processes by which the chief executive of the department responsible for the *Transport and Infrastructure Act 1994* can designate land along State-controlled roads and/or railway land as being affected by road or rail traffic noise. To ensure there is consistency in how corridors are identified by the transport chief executive, the process for designation, as well as characteristics for the transport noise corridor (such as width and traffic volume) have been outlined.

The transport chief executive may designate land as being a transport noise corridor if the land, affected by noise emanating from the land with the roadway or rail line, is situated up to 100 metres, measured horizontally in any direction, from the edge of the State-controlled road or railway land. In instances where the noise is higher due to factors such as vehicle speed, pavement type, topography or a higher proportion of heavy vehicles, this distance may be increased to up to 250 metres in total, being the initial 100m and an distance of up to additional 150m, providing the noise level at those locations has been measured to be at least 58 dB(A).

The designation of transport noise corridors under this section complements the operation of sections 30 and 65 of the BA to allow the building assessment provisions to set building standards for classes 1, 2, 3 or 4 buildings under the BCA that mitigate the effects of transport noise on the occupants of the building.

The term “State-controlled road” is defined as a road or land, or part of a road or land, which has been declared under the *Transport Infrastructure Act 1994* to be a State-controlled road and the definition of “railway land” refers to rail corridor land, commercial corridor land or future railway land under the *Transport Infrastructure Act 1994*. For the purposes of designating a transport noise corridor under this section the transport chief executive may decide to take measurements from the edge of the road surface or railway line on which motor vehicles or trains typically travel rather than from the edge of land with the relevant road or railway.

While the maximum width of the affected land is measured from the boundary of the “State-controlled road” or “railway land”, in using this section, it is intended that the width of the affected land is decided by using modelling of noise levels that would indicate the noise has the potential to impact upon occupants of residential buildings. After the land is designated as a transport noise corridor, classes 1, 2, 3 and 4 buildings (and renovations requiring a building approval) that are intended to be located on an affected lot and within the specified distance, will be required to comply with any relevant building assessment provisions.

A decision to designate land as a transport noise corridor by the chief executive of the department responsible for the *Transport and Infrastructure Act 1994* under this section, must be published in the gazette notice. The gazette notice must include either the details of each parcel of land affected by the designation, or it must state general information regarding the designation. In the case of the latter, the detailed information is to be included in nominated documents held by the department responsible for the *Transport and Infrastructure Act 1994*.

### **Section 246ZA Notification about designation of transport noise corridor**

As part of the designation process, the transport noise corridor must be identified in the relevant Local Government’s planning scheme to provide a means of informing property owners, potential buyers, builders, building certifiers and the like about the designation. The amendments require the

transport chief executive to give notice to both the chief executive of planning and building, and the relevant Local Government about the designated land within the transport noise corridor.

Upon receiving the notice from the transport chief executive, the Local Government must make a record in its planning scheme as soon as practicable relating to the designated transport noise corridor.

### **Clause 30 Amendment of s 258 (Guidelines)**

The chief executive can make guidelines under sections 218 and 258 of the BA. Section 258 is a generic provision enabling guidelines for matters within the scope of the Act to help compliance. Clause 30 amends section 258 to confirm the chief executive's powers to make a guideline to help persons to prepare a sustainability declaration.

### **Clause 31 Amendment of s 260 (Evidentiary aids)**

The general manager of the Building Services Authority can sign a certificate as an evidentiary aid about a copy of, or extract from, or part of a document kept or made under chapter 6, part 2, 3 or 4. Parts 2, 3 and 4 deal with private certifiers, licensing of building certifiers and complaints, investigations and proceedings about building certifiers, respectively.

Clause 31 amends section 260 to outline that a certificate signed by the chief executive responsible for the BA may state that an edition of the BCA was the current edition of the BCA at a stated time or during a stated period, a particular version of the QDC was in force at a particular time or a particular part of the QDC was in force at a particular time. The certificate may also contain evidence which is a document kept or made under the BA other than a document kept or made under chapter 6, part 2, 3 or 4.

