

Queensland



# QUEENSLAND BUILDING TRIBUNAL ACT 2000

**Reprinted as in force on 6 December 2002  
(includes amendments up to Act No. 58 of 2002)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 1C**

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

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# Queensland



# QUEENSLAND BUILDING TRIBUNAL ACT 2000

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# QUEENSLAND BUILDING TRIBUNAL ACT 2000

[as amended by all amendments that commenced on or before 6 December 2002]

**An Act to establish a tribunal to resolve disputes in the building industry, to review decisions of the Queensland Building Services Authority and to decide applications by the Queensland Building Services Authority, and for other matters**

## PART 1—PRELIMINARY

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Queensland Building Tribunal Act 2000*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### *Division 2—Operation of Act*

#### **3 Act binds all persons**

This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

***Division 3—Objects of Act*****4 Objects of Act**

(1) The objects of this Act are to establish a tribunal and have it deal with the following in an expeditious way that is just, fair and cost efficient—

- (a) domestic building disputes and minor commercial building disputes;
- (b) major commercial building disputes if the parties to this type of dispute agree;
- (c) reviews of decisions of the authority;
- (d) applications by the authority for—
  - (i) proceedings to decide whether proper grounds exist for taking disciplinary action against a person; or
  - (ii) public examinations that investigate stated matters for this Act; or
  - (iii) orders prohibiting a person from starting or continuing building work; or
  - (iv) the recovery of amounts paid by the authority for claims under the statutory insurance scheme under the *Queensland Building Services Authority Act 1991*;<sup>1</sup>
- (e) applications under the *Domestic Building Contracts Act 2000*;
- (f) other applications that may be made to the tribunal under this or another Act.

(2) A further object of this Act is to establish a central tribunals registry to support particular tribunals established under Acts administered by the Minister.

**5 How objects are to be achieved**

The objects of this Act are to be achieved by establishing a system of dispute resolution that—

- (a) is just in the results it delivers; and

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<sup>1</sup> *Queensland Building Services Authority Act 1991*, part 5 (The statutory insurance scheme)

- (b) is fair by—
  - (i) ensuring litigants have an equal opportunity, regardless of their resources, to assert or defend their legal rights; and
  - (ii) giving parties to proceedings an opportunity to state their case and to answer their opponent’s case; and
  - (iii) treating like cases alike; and
- (c) has a range of procedures available and minimises costs to the extent practicable; and
- (d) deals with applications with reasonable speed and encourages the early resolution of disputes; and
- (e) is understandable to users of the system; and
- (f) is responsive to the needs of users of the system; and
- (g) allows parties to represent themselves and save legal costs wherever appropriate.

#### *Division 4—Interpretation*

### **6 Definitions**

The dictionary in the schedule defines particular words used in this Act.

### **7 Meaning of “building work”**

(1) The following is “**building work**”—

- (a) the erection or construction of a building;
- (b) the renovation, alteration, extension, improvement or repair of a building;
- (c) the provision of electrical work, water supply, sewerage or drainage or other like services for a building;
- (d) the demolition, removal or relocation of a building;
- (e) any site work (including the construction of retaining structures, driveways, landscaping and the construction of a swimming pool) related to building work of a kind mentioned in paragraphs (a) to (d);

- (f) the preparation of plans, specifications or bills of quantity for the carrying out of building work;
- (g) the inspection of a completed building;
- (h) subject to subsection (3), work prescribed under a regulation.

(2) To remove doubt, it is declared that domestic building work is building work.

(3) The following is not “**building work**”—

- (a) the construction, extension, repair or replacement of a water reticulation system, sewerage system or stormwater drain, outside the boundaries of private property;
- (b) the building or maintenance of a road as defined under the *Land Act 1994*;
- (c) the construction, maintenance or repair of a bridge, other than a bridge on private property;
- (d) the construction, maintenance or repair of railway tracks, signals or associated structures, unless the structures are buildings for residential purposes, or are storage or service facilities;
- (e) the construction, maintenance or repair of airport runways, taxiways and aprons;
- (f) the construction, maintenance or repair of ports or ports infrastructure, unless the structures are buildings for residential purposes, or are storage or service facilities;
- (g) the construction, maintenance or repair of a dam;
- (h) the construction, maintenance or repair of communications installations performed for a public company or public body engaged in radio or television broadcasting or in some other form of communications business or undertaking;
- (i) the installation of manufacturing equipment or equipment for hoisting, conveying or transporting materials or products (including primary produce), other than the installation of fixed structures providing shelter for the equipment;
- (j) construction work in mining;
- (k) work consisting of monumental masonry, sculpture, or the erection or construction of statues, fountains or other works of



art, other than work affecting the way in which a building is constructed;

- (l) building work carried out by the State for the State or for an entity representing the State;
- (m) building work carried out by a local government for a local government, the State or an entity representing a local government or the State;
- (n) building work carried out outside Queensland.

