

## **CLAUSE NOTES**

### **LAND USE PLANNING AND APPROVALS AMENDMENT BILL 2013**

#### **PART 1 - PRELIMINARY**

##### **Clause 1. Short Title**

This clause provides for the short title when citing the Act for legal purposes.

##### **Clause 2. Commencement**

This clause provides for the commencement of the Act on a day or days to be proclaimed.

#### **PART 3 - BUILDING ACT 2000 AMENDED**

##### **Clause 3. Principal Act**

This clause provides for the *Building Act 2000* to be referred to as the Principal Act in this Part.

##### **Clause 4. Section 3 amended (Interpretation)**

This clause defines terms as having the same meaning in the *Land Use Planning and Approvals Act 1993*. The clause also defines 'relevant planning requirements' as referred to in Section 71A.

##### **Clause 5. Section 71 amended (Consideration of application for building permit)**

This clause adds a further matter (subsection (1)(da)) that is to be taken into account in the consideration of an application for a building permit.

##### **Clause 6. Section 71A inserted**

This clause inserts a new section 71A – Relevant planning instruments after section 71 of the Principal Act.

##### **71A. Relevant planning requirements**

This section outlines what it meant by the term 'relevant planning requirements' necessary for the administration of proposed subsection (1)(da) of section 71 of the Principal Act.

##### **Clause 7. Section 72 amended (Granting building permit)**

The clause specifies that if an application for a permit is accompanied by a planning compliance certificate, it must be for a building that is either a 'single dwelling development' or a 'low risk development' and that the development is to be taken to comply with the 'relevant planning requirements'.

Under section 60ZD of the *Land Use Planning and Approvals Act 1993* a planning compliance certificate can only be issued if –

- the use and development is a single dwelling or low risk use and development; and
- under a planning scheme no permit is required; and
- the development is not prohibited.

**Clause 8. Section 73 amended (Refusing building permit)**

This clause prevents a permit authority (council) from refusing an application for a building permit is that application if accompanied by a planning compliance certificate.

**Clause 9. Section 25I amended (Immunity from liability)**

This Clause provides immunity from liability if a permit authority relies on a planning compliance certificate.

**PART 3 - LAND USE PLANNING AND APPROVALS ACT 1993 AMENDED**

**Clause 10. Principal Act**

This clause provides for the *Land Use Planning and Approvals Act 1993* to be referred to as the Principal Act in this Part.

**Clause 11. Section 3 amended (Interpretation)**

This clause defines a number of terms to aid understanding of Part 3 (Planning Schemes).

**Clause 12. Section 12A inserted**

This clause inserts a new section 12A - Issue of interim planning directives.

**12A. Issue of interim planning directives**

This section provides for a draft planning directive to be given immediate effect as an interim planning directive. The Minister can only issue an interim planning directive on the recommendation of the Tasmanian Planning Commission and only then, after he or she has directed the Commission to undertake an assessment of the draft planning directive.

The interim planning directive will cease to operate if it is superseded by a planning directive that comes into operation under section 13 of the Principal Act, has been in effect for 12 months or the Minister, by notice in the gazette, terminates its operation.

The Minister must give notice of the issue of the interim planning directive and advise the Commission and all planning authorities affected by its operation.

**Clause 13. Section 15 amended (Modification or revocation of planning directive)**

This clause removes interim planning directives from the operation of section 15 in terms of its powers to revoke a planning directive. This power has been replaced by proposed subsection 12A(7).

**Clause 14. Part 3, Division 1A, Subdivision 1: Heading inserted**

This clause introduces a new heading after section 30A to aid readability of the Principal Act.

***Subdivision 1 – Purposes and interpretation***

**Clause 15. Section 30B amended (Interpretation: Division 1A)**

This clause removes the definition of “dispensation” from section 30B as the definition has been included in section 3 (Interpretation) as it now has broader application.

**Clause 16. Part 3, Division 1A, Subdivision 2: Heading inserted**

This clause introduces a new heading after 30B to aid readability of the Principal Act.

