Since 2012, Queensland’s Liberal National Government, led by Campbell Newman, has passed several new or reformed environmental and planning statutes. In every case, cutting red tape, by eliminating duplication and procedural inefficiencies, was top of the agenda. The main pieces of legislation are: the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012 (Qld), the Sustainable Planning and Other Legislation Amendment Act 2013 (Qld), the Economic Development Act 2012 (Qld) and, in 2014, the Regional Planning Interests Act 2014 (Qld). This article analyses these statutes to assess their contribution to eliminating duplication and cutting red tape.

INTRODUCTION

In March 2012, the Liberal National Party, under the leadership of Campbell Newman, swept to power in Queensland with a decisive victory over a Labor government that had held the reins of power, with only one short break, since 1989. Top on the agenda of the new government was its mission to cut back on wasteful bureaucracy. By eliminating duplication and cutting red tape, it would become cheaper, easier and more profitable to do business in Queensland. Environmental regulation, including planning law, was quickly identified as a hindrance to development in all four “pillars” of the Queensland economy – tourism, agriculture, resources and construction. In a flurry of activity, the new government passed the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012 (Qld), the Sustainable Planning and Other Legislation Amendment Act 2013 (Qld), the Economic Development Act 2012 (Qld) and, in 2014, the Regional Planning Interests Act 2014 (Qld). This article analyses these statutes to assess their contribution to eliminating duplication and cutting red tape.

THE MICROECONOMIC REFORM AGENDA AND ITS RELEVANCE TO PLANNING LAW

Microeconomic reform aims to improve economic efficiency by implementing measures to reduce or eliminate distortions in the economy as a whole or in individual sectors in particular. In Australia, the first spate of microeconomic reform policies occurred in the early 1980s when the Hawke Government decided to float the Australian dollar, reduce tariff barriers and deregulate the financial sector. The reform process did not stop there. In addition to these specific measures, advocates of microeconomic reform argued more generally that, across all sectors, the burden to business of complying with ever-increasing amounts of government regulation was impeding economic efficiency. The problem lay not only in the ever-increasing number of regulations, but also in their content, which was, in many cases, “overly prescriptive, poorly targeted, duplicative, mutually inconsistent, excessive in their coverage of firms and unduly onerous in the reporting and other obligations on the firms affected”.

The logical solution to this dilemma was, of course, to reduce the overall amount of regulation and to redesign whatever remained to make it perform better (especially for business).
Since the 1980s, the call for regulatory reform has regularly resurfaced (if it ever recedes) with surprising vigour. For instance, in 1988 the Industry Assistance Commission (IAC) (now the Productivity Commission) made regulatory reform the centrepiece of its Annual Report; in 1992, the Council of Australian Governments (COAG) accepted a mandate to reduce regulatory complexity across Australia’s multiple jurisdictions; and in 2006, a specially appointed Taskforce on Reducing the Regulatory Burden on Business produced its report on Rethinking Regulation (the Banks Report) which prompted COAG to adopt a new National Reform Agenda to advance the cause of regulatory reform. Most recently, in July 2013, the Coalition Government adopted its Policy to Boost Productivity and Reduce Regulation. This aims to “reduce the red tape cost burden imposed on the Australian economy by $1 billion per year”.5

In one of the more insightful analyses of the causes and characteristics of “regulation obesity”,6 the Banks Report identified five tendencies symptomatic of our regulatory malaise:

- Excessive coverage, including “regulatory creep”, whereby regulations catch more activity than originally intended or warranted, as, for instance, the real value of thresholds becomes eroded by inflation.
- Overlapping and inconsistent regulatory requirements, particularly across jurisdictions.
- Redundant regulation or regulation not justified by policy intent. For instance, poorly designed regulations may give rise to unintended or perverse outcomes, others may become ineffective or unnecessary as circumstances change over time.
- Excessive reporting or recording burdens on companies facing multiple demands from different arms of government for similar information and/or information that is excessive or unnecessary.
- Variations in definitions and reporting requirements.7

The Banks Report also analysed the root causes of this phenomenon. In its view:

A variety of forces appear to be contributing to excessive and poor quality regulation, and the costs it generates. However, in the Taskforce’s view, a fundamental driver is increasing “risk aversion” in many spheres of life. In effect, regulation has come to be treated as a panacea for many of society’s ills and, in particular, is seen as an easy means to protect people against an array of risks – big and small, physical and financial – that arise in daily life. Reflecting this view, a failure by governments and their regulators to “do something” in response to the crisis of the moment often brings criticism from political opponents and in the media.8

The Banks Report called for “strong leadership” to counter this tendency and to ensure that any new legislation remains proportionate to the level of risk being addressed.9 In other recommendations, it endorsed the following principles of good regulation adopted by the OECD and other experts:10

10 Australian Government, n 7, p 8 (Box 2.3).
OECD Principles of Good Regulation

1. Minimum necessary to achieve objectives: Overall benefits to the community should justify the costs. Regulation should be kept simple to avoid unnecessary restrictions and targeted at the problem. Regulation should not impose an unnecessary burden on those affected nor restrict competition, unless there is a demonstrated net benefit.