### **Clause 32 Insertion of new ch 11, pt 8**

## **Part 8                      Transitional provision for Building and Other Legislation Amendment Act 2009**

Clause 32 introduces chapter 11 for transitional provisions for the continuing application of section 154 before the section was amended

### **Section 286 Continuing application of s 154**

Section 286 provides transitional arrangements for the continuing application of section 154 where a person was licensed as a BST before the commencement of the section and does not have at least 1 year experience as a building surveying technician employed by a Local Government or under the direct supervision of a private certifier.

### **Section 287 Continuing application of s 155**

Section 287 provides transitional arrangements for the continuing application of section 155 where an application for a license at the level of BST was made but not decided before 1 January 2010.

### **Clause 33 Replacement of sch 1 (The QDC On 26 February 2009)**

Clause 33 amends schedule 1 to reflect the current mandatory parts of the QDC.

### **Clause 34 Amendment of Sch 2 (Dictionary)**

The dictionary has been amended to include the following definitions:

- *bathroom*, for chapter 8A, part 2, see section 246M.
- *BCA classification or use change* see section 109.
- *current sustainability declaration*, for chapter 8A, part 1, see section 246A.
- *energy efficient*, for chapter 8A, part 2, see section 246M.
- *prescribed building*, for chapter 8A, part 1, see section 246A.
- *publish*, for chapter 8A, part 1, see section 246A.
- *railway land*, for chapter 8B, see section 246W.
- *relevant advertisement*, for chapter 8A, part 1, see section 246A.
- *relevant instrument*, for chapter 8A, part 2, see section 246M.
- *road*, for chapter 8B, see section 246W.
- *seller*, for chapter 8A, part 1, see section 246A.
- *solar hot water system*, for chapter 8A, part 2, see section 246M.

- *State-controlled road*, for chapter 8B, see section 246W.
- *sustainability declaration* see section 246A.
- *transport chief executive*, for chapter 8B, see section 246W.
- *Transport Infrastructure Act*, for chapter 8B, see section 246W.
- *transport noise corridor* see section 246W.
- *Treat*, for chapter 8A, part 2, see section 246M.

The definition of *building* has been amended to include a fixed structure that is wholly or partly enclosed by walls or is roofed. The term also includes a floating building and any part of a building.

The definition of *self-assessable building work* has been amended to accord with the amendment of section 21.

### **Part 3                      Amendment of *Animal Management (Cats and Dogs) Act 2008***

#### **Clause 35 Act amended**

Clause 35 provides that part 3 amends the *Animal Management (Cats and Dogs) Act 2008*.

#### **Clause 36 Amendment of long title**

Clause 36 amends the long title as the reference to amendments to the *City of Brisbane Act 1924* and the *Local Government Act 1993* are redundant.

#### **Clause 37 Amendment of s 3 (Purposes of Act)**

Clause 37 amends section 3(c) (Purposes of Act) to change “cat” to “cats”.

#### **Clause 38 Amendment of s 4 (How purposes are to be primarily achieved)**

Clause 38 amends section 4(g) (How purposes are to be primarily achieved) to change “services services” to “services”.

**Clause 39 Amendment of s 13 (Supplier must ensure cat or dog is implanted)**

Clause 39 replaces the note to section 13(1) (Supplier must ensure cat or dog is implanted) as a consequence of the amendments to section 24.

**Clause 40 Amendment of s 24 (Minimum age for cat or dog to be implanted)**

Clause 40 replaces the heading to section 24 and section 24(1) (Age restriction for implanting PPID).

New section 24(1) enables a prescribed permanent identification device (PPID) to be implanted in a cat or dog at an age earlier than eight weeks by an authorised implanter who is a veterinary surgeon if the implanter is satisfied that the implantation is not likely to be a serious risk to the health of the cat or dog. If the authorised implanter is not a veterinary surgeon, there must be a signed veterinary surgeon's certificate for the cat or dog stating that implanting the PPID is not likely to be a serious risk to the health of the cat or dog.

**Clause 41 Amendment of s 34 (PID must not be removed or otherwise interfered with)**

Clause 41 amends section 34(2) (PID must not be removed or otherwise interfered with) to change "it a way" to "it in a way".