***Subdivision 2 – Regional areas and land use strategies***

**Clause 17. Part 3, Division 1A, Subdivision 3: Heading inserted**

This clause introduces a new heading after section 30C to aid readability of the Principal Act.

***Subdivision 3 – Interim planning schemes***

**Clause 18. Section 30IA amended (Urgent amendment of interim planning schemes)**

This clause provides that a reference to interim planning scheme under Subdivision 4 is to be taken to be a reference to an interim planning scheme that has been modified under section 30IA. The clause also removes superfluous words from subsection 30IA(6)(j).

**Clause 19. Sections 30P, 30Q and 30R substituted**

This clause substitutes sections 30P, 30Q and 30R of the Principal Act with a new subdivision (subdivision 4 – Dispensations).

***Subdivision 4 - Dispensations***

**30P. Interpretation of Subdivision 4**

This section defines the term “relevant exhibition documents” as referred to in Subdivision 4.

### **30Q. Applications for dispensations**

This section provides for an application to be made to a planning authority for a dispensation from a local provision of an interim planning scheme during the period the Commission is conducting the assessment of the interim planning scheme.

This section also allows a person who has made an application for a dispensation to also request the planning authority to consider an application for a permit (s.30R), similar to the process available in existing schemes under section 43A of the Principal Act.

The planning authority has powers under this section to modify the application for a dispensation and request additional information if it does not consider it has sufficient information to be able to assess the application. If the planning authority modifies the application the applicant must be notified.

### **30R. Application for permit that relates to application for dispensation**

This section provides for an application for a permit to be made to a planning authority which would not be allowed if the dispensation from the planning scheme was not granted.

The planning authority has powers under this section to request additional information if it considers there is insufficient information to assess the application. If a request is made for additional information the clock stops for both the application for a permit and the dispensation to avoid the processes becoming uncoupled.

This section also specifies which sections of Division 2 (Development control) of Part 4 of the Principal Act applies and those that do not apply.

### **30S. Planning authority to decide whether to reject or exhibit application for dispensation**

This section provides for a planning authority to either exhibit the application for a dispensation or reject it. This decision must be made within 42 days of receiving the application.

A planning authority can only exhibit the application if it is satisfied that it meets the criteria specified in subsection (2)(a) to (f).

If the planning authority decides to reject the application, the permit, if any, is to be taken to be refused. The planning authority is required to give notice to the applicant, the owner of the property (if not the applicant) and the Commission.

### **30T. Planning authority that agrees to exhibition is to consider permit application first**

This section requires a planning authority to decide whether to grant or refuse to grant an application for a permit if a decision has been made to exhibit the application for a dispensation (s.30S). The decision to grant or refuse to grant a permit must be made within 42 days of receiving the application.

When making its decision on an application, a planning authority must seek to further the objectives of the Principal Act (Schedule 1) and take into consideration any relevant prescribed matters.

A planning authority can grant a permit with or without conditions or restrictions.

### **30U. Exhibition of applications for dispensations**

This section provides for the exhibition of an application for a dispensation and a permit, if any. The planning authority is required under this section to exhibit the “relevant exhibition documents” (s.30P), as the case may be, for period of 3 weeks in its office and on its website. The three week period is extended by any days the office of the planning authority is closed during normal business hours.

This section also requires a notice of the application(s) to be published in a daily newspaper circulating generally in the area and specifies what the notice must contain.

### **30V. Representations and reports in relation to applications for dispensations and permits**

This section provides for a person to make a representation in relation to either the application for a dispensation or a permit (if any) or both during the exhibition period (3 weeks).

The planning authority is required to prepare a report to the Commission on the representations within 35 days from the end of the exhibition period. The section also specifies what must be contained in the report.

The Board of the Environment Protection Authority, where relevant, must also provide to the Commission its opinion, views or recommendations on each representation and on the decision(s) of the planning authority in relation to those representations.

