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PLEASE QUOTE

YOUR REFERENCE:
OUR REFERENCE: AN1506290852

ENQUIRIES TO: Aletta Nugent, Manager Strategic Planning

9 July 2015

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

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Dear Sir/Madam

Submission – Planning and Development (Planning for Prosperity) Bill 2014

Thank you for the opportunity to make a submission on the *Planning and Development (Planning for Prosperity) Bill 2015* (**Bill**).

Council supports the Bill's objective, which is to deliver Australia's best land use planning and development assessment system. The detailed nature of this submission reflects the desire of Council and its officers to contribute to the development of legislation which will achieve this aim.

Overall, in reviewing the Bill, Council has some concerns about certain aspects of the proposed planning regime the Bill seeks to deliver. Aspects of the proposed regime appear to increase complexity and the focus on process over outcomes, when compared to the existing regime.

The removal of certain content that is currently contained in the *Sustainable Planning Act 2009* (**SPA**) from the Bill means that determining what needs to occur for an application or the preparation of a local planning instrument involves referring back and forth between multiple documents. While this may have resulted in a reduction in the size of the Bill as compared with SPA, the overall complexity this will cause in some cases appears unnecessary and outweighs any benefit from having a smaller Act.

It appears that there has been a deliberate decision when drafting the Bill to change the terminology used in SPA. This is considered unnecessary and will result in a significant administrative burden to Council in transitioning to the new system. Every hard copy and electronic resource and system utilised by Council's development assessment section will need to change. The processes and intent around the terminology can be improved through the Bill, without having to change the actual terminology itself.

In addition, some new terminology has been created, and this appears unnecessary. For example, an affected entity advising if it objects to the change of an approval before the application to change the approval is made must provide a "pre-request response notice". It would be easier just to state that the affected entity must provide a response by way of written notice.

Regarding the proposed third party assessment managers, their jurisdiction should be limited to the initial assessment of a development application and any request for a negotiated decision notice. All other steps such as change applications, extensions of approvals, cancellation of approvals and enforcement require consideration of a local government's broader policy position, and should not be able to be handled by a third party.

Specific comments on individual provisions in the Bill are provided in the Table attached to this submission.

Should you wish to discuss the content of this submission further, please contact Council's Manager Strategic Planning Ms Aletta Nugent

Yours faithfully

JOHN PETTIGREW
DIRECTOR PLANNING & ENVIRONMENTAL SERVICES

Table – comments on the provisions of the Planning and Development (Planning for Prosperity) Bill 2015

Reference in the Bill	Comment	Suggested amendments
Section 3(1) – Purpose of the Act	Prosperity is an ambiguous term, which raises concerns in relation to its use as the whole basis of the planning system in Queensland.	Define "prosperity" or use alternative wording with greater clarity.
Section 9(4) – Minor amendments to State planning instruments	The list of amendments that will be classed as minor is extensive and accords with what would be considered reasonable to occur without public consultation. Therefore, it is not considered necessary to provide for additional matters to be prescribed by regulation.	Delete subsection (c)
Section 16 – Making or amending planning schemes	This section, when read in conjunction with the draft guideline for making and amending local planning instruments released in late 2014 (**MALPI Guideline**), adds delays to the making of a planning scheme. While the intent of tailoring the planning scheme making process to the particular circumstances of a local government is desirable, the outcome of this section and the corresponding provisions in the MALPI Guideline is delays and additional processes that need to be complied with. These additional process steps are likely to add an additional estimated three months to the timeframes for a planning scheme project. It is likely that the notices given about making or amending a planning scheme will contain requirements that are almost identical between local governments, and therefore the additional three month delay cannot be justified.	Delete section 16 and the corresponding sections of the MALPI Guideline. Focus on making the standard or default process for making and amending a planning scheme under the MALPI Guideline as efficient and streamlined as possible. Alternatively, allow for a local government to opt out of the tailored process, and instead utilise the standard/default process.
Section 16(5)(a) – Making or amending planning schemes	The chief executive should not be able to direct a local government in relation to how any submissions about the proposed planning scheme must be dealt with. Councils should be required to consider all submissions received in relation to a draft Planning Scheme and advise submitters on how their submission was dealt with, but should have discretion to deal with the submissions received as they see fit.	Delete "such as how any submissions about he proposed planning scheme must be dealt with".
Section 17 – Amending planning schemes under Minister's rules	The wording of this section is unnecessarily complicated. Section 18 covers a similar matter but it sets out the requirements in a clearer and simpler way.	This section should be reworded so that it is consistent with the wording of section 18.
Section 19(1)(a) – Making or amending TLPIs	It is unclear what "conditions" means in this context.	Reword section 19(1)(a) to clarify the circumstances in which a local government may make a TLPI.
Section 20(2) – Repealing TLPIs or	TLPIs and planning scheme policies address local planning matters and are not relevant to State interests. Therefore, there should be no need for the	Amend section 20(2) and section 21 to clarify that the Minister cannot direct a local government to make a TLPI