(4) For subsection (3)(l), building work is not carried out by the State if the work is carried out for the State by an independent contractor.

(5) For subsection (3)(m), building work is not carried out by a local government if the work is carried out for the local government by an independent contractor.

## **8 Carrying out building work**

(1) A person carries out building work whether the person carries it out personally, or directly or indirectly causes it to be carried out.

(2) A person is taken to carry out building work if the person provides advisory services, administration services, management services or supervisory services relating to the building work.

(3) A person undertakes to carry out building work if the person enters into a contract to carry it out or submits a tender or makes an offer to carry it out.

## **PART 2—ESTABLISHMENT AND MEMBERSHIP OF TRIBUNAL**

### **9 Establishment of tribunal**

The Queensland Building Tribunal is established.

### **10 Tribunal's seal**

(1) The tribunal must have a seal.

(2) The director is to have custody of the seal.

(3) The seal must be judicially noticed.

### **10A Advertising for nominations for appointment**

Before recommending a person to the Governor in Council for appointment as a member of the tribunal, the Minister must advertise in a newspaper circulating throughout the State for applications or expressions of interest from suitably qualified persons to be considered for selection as a member of the tribunal.

## **11 Appointment of chairperson and membership of tribunal**

(1) The tribunal consists of the chairperson and the number of other members appointed under this Act.

(2) The chairperson and other members of the tribunal are to be appointed by the Governor in Council.

(3) A person is eligible for appointment as a member of the tribunal if the person is—

(a) a lawyer of not less than 5 years standing; or

(b) a retired judge of any Australian court.

(4) A member may be appointed on a full-time or part-time basis.

(5) A member is appointed for the term (not longer than 7 years) stated by the Governor in Council in the instrument of appointment.

(6) A member is to be appointed under this Act, and not under the *Public Service Act 1996*.

(7) The chairperson may hold, or act in, and perform the functions of, another public office in addition to the office of chairperson if the chairperson is appointed to, or appointed to act in, the other office by the Governor in Council.

## **12 Terms and conditions of member's appointment**

(1) A member of the tribunal is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) To the extent that the terms and conditions are not provided for by this Act, a member of the tribunal holds office on the terms and conditions decided by the Governor in Council.

### **13 Chairperson's role**

(1) The chairperson's role includes the following—

- (a) directing the tribunal's adjudicative operations to ensure they are as fair, economical, informal and speedy as practical;
- (b) developing, with the participation of other members, guiding principles that promote high quality and consistent decisions by the tribunal;
- (c) developing and implementing procedures and policies for the tribunal's adjudicative operations;
- (d) issuing practice directions of general application to proceedings;
- (e) managing the overall performance of members;
- (f) being responsible for the professional development and training of members of the tribunal in relation to the discharge of their functions.

(2) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.

### **13A Chairperson and director to work cooperatively**

The chairperson and the director must work cooperatively to promote the effective and efficient operation of the tribunal.

### **13B Member's role**

(1) A member's role includes professionally and efficiently performing the functions of the tribunal assigned or given to the member under this Act.

(2) A member must comply with the procedures and policies implemented by the chairperson for the tribunal's adjudicative operations.

## **14 Delegation of powers by chairperson**

(1) The chairperson may delegate the chairperson's powers under this Act or another Act to another member.

(2) The chairperson may delegate the chairperson's power under section 27(1) to the director.

(3) The director may subdelegate the delegated power to another appropriately qualified member of the staff of the registry.

(4) In this section—

**“appropriately qualified”**, for a subdelegated power, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's level of employment in the registry.

## **15 Appointment of deputy chairperson**

(1) The Governor in Council may appoint 1 or more members of the tribunal to be deputy chairperson.

(2) A deputy chairperson may be appointed on a full-time or part-time basis.

(3) The chairperson or the Minister may appoint a deputy chairperson to act as chairperson if—

- (a) the chairperson is not available to carry out the chairperson's duties; or
- (b) there is a vacancy in the office of chairperson.