### **30W. Grant of dispensations**

This section requires the Commission to hold hearings into each representation received during the exhibition period. The Commission can also hold hearings in relation to any matter it thinks fit and is required to consider the applicable matters in relation to the exhibited documents. The applicable matters are specified under this section.

This section specifies the process for the Commission’s assessment of the application for a dispensation. The Commission must decide to grant, with or without modifications, or to refuse to grant the dispensation within 3 months after receiving the planning authority’s report (s.30V). The Commission must be satisfied that the dispensation meets the tests under subsection (5) and is required to give notice of its decision.

The section also provides for a penalty applying to people that contravene any condition specified in a dispensation.

The section also clarifies the status of a dispensation that has been granted insofar as it relates to an interim planning scheme as it is being assessed and after it has been made a planning scheme.

### **30X. Alteration of certain planning schemes and revocation of dispensations**

This section provides for a landowner to apply to the Commission to revoke a dispensation. The Commission is provided with the power to either revoke in accordance with the application or refuse to revoke the dispensation.

The section also provides the power to the Commission to cause an interim planning scheme or a 30N planning scheme to be modified to give effect to the dispensation. Once either scheme is amended, the Commission can revoke the dispensation but only after providing the landowner the opportunity to make representations.

Any amendments made under this section are not subject to the 'normal' planning scheme amendment process under Division 2 of Part 3 of the Principal Act.

### **30Y. Decision in relation to permit application accompanying dispensation application**

This section specifies what the Commission can decide in relation to a permit at the same time as it is considering whether to grant a dispensation. If the Commission has refused to grant a dispensation, any permit issued by the planning authority is automatically refused.

Any permit granted under this section comes into effect on the date the Commission makes its decision, a later date specified by the Commission or, if an agreement is required to be entered into, the date when the agreement is executed.

Permits granted under this section lapse after 2 years if the use or development that the permit allows is not substantially commenced. However, like 'ordinary' permits granted under Part 4 of the Principal Act, they can be extended for a further 2 years by the planning authority.

The Commission is also required to notify the applicant (if not the owner) and the planning authority of its decision in relation to the permit.

### **30Z. Correction of mistakes in permits referred to in section 30Y and minor amendments**

This section provides a planning authority with the power to correct errors in a permit.

### **30ZA. Minor amendments of permits referred to in section 30Y**

This section provides a planning authority with the power to make minor amendments to a permit on the request of a landowner. The planning authority may only amend the permit if it is satisfied that an amendment meets the conditions specified in subsection (2) and is required to give notice of its decision.

Any person who made representation in relation to the permit can appeal the decision to amend the permit to the Resource Management and Planning Appeal Tribunal (Appeal Tribunal).

### **30ZB. Dispensation application that are not decided before planning scheme made**

This section provides for applications for dispensations, with or without permits, to continue to be assessed under the interim planning scheme even though the interim planning scheme has been replaced by a planning made under section 30N. These transitional arrangements do not apply where the planning authority has not made a decision to exhibit the application for a dispensation.

## **Clause 20. Sections 50A, 50B, 50C and 50D inserted**

This clause provides for the insertion of sections 50A, 50B and 50D after section 50 of the Principal Act.

### **50A. Certifiable schemes or orders and certifiable permitted uses and developments**

This section provides for the certification, by regulation, of particular planning schemes and particular permitted uses or developments that are the only schemes or uses or developments applicable to the issue of permitted use or development certificates (s.50B).

### **50B. Permitted use or development certificates**

This section provides for the request for and issue of permitted use or development certificates by planning certifiers.

A private certifier can only issue a permitted use or development certificate under this section if it is in relation to a certifiable permitted use or development under a certified planning scheme.

The section also provides for a penalty applying to people making false representations to obtain a permitted use or development certificate.

### **50C. Permitted use or development certificates if water or sewerage supply implications**

This section requires a planning certifier to give notice, where necessary, to a regulated entity under the *Water and Sewerage Industry Act 2008* if they receive a request for and issue a permitted use or development certificate that would impact on the infrastructure of the entity.