Reference in the Bill	Comment	Suggested amendments
planning scheme policies Section 21 – Power of Minister to direct action be taken	Minister to direct a local government to prepare or amend a TLPI or planning scheme policy. If the Minister considers that there is a State interest that should be addressed, a temporary State planning instrument or a State planning policy should be created or amended.	or a planning scheme policy.
Section 23(5) – Request to apply superseded planning scheme	The items referred to in subsection (5) should be outlined in section 23. After reviewing the relevant provisions in the draft Planning and Development Regulation 2014 that was released in late 2014 (**Regulation**), the only outcome achieved by moving the items referred to in subsection (5) into the Regulation is an increase in overall complexity arising from the need to refer to multiple documents.	Move the items referred to in subsection (5) from the Regulation into section 23.
Section 24(4)(e) – When this division applies	The wording of this subsection is not supported and does not give local government the ability to address natural hazards in planning schemes without becoming liable to pay compensation. The version of the Bill that was previously released for public consultation had an alternative provision (ea) which was worded clearly and appropriately to address this matter.	Replace (e) with (ea) as drafted in the earlier version of the Bill that was released for public consultation.
Section 31(4) – Making or amending a designation	15 business days is not long enough for submissions to be made, particularly if the proposed infrastructure is significant in scale and potential impact.	Extend the minimum period for accepting submissions to 30 business days.
Section 38 – Categorising instruments	This section introduces two new terms which are considered unnecessary – "categorising instrument" and "local categorising instrument". Rather than taking up 1.5 pages of the Bill explaining what these are, it would be simpler just to refer to each instrument (eg. Regulation, planning scheme or TLPI) as the context of a particular section requires. A variation approval should not be a categorising instrument and does not need to be referenced in this section, as it is an approval which varies the provisions of a planning scheme. This section also introduces two terms which replace existing and well understood terminology – "assessment benchmarks" and "variation approval". The introduction of these terms, replacing the existing and well understood terms (codes and preliminary approval to override a planning scheme), will increase the implementation costs and complexity associated with the proposed new planning regime.	Delete the terms "categorising instrument" and "local categorising instrument" from the Bill and replace with regulation, planning scheme or TLPI depending upon the context. Replace "assessment benchmarks" with "codes" where used in the Bill. Replace "variation approval" with "preliminary approval to override the planning scheme" where used in the Bill.
Section 39(1) and (4) –	This section introduces the concept of "accepted development". This is	Replace "accepted development" where used in the Bill and

Reference in the Bill	Comment	Suggested amendments
Categories of development	intended to replace “exempt development” and “self-assessable development”. The introduction of this term, replacing the existing and well understood terms, will increase the implementation costs and complexity associated with the proposed new planning regime. It is submitted that it is possible to improve the processes around the existing terms without changing the terms themselves. In addition, merging self-assessment and exempt development will result in development that would have otherwise been classed as self-assessable being elevated to code assessment (standard assessment). This is because the drafting of the Bill and associated statutory instruments appears to limit the ability to include meaningful criteria (by way of acceptable outcomes) to apply to accepted development. This will result in the level of assessment for development increasing, and development applications being required for development that would have been self-assessable. This is contrary to the stated aim of the proposed new planning regime of reducing red tape.	associated statutory instruments with “exempt development” and “self-assessable development”.
Section 40(1), (3), (4) – Categories of assessment	This section introduces the terms “standard assessment” and “merit assessment”. This is intended to replace “code assessment” and “impact assessment”. The introduction of these terms, replacing the existing and well understood terms, will increase the implementation costs and complexity associated with the proposed new planning regime. It is submitted that it is possible to improve the processes around the existing terms without changing the terms themselves.	Replace “standard assessment” where used in the Bill and associated statutory instruments with “code assessment”. Replace “merit assessment” where used in the Bill and associated statutory instruments with “impact assessment”.
Section 40(3) and (4) – Categories of assessment	The full criteria for assessing standard and merit assessable development applications should be outlined in this section, rather than having some of the criteria in this section, and then the rest in the Regulation. This means that it is necessary to refer to two different statutory instruments to determine all the requirements for standard and merit assessment. Further, it is not possible to comment on the completeness of the requirements for standard and merit assessment while these requirements are excluded from the Bill. The requirements outlined in section 40(4) for merit assessment are not	Amend section 40(3) and 40(4) to include all the requirements for standard and merit assessment, and remove these requirements from the Regulation. Amend section 40(4) so that merit assessable development must be assessed against the relevant planning scheme.