## **16 Resignation of members**

A member may resign by giving a signed notice of resignation to the Minister.

## **17 Termination of appointment of a member**

(1) The Governor in Council may terminate the appointment of a member of the tribunal if the Governor in Council is satisfied the member—

- (a) is mentally or physically incapable of satisfactorily performing the member's duties; or
- (b) performed the member's duties carelessly, incompetently or inefficiently; or
- (c) has engaged in conduct that could warrant dismissal from the public service if the member were a public service officer; or
- (d) is affected by bankruptcy action.

(2) The Governor in Council must terminate the appointment of a member if the member—

- (a) ceases to be eligible for appointment as a member; or
- (b) is convicted of an indictable offence, whether dealt with on indictment or summarily.

(3) This section applies to a member of the tribunal whether appointed before or after the commencement of this section.

## **18 Disclosure of interests**

(1) If a member becomes aware that the member has a conflict of interest about a proceeding before the tribunal, the member must disclose the issue giving rise to the conflict—

- (a) if the member is the chairperson—to the parties to the proceeding; or
- (b) otherwise—to the chairperson and the parties to the proceeding.

(2) After making the disclosure, the member may disqualify himself or herself.

(3) However, the member may take part in the proceeding, or exercise a power for the proceeding—

- (a) if the member is the chairperson—if the parties agree; or
- (b) otherwise—if the chairperson and the parties agree.

(4) A member has a conflict of interest about a proceeding if the member has an interest, financial or otherwise, that could conflict with the proper performance of the member's functions for the proceeding.

## **19 Protection of members**

A member has, in the performance of the member's duties as a member, the same protection and immunity as a District Court judge has in the performance of the judge's duties.

## **PART 3—CENTRAL TRIBUNALS REGISTRY, DIRECTOR AND OTHER STAFF**

### **20 Director, central tribunals registry and registry**

- (1) There is to be a director, central tribunals registry.
- (2) The central tribunals registry is established.
- (3) The registry consists of the director and the staff of the registry.
- (4) The registry is the registry for each central tribunal.

### **21 Director's functions and powers for central tribunals**

(1) Subject to the chief executive, the director is responsible for managing the central tribunals registry and the administrative affairs of each central tribunal.

- (2) The director has the following functions for each central tribunal—
- (a) to keep a register containing details of all applications made to the tribunal, which may be kept in any form allowing it to be inspected as mentioned in paragraph (b);
  - (b) to ensure the register is available for inspection by a person paying any fee that may be prescribed under a regulation made under a central tribunal Act for the inspection;
  - (c) to supply a certificate as to the correctness of a matter in the register to a person paying any fee that may be prescribed under a regulation made under a central tribunal Act for the certificate;
  - (d) to sign and issue summonses and attendance notices, however described, for the tribunal;
  - (e) to keep the tribunal's records and decisions;

- (f) to notify the participants in or parties to a proceeding of the tribunal's final decision in the proceeding and any reasons given for the decision;
- (g) to publish decisions of the tribunal approved for publication by the chairperson of the tribunal under arrangements, and in the way, approved by the chairperson of the tribunal;
- (h) to keep account of fees paid and payable to the tribunal;
- (i) to collect statistical data and other information relevant to the administration of the central tribunals registry for inclusion in the tribunal's annual report.

(3) The director may exercise the powers given to the director under a central tribunal Act.

(4) Subsection (2) does not limit the functions of the director under this or another central tribunal Act.

## **22 Keeping and disclosure of records and information**

(1) The director may keep the records of and information for a central tribunal the director considers appropriate, and may make the records and information available to the public.

(2) Without limiting subsection (1), the director must keep the records of and information about proceedings before each central tribunal the director considers appropriate, and must make the records and information available to the public.

(3) Despite subsections (1) and (2), the director must not make a record or information available to the public if the relevant central tribunal orders that the record or information must not be made available to the public.

## **23 Particular powers of director for this Act**

(1) For this Act, the director may—

- (a) appoint mediators and decide whether a proceeding should be the subject of a mediation or expedited hearing and the times and places of mediations or expedited hearings; and
- (b) give decisions by default under section 121; and
- (c) keep account of moneys paid into and out of the tribunal's trust account.

(2) Subsection (1)(a) does not limit the tribunal's power to appoint a mediator under section 123.