**Clause 42 Amendment of s 90 (Notice of proposed declaration)**

Clause 42 amends section 90(1) (Notice of proposed declaration) to change "dog notice" to "dog a notice".

**Clause 43 Amendment of s 97 (Declared dangerous dogs)**

Clause 43 amends section 97(1) (Declared dangerous dogs) to specify schedule 1 section 8 (Notice of change of address) is also a permit condition that a relevant person for a declared dangerous dog must comply with as well as schedule 1 sections 2 to 6.

**Clause 44 Amendment of s 98 (Declared menacing dogs)**

Clause 44 amends section 98(1) (Declared menacing dogs) to specify schedule 1 section 8 (Notice of change of address) is also a permit

condition that a relevant person for a declared menacing dog must comply with as well as schedule 1 sections 2, 3(1)(b) and (2) and 4 to 6.

### **Clause 45 Insertion of new ch 10, pt 1, hdg**

Clause 45 inserts new chapter 10 part 1 heading (Transitional provisions for Act No. 74 of 2008) as a consequence of the inclusion of new part 2 (Transitional provision for Building and other legislation Amendment Act 2009).

### **Clause 46 Insertion of new ch 10, pt 2**

New part 2 section 222 (Provision about offences under section 24) provides that given the amendment to section 24(1) of the *Animal Management (Cats and Dogs) Act 2008*, a proceeding can not be started under the pre-amended section 24(1).

### **Clause 47 Amendment of sch 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs)**

Clause 47 amends schedule 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs) section 3 (Muzzling and effective control in place that is not relevant place) to clarify that a proposed menacing dog as well as a declared menacing dog does not have to be muzzled when not in the relevant place for the dog. Currently the Act may be read as providing that only a declared menacing dog does not have to be muzzled when not in the relevant place for the dog.

## **Part 4                      Amendment of *Body Corporate and Community Management Act 1997***

### **Clause 48 Act amended**

This part amends the *Body Corporate and Community Management Act 1997*.

### **Clause 49 Amendment of s 66 (Requirements for community management statements)**

Clause 49 amends section 66 to outline that a community management statement must not include provisions that have no force or effect under the BA.

### **Clause 50 Amendment of s 180 (Limitations for by-laws)**

Clause 50 amends section 180 to outline that a by-law must not be oppressive or unreasonable and must have regard to the interests of all owners and occupiers. This provision also states that a by-law must not include a provision that has no force or effect under chapter 8A, part 2 of the BA.

### **Clause 51 Amendment of sch 4 (By-laws)**

Clause 48 amends schedule 4 to insert a note that under the BA, bodies corporate cannot withhold consent for particular activities stated in the sections of the Act that might change the external appearance of a lot.

For example, they can not withhold consent for a lot owner to install a solar hot water system or photovoltaic cells on a roof of a house, townhouse or apartment building (class 1 and 2 buildings) for cosmetic reasons alone. However, bodies corporate will still be able to preserve the overall uniform appearance of a building as much as possible, if there are a number of suitable locations for the solar hot water system or photovoltaic cells and impose non-cosmetic restrictions on how work is conducted in common areas. For example, the body corporate might impose a condition that the waterproof roof membrane installed above a concrete roof not be breached by the installation of a solar hot water system.

## **Part 5                      Amendment of *Fire and Rescue Service Act 1990***

### **Clause 52 Act amendment**

Clause 52 provides that Part 5 amends the *Fire and Rescue Service Act 1990*.

The *Fire and Rescue Service Act 1990* is being amended to establish a process for the Queensland Civil and Administrative Tribunal (QCAT) to receive advice from assessors when hearing reviews of notices issued under section 69(2)(a) or Part 9A of the *Fire and Rescue Service Act 1990*. The assessors will be selected by the Principal Registrar, QCAT from a list of assessors appointed by the Commissioner, Queensland Fire and Rescue Service.

### **Clause 53 Insertion of new ss 104SG-104SK**

Clause 53 inserts new sections 104SG – SK.