Reference in the Bill	Comment	Suggested amendments
	complete, in that they do not require a development to be assessed against the relevant planning scheme. This is a fundamental and basic requirement, which ensures that a development is assessed in accordance with a Council's local planning aspirations and policy framework. Therefore, this requirement should be included in section 40(4).	
Section 40(4)(b)(iii) – Categories of assessment	The ability for merit assessment to be carried out having regard to "any other relevant matter" is considered not to be appropriate, in that it is too broad and allows for potentially inappropriate factors to be introduced. There may also be costly legal disputes over what is a "relevant matter". To reduce uncertainty and costly legal disputes, the relevant matters should be limited to existing, established and well understood planning grounds.	Amend section 40(4)(b)(iii) so that it states "having regard to any other relevant planning grounds".
Section 40(4)(b)(iii) – Categories of assessment	The current relevance of the assessment benchmarks in light of changed circumstances is stated as a relevant matter for the purposes of section 40(4)(iii). The inclusion of this as a relevant matter allows the planning scheme and its contents to be disregarded. If a Council considers that a planning scheme and its contents are not representative of current circumstances, the planning scheme should be amended following the proper process, including public consultation. If the matter is urgent, then a TLPI should be introduced. It should not be possible to just disregard parts of the planning scheme on an ad hoc basis.	If the recommended amendments in the row above are not made, delete "the current relevance of the assessment benchmarks in the light of changed circumstances" where listed as an example of a relevant matter.
Section 41(7)(a) and (c) – Exemption certificate for some assessable development	The use of "started" in these two subsections is too broad. The effect of these subsections should be refined by replacing "started" with "substantially started". There may be disputes over what started means, as an applicant may argue that the fact they have engaged someone to draw up plans, even if the work has not commenced, should be considered having started the development or works. There should be a requirement for the works or development to have actually commenced on the ground, rather than just preparatory works. This can be assured by amending these subsections as recommended.	Replace "started" in sections 41(7)(a) and (c) with "substantially started".
Section 43(5) – Who is the assessment manager	It is unclear what the purpose of section 43(5) is? Does this mean that a local government can be bypassed as assessment manager for particular types of development under its planning scheme? Given the broad ability for the State to nominate the assessment manager for particular types of development in section 43, the inclusion of section 43(5) appears unnecessary.	Delete section 43(5).