2. Not unduly prescriptive: Regulation should be performance and outcomes focused; general rather than overly specific.

3. Accessible, transparent and accountable: Regulation should be readily available to the public and easy to understand. It should be fairly and consistently enforced but flexible enough to deal with special circumstances. There should be avenues for appeal and review.

4. Integrated and consistent with other laws: Regulation should address a problem not addressed by other regulations. It should recognise existing regulations and international obligations.

5. Communicated effectively: Regulation should be clear and concise, written in “plain language”.

6. Mindful of the compliance burden imposed: Regulation should be proportionate to the problem, set at a level that avoids unnecessary costs.

7. Enforceable: Regulation should provide the minimum incentives needed for reasonable compliance. It should be able to be monitored and policed effectively.

For the past 30 years the microeconomic reform agenda has strongly influenced debates about the objectives, substance and form of planning regulation. Common themes in the literature include the need for:

- **Streamlining**: Reducing duplication, simplifying procedures and downsizing regulatory reach. Governments should regulate only where necessary and in proportion to the level of risk being addressed. They should consider forms of self-regulation as an alternative.\(^1\)

- **Integration**: This involves minimising the number of approvals required; encouraging separate departments to talk to one another, and creating a more holistic approach to approvals.\(^1\)

- **Client focus**: This includes prior consultation, clear language, certain expectations, timeliness, accountability and transparency.\(^1\)

- **Performance not prescription**: Regulatory requirements should focus on overall outcomes not prescriptive conformity per se and allow flexibility in achieving the required outcomes.\(^1\)

---


In Queensland, the microeconomic reform agenda has motivated a record number of planning discussion papers, reform proposals and legislative amendments as well as entirely new planning statutes. For instance, in 1990, the Queensland Department of Housing, Local Government and Planning conducted a Systems Review of Queensland planning and development legislation and issued a report, *Is it too Complex?*, which recommended adopting an integrated development assessment system. This was followed by a Discussion Paper in 1993, and a new Planning, Environment and Development Assessment Bill in 1995, which ultimately became the *Integrated Planning Act 1997* (Qld) in 1997. The *Integrated Planning Act* was subject to constant amendments and refinements and in 2007 another departmental report, *Planning for a Prosperous Queensland*, concluded the only way forward was to replace the *Integrated Planning Act* with a new Act that would provide “[a] significantly improved and streamlined land use planning and development framework” including “streamlining … clarity … greater flexibility and responsiveness”. This recommendation eventually bore fruit as the *Sustainable Planning Act 2009* (Qld), but that legislation, too, is now under review. The current government is undertaking a “once-in-a-generation” reform of the planning system that aims to: streamline assessment and approval processes; remove unnecessary red tape; and re-empower local governments to plan for their communities.

The recently published Planning and Development Bill, if enacted, will be the culmination of the government’s legislative overhaul in the area of planning law. In the meantime, since entering government in March 2012, the Coalition Government has passed the *Environmental Protection (Greentape Reduction) Act*, the *Sustainable Planning and Other Legislation Amendment Act*, the *Economic Development Act* and the *Regional Planning Interests Act*. Each of these Acts has an important bearing on the legal framework for planning in Queensland. This article analyses these statutes to assess their contribution to microeconomic reform.

**ENVIRONMENTAL PROTECTION (GREENTAPE REDUCTION) AND OTHER LEGISLATION AMENDMENT ACT**

The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act* (EPOLA Act) was passed in August 2012. As its name suggests, this Act responds directly to the microeconomic reform agenda by aiming to “simplify and improve” the licensing processes under the *Environmental Protection Act 1994* (Qld).

In a decisive break with the previous government’s commitment to integrating development and environmental approvals, the EPOLA Act separates environmental and development authorities and creates a stand-alone assessment system for licensing almost all environmentally relevant activities, including resource activities. The main reasons for doing this are:

- to make operational approvals more flexible;
- to ensure licensing procedures and requirements are proportionate to environmental risk; and
- to streamline the approvals process for mining and petroleum.

The decision to separate environmental and development authorities seems to fly in the face of conventional microeconomic wisdom favouring ever greater integration. The question is, to what extent does the Act advance microeconomic reform despite the “disintegration” of environmental and development approvals? Three criteria will be examined: streamlining, integration and client focus.

---


17 *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill*, Explanatory Notes, p 2.

18 This excludes agricultural activities affecting the Great Barrier Reef (covered separately in Ch 4A).

19 *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill*, Explanatory Notes, p 1.

20 Space does not allow a full consideration of how well current reforms extend performance based planning. This aspect of the microeconomic reform agenda is usually covered in subsidiary instruments.
Streamlining

Streamlining involves simplifying procedures, reducing unnecessary, unintended or duplicate regulation and ensuring that, overall, the level of regulation is proportionate to the risk being addressed. How well does the EPOLA Act fare in these respects?

First and foremost, the 2012 amendments are said to promote risk based assessment. This means that, within the newly separated assessment process, every application for an environmental authority will follow an assessment path that is proportionate to the level of environmental risk being proposed. The three different assessment paths are for:

- standard applications;
- variation applications; and
- site specific applications.