#### **Section 104SG Assessors to help QCAT**

Section 104SG provides for assessors to help QCAT when conducting a proceeding that is a review of a notice, or the terms of a notice, issued under section 69(2)(a) or Part 9A of the *Fire and Rescue Service Act 1990*. Subsection (1) provides that QCAT must be helped by the persons chosen by the principal registrar from the list of assessors maintained by the Commissioner, Queensland Fire and Rescue Service. Subsection (5) provides that despite subsection (1) a proceeding may be conducted without the help of assessors if the presiding member is satisfied it is necessary because of the urgency of the matter.

#### **Section 104SH Functions and powers of assessors**

Section 104SH describes the functions and powers of assessors. Assessors are appointed to help QCAT decide questions of fact in a proceeding.

#### **Section 104SI Appointment of assessors**

Section 104SI provides for the appointment of assessors by the Commissioner to a list of assessors. Subsection (2) sets out the qualifications for appointment as an assessor. Subsection (3) provides that the Commissioner must at the beginning of each year give the principal registrar of QCAT a list of the persons appointed as assessors for the year.

### **Section 104SJ Disqualification from appointment as assessor**

Section 104SJ provides that a person may not be appointed or continue as an assessor if the person is not qualified or ceases to be qualified under section 104SI(2).

### **Section 104SK QCAT may have regard to assessor's view**

Section 104SK provides that the member or members constituting QCAT may have regard to the assessor's view when deciding a question of fact in the proceeding to the extent that the member or members consider appropriate.

### **Clause 54 Amendment of sch 6 (Dictionary)**

Clause 54 amends the dictionary in Schedule 6 of the Act.

## **Part 6                      Amendment of *Land Title Act 1994***

### **Clause 55 Act amended**

This part amends the *Land Title Act 1994* (Land Title Act).

### **Clause 56 Amendment of s 50 (Requirements for registration of plan of subdivision)**

Clause 56 amends section 50(2)(b) to omit 'Local Government concerned' and insert 'relevant planning body' to be consistent with a previous amendment made to section 50 under the *Urban Land Development Authority Act 2007*.

### **Clause 57 Insertion of new s 54DA**

### **Section 54DA When building management statement taken not to be registered**

Clause 57 inserts section 54DA to outline the extent to which a building management statement is taken not to be registered and where the registrar

may refuse to register an instrument purporting to be a building management statement.

A registered building management statement is taken not to be registered under the *Land Title Act 1994* to the extent that it includes a prohibition, requirement or restriction that under section chapter 8, part 2 of the BA has no force or effect. The registrar may also refuse to register an instrument purporting to be a building management statement if the registrar is satisfied that the instrument includes a prohibition, requirement or restriction that under chapter 8, part 2 of the BA has no force or effect.

## **Part 7**                      **Amendment of *Mixed Use Development Act 1993***

### **Clause 58 Act amended**

This part amends the *Mixed Use Development Act 1993*.

### **Clause 59 Amendment of s 3 (Definition)**

Clause 59 amends section 3 for the definition of ‘chief executive’ as this definition is redundant.

### **Clause 60 Amendment of s 136 (General provisions that apply to management statements)**

Clause 60 amends section 136 to correct a reference to section 124.

## **Part 8**                      **Amendment of *Plumbing and Drainage Act 2002***

### **Clause 61 Act amended in part and schedule**

Clause 61 states that this part amends the *Plumbing and Drainage Act 2002*.

### **Clause 62 Replacement of pt 2 hdg (Plumbers and Drainers Board)**

Clause 62 amends the heading of part 2 to replace the reference to ‘Plumbers and Drainers Board’ with ‘Plumbing Industry Council’ (the council).

## **Part 2 Plumbing Industry Council**

### **Clause 63 Replacement of s 5 (Establishment of board)**

Clause 63 amends section 5 to replace the reference to ‘Establishment of board’ with ‘Establishment of council’.

### **Clause 64 Amendment of s 9 (Membership of board)**

Clause 64 amends section 9 to replace the references to ‘board’ with ‘council’ and permits the relevant Minister to appoint members to the council without the requirement to seek Governor in Council approval. Further, the relevant Minister can also decide the numbers of members in addition to those already prescribed under this part.

### **Clause 65 Amendment of s 10 (Appointment of deputy members)**

Clause 65 amends section 10 to permit the relevant Minister to appoint deputy members to the council without the requirement to seek Governor in Council approval.