Reference in the Bill	Comment	Suggested amendments
Section 44(4) – What is a development approval	The wording of this subsection is not completely correct. It does not accurately reflect the interaction between a preliminary approval and a later development permit.	Consider rewording section 44(4) to use more appropriate language to describe the interaction between a preliminary approval and a later development permit, such as that used in section 243 of the *Sustainable Planning Act 2009* (**SPA**).
Section 46(2)(c) – Making development applications	Rather than requiring reference to the dictionary, the excluded premises should just be listed in this section. This will make the final Act less complicated and easier to navigate.	Detail the relevant excluded premises in section 46(2)(c) and delete the definition of excluded premises from Schedule 2.
Section 51(6) – Referral agency response	This section introduces the concept of "referral agency (advice only)". This is intended to replace "advice agency". The introduction of this term, replacing an existing and well understood term, will increase the implementation costs and complexity associated with the proposed new planning regime. In addition, the "wordiness" of the proposed new term detracts from the purpose of the proposed new planning regime to simplify and streamline the development assessment process. Overall, the decision to retain advice agencies is supported, however the decision to change the term for these agencies is not.	Replace "referral agency (advice only)" with "advice agency".
Section 55 – What this division is about	This section introduces a term which replaces an existing and well understood term – "variation request". The introduction of this term, replacing an existing and well understood term (application for preliminary approval to override a planning scheme), will increase the implementation costs and complexity associated with the proposed new planning regime. Also, the removal of this term would reduce the length of section 55.	Replace "variation request" with "application for preliminary approval to override a planning scheme".
Section 60(2)(d)(iv) – Notice of decision	The requirement for each condition about infrastructure to include details of the section under which the condition was imposed is an unnecessary administrative burden on local government. It also adds to the complexity of development approvals.	Delete section 60(2)(d)(iv).
Section 60(3) – Notice of decision	The material that should be included in or accompany a decision notice should be outlined in section 60. After reviewing the relevant provisions in the Regulation, the only outcome achieved by moving the material referred to in subsection (3) into the Regulation is an increase in overall complexity arising from the need to refer to different documents.	Move the material that should be included in or accompany a decision notice from the Regulation into section 60.
Section 63(1)(d) – Prohibited development	It is unclear why a condition requiring an access restriction strip is a prohibited condition.	Delete section 63(1)(d).

Reference in the Bill	Comment	Suggested amendments
conditions		
Section 63(2) – Prohibited development conditions	A development condition may need to be inconsistent with an earlier development approval that was issued many years prior or is for a completely different type of development. Also, a previous development approval may not have been acted upon, and therefore it is not relevant to the new development approval. Overall, there are circumstances where a development condition should not be inconsistent with a condition of an earlier development approval, but the current wording of section 63(2) is too broad and will have unintended consequences.	Consider rewording section 63(2) so that it does not unduly impact on the imposition of reasonable and relevant conditions on a development.
Section 68(4)(a) – When development approval has effect	To reduce the wordiness and complexity of this subsection, which currently requires reference to two separate definitions in the dictionary in Schedule 2, the definition of "eligible submitter" in Schedule 2 should be amended to include the definition currently included in Schedule 2 for "eligible referral agency".	The definition of "eligible submitter" in Schedule 2 should be amended to include the definition currently included in Schedule 2 for "eligible referral agency".
Section 70(1)(a) – Attachment to the premises	Upon review of the definitions for "premises" and "land" in Schedule 2, this subsection should be amended so that the development approval attaches to the land, and not the premises. Based on the definition of "premises" in Schedule 2, it is not logical for an approval to attach to the premises.	Amend section 70(1)(a) so that the development approval attaches to the land.
Section 72 – Making change representations	This section introduces a term which replaces an existing and well understood term – "change representations". The introduction of this term, replacing the existing and well understood term (request for a negotiated decision notice), will increase implementation costs and the complexity associated with the proposed new planning regime. Further, the current terminology used in SPA is clear in that it is descriptive of what is occurring. The new term is unclear in that "change representations" gives no clear indication of what is taking place.	Replace "change representations" with "request for a negotiated decision notice".
Section 75 – Making change application	This section introduces another new term – "change application". This section and the other associated sections in Subdivision 2, Division 2 in Part 6 of the Bill will operate without the creation of this new term to describe an application to change a development approval.	Remove references to "change application" from section 75 and other relevant sections in the Bill.
Section 76(2)(a) – Requirements for change	Rather than requiring reference to the dictionary, the excluded premises should just be listed in this section. This will make the final Act less complicated and	Outline the relevant excluded premises in section 76(2)(a).