In this new environmental assessment system, low risk environmental activities will be automatically approved provided an activity meets the eligibility criteria for a standard application (ie it can operate within the standard conditions). An applicant who cannot meet all the eligibility criteria may make a variation application to change some of the conditions. A variation application will be assessed only on the basis of the proposed variations. All other environmentally relevant activities (ERAs) require a site specific application which will be assessed on a case by case basis.

In addition to risk based assessment, the new assessment regime has reduced the information and reporting requirements for some operators, particularly large-scale mining operators. For example, information collated during the environmental impact statement (EIS) process (if required) will now be automatically included in the environmental authority application; public consultation conducted for the EIS will replace the requirement to include a notification stage in the site specific assessment process, and submissions made as part of the EIS will automatically be carried through into the assessment for an environmental authority.

The significance of some of these streamlining amendments is overstated. For instance, prior to 2012 the Environmental Protection Act already made provision for standard environmental conditions, and the automatic approval of code compliant mining applications. Nevertheless, if these measures are properly implemented there should be a real reduction in the regulatory burden for new applicants.

The EPOLA Act amendments may also claim to have reduced the overall length and complexity of the Environmental Protection Act. The EPOLA Act repealed 170 sections covering 206 pages. It replaced those sections with a new Chapter 5 comprising 210 sections covering 123 pages, and a Chapter 5A comprising two sections covering 22 pages. Although the 212 new sections significantly outnumber the 170 sections they replace, the EPOLA Act has, to its credit, reduced the overall length of these sections by 61 pages. This suggests a significant reduction in complexity. That is not quite the end of the story, however, as the transitional provisions relating to the EPOLA Act amount to a further 34 sections covering another 19 pages. Nevertheless, overall, the amended Environmental Protection

21 Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill, Explanatory Notes, p 2.
22 Environmental Protection Act 1994 (Qld), as amended, ss 122, 170.
23 Environmental Protection Act 1994 (Qld), as amended, ss 123, 176.
24 Environmental Protection Act 1994 (Qld), as amended, ss 124, 176.
25 Environmental Protection Act 1994 (Qld), as amended, ss 40, 139, 176.
26 Environmental Protection Act 1994 (Qld), as amended, s 150.
27 Environmental Protection Act 1994 (Qld), as amended, s 150.
28 Environmental Protection Act 1994 (Qld), reprint no 11, ss 548-549 (now repealed).
29 Environmental Protection Act 1994 (Qld), reprint no 11, ss 164-165 (now repealed).
30 The Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 (Qld) repealed Chs 4, 5, 5A and 6 of the Environmental Protection Act 1994 (Qld) and replaced them with new Chs 5 and 5A. The Environmental Protection Act, now has no Chapter 4 or 6.
Act still comes out ahead in terms of overall page length: the new Chapters 5 and 5A and their transitional provisions cover 164 pages replacing 206 pages in the pre-2012 version of the Act.\textsuperscript{31}

**Integration**

Until 2012, environmental authorities (other than for mining and petroleum activities) were, for the most part, processed and assessed under Queensland’s main planning legislation, the *Sustainable Planning Act 1997* (Qld). The result was a single approval covering all aspects of development including any environmentally relevant activities (ERAs). Although this was a great idea in theory, integration at this level created a number of practical problems, such as: the need for a separate registration system for environmental operators (to check their personal credentials); difficulties in transferring and amending environmental approvals; and (potentially) time delays as applications wound their way through the cumbersome, integrated development assessment system (IDAS) of the *Sustainable Planning Act*.\textsuperscript{32} The EPOLA Act sacrificed the existing high level of integration in favour of a more flexible, user-friendly end product (discussed below). The overall effect of the EPOLA Act, however, is that the majority of applicants will now be required to complete two assessment procedures: one to assess the development aspects of their proposal; and another for their environmentally relevant activity. They will also still have to register separately as an environmental operator.

There have been some attempts to minimise the impact of this “disintegration”. In the amended *Environmental Protection Act*, the separate assessment process is structured along lines similar to the IDAS and is designed to run prior to or concurrently with any requisite development assessment process under the *Sustainable Planning Act*.\textsuperscript{33}

**Client focus**

The retreat from a fully integrated assessment system is claimed to be a client friendly initiative with net benefits for environmental operators:

The initiatives also provide a flexible framework that caters to the changing needs of modern business. Business will benefit through the ability to obtain, transfer or amend licences in a simpler and clearer manner. There will also be less administrative burden for business through the acquisition of corporate licences, and the standardisation of conditions across multiple sites.\textsuperscript{34}

In the new scheme, an environmental authority is decoupled from a development authority and does not attach to the land. This makes amalgamating, amending and assigning environmental authorities a much simpler exercise. In particular:

- transfers of ERA authorities between registered operators will be automatically allowed;
- environmental operating conditions will be more easily amended without triggering the need to apply for a new or amended development approval; and
- a company holding environmental authorities at different sites will be able to apply for an amalgamated corporate authority. An amalgamated corporate authority may include a single set of administrative conditions (for example, a single reporting date and a single date for payment of annual returns) and may consolidate common operating conditions across multiple sites.\textsuperscript{35}

\textsuperscript{31} Note the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) removed 65 pages (61 sections) of transitional provisions relating to amendment Acts from 1997-2005 inclusive – so, arguably, the only real gain has been in an overall reduction in the number of transitional provisions going back to 1997-2005.