### **Clause 66 Amendment of s 11 (Chairperson and deputy chairperson)**

Clause 66 amends section 11 to replace the references to ‘board’ with ‘council’ and permits the relevant Minister to appoint a chairperson and deputy chairperson of the council without the requirement to seek Governor in Council approval.

**Clause 67 Amendment of s 17 (Remuneration of members)**

Clause 67 amends section 17 to replace the references to ‘Governor in Council’ with ‘Minister’ and permits the relevant Minister to decide the fees and allowances paid to council members. It is intended that future fees and allowances paid to council members will be considered by the relevant Minister and aligned with the Remuneration Procedures administered by Public Sector Industrial and Employee Relations Division, Department of Justice and Attorney-General if appropriate.

**Clause 68 Amendment of s 26 (Remuneration of committee members)**

Clause 68 amends section 26 to replace the references to ‘Governor in Council’ with ‘Minister’ and permits the relevant Minister to decide the fees and allowances paid to council committee members. The former Board committee members were paid fees and allowances under the Remuneration Procedures administered by Public Sector Industrial and Employee Relations Division, Department of Justice and Attorney-General. Future fees and allowances paid to council committee members will be considered by the relevant Minister and aligned with the Remuneration Procedures if appropriate.

**Clause 69 Insertion of new pt 10, div 6 – Transitional provisions for *Building and Other Legislation Amendment Act 2009***

Clause 69 inserts a new part 10, division 6 – Transitional provisions for *Building and Other Legislation Amendment Act 2009*.

**Section 177 Insertion of new s 177 (Definitions for div 6)**

Section 177 provides definitions for the operation of division 6.

**Section 178 Insertion of new s 178 (Dissolution of Plumbers and Drainers Board)**

Section 178 provides for the dissolution of the board (former board) on commencement of the amendments. Former board chairperson, deputy chairperson, members and deputy members, and any members of a committee of the former board will go out of office. Despite these members ceasing to hold office, no financial disadvantage to an individual is

anticipated, as a person is not prevented from being renominated for holding office with the council.

### **Section 179 Insertion of new s 179 (Registrar and officers of former board)**

Section 179 states administrative arrangements relating to officers of the former board and that their functions continue under the council.

### **Section 180 Insertion of new s 180 (References to the former board)**

Section 180 outlines that a reference to the former board in an Act or document is to be taken as a reference to the council.

### **Section 181 Insertion of new s 181 (Legal proceedings)**

Section 181 provides transitional provisions for legal proceedings that have started, or could have started or continued by or against the former board before the commencement of the amendments, may be started or continued by or against the council.

### **Section 182 Insertion of new s 182 (Migration of undecided applications)**

Section 182 provides transitional provisions for the council to decide applications made to the former board as though they were applications made to the council.

### **Section 183 Insertion of new s 183 (Migration of former board's matters)**

Section 183 provides transitional provisions about decisions of the former board to be decisions of the council.

### **Clause 70 Amendment of schedule (Dictionary)**

Clause 70 amends the dictionary to omit the definition of 'board' and introduce a new definition for 'council'. 'Council' means the Plumbing Industry Council established under section 5.

## **Part 9**                      **Amendment of *Property Agents and Motor Dealers Act 2000***

### **Clause 71 Act amended**

This part amends the *Property Agents and Motor Dealers Act 2000* (PAMDA).

### **Clause 72 Amendment of s 363 (Purposes of ch 11)**

Clause 72 amends section 363 of PAMDA to create obligations on seller's agents about advertising and availability of information about sustainable housing measures for the sale of houses, town houses and residential units (class 1 and 2 buildings).

### **Clause 73 Insertion of a new ch 11, pt 5**

Clause 73 inserts chapter 11 into the PAMDA which relates to the requirement for a sustainability declaration to be completed before advertising sale of houses, town houses and residential units (class 1a and class 2 buildings).

## **Part 5**                      **Advertising sale of particular properties – sustainability declarations**

### **Division 1**                      **Preliminary**

#### **Section 373A Definitions for pt 5**

Section 373A introduces new definitions into PAMDA to support the sustainability declaration provisions.