Reference in the Bill	Comment	Suggested amendments
applications	easier to navigate.	
Section 77 – Notifying affected entities of minor change application	In accordance with this section, a person who wants to change a development approval needs to notify affected entities, but then if they do not receive a "pre-request response notice", they have to forward the application to the affected entity in any event. Therefore, section 77 introduces an additional process and step for anyone who wants to apply to change a development approval. Council understands that the purpose of this requirement is to allow for the resolution of matters outside the formal application process, however the outcome of including this new section is to introduce an additional formal process and step where there wasn't one previously. Further, the "wordiness" of newly introduced terms such as "pre-request response notice" detracts from the aims of the Bill to simplify and streamline the development assessment process. Overall, it is submitted that a person who wishes to amend a development approval should just forward the application to an affected entity as soon as practicable after giving the application to the responsible entity.	Delete section 77.
Section 78(3) – Assessing and deciding application for minor changes	Should "person" as used in this section be "responsible entity"? The interchangeable use of terms (in particular where they are all new) makes this section difficult to interpret.	Replace "person" with terminology appropriate to deliver the outcome sought by section 78(3) and consistent with the terminology used elsewhere in section 78.
Section 78(3)(a) – Assessing and deciding application for minor changes	The application should not be assessed against the matters that applied when the development application was made. Especially where the approval was issued some years ago, current circumstances and planning policy should be applied.	Reword section 78(3) so that current circumstances and planning policy is of greater importance than the framework that existed when the approval was granted.
Section 78(7)(a) – Assessing and deciding application for minor changes	This subsection is confusing and difficult to interpret. It should be reworded so that it is clearer. The removal of some of the new terms which could instead be replaced with a description of the thing/action would assist.	Reword section 78(7)(a) so it is clearer and less complex.
Section 79 – Assessing and deciding application for other changes	If the proposed change is not "minor", then the proposed development becomes significantly different and a new application should be required. This section requires the application to be dealt with utilising processes and requirements that apply to a new application in any event, so it would be much	Delete section 79.

Reference in the Bill	Comment	Suggested amendments
	simpler and less complex just to require a new application to be made if the change to the development approval is not a minor change.	
Section 83(4)(a) – Extension applications	Rather than requiring reference to the dictionary, the excluded premises should just be listed in this section. This will make the final Act less complicated and easier to navigate.	Outline the relevant excluded premises in section 83(4)(a).
Section 83(4)(c) – Extension applications	If a property owner's interests are materially affected, their consent to an application should be required.	Amend section 83(4)(c) so that subsection (3)(b)(ii) applies unless the assessment manager is satisfied that the owner's interests are not materially affected.
Section 92 – Directions to decision makers – current applications	The powers outlined in this section are very broad and have the potential to impact on local government's autonomy for planning decisions. The nature and extent of these powers should be reconsidered and should be redefined so they are appropriate for dealing only with matters of State interest.	Reconsider the wording of section 92 so that the powers outlined are appropriate for dealing only with matters of State interest.
Section 100(3)(a) – Deciding called in application	The ability for the Minister to consider anything the Minister considers relevant allows for the consideration of matters that are not of State interest. The Minister should only step in where a matter of State interest is affected. Therefore, the matters that the Minister can consider should be limited to those matters affecting a State interest.	Reword subsection 100(3)(a) so that the matters the Minister can consider are limited to those matters affecting a State interest.
Section 107(3) – Regulation prescribing charges	The effect of subsection (3) is that a legislative amendment will be required to increase the maximum adopted change above the Producer Price Index for construction. There should be the flexibility to do this without an amendment to the Act, and therefore this provision should be moved to the Regulation. It is also noted that there is a typing error in this subsection and in the definition for "PPI index" in Schedule 2. As currently written, this reads as the Producer Price Index index.	Move the contents of this subsection to the Regulation. Amend "PPI index" where used in the Bill so that it is just "PPI" or "Producer Price Index".
Section 114(12)(c) – When charge may be levied and recovered	Upon review of the definitions for "premises" and "land" in Schedule 2, this subsection should be amended so that the levied charge attaches to the land, and not the premises. Based on the definition of "premises" in Schedule 2, it is not logical for the charge to attach to the premises.	Amend section 114(12)(c) so that the levied charge attaches to the land.
Section 115(2)(b) – Limitation of levied charge	The effect of this subsection is that a lawful use that occurred many years ago will need to be taken into account in determining the demand generated by a development. There is no limitation on when this use could have occurred, or if the use has since ceased and other uses have since been made of the premises. This means that the demand generated by a development will need to be discounted by a historic land use with no relevance to the current	Delete subsection 115(2)(b).