\textsuperscript{33} Section 120 of the amended *Environmental Protection Act 1994* (Qld) requires a development application to be commenced or completed before an application for an environmental authority is made.

\textsuperscript{34} Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill, Explanatory Notes, p 6.

\textsuperscript{35} Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill, Explanatory Notes, p 3; *Environmental Protection Act 1994* (Qld), as amended, s 244.
Once again, the magnitude of these reforms should not be overstated. Mining and resource activities were never integrated into IDAS and remain tied to resource tenure – so some of the above flexibility reforms do not apply.36 Furthermore, licence holders operating at different sites were already able to register as a “single integrated operation” in some circumstances prior to 2012.37

Aside from the client friendly benefits of the above “flexibility mechanisms”, the EPOLA Act has made no significant improvements to other key aspects of the client focused reform agenda, including improved accountability and transparency. To balance up the score card, in its favour, the EPOLA Act does offer increased certainty and reduced timeframes for operators applying for standard or variation licences.

**Overall assessment**

The EPOLA Act may justifiably claim to have made some gains in reducing the overall length and complexity of the Environmental Protection Act. At the cost of a fully integrated development assessment system, the EPOLA Act offers environmental operators more flexibility and, potentially, a reduced regulatory burden – although duplicating the assessment system of the Sustainable Planning Act must significantly qualify the scale of those achievements.

When introducing the EPOLA Act, the Minister was at pains to stress that the “process improvements” in the EPOLA Act would be made “without affecting environmental outcomes”.38 Despite the Minister’s confidence, two aspects of the reform agenda may have a bearing on overall performance outcomes. First, we are assured that the number of environmentally relevant activities that will also require a development approval for a material change of use will be reduced considerably.39 There is a risk that this will be at the cost of comprehensive and holistic impact assessment. Second, in the standard assessment stream, applicants who say they will be able to address the relevant eligibility criteria will automatically be issued an environmental authority subject to the standard conditions. This requires applicants to self-assess their own applications against the relevant eligibility criteria. It gives them a clear incentive to “look good on paper” with little guarantee that these standards will actually be implemented. In effect, the integrity of operators’ claims will not be tested until their operations are up and running and subject to annual reporting requirements. Compliance and enforcement are notoriously tricky issues in the field of environmental law.40 It remains to be seen whether standardised conditions will prove too blunt a tool for operators and enforcement agencies in Queensland.

**Sustainable Planning and Other Legislation (Amendment) Act**

The Sustainable Planning Act is Queensland’s most comprehensive piece of legislation governing land-use and development. It provides the framework for land-use planning and development control throughout the State. It incorporates a far-reaching referral mechanism whereby State entities, acting within their particular jurisdiction, may advise and/or give their concurrence to development applications received by local governments. This complex process is known as the integrated development assessment system (IDAS). The IDAS was the crowning glory of the reform package when the Sustainable Planning Act, formerly known as the Integrated Planning Act, was originally conceived, but it has since been the subject of enduring criticism. Long delays, conflicting advice from...
different referral agencies and an emphasis on procedural compliance instead of quality outcomes are just some of the problems that have been regularly highlighted.\textsuperscript{41}

The \textit{Sustainable Planning and Other Legislation (Amendment) Act} (SPOLA Act) tackled some of these problems head on. It established a single entity, the State Assessment and Referral Agency (SARA), with overall responsibility for assessing and deciding all development applications involving a referral to any State agency (other than building work assessable against the \textit{Building Act 1975} (Qld)).\textsuperscript{42} Other reforms associated with the SPOLA Act include the amalgamation of separate State planning policies into a single State planning policy and the publication of State Development Assessment Provisions (SDAP). The SDAP sets out the matters of interest to the State when SARA assesses or decides development applications.\textsuperscript{43}

The policy objective of the SPOLA Act was “to make certain improvements to Queensland’s planning and development system, as informed by users of the system”, so as to ensure an “effective and efficient planning and development system”.\textsuperscript{44} How well, then, does the SPOLA Act fare against the standard microeconomic reform criteria of streamlining, integration and client focus?

\textbf{Streamlining}

SARA is now the \textit{single} State agency responsible for handling almost all referrals requiring any State input through IDAS. However, being a relatively small unit, SARA continues to liaise with other State entities, now known as relevant entities. These State entities have lost their concurrence powers but they are still responsible for advising SARA on applications forwarded to them by SARA.\textsuperscript{45}

To accommodate the work of SARA, the SPOLA Act introduced a new Subdivision 2A into Chapter 6 of the \textit{Sustainable Planning Act}. This subdivision states the powers of the chief executive, acting through SARA, as the State referral agency for development applications. However, because the pre-existing referral agencies still have a role to play, existing provisions on the information and referral stage of IDAS were not repealed.\textsuperscript{46} There was, consequently, no reduction in the length of the legislation in this regard.

\textbf{Integration}

The main outcome of the SPOLA Act is that SARA now coordinates and delivers a single referral agency response (or decision) for almost all IDAS applications requiring State input.\textsuperscript{47} However, as stated above, SARA continues to liaise with other State entities and take their advice on board. This means that, arguably, SARA is simply yet another stage and yet another entity involved in the cumbersome decision-making process that is IDAS. The main justification for this level of duplication is said to lie in the prospect of more consistent, streamlined development conditions resulting from better coordination at the State level.