On receipt of the notice, the regulation entity may make submissions to the planning certifier in relation to the application within 14 days or a further period that the planning certifier allows. The section also provides the regulated entity to seek further information and details the process to obtain that information and associated time periods.

## **50D. Water and sewerage certificates**

This section provides for the issue of water and sewerage certificates by the planning certifier in relation to a certifiable permitted use and development. The certificates can state that the certifiable permitted use and development, in the certifier's opinion, does not impact on the regulated entity's infrastructure or, it has an impact, and the regulated entity has made a submission to the private certifier, or the regulated entity has not made submissions in response to a notice.

### **Clause 21. Section 51 amended (Permits)**

This clause provides for an application for a certified permitted use and development to a planning authority to be accompanied by a permitted use and development certificate and water and sewerage certificate. If those certificates are provided to the planning authority they need to be accompanied by any submissions from a regulated entity and a copy of the notice (if any) provided to the regulated entity.

### **Clause 22. Section 53 amended (When does a permit take effect?)**

This clause specifies a further circumstance where a permit ceases to remain in effect. The further circumstance relates to the cancellation of a permit by a planning authority under proposed section 65G.

### **Clause 23. Section 58 amended (Application for other permits)**

This clause requires a 50% reduction of the fees normally paid to a planning authority for an application for a permit for a permitted use or development if that application relates to a certifiable permitted use or development and is accompanied by the required certificates. The 42 day period in which the planning authority has to grant the permit is reduced to 10 working days under this clause.

This clause also requires the planning authority to consider, when determining whether to grant the permit with or without conditions, that the use or development subject to the application is a certified permitted use or development. If the planning authority is of the opinion the use or development is not a certified permitted use or development, the planning authority must refuse the permit and notify the applicant. The applicant can appeal the planning authority's decision to refuse the permit to the Appeal Tribunal.

The clause also specifies the requirements associated with notification to, and any permit conditions of, a regulated entity under the *Water and Sewerage Industry Act 2008*. A regulated entity is automatically taken to be a party to an appeal if it relates to the imposition of condition on a permit.

### **Clause 24. Section 58A amended (Permits requiring entering into of agreements)**

This clause allows the imposition of a condition requiring an agreement to be entered into on a permit associated with a dispensation to an interim planning scheme.



**Clause 25. Section 60C amended (Projects eligible to be declared projects of regional significance)**

This clause allows the consideration of projects of regional significance which are prohibited by an interim planning scheme or a planning scheme made under s.30N.

**Clause 26. Section 60Y amended (Amendment of planning schemes, &c.)**

This clause allows the amendments to be made to an interim planning scheme or a planning scheme made under s.30N to remove any inconsistency between a project of regional significance permit and either planning scheme.

**Clause 27. Part 4, Division 2B inserted**

This clause inserts Division 2B – Planning compliance certificates after section 60Z of the Principal Act.

**60ZA. Interpretation of Division 2B**

This section defines a number of terms to aid understanding of this Division.

**60ZB. Planning compliance certificates to be obtained**

This section specifies that it is an offence to commence the development of a single dwelling or low risk development unless a planning compliance certificate is obtained.

The section also provides for a court to order that an offender carry out work to ensure that the breach is rectified. If the required work is not carried out by an offender in accordance with the order, the section provides authority to the planning authority to carry out the work and recover costs from the offender. The court may also order the offender to pay the costs of the planning authority in investigating or prosecuting the offence.

**60ZC. Applications for planning compliance certificates**

This section provides for a person to apply to a planning authority or a planning certifier for the issue of a planning compliance certificate in relation to a single dwelling or low risk development.

The section also provides for a penalty applying to people making false representations to obtain a planning compliance certificate.

**60ZD. Issue of planning compliance certificates**

This section requires a planning authority or a planning certifier to issue a planning compliance certificate if they are of the opinion that the use and development is a single dwelling use and development or a low risk use and development. If a planning authority or a planning certifier is not of that opinion, they must refuse to issue a planning compliance certificate.