## **24 Engagement of consultants**

(1) The director may engage persons having suitable qualifications and experience as consultants to perform services for a central tribunal.

(2) Without limiting subsection (1), the services a consultant may be engaged to perform include conducting research for the tribunal.

(3) An engagement under subsection (1) must be made for the State under a written agreement.

(4) This section does not limit the power of a central tribunal to engage experts under a central tribunal Act.

## **25 Delegation by director**

(1) The director may delegate the director's powers under this Act or another Act to an appropriately qualified member of the staff of the central tribunals registry.

(2) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's seniority level as a member of the staff of the central tribunals registry.

## **26 Employment provisions for director and staff of registry**

(1) A person is eligible for appointment as the director only if the person has particular knowledge and experience of—

- (a) public administration; and
- (b) something else of substantial relevance to the functions of the director.

(2) The director and other staff of the central tribunals registry are to be appointed under the *Public Service Act 1996*.



(3) The director may hold, or act in, and perform the functions of, another public office in addition to the office of director, central tribunals registry.

### **26A Appointment of acting director**

(1) The chief executive may appoint an appropriately qualified person to act as director.

(2) The appointee is to act as director if—

- (a) the director is not available to carry out the director’s duties; or
- (b) there is a vacancy in the office of director.

(3) In this section—

“**appropriately qualified**” includes having particular knowledge and experience of—

- (a) public administration; and
- (b) something else of substantial relevance to the functions of the director.

## **PART 3A—PRESIDING CASE MANAGER**

### **26B Presiding case manager**

There is to be a presiding case manager.

### **26C Presiding case manager’s power to deal with particular applications to central tribunals**

(1) The presiding case manager may deal with a prescribed application or matter to, or before, any central tribunal if selected by the chairperson of the relevant central tribunal to constitute the central tribunal for the prescribed application or matter.

(2) For the prescribed application or matter, the presiding case manager constitutes, and may exercise all the jurisdiction and powers of, the central tribunal.

(3) The presiding case manager may exercise the other powers in relation to a direction given or a decision made by the presiding case manager that are incidental to the direction or decision and prescribed under a regulation made under a central tribunal Act for this section.

*Example—*

A regulation may provide that the presiding case manager may correct a clerical error or accidental slip or omission in a direction given by the presiding case manager.

(4) The exercise of power by the presiding case manager under subsection (3) is taken to be an exercise of power by the relevant central tribunal.

(5) Subsection (6) applies if the presiding case manager has jurisdiction to deal with a prescribed application or matter under the *Property Agents and Motor Dealers Act 2000*, the *Retirement Villages Act 1999* or this Act.

(6) The presiding case manager is to constitute the tribunal to deal with the application or matter unless the chairperson of the central tribunal decides that the presiding case manager should not constitute the tribunal for the prescribed application or matter because it would result in undue delay or it would otherwise be inappropriate.

(7) If the chairperson of the relevant central tribunal decides that the presiding case manager should not constitute the tribunal, the chairperson must—

- (a) deal with the prescribed application or matter personally; or
- (b) select a legally qualified member of the relevant central tribunal to constitute the tribunal to deal with it.

(8) The presiding case manager may refer any prescribed application or matter, including an application or matter to which subsection (6) applies, to a member of the relevant central tribunal to be dealt with if the presiding case manager decides that it is an application or matter that should be dealt with by a member of the relevant central tribunal.

(9) In this section—

**“legally qualified member”**, of a relevant central tribunal, means a member of the tribunal who is a lawyer of at least 5 years standing.

**“prescribed application or matter”** means an application or matter that—

- (a) may be heard and decided by a central tribunal; and

- (b) is of a kind prescribed under a regulation made under a central tribunal Act for this section.

### **26D Particular powers of presiding case manager for this Act**

For this Act, the presiding case manager may appoint mediators and decide whether a proceeding should be the subject of a mediation or expedited hearing and the times and places of mediations or expedited hearings.

### **26E Independence of presiding case manager**

(1) The presiding case manager when constituting a central tribunal is not subject to direction or control, other than as provided under this Act.

(2) However, the presiding case manager must comply with any procedural directions given by the chairperson of the central tribunal the presiding case manager is constituting.

### **26F Employment provisions for presiding case manager**

(1) The presiding case manager is to be appointed by the Governor in Council.

(2) A person is eligible for appointment as the presiding case manager only if the person is a lawyer of not less than 5 years standing.