Interestingly, when making its assessment, SARA may choose whether or not to observe the laws and policies of other State entities and whether or not to follow the advice of those agencies.\textsuperscript{48} The

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{42} \textit{Sustainable Planning Regulation 2009} (Qld), Sch 7. The \textit{Sustainable Planning and Other Legislation (Amendment) Act 2012} (Qld) also repealed sections of the \textit{Sustainable Planning Act 2009} (Qld) relating to master planning and structure planning and gave the Planning and Environment Court greater discretion in relation to costs. These and other reforms are not considered in this article.
\end{flushleft}

\begin{flushleft}
\textsuperscript{43} Available at \url{http://www.dsdip.qld.gov.au/development-applications/sdap.html} (viewed 11 September 2014).
\end{flushleft}

\begin{flushleft}
\textsuperscript{44} \textit{Sustainable Planning and Other Legislation Amendment Bill 2012}, Explanatory Notes, p 1.
\end{flushleft}

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{46} In the near future, regulations to be developed alongside the Planning and Development Bill should address this issue.
\end{flushleft}

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{48} \textit{Sustainable Planning Act 2009} (Qld), as amended, s 255E.
\end{flushleft}
reason given for this wide-ranging discretion is the need for flexibility to ensure the single referral agency response is internally consistent and, if necessary, a balanced resolution of any competing agendas.  

Client focus

With respect to client focused reform, the SPOLA Act has delivered a single State referral agency to coordinate all State agency referral responses. This will, it is claimed, achieve real and significant savings in time for applicants, especially large developers with complex applications subject to many State regulations. In addition, the SDAP offers a degree of transparency regarding the applicable assessment criteria formerly applied by different State agencies that has not previously been readily available.

Complementing SARA, MyDAS is the new online system that allows an applicant to prepare and lodge or refer applications to SARA. MyDAS creates a single point of entry for development applications and, among other features, informs applicants of the applicable information and referral requirements for their application. This should cut costs and eliminate some of the mistakes that have occurred in the past due to missed referrals. In all these respects, the advent of SARA is to be welcomed.

Yet there remains a more sinister element to the SPOLA Act. The bottom line is that the chief executive of the Department of State Development, Infrastructure and Planning, who now bears ultimate responsibility for all State referrals administered through SARA, is under no obligation to apply, or even have regard to, either the overall purpose of the legislation which defines the State’s jurisdiction on any particular matter, or any of the assessment criteria included in that legislation. Even with respect to the SDAP, SARA’s own assessment criteria, the chief executive may choose whether or not to “have regard, and give the weight the chief executive considers appropriate, to the matters prescribed under a regulation”. These are extremely open-ended, discretionary terms and one can only wonder if greater flexibility has been bought at too high a cost to certainty and accountability.

Overall assessment

The SPOLA added new and additional requirements to IDAS so, in this respect, it did not reduce the length and complexity of the relevant legislation. Nevertheless, it claims to offer speedier assessment and more internally consistent development approvals for big development projects. Arguably, these reforms enhance the client focus of IDAS, but the huge scope for discretion vested in SARA suggests that there may be a heavy toll on accountability, transparency and quality assessment by relevant State agencies.

**Economic Development Act**

Following through on its election promises, another early piece of legislation introduced by the Newman Government was the *Economic Development Act*. This Act aims to “facilitate economic development and development for community purposes, in the State”. The Act establishes the office of Minister for Economic Development Queensland (MEDQ) and provides a separate planning and development framework for parts of the State declared priority development areas. The MEDQ is

---

Regulatory obesity, the Newman diet and outcomes for planning law in Queensland

responsible for planning, developing and managing land in priority development areas. Its statutory powers include the power to buy or sell land, provide infrastructure and enter into financial agreements. The MEDQ also has leadership with respect to developing the Commonwealth Games village for 2018.

In 2007, the previous Labor government had enacted the Urban Land Development Authority Act 2007 (Qld) (ULDA Act). The main purpose of the ULDA Act was to establish a specialist, State-level agency to manage development in particular urban areas targeted for rapid growth. The goal was to promote a swift and well-managed transition to high density development including (but not limited to) affordable housing in these areas. The ULDA Act was repealed when the Economic Development Act commenced.

How do the Economic Development Act and the ULDA Act compare against the microeconomic reform objectives of streamlining, integration and client focus.

Streamlining

To its credit, the Economic Development Act has avoided duplication by repealing the ULDA Act upon its commencement. Avoiding duplication, however, is not the same as generating an overall reduction in regulatory reach. To a large extent, the Economic Development Act simply replaces and replicates the ULDA Act. For instance, both Acts are (or were) concerned with land management in selected “priority areas”; both Acts vest power to plan for and assess development in these areas in statutory authorities established independently of local governments; and the powers, functions and obligations of each statutory authority are almost identical. In general, statutory procedures in the Economic Development Act mirror very closely the procedures of its predecessor, the ULDA Act. Overall, there is no evidence of procedural simplification or a more general reduction in regulatory reach.

