

12 October 2018

Our ref: WD: P&E

Committee Secretary
State Development, Natural Resources and
Agricultural Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

Email: sdnraidc@parliament.qld.gov.au

Dear Committee Secretary

Economic Development and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Economic Development and Other Legislation Amendment Bill 2018 (the **Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Planning & Environmental Law Committee who have substantial expertise in this area.

Key issues

As noted below, QLS has limited its comments to the specific issues identified below:

- the amendments to the *Planning Act 2016* (**Planning Act**) directed at validating infrastructure charges notices (**ICNs**) issued under the repealed *Sustainable Planning Act 2009* (**SPA**) since 4 July 2014;
- the need for further consultation on the proposed amendment to section 121(3) of the *Planning Act* under which an ICN must "*include or be accompanied by any other information prescribed by regulation*"; and
- amendments enabling the Planning & Environment Court to refer a matter to a private mediator subject to the comments below.

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Limited scope of response

The Bill was introduced on 19 September 2018 and submissions are due 3 ½ weeks later on 12 October 2018. The Bill is 224 pages long and amends 8 other Acts.

Given the wide-ranging scope and complexity of the amendments, QLS has limited its comments to certain specific issues.

It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified due to the timeframes for response.

By omitting to comment on the full scope of provisions in the Bill, QLS does not express its endorsement of these.

1. Infrastructure charges notices including reasons

The amendments are supported, to the extent that the legislation would validate ICNs issued under SPA from 4 July 2014 which did not include reasons as required under section 637(2) of SPA.

The Explanatory Notes suggest that the proposed amendments are "*not considered to have an adverse effect on rights and liberties, or the imposition of obligations, retrospectively.*"

These amendments are clearly retrospective in operation. Generally, retrospective legislation is a breach of the fundamental legislative principles under the *Legislative Standards Act 1992*.

However, it is also noted that these amendments will ensure certainty for councils and industry who have relied on ICNs issued without reasons and will avoid placing at risk the financial sustainability of local governments who utilise the infrastructure charging framework.

In these specific and limited circumstances, the proposed retrospectivity appears appropriate.

2. ICNs - Amendments to section 121 of the Planning Act

QLS notes that the proposed amendment to section 121 of the Planning Act will mean that ICNs must:

- State the date of the notice; and
- State any appeal rights the recipient of the notice has in relation to the notice; and
- Include or be accompanied by any other information prescribed by regulation.

These amendments will commence on assent to the Bill.

QLS considers that further consultation is required in relation to the proposal that an ICN must "*include or be accompanied by any other information prescribed by regulation*".

The Explanatory Notes do not indicate the nature of the information likely to be "*prescribed by regulation*".

It will be important to ensure that any amendments to the regulation are consistent with section 4(5) of the *Legislative Standards Act 1992* which requires that the regulation is consistent with the policy objectives of the authorising law and it contains only matter appropriate to subordinate legislation.

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Depending on the nature of the information prescribed in a regulation, these changes could have a significant impact on entities issuing ICNs and the need to undertake an unknown amount of work to comply with the new regulation.

Further consultation and a reasonable transitional period for any amendments to the regulation are required in relation to this change.

3. Referring matters for private mediation

The proposed change is supported, which will enable the Planning and Environment Court to refer matters to private mediation, as was the position under SPA.

QLS recommends that there be no limitations on when the Court may refer a matter to a private mediator. The Court should be the ultimate arbiter of this matter based on the facts and circumstances before it.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Principal Policy Solicitor, Wendy Devine by phone on (07) 3842 5851 or by email to w.devine@qls.com.au.

Yours faithfully



Ken Taylor
President