The applicant can appeal the decision of the planning authority or planning certifier to refuse the permit to the Appeal Tribunal.

## **60ZE. Planning compliance certificates**

This section defines a planning compliance certificate.

The section also provides for planning compliance certificates to lapse after 2 years if the use or development that the certificate allows is not substantially commenced. However, like 'ordinary' permits granted under Part 4 of the Principal Act, they can be extended for a further 2 years by the planning authority.

The section also clarifies the status of a planning compliance certificate where a planning scheme or special planning order has altered and the use or development subject to the certificate is no longer a use or development that a certification can be issued for.

A planning authority must keep a register of all planning compliance certificates and provide a copy of all entries in the register to the Commission.

## **60ZF. Cancellation of planning compliance certificates**

This section provides for a notice of intention to cancel a planning compliance certificate to be cancelled. The section also details the content of the notice and the procedures to be followed in addressing the content of the notice.

The section also provides for the person on whom a notice is provided can make representation to planning authority. Any representation received must be considered before a planning compliance certificate can be cancelled.

A person can appeal the decision of the planning authority to cancel the planning compliance certificate to the Appeal Tribunal.

## **Clause 28. Section 61 amended (Appeals against planning decisions)**

This clause provides for an appeal to the Appeal Tribunal against a decision of an Authorised Officer to issue an enforcement notice.

The clause also provides for an appeal to the Appeal Tribunal in circumstances where a planning authority cancels a permit. The appeal must be lodged with the Appeal Tribunal within 14 days after of the notice cancelling the permit is served.

## **Clause 29. Section 62 amended (Determination of appeals)**

This clause provides for the Appeal Tribunal to direct the planning authority not to cancel a permit (which has been the subject of an appeal regarding its cancellation), and may or may not further impose or vary conditions.

The Appeal Tribunal can also confirm the decision of the planning authority to cancel the permit using its general powers under section 23 (Determination of appeal) of the *Resource Management and Planning Appeal Tribunal Act 1993*.

### **Clause 30. Section 63 amended (Obstruction of sealed schemes)**

The clause makes provision for the payment of costs incurred by a planning authority in investigating or prosecuting an offence if a person is convicted of the offence.

The clause also provides for a court to order that an offender carry out work to ensure that the breach is rectified. If the required work is not carried out by an offender in accordance with the order, the clause provides authority to the planning authority to carry out the work (subclause 5C) and recover costs (subclause 5A) from the offender.

### **Clause 31. Section 63B inserted**

This clause inserts 63B. - Notice of suspected contravention, &c., may be given after 63A of the Principal Act.

#### **63B. Notice of suspected contravention, &c., may be given**

This clause provides for a person to notify, in writing, a planning authority that another person (other than a planning authority), in their opinion, has contravened or failed, or is likely to contravene or fail to comply with section 63(3) of the Principal Act.

The clause also requires the planning authority, within 120 days after the complainant's notice is received, to advise the complainant what, if any, actions it intends to take regarding the suspected contravention or failure.

### **Clause 32. Section 64 amended (Civil enforcement proceedings)**

This clause confines an application for a civil enforcement order to a person other than the Commission or a planning authority. An order may be sought by a person that suspects another person has contravened or failed or is likely to contravene or fail to comply with a provision of Part 4 (Enforcement of Planning Control) of the Principal Act excluding sections 48, 48AA or 63A. Sections 48, 48AA or 63A are excluded to prevent the Tribunal inappropriately instructing a planning authority when to, or how to, enforce the Principal Act against third parties.

One of the more significant requirements of the clause is that an application may only be made to the Tribunal after an application to the planning authority and only then after 120 days have passed. The 120 day 'non-lodgement' requirement is to provide sufficient time for the planning authority to investigate a matter, obtain evidence of the breach and issue appropriate notices where necessary.

However, if a planning authority determines that no action is required within the 120 day period and accordingly notifies the complainant (refer Clause 9), that person can then commence section 63A or 64 proceedings if they still consider it necessary.