The ULDA Act comprised (in its last rendition) 148 sections covering 90 pages and one Schedule. In contrast, the Economic Development Act comprises 216 sections over 138 pages and one Schedule. Admittedly, the scope of the Economic Development Act is slightly broader than that of the ULDA Act – it includes specific measures for managing the Commonwealth Games, for example. Nevertheless, the sections of the Economic Development Act which effectively replace the ULDA Act equivalents extend over 143 sections and, in addition to these sections, the Economic Development Act includes another 38 transitional provisions dealing with the transfer of powers from the Urban Land Development Authority to the MEDQ, etc. This effectively means that the Economic Development Act accomplishes in 256 sections what the ULDA Act accomplished in 148 sections, with little or no substantive change in content. On these grounds alone, the Economic Development Act is clearly not an exercise in streamlining.

Integration

One of the long-standing complaints targeted at the ULDA Act was that it removed planning and development control over key urban sites from the hands of local government. It duplicated their planning endeavours while creating a centralised and less accountable framework. The Economic Development Act does not answer to these concerns, it simply entrenches them. For instance: both Acts enable a priority development area (or urban development area) and an interim land-use plan to be declared by regulation without community consultation; both Acts allow the Minister to

56 Economic Development Act 2012 (Qld), s 13(2)(c).
57 Economic Development Act 2012 (Qld), ss 13-24; ss 123-128.
58 Urban Land Development Authority Act 2012 (Qld), s 3.
59 Economic Development Act 2012 (Qld), ss 177-215.
61 Urban Land Development Authority Act 2007 (Qld), ss 7, 8; Economic Development Act 2012 (Qld), s 34.
arbitrarily amend a local government’s planning instruments; and both Acts provide a separate development assessment regime (operated by the State) for development in appointed areas. In both cases, the development scheme takes priority over conflicting local planning instruments.

Perhaps in response to complaints from local government, the MEDQ is instructed to “consult with each relevant local government” when planning for or developing land in priority development areas. By comparison, the ULDA was authorised to “[A]ct alone or in conjunction with public sector units, local governments, agencies or instrumentalities of the Commonwealth and other persons”. In all other respects, the degree of State-local integration is unchanged – the Economic Development Act establishes an entirely separate, State-led planning and development control regime for selected areas of the State as did its predecessor.

Client focus

Consultation, transparency and accountability (including appeal avenues) are often cited as best practice goals in planning legislation. However, both the Economic Development Act and the ULDA Act curtail public and proponents’ rights of participation and appeal, especially when compared against the Sustainable Planning Act. For example, in the Economic Development Act, no public notice or consultation is required before a priority development area or a provisional priority development area is declared. Both Acts also limit rights of appeal for development proponents.

While transparency and accountability are limited in both pieces of legislation, the Economic Development Act allows greater scope for the exercise of political oversight and discretion. The ULDA Act established an Urban Land Development Authority as a separate entity to “represent the State”. The majority of its members were appointed experts from related areas. The Economic Development Act replaces the Urban Land Development Authority with an Economic Development Board which advises the MEDQ and performs functions delegated to it by the MEDQ. Membership of the Economic Development Board comprises up to three appointed members – meaning they do not outnumber the departmental representatives. The role of the Economic Development Board is essentially advisory and it is less independent of its political masters.

Overall assessment

Overall, the Economic Development Act, in so far as it replaces the ULDA Act, does not perform particularly well against any standard microeconomic reform objectives. With respect to streamlining, the new Act is significantly longer than its predecessor, even when the new content (relating to the Commonwealth Games village etc) is excluded. With respect to integration, except for a cursory requirement to consult with relevant local governments, the Economic Development Act continues the separate, “top-down”, State-based planning and development system that was created by the ULDA Act. As to client focus, neither the Economic Development Act, nor its predecessor, the ULDA Act, may make any great claims with respect to transparency and accountability although, arguably, development applications will be assessed more speedily when they do not have to wind their way through the Sustainable Planning Act and local government administration. Even if that is the case,
the Economic Development Act makes no improvement on what previously existed under the ULDA Act. Arguably, the only significant change is in the switch to a more politicised and less independent governance arrangement (the MEDQ advised by an Economic Development Board compared to the ULDA).

REGIONAL PLANNING INTERESTS ACT

The Regional Planning Interests Act is the current government’s response to the growing number of regional land-use conflicts involving mining and agricultural interests. The rapid rise of CSG mining in recent years has dramatically increased the number and intensity of these conflicts. The Regional Planning Interests Act responds to these issues by creating a new licensing regime for resource and regulated activities in areas of regional interest. An area of regional interest may be a priority agricultural area, a priority living area, a strategic cropping area or a strategic environmental area. As strategic cropping land may now qualify as an area of regional interest under the Regional Planning Interests Act the Strategic Cropping Land Act 2011 (Qld) was repealed on commencement of the Regional Planning Interests Act. The question then is – does the new Regional Planning Interests Act do a better, more efficient job than its predecessor, the Strategic Cropping Land Act? Is it more streamlined, better integrated with existing regulations and more client focused than its predecessor?