(3) The presiding case manager may be appointed on a full-time or part-time basis.

(4) The presiding case manager is a member of the staff of the central tribunals registry.

(5) The presiding case manager may hold, or act in, and perform the functions of, another public office in addition to the office of presiding case manager.

### **26G Disclosure of interests**

(1) If the presiding case manager becomes aware that he or she has a conflict of interest about a prescribed application or matter before the presiding case manager, the presiding case manager must disclose the issue giving rise to the conflict to the chairperson of the relevant central tribunal and the parties to the application or matter.

(2) After making the disclosure, the presiding case manager may disqualify himself or herself.

(3) However, the presiding case manager may deal with the prescribed application or matter, or exercise a power for the application or matter, if the chairperson of the relevant central tribunal and the parties agree.

(4) The presiding case manager has a conflict of interest about a prescribed application or matter if he or she has an interest, financial or otherwise, that could conflict with the proper performance of the presiding case manager's functions for the application or matter.

### **26H Protection of presiding case manager**

The presiding case manager has, in the performance of the presiding case manager's duties when constituting a central tribunal or exercising a power under section 26C(3), the same protection and immunity as a District Court judge has in the performance of the judge's duties.

### **26I Appointment of acting presiding case manager**

(1) The chief executive may appoint a person who is eligible to be appointed as the presiding case manager to act as the presiding case manager.

(2) The appointee is to act as the presiding case manager if—

- (a) the presiding case manager is not available to carry out the presiding case manager's duties; or
- (b) there is a vacancy in the office of presiding case manager.

## **PART 4—GENERAL JURISDICTION AND OPERATION OF TRIBUNAL**

### *Division 1—Constitution and general jurisdiction of tribunal*

#### **27 Constitution of tribunal**

(1) For a proceeding, the tribunal is to be constituted by the chairperson or a single member selected by the chairperson.

(2) However, if the proceeding is for a prescribed application or matter under section 26C,<sup>2</sup> the presiding case manager must constitute the tribunal except as otherwise provided under that section.

#### **28 General jurisdiction**

The tribunal may hear and decide all applications made to it and all matters required or permitted to be heard and decided by it under this Act, the *Queensland Building Services Authority Act 1991*, the *Domestic Building Contracts Act 2000* or another Act.

### *Division 2—Start of proceedings*

#### **29 Start of proceedings**

(1) A proceeding for a matter for which the tribunal has jurisdiction is started by a person (the “**applicant**”) filing an application in the approved form in the tribunal and paying the fee prescribed under a regulation.

(2) However, the authority does not have to pay a fee for an application filed by it.

(3) The application must state—

- (a) the facts or grounds on which the application is based; and
- (b) the claims made and outcome or order sought by the applicant.

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2 Section 26C (Presiding case manager’s power to deal with particular applications to central tribunals)

(4) The applicant must serve a copy of the application on each person (the “**respondent**”) against whom a claim is made or in relation to whom an outcome or order is sought.

(5) Also, if the tribunal considers another person is affected by the application, it may direct the applicant to serve a copy of the application on the person.

(6) The applicant must comply with a direction under subsection (5).

(7) For a public examination, the person required to be served under subsection (4) is the person proposed to be the subject of the public examination.

### **30 Defence and counterclaim**

(1) This section applies to an application starting a proceeding for—

- (a) a building dispute; or
- (b) the recovery of a debt under the *Queensland Building Services Authority Act 1991*, section 71; or
- (c) a matter under the *Domestic Building Contracts Act 2000*, sections 18, 55, 60 or 84.<sup>3</sup>

(2) The respondent must file a defence to the application and any counterclaim that states—

- (a) the facts relied on by the respondent in defence of the claims by the applicant; and
- (b) the nature of the defence to each outcome or order sought by the applicant; and
- (c) the facts on which any counterclaim is based and the outcome or order sought by the respondent relating to the counterclaim.

(3) The respondent must act under subsection (2) within 14 days of being served with the application or the extended time allowed by the tribunal.

(4) A defence and any counterclaim must be in the approved form.

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<sup>3</sup> *Domestic Building Contracts Act 2000*, section 18 (Effective completion date or period), 55 (Cost plus contracts), 60 (Effect of improper statements) or 84 (Right of building contractor to recover amount for variation)

(5) A copy of the defence and any counterclaim must be served on the applicant.

(6) Also, if the tribunal considers another person is affected by the defence or counterclaim, it may direct the respondent to serve a copy of the defence or counterclaim on the person.