Reference in the Bill	Comment	Suggested amendments
	development or infrastructure that is provided to the premises	
Section 115(2)(c) – Limitation of levied charge	The effect of this subsection is to potentially exclude self-assessable (or accepted) development from the requirement to pay levied charges. The result of including this subsection will be the elevation of the level of assessment for development that would otherwise be self-assessable (or accepted), so that levied charges can be collected for the development.	Reword subsection 115(2)(c) so that it is clear that development that is self-assessable (or accepted) development can be subject to levied charges.
Section 115(3)(b) – Limitation of levied charge	This subsection is confusing and difficult to interpret. It should be reworded so that it is clearer. The removal of the new term (eg. infrastructure requirement), which could instead be replaced with a description of the thing/action, would assist.	Reword section 115(3)(b) so it is clearer and less complex.
Section 116(2) – Requirements for infrastructure charges notice	The requirement for an infrastructure charges notice to include or be accompanied by an information notice is an unnecessary administrative burden on local government. It also adds to the complexity of an infrastructure charges notice.	Delete section 116(2).
Section 128(2) – Content of additional payment condition	The timing for payment specified in this subsection is not appropriate. A Council will only require the payment if the infrastructure is necessary to service the development. Requiring payment just before the development is to commence does not give a Council time to construct or upgrade the required infrastructure. Ultimately, Council should specify when payment is required, as it will know when the infrastructure will be required and how long it will take to construct or modify.	Reword section 128(2) so that the timing for payment is as specified by the local government.
Section 139(5) – Effect of and action after conversion	This subsection refers to a table 1 in schedule 1. There is no schedule 1 in the Bill.	Amend this subsection so it refers to the correct part of the Bill.
Chapter 4, Part 4 – Infrastructure agreements	An infrastructure agreement is a private agreement between an applicant and a government entity. The State should not be seeking to regulate these, particularly where the agreement is between a local government and an applicant. In addition, the regulatory regime applied to infrastructure agreements in the Bill is complex. Given that it is unnecessary, the relevant provisions should be removed.	Delete sections 147 to 149 and section 63(1)(b) of the Bill.
Section 152(1)(b), (3), (4)	Upon review of the definitions for “premises” and “land” in Schedule 2, these	Amend subsections 152(1)(b), (3), (4) and (5) so that the

Reference in the Bill	Comment	Suggested amendments
and (5) – When infrastructure agreement binds successors in title	subsections should be amended so that the infrastructure agreement attaches to the land, and not the premises. Based on the definition of "premises" in Schedule 2, it is not logical for an infrastructure agreement to attach to the premises.	infrastructure agreement attaches to the land.
Section 153 – Exercise of discretion unaffected by infrastructure agreement	The inclusion of section 153 is supported.	Not applicable.
Section 156(1) – Sale of particular local government land held on trust	Why must a local government only take land for public parks infrastructure or local facilities in fee simple on trust? Why can't the land become reserve land, with Council as trustee?	Replace "must" with "may" in subsection 156(1).
Section 166(2)(a) – Consulting private certifier about enforcement notice	What if the private certifier is no longer in business and cannot be contacted? In accordance with the current wording of section 166(2), an enforcement notice could not be issued in this circumstance.	Amend subsection 166(2) so that the enforcement notice can be issued if the enforcement authority has made reasonable efforts to contact the private certifier.
Section 184(5)(a) – Appeals to tribunal or P&E Court	The service period stated in section 184(5)(a) should be extended to 10 business days, consistent with subsection 184(5)(b). Although the appeal may be started by a submitter or a referral agency, any other submitters will need to be given a copy of the notice of appeal. If there are a large number of submitters, it is unreasonable to require this to occur within 2 business days.	Amend subsection 184(5) so that the service period is 10 business days, regardless of who started the appeal.
Section 217 – Rules to ensure appropriate public access Section 218 – Access rules for certain documents Section 219 – Public access rights	It adds to the complexity of the proposed new planning regime to have to check between different legislative instruments to determine the requirements for a certain matter, therefore the access rules should be outlined with the other requirements for public access to information in Part 3 of Chapter 7 of the Bill.	Include the material that will form the access rules in Part 3 of Chapter 7 of the Bill.
Schedule 2, definition of "enforcement authority"	A chosen assessment manager should not be an enforcement authority. Third parties should not be able to take enforcement action on behalf of a local government, as this requires a greater appreciation of the local government's	Delete "including a chosen assessment manager" from the definition of enforcement authority in Schedule 2.

Reference in the Bill	Comment	Suggested amendments
	enforcement policies and procedures.	