Streamlining

The Strategic Cropping Land Act comprised 299 sections and two Schedules covering a total of 198 pages. In addition to the main Act, there was a Strategic Cropping Land Regulation 2011 (Qld), which comprised 11 sections over seven pages (setting out fees and other administrative matters). In comparison, the Regional Planning Interests Act comprises a slender 108 sections and one Schedule covering a total of 68 pages. The Regional Planning Interests Regulation 2014 (Qld) comprises 20 sections and six Schedules covering an additional 48 pages bringing the total up to 116 pages, a significant reduction on the Strategic Cropping Land Act, which spread itself over 205 pages including the 2011 Regulation. This is no small achievement for an Act which actually claims a bigger scope (applying potentially to priority agricultural areas, priority living areas and strategic environmental areas as well as strategic cropping areas).

Is this reduction purely the result of better drafting, including simpler language and reduced procedural complexity? Unfortunately, that is not the case. While the Strategic Cropping Land Act was arguably more involved (or technically verbose) it did incorporate a number of tailored management tools which implemented a more sophisticated regulatory framework. For instance, the validation process in the Strategic Cropping Land Act allowed any eligible person to apply for a validation decision to confirm whether or not particular land identified in the Department’s strategic cropping land trigger map was in fact strategic cropping land and should therefore be subject to the licensing requirements of the Act. This method allowed the Department to rely on its preliminary mapping unless and until further investigation was prompted by an eligible person applying for a validation decision. Alternatively, if a validation decision was not sought, a development proponent could accept the trigger map as it stands and proceed to commence the applicable licensing process. This level of transparency and accountability is altogether missing from the Regional Planning Interests Act. The new Act simply relies on the existing trigger mapping to determine strategic cropping land areas of regional interest.

73 Areas of regional interest are areas identified as contributing (or potentially contributing) to Queensland’s economic, social and environmental prosperity, Regional Planning Interests Act 2014 (Qld), s 3.

74 Strategic Cropping Land Act 2011 (Qld), s 40.
Integration

In the Strategic Cropping Land Act, the strategic cropping land licensing process for development proponents was integrated with and managed through the Sustainable Planning Act while applicants for resource or stand-alone environmental authorities needed to apply directly to the Department of Environmental Protection and Heritage (DEPH). In the Regional Planning Interests Act, the licensing system runs completely independently of the Sustainable Planning Act. An application for a regional interests development approval must be made to the chief executive and be accompanied by a report assessing the impact of the activity on the area of regional interest. The chief executive may refer the application to an assessing agency which will assess the application against the matters stated in s 41, but it remains the task of the chief executive to finally decide all applications.

Client focus

In comparison to the Strategic Cropping Land Act, the Regional Planning Interests Act relies on fewer technical terms and distinctions and incorporates fewer and simpler procedural requirements. Also, the Regional Planning Interests Regulation clearly states the required outcomes and a range of “prescribed solutions” against which assessment applications will be judged, providing some degree of certainty as to outcomes. These achievements are laudable. However, the Regional Planning Interests Act is designed to mediate some of the most ferociously contested land-use debates in Queensland so, arguably, accountability and transparency are the paramount considerations for stakeholders. How well does the Regional Planning Interests Act advance accountability and transparency?

The absence of a validation process – providing accountability and transparency in the selection of regional protection areas – has already been noted. In comparison to the Strategic Cropping Land Act, applicants for a regional interests development approval have limited rights of review – they may request an amendment to their approval provided it will not adversely change the impact of the resource activity, or they may appeal a decision to the Planning and Environment Court. Other members of the community fare more poorly. Section 34 makes public notification a requirement for some assessment applications, but the Regional Planning Interests Regulation limits that requirement to applications for resource activities in priority living areas. Properly made submissions will be considered by the chief executive when deciding whether to grant an approval, but, in contrast to the Sustainable Planning Act, submitters do not automatically acquire the right to appeal a decision. In the Regional Planning Interests Act, the right of appeal is limited to the applicant, the owner of the land or an “affected landowner” (whether or not they made a submission). An “affected landowner” is determined by reference to the proximity of the affected land to the land the subject of the application.

75 Environmentally relevant activities with no other development implications do not require a development approval under the Sustainable Planning Act 2009 (Qld).
76 Strategic Cropping Land Act 2011 (Qld), ss 82, 95.
77 Regional Planning Interests Act 2014 (Qld), s 29.
78 These are: expected impacts; public submissions; any other criteria prescribed under a regulation; and, if the assessing agency is a local government, the applicable planning scheme. Regional Planning Interests Act 2014 (Qld), s 41.
79 Regional Planning Interests Act 2014 (Qld), s 47.
80 Regional Planning Interests Act 2014 (Qld), Sch 2.
81 Regional Planning Interests Act 2014 (Qld), s 55.
82 Regional Planning Interests Act 2014 (Qld), s 71.
83 Regional Planning Interests Regulation 2014 (Qld), reg 13.
84 Regional Planning Interests Act 2014 (Qld), s 49.
85 Regional Planning Interests Act 2014 (Qld), s 72.
Regulatory obesity, the Newman diet and outcomes for planning law in Queensland

and whether the anticipated impacts will adversely affect the “affected landowner”. Both tests involve an element of discretionary judgment opening the door to extended litigation on the preliminary issue of standing.\(^{86}\)

Overall, the Regional Planning Interests Act clearly makes no headway in terms of stakeholder consultation and individual rights of review.

