



Planning Legislation

Old Problems, New Tools

Planning and Development Bill 2014 & Planning and Environment Court Bill 2014

The Planning Bills are proposed to replace the Sustainable Planning Act 2009 (QLD)

Seeking to implement a new land-use planning and development assessment system that:

Promotes prosperity through

- ❖ **Balancing economic growth**
- ❖ **Environmental protection**
- ❖ **Community wellbeing**



Development assessment - more than just a change in terminology

The State government has indicated that the P&D Bill will implement the government's reform initiative of lowering the level of assessment for development generally. To achieve this, three (or four) categories of development streams will replace SPA's six development assessment categories:

- ❖ Accepted development (comprising both exempt and self-assessable development under SPA) - no development approval required;
- ❖ Assessable development (divided into 'standard assessment' and 'merit assessment') - development approval required; and
- ❖ Prohibited development.



Planning and Environment Law Reforms

One of election commitments of the Newman government related to a reform of Queensland's planning system. The government created an assistant ministerial position to facilitate that process.

As a result of consultation through various discussion groups and stakeholders, the Newman government introduced two bills into parliament:

- (a) the Planning and Development Bill 2014 (Qld) (P&D Bill); and
- (b) the Planning and Environment Court Bill 2014 (Qld) (PEC Bill).

When former Premier Campbell Newman announced the election the previous Government went into caretaker mode for the Bills and the Parliamentary Committees ceased to exist.

With the Labor Party coming into Government, the future of these two bills is largely unknown.

General Observations

There are some very useful features of the P&D Bill, particularly in and around the assessment and decision rules for 'standard assessment'.

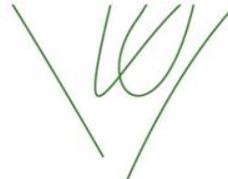
However, it is apparent that the P&D Bill will not result in self-contained legislation. Many of the key 'sources of law' for Queensland's new planning system will involve considering a number of documents including regulations, guidelines and ministerial rules which can of course change from time to time.

With the regulation, guidelines and rules only being available as incomplete drafts, there is some difficulty in providing a comprehensive analysis at the present time of what the new planning system for Queensland will entail. That uncertainty is compounded by an unclear State election outcome.

Purpose of the P&D Bill

A key feature of the current SPA involves a purpose which is for the relevant stakeholders to achieve ‘ecological sustainability’.

Following feedback during the public consultation phase, the purpose was amended so that prosperity was achieved, ‘including through ecologically sustainable development that balances economic growth, environmental protection and community wellbeing’.



Planning and Development Bill 2014 (Qld)

Following the recent Queensland State election, the future of the Planning and Development Bill 2014 (Qld) is largely an unknown.

As it currently stands, some of the changes proposed to the provisions regulating development compliance are:



- **The removal of an offence for not complying with applicable codes for self-assessable development;**
- **The removal of an offence for not progressing a development application required by an enforcement notice or in response to a show cause notice;**
- **The increase of the maximum penalties for committing development offences to 4,500 penalty units;**

- the creation of a new offence for breaching an enforcement order and increasing the maximum penalty for breaching a Magistrates Court order in a prosecution proceeding or a Planning and Environment Court's order in an enforcement proceeding to 4,500 penalty units or two years imprisonment (currently 1,665 penalty units and 12 months imprisonment and only applicable to breaching a Magistrates Court order);
- the time limitation for commencing prosecution proceedings to be one year after the offence is committed or one year after the offence came to the complainant's knowledge (currently one year after the offence was committed or six months after the offence came to the complainant's knowledge);

- **That an enforcement order imposed by the Magistrates Court or the P&E Court attaches to the premises and binds the owner, the owner's successor in title and any occupier of the premises**
- **Requiring the defendant to ask the registrar of titles to record the enforcement order made by the Magistrates Court or the P&E Court against the property's title; and**
- **If the defendant does not comply with the enforcement order imposed by the Magistrates Court or the P&E Court within the stated time, the enforcement authority may take the action and recover the reasonable cost of taking the action as a debt against the defendant.**

A Key Positive...

(5) An enforcement authority need not give the person a show cause notice, before giving the person an enforcement notice, if—

(a) the development offence relates to—

(i) a Queensland heritage place or a local heritage place; or

(ii) works that the enforcement authority reasonably believes are a danger to persons or a risk to public health; or

(iii) the demolition of works; or

(iv) the clearing of vegetation; or

(v) the removal of quarry material allocated under the Water Act 2000; or

(vi) extracting clay, gravel, rock, sand or soil, not mentioned in subparagraph (v), from Queensland waters; or

(vii) development that the enforcement authority reasonably believes is causing erosion, sedimentation or an environmental nuisance; or

(b) the enforcement authority reasonably believes it is not appropriate in the circumstances to give the show cause notice.

Maximum Penalties & PINs for SPA Offences

- 1 The following table shows the maximum penalties and PIN ranges for development offences against the SPA.

SPA provision	Development offence	Maximum penalty	PIN range²³
Section 574(1)	A person does not comply with applicable codes for self-assessable development.	Individual \$18,785.25 Corporation \$93,926.25	Individual \$569.25 to \$1,138.50 Corporation \$2,846.25 to \$14,231.25
Section 575(1)	A person carries out development requiring compliance assessment without an effective compliance permit for the	Individual \$189,560.25 Corporation \$947,801.25	N/A
Section 576(1)	A person contravenes a compliance permit, including any condition of the permit.	Individual \$18,785.25 Corporation \$93,926.25 (corporation)	N/A
Section 576(2)	A person contravenes a condition in a compliance certificate.	Individual \$18,785.25 Corporation \$93,926.25	N/A
Section 577(2)	A person did not make a request for compliance assessment, as required.	Individual \$18,785.25 Corporation \$93,926.25	N/A
Section 578(1)	A person carried out assessable development without an effective development permit for the development.	Individual \$189,560.25 Corporation \$947,801.25 ²⁴	Individual \$569.25 to \$2,270.00 Corporation \$2,846.25 to \$56,925.00
Section 577	A person does not comply with the codes mentioned in the planning scheme or temporary	Individual \$18,785.25	Individual \$569.25

SPA provision	Development offence	Maximum penalty	PIN range 23
	instrument when carrying out assessable development.	Corporation \$93,926.25	Corporation \$14,231.25
Section 580(1)	A person contravenes a development approval, including any condition in the approval.	Individual \$189,560.25 Corporation \$947,801.25	Individual \$569.25 to \$2,277.00 Corporation \$2,846.25 to \$56,925.00
Section 581(1)	A person carries out development that is prohibited development.	Individual \$189,560.25 Corporation \$947,801.25	N/A
Section 582	A person uses a premises: (a) for an unlawful use; or (b) and the use is not in accordance with: (i) for premises that have not been designated – a planning scheme or a temporary local planning instrument that regulates the use of the premises; or (ii) for premises that have been designated – any requirements about the use of land that are part of the designation.	Individual \$189,560.25 Corporation \$947,801.25	Individual \$1,138.50 Corporation \$28,462.50