The restriction from lodging an application directly to the Tribunal does not apply where a council is both the proponent and the planning authority that is required to act on the application. This avoids the situation where the council would need to prosecute itself if it found that a contravention or a failure to comply has occurred.

The clause also makes the necessary consequential changes to subsections (2A) and (2B) as the words ‘other than a planning authority’ are superfluous, as this amendment confines an application for a civil enforcement order to a person other than .... a planning authority [subclause (a)(1)]. Subsection (2C) is also superfluous as it relates to the Commission which, as a body, will no longer be able to apply to the Appeal Tribunal for orders. Subclause (2A) is also to be amended to cater for the situation where the respondent is the planning authority.

### **Clause 33. Part 4, Division 4A and 4B inserted**

This clause provides for the inclusion of 2 new Divisions after section 65 of the Principal Act.

#### ***Division 4A      Enforcement by planning authorities***

##### **65A.      Infringement notices**

This section provides for the issue of infringement notices by an “authorised officer”. The section requires an infringement notice to be in accordance with the *Money Penalties Enforcement Act 2005* and provides for Regulations to prescribe what is an offence and penalties.

##### **65B.      Notice of intention to issue an enforcement notice**

This section provides for an authorised officer to issue a notice of intention to issue an enforcement notice. The section details circumstances under which such a notice may be issued and outlines notification requirements, content and procedures following receipt of the notice.

The section also provides for the person on whom a notice of intention to issue an enforcement notice is served can make representation to the Council. Any representation received must be considered before an enforcement notice may be issued (refer section 65C).

##### **65C.      Enforcement notices**

This section provides for an authorised officer to issue an enforcement notice and details circumstances under which such a notice may be issued. The section details notification requirements associated with the notice, and also outlines circumstances under which an enforcement notice might be served without the issue of a notice of intention to issue an enforcement notice.

The section provides for enforcement notices to detail particulars of the alleged offence, what appeal rights exist and may specify requirements to be imposed on a person. The section also provides for an enforcement notice to be withdrawn by a planning authority.

##### **65D.      Requirements of enforcement notices**

This section provides that an enforcement notice may require a person to do certain things and details the provisions that are able to be included in the notice.

The section also prevents an enforcement notice from including matters associated or inconsistent with environment protection notices under the *Environmental Management and Pollution Control Act 1994*.

#### **65E. Offences and penalties in relation to enforcement notices**

This section provides for penalties against a person (including a body corporate) failing to comply with an enforcement notice and enables a planning authority to recover costs associated with an investigation or prosecution of the offence.

The section also provides the court with the power to order a person convicted of an offence to carry out any work needed to 'address' the offence. In the event that an order is issued and the offender does not carry out the specified work within a set time, a planning authority can undertake that work and recover its costs from the offender.

#### **65F. Notice of intention to cancel a permit to be issued before permit cancelled**

This section provides for a notice of intention to cancel a permit to be issued before a permit can be cancelled. The section also details the content of the notice and the procedures to be followed in addressing the content of the notice.

The section also provides for the person on whom a notice is served can make representation to an authorised officer. Any representation received must be considered before a permit can be cancelled (refer section 65G).

#### **65G. Cancellation of permits**

This section provides for the cancellation of a permit by a planning authority. The section specifies the grounds under which the permit might be cancelled and the procedures to be followed prior to the cancellation of the permit.

The section also requires that cancellation notices must detail, amongst other matters, the permit, the subject of the notice, the grounds on which the permit has been cancelled and what appeal rights exist.

#### **65H. Issue of notices where application made to Tribunal**

This section restricts a planning authority from taking various enforcement actions while a matter is before the Tribunal. The section also provides that a planning authority cannot issue a notice in circumstances where the Tribunal finds that an offence has not occurred.

#### **Division 4B. Authorised officers**

This clause introduces Authorised Officers for the purposes of administering the civil enforcement procedures in relation to offences against the Principal Act.