## **Division 2                    Requirements about advertising sale, and inspection, of residential dwellings**

This division outlines seller's agent obligations when advertising sale and inspection of residential dwellings (class 1a and class 2 buildings).

### **Section 373B Application of div 2**

Section 373B provides for the application of division 2. The division applies to a seller's agent appointed under PAMDA, until the day the residential dwelling is sold or withdrawn from sale, whichever is the earlier.

### **Section 373C Requirements about advertising sale of residential dwelling**

Section 373C applies when a seller's agent advertises a sale of a residential dwelling. Subsection (1) outlines the seller's agent's obligation to include information about where a person may obtain a copy of a sustainability declaration when an advertisement is published to sell a residential dwelling. For example, an internet site or advertisement may include information about where a person may obtain a copy of the declaration.

Subsection (2) provides that the seller's agent must not give a person a document advertising the sale of a residential dwelling unless the person already has a copy of the current sustainability declaration or a copy of the declaration accompanies the advertising document. This obligation is not intended to extend to requiring that the seller's agent is responsible for the person accepting possession of the copy of the sustainability declaration. The obligation to give a copy to a person is satisfied if the seller's agent makes a reasonable effort to give a copy to the person with the other document advertising the sale.

Subsection (2) does not apply to the seller's agent if the document is given to the person at the residential dwelling when the building is generally open to the public for inspection by potential buyers. This is because a copy of the declaration needs to be conspicuously displayed at open inspections and therefore potential buyers need not be given a copy unless they request one. Requirements for the inspection of a building are outlined in section 373D.

A breach of these obligations by the seller's agent incurs a maximum penalty of 100 penalty units.

### **Section 373D Requirements about inspection of residential dwelling**

Section 373D applies where a residential dwelling is open to the public for inspection by potential buyers and requires the seller's agent to ensure a copy of the sustainability declaration is conspicuously displayed so that anyone entering the dwelling can easily read the declaration. For example, the seller's agent may place it in a clearly visible location where persons entering the building would reasonably be expected to notice it, such as on a kitchen top, adjacent to the visitor's register or on a sign on or near the site in a location it is likely to be seen by potential buyers.

If a potential buyer inspects a residential dwelling at any time other than when the residential dwelling is generally open to the public for inspection, subsection (2) places an obligation on the seller's agent regarding the sustainability declaration with three ways to comply.

Subsection (2) (a) specifies the seller's agent may comply by ensuring the potential buyer has already been given a copy of the sustainability declaration before the person enters the residential dwelling.

Further, subsection (2) (b) allows the seller's agent to advise the potential buyer that they have a copy with them that is readily available for inspection before the person enters the building as a means of complying with the section. If a potential buyer inspects the building more than once it is not intended that the seller's agent repeatedly offer the person a copy if the person had been offered a copy at an earlier visit and had refused to take one.

Another alternative for complying with subsection (2) is for the sustainability declaration to be displayed conspicuously, on or near the site or building in a location it is likely to be seen by the potential buyer, or in the dwelling, so that the person can easily read it.

### **Section 373E Requirements to give copy of sustainability declaration**

If a potential buyer asks the seller's agent for a copy of the sustainability declaration, the seller's agent must give the potential buyer a copy as soon as practicable. The section recognises that there may be many interested

persons who take copies and seller's agents may run out or not have adequate numbers in certain circumstances. The seller may choose to post or e-mail a copy to the person, or make it available later in the day or at another agreed time.

A breach of these obligations incurs a maximum penalty to the seller's agent of 100 penalty units.

### **Section 373F Breach of obligation does not generally give rise to right or remedy**

A breach of an obligation of this division does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.

## **Division 3            Publishing or giving incomplete or false or misleading sustainability declaration**

This division outlines the publishing or giving of false or misleading information in a sustainability declaration.

### **Section 373G Application of div 3**

Section 373G clarifies the application of division 3. Division 3 only applies in circumstances where a seller's agent publishes an advertisement for the sale of a house or residential unit (class 1a and 2 building) that includes information about the house or residential unit's sustainability declaration or gives or makes a sustainability declaration available to a person. The division also only applies if the declaration is incomplete or includes false or misleading information and this information was not included by the seller's agent or because of any representation made by or for the seller's agent.