**Overall assessment**

Comparing the Regional Planning Interests Act and its predecessor, the Strategic Cropping Land Act, it is clear that the Regional Planning Interests Act is a more slender, less complex instrument. At the same time, the scope of the Regional Planning Interests Act is broader than that of the Strategic Cropping Land Act. For instance, it identifies four different types of areas that may qualify as an area of regional planning interest: a priority agricultural area; a priority living area; a strategic cropping area; or strategic environmental area. However, these laudable achievements in the realm of “streamlining” come at a cost, with transparency and accountability being the main victims in what is often a fiercely contested public debate.

**CONCLUSION: THE SCORE CARD TO DATE**

In 2006, the Banks Report argued:

> [T]he Taskforce considers that no regulation should be introduced unless the need for government action and the superiority of the preferred option have been transparently demonstrated.\(^{87}\)

Since its decisive victory at the polls in 2012, the Newman Government has been tireless in its campaign to review, amend and improve planning and environmental legislation in Queensland. In every case, “cutting the green tape” has topped the list of claimed improvements. This agenda is evident in the material surrounding each of the Acts covered in this article – the EPOLA Act, the SPOLA Act, the Economic Development Act and the Regional Planning Interests Act. The Queensland Government is not alone in this endeavour. Bureaucratic streamlining has been a prominent objective of the microeconomic reform agenda since at least the 1980s, so it is a bold government that claims it can still make significant “process improvements” in this respect. How well then, has the current Queensland Government fared in its mission to fight our regulatory obesity?

On the standard microeconomic reform criteria of streamlining, integration and client focus, recent reforms in Queensland, like many diets, have produced some fairly equivocal results. With respect to streamlining, only the EPOLA Act and the Regional Planning Interests Act actually managed to reduce the overall length of the applicable legislation. Moreover, the overall reduction in the length of the Regional Planning Interests Act compared to its predecessor, the Strategic Cropping Land Act, cannot be attributed solely to better, simpler drafting and the elimination of duplication. On the contrary, in the Regional Planning Interests Act there are some very significant cuts in the range of legal measures offering transparency and accountability in what is a highly contested area of public debate.

An aspect of streamlining in which the current government has generally fared better is standardisation. The EPOLA Act exemplifies this approach. Its three-tiered assessment path caters for standard, variation and site specific applications. The accompanying literature claims that this reform represents best practice, risk based assessment\(^{88}\) but it remains to be seen whether the same or better environmental outcomes will be achieved when, for instance, standard applications are guaranteed approval so long as they meet the relevant eligibility criteria.

Until 2012, integration was the bedrock of the bureaucratic reform agenda for planning and development legislation in Queensland. The current government has decisively downgraded – if not


\(^{87}\) Australian Government, n 7, p 148.

\(^{88}\) The government’s proposed Planning and Development Act (see n 14) also contemplates standard and variation assessment streams.

(2015) 32 EPLJ 60
altogether abandoned – this particular aspect of the microeconomic reform agenda. The EPOLA Act and the *Regional Planning Interests Act* both establish new and separate licensing regimes and the *Economic Development Act* continues the separate planning and development regime commenced under the earlier ULDA Act. It appears the gospel truth of integration has given way to other goals such as increased flexibility for large-scale environmental operators.

In one respect the Newman Government has excelled at “integration” - that is, the consolidation of discretionary powers in the hands of the chief executive of the Department of State Development, Infrastructure and Planning. SARA’s centralised decision-making power epitomises this trend. Its role is to coordinate and harmonise the advice of all other State departments to ensure internally consistent development approvals are more speedily delivered. This should be to the benefit of applicants, especially those proposing large, often complex, development projects. Development proponents, however, are not the only stakeholders with a legitimate interest in development. It must surely be a cause for concern to these other “clients” of the system, including the public and affected communities, to note the scale of discretion that is now vested in the chief executive of the Department who may or may not consider and may or may not apply any (or no) relevant legislation when making development decisions.

The Newman Government’s reforms perhaps fare the best when judged against the criteria of improving client focus. For instance, development proponents, especially large operators, should benefit from the increased flexibility and speedier decision-making evident in the EPOLA Act and, to some extent, the SPOLA Act. At the same time, greater standardisation in the EPOLA Act assessment streams should benefit lower risk operators.

Nevertheless, despite these improvements, other standard elements of the client focused reform agenda have not fared so well. In almost every case, opportunities for consultation, transparency and accountability have diminished, while the scope for unchecked, discretionary decision-making has significantly expanded. In this respect, it is disingenuous for the government to claim that its recent reforms are simply “procedural” with no possible bearing on substantive outcomes.

Overall, the legislation covered in this article suggests that bureaucratic streamlining is a tough ask for any government. Where gains are made in one respect – to improve flexibility or standardisation, for example – they often necessitate sacrifices in other respects – integration being the primary example in recent times. Overall, it seems salient to ask, are we simply going around in circles? Echoing concerns expressed in the Banks Report, is this simply “change for change’s sake”? When transparency and accountability (themselves recognised objectives of microeconomic reform) take such big hits, we could perhaps also be asking – is this one step forward and two steps back?