#### **65I. Authorised officers**

This section provides for the appointment of authorised officers for the administration and enforcement of the Principal Act. General Managers of a council and police officers are authorised officers for the purposes of the Principal Act.

#### **65J. Powers of authorised officers**

This section details the general powers of an authorised officer including powers of entry, inspection and questioning.

The section confines the authorised officer's powers to matters connected with the administration and enforcement of the Principal Act.

#### **65K. Entry and search warrants**

This section provides for the issue of a warrant by a magistrate authorising an authorised officer to enter premises or land specified in the warrant. The section details the justification required before a warrant can be issued and outlines the specifications of the warrant.

In executing a warrant, a police officer acting as an authorised officer may use necessary and reasonable force.

#### **65L. Additional requirements in respect of dealings with persons not &c., in English**

This section provides for assistance to be provided in circumstances where questioning by an authorised officer of a person not reasonably fluent in English occurs.

#### **65M. Obstruction, &c., of authorised officers and others**

This section requires a person to provide a general level of co-operation and compliance with an authorised officer in the conduct of his / her duties.

### **Clause 34. Section 69B inserted**

This clause inserts 69B. - Protection from liability after 69A of the Principal Act.

#### **69B. Protection from liability in respect of certain certificates issued by planning certifiers**

This section protects a planning authority from liability in relation to a planning compliance certificate, or a permitted use or development certificate, issued by a planning certifier. This protection does not remove the planning authority's obligations to enforce the observance of its planning scheme (subsection (2)).

### **Clause 35. Part 5A inserted**

This clause inserts PART 5A – PLANNING CERTIFIERS Division I – Authorisation of planning certifiers after section 80A of the Principal Act.

## **80B. Transitional applicants for authorisations**

This section provides for the ‘grandfathering’ of people as planning certifiers if they have the appropriate experience but not the qualification.

## **80C. Authorisation of planning certifiers**

This section provides for the authorisation of people as private certifiers that have the appropriate qualifications or are approved under the ‘grandfathering’ provisions (subsection (2)). The section also details the application process, the matters the Commission must take into consideration in deciding whether a person should be authorised and what regulations should cover in relation to private certifiers.

## **80D. Surrender, revocation and suspension of authorisation**

This section provides for the surrender, revocation and suspension of an authorisation and details the process for these actions. An authorisation can be surrendered voluntarily by its holder. The section also allows the Commission to suspend or revoke a person’s authorisation. The Commission’s decision under this section can be challenged before the Magistrates Court (Administrative Appeals Division) by seeking a review of the decision.

## **80E. Variation and revocation of conditions and restrictions specified on authorisations**

This section provides for the Commission to vary or revoke conditions or restrictions specified on an authorisation and details the process for these actions. The Commission’s decision under this section can be challenged before the Magistrates Court (Administrative Appeals Division) by seeking a review of the decision.

The section also allows for a holder of the authorisation to apply to the Commission for a revocation or variation of a condition or restriction specified on an authorisation.

## **80F. Planning certifier must not issue false statement or act if conflict of duty**

This section provides for a penalty against planning certifiers if providing false or misleading statements in a particular matter or issuing a planning compliance certificate or a permitted use or development certificate where they have direct or indirect pecuniary interest.

## **80G. Change of, or referral to, other planning certifiers**

This section prevents a person from ‘certificate shopping’. That is, a person cannot engage another private certifier to exercise the same power that has been the subject of a previous application nor can they remove a private certifier from an engagement. In both cases the section provides for exclusions from those rules.

Any breach of those rules results in a penalty which is higher for a corporation than an individual.

## ***Division 2 – Rights and duties in relation to planning certifiers***

### **80H. Planning certifier may charge for services**

This section provides for a private certifier to charge for his or her services.

### **80I. Information to be provided to planning authorities**

This section requires a planning certifier to make certain notifications to a planning authority on receipt or after making a decision in relation to an application for a planning compliance certificate or a permitted use or development certificate.

Failure to comply with these provisions results in a penalty against the private certifier.