A seller's agent can prepare a declaration for a seller but there is no obligation to do so.

### **Section 373H No right to terminate contract for publishing or giving declaration**

Section 373H states that a buyer has no right to terminate a contract of sale if a seller of a building provides the declaration is incomplete or contains information that is false or misleading.

### **Section 373I Publishing or giving declaration does not contravene particular provisions**

The seller is responsible for the preparation and accuracy of a sustainability declaration under section 246B of the BA. Section 373I outlines that if a seller's agent merely publishes or makes available a sustainability declaration signed by the seller that contains false or misleading information that sections 573A, 573B(1), 573C(1) or 574(1) of PAMDA for which a person may make a claim against the fund are not contravened. The fund is established by the Act under section 408. This section also outlines that the publishing or giving of a false or misleading declaration by a seller's agent does not contravene sections 38, 39, 40 or 40A of the *Fair Trading Act 1989*.

### **Clause 74 Amendment of s 470 (Claims)**

The amendment of section 470 inserts a note that references the sections of the PAMDA provided in section 373I. This mentions particular activities that do not constitute a contravention of the Act whereby a person may make a claim against the fund.

### **Clause 75 Amendment of sch 2 (Dictionary)**

New definitions have been introduced into schedule 2 to support the sustainable housing declaration requirements.

## **Part 10                      Amendment of *Sustainable Planning Act 2009***

### **Clause 76 Act amended**

Clause 76 amends the *Sustainable Planning Act 2009* (SPA).

### **Clause 77 Amendment of s 335 (Content of decision note)**

This section has been amended to include that a decision notice issued by a building certifier must include the approved plans for the development approval and state the classification or proposed classification of the building or parts of the building under the BCA.

### **Clause 78 Amendment of s 870 (References to repealed IPA)**

Clause 78 amends section 870 of the SPA to include a new subsection (3). This new subsection ensures that, until the *Local Government Act 2009* commences, a reference in the SPA to the *Local Government Act 2009* may be taken to be a reference to the *Local Government Act 1993*.

## **Part 11                      Amendment of *Transport Infrastructure Act 1994***

### **Clause 79 Act amended**

Clause 79 amends the *Transport Infrastructure Act 1994*.

### **Clause 80 Insertion of new s 477B**

#### **Section 477B Recording of information for land in transport noise corridor**

Clause 80 inserts section 477B into the *Transport Infrastructure Act 1994* to enable the transport chief executive to give the registrar of titles a notice about land within a designated transport noise corridor.

The intention of these notices is to inform property owners and potential purchasers that a property is affected by road or rail traffic noise, and may be subject to additional building assessment provisions. The notices will be identified during title searches when a property is being sold. The notices will replace the use of statutory covenants, which were previously used by the former DTMR to ensure new residential development was designed and constructed in a manner to mitigate road traffic noise.

## **Part 12**                      **Amendment of Acquisition of Land Act 1967**

### **Act amended**

Clause 81 provides that the Part amends the *Acquisition of Land Act 1967*.

### **Amendment of schedule (Purposes for taking land)**

Clause 82 amends the schedule to the *Acquisition of Land Act 1967* to include an additional purpose for which land may be acquired. This purpose will allow the acquisition of land for koala conservation purposes in the south east Queensland local government areas of the Brisbane City Council, Gold Coast City Council, Ipswich City Council, Logan City Council, Moreton Bay Regional Council, Redland City Council or Sunshine Coast Regional Council. Exercise of the power will be on uninhabited land outside of the urban footprint, namely, the Rural Living Areas and Regional Landscape and Rural Protection Areas as mapped under the South East Queensland Regional Plan. The chief executive of the Department of the Environment and Resource Management will develop a policy to determine the circumstances in which the power may be used.

## **Schedule**                      **Consequential amendments of *Plumbing and Drainage Act 2002***

The schedule provides consequential amendments of *Plumbing and Drainage Act 2002* to replace ‘board’ with ‘council’.