## **Clause 36. Part 6, Division I inserted**

This clause inserts PART 6, Division I before section 8I of the Principal Act.

### **80J. Interpretation of Division I**

This section defines a number of terms to aid understanding of Division I of Part 6.

### **80K. Database**

This section requires the Commission to establish and maintain a database of the legislative history of the electronic planning instruments and provides for the Commission, if it chooses, to include on that same database the legislative history of electronic policy instruments. The section defines what those instruments are and what constitutes their legislative history.

The section also provides for a 'hard copy' map which may form part of an existing planning instrument in effect to be replicated in the database.

Provision is also made for the Minister to prescribe, by a notice in the gazette, which planning schemes or special planning orders this section applies to. This allows for a staged approach to the placement of electronic planning schemes on the database as not all schemes will be ready at the same time.

### **80L. Back-up database to be kept**

This section requires the Commission to securely place copies of the database 'off-site' from where the database is held. The copy of the database has the same status as the database under this section.

### **80M. Authorised versions**

This section provides that the version of the electronic planning instrument or an electronic policy document is placed on the database, and so specified, is the authorised version of that instrument or document for the purposes of this section.



#### **80N. Certified copies of authorised versions**

This section provides for the Commission to approve the production of copies, in whole or in part, of authorised versions of electronic planning instruments or electronic policy instruments in electronic or printed form. For those copies to be certified copies under this section, they will need to display the signature of the Executive Commissioner.

The section also clarifies that while the information displayed in certified copies of electronic planning instruments or electronic policy instruments at a particular date can vary depending on the scale of those documents, they are to be taken as not being materially different. This provision is necessary to take account of the more that you zoom into an electronic map, the topographical information increases and the opposite is the case when you zoom out.

Provision is also made for the Commission to charge a fee for providing certified copies under this section.

#### **80O. Commission may alter authorised versions of electronic planning instruments**

This section provides for the Commission to alter the authorised version of the electronic planning instruments to correct minor errors, anomalies and inconsistencies including the correction of typology, grammatical, spelling, punctuation, and cross referencing errors.

The Commission can also authorise the alteration of the electronic zoning map to maintain an alignment between the planning scheme zone boundary data and the State cadastral data where it is intended to do so. This provision is necessary to take account of changes to the cadastre over time.

#### **80P. Offences**

This section provides for penalties against a person falsely making representations that a particular electronic planning instrument or an electronic policy instrument is an authorised version or a copy of an authorised version of that instrument or document.

#### **80Q. Documents, submissions, &c., may be issued or made electronically**

This section provides for the electronic submission or display of relevant documents to a relevant person which includes applications for permits, representations to a planning authority in relation to an advertised development, and online exhibition of draft planning schemes and amendments to planning schemes.

The section defines “relevant person” and “relevant document”.

### **Clause 37. Part 6, Division 2: Heading inserted**

This clause introduces a new heading before section 8I to aid readability of the Principal Act.

**Clause 38. Section 81A amended (Planning schemes, &c., to be registered in Central Plan Register)**

This clause removes the need to lodge paper copies of planning schemes or special planning orders that are included on a database prescribed for the purposes of proposed section 80K.

**Clause 39. Section 82 substituted**

This clause replaces the wording of section 82 - Evidentiary provision with alternative wording.

**82. Evidentiary provision**

This section provides for paper and electronic copies of planning instruments and policy instruments prescribed for the purposes of this section to be given as evidence to a court or tribunal or a person acting judicially. In terms of the electronic copies of those instruments, they must be the signed by the Executive Commissioner of the Commission as being a certified copy of the instruments.

**Clause 40. Section 85A inserted**

This clause inserts section 85A – Immunity from liability after section 85 of the Principal Act.

**85A. Immunity from liability**

This section provides for a ‘reasonable’ level of personal protection to an authorised officer, an assistant, and members of a planning authority in the execution of a warrant.

**Clause 41. Repeal of Act**

This clause provides for the repeal of this amending Act following the inclusion of all provisions into the Principal Act.