(7) The respondent must comply with a direction under subsection (6).

(8) If the respondent does not file a defence within the period or extended period allowed, the tribunal may deal with the matter in the absence of respondent.

### *Division 3—Business names*

#### **31 Proceeding if business name**

A proceeding may be brought against a person under a name or style, other than the person's own name and under which a person carries on business, regardless of whether the name or style is registered under the *Business Names Act 1962*.

#### **32 Proceeding if registered business name**

(1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name and the name is registered under the *Business Names Act 1962*.

(2) The proceeding may be started against the person in the name or style registered under the *Business Names Act 1962*.

(3) The name or style registered under the *Business Names Act 1962* is sufficient designation of the person in a document filed in the proceeding.

(4) An order in the proceeding may be enforced against the person.

#### **33 Proceeding in business name if unregistered**

(1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name and the name is not registered under the *Business Names Act 1962*.

(2) The proceeding may be started against the person in the name or style under which the person carries on business.

(3) The name or style under which the business is carried on is sufficient designation of the person in a document filed in the proceeding.

(4) An order in the proceeding may be enforced against the person.

### **34 Defence**

(1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name, regardless of whether the name or style is registered under the *Business Names Act 1962*.

(2) A defence must be in the name of the person and not in the business name.

(3) If the person files a defence, the person must file and serve with the defence a statement of the names and places of residence of all persons who were carrying on business under the name or style as at the day the proceeding was started.

(4) The tribunal may set aside the defence if the person does not comply with subsection (3).

### **35 Amendment as to parties**

(1) This section applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name, regardless of whether the name or style is registered under the *Business Names Act 1962*.

(2) The applicant must, as soon as practicable, take all reasonable steps to find out the name of the person carrying on the business under the name or style in question.

(3) The applicant must continue the proceeding in the person's name and not in the name or style under which the business was carried on.

(4) However with the tribunal's leave, the applicant may take a further step in the proceeding in the name or style under which the business was carried on.



(5) Before allowing a proceeding to continue against a named person, the tribunal must be satisfied that the named person is aware the proceeding is being continued against the named person.

### *Division 4—Service*

#### **36 Service of documents**

(1) A document may be served under this Act—

- (a) in a way directed by the tribunal; or
- (b) as stated in this Act; or
- (c) for person licensed under the *Queensland Building Services Authority Act 1991*— by leaving it at, or sending it by post, telex, facsimile or similar facility to, the address of the person in the register of licensees kept by the authority.

(2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.<sup>4</sup>

#### **37 Service in relation to a business**

(1) This section applies if—

- (a) a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name, regardless of whether the name or style is registered under the *Business Names Act 1962*; and
- (b) the proceeding is brought in the name or style under which the person carries on the business.

(2) The application may be served by leaving a copy at the person's place of business with a person who appears to have control or management of the business at the place.

#### **38 Acceptance of service by solicitor**

(1) A solicitor may accept service of a document for a party.

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<sup>4</sup> *Acts Interpretation Act 1954*, section 39 (Service of documents)

(2) The document is taken to have been served on the party, unless the party proves the solicitor did not have authority to accept service for the party.

(3) This section applies whether or not personal service of the document is required under this Act.

(4) The solicitor must make a note on a copy of the document to the effect that the solicitor accepts service for the party.

### **39 Informal service**

(1) This section applies if—

- (a) for any reason, a document is not served as required by this division but the document or a copy of it came into the possession of the person to be served; and
- (b) the tribunal is satisfied on evidence before it that the document came into the person's possession on or before a particular day.

(2) The tribunal may, by order, decide that the possession of the document is service for this Act on the day it came into the person's possession or a later day stated in the order.

### *Division 5—Case management*

### **40 Tribunal to fix time and place for proceedings**

(1) This section applies if an application has been filed and served under this Act.

(2) The tribunal must fix a time and place for the proceedings the tribunal considers necessary for resolution of the matters to which the application and any defence and counterclaim relate.

(3) However, the tribunal must not fix a time and place for an application for a matter mentioned in section 30(1)<sup>5</sup> until either—

- (a) a defence and any counterclaim have been filed and served; or

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5 Section 30 (Defence and counterclaim)

- (b) the time or extended time (if the tribunal has extended the time for filing a defence and any counterclaim) for filing a defence and counterclaim has ended without a defence being filed.

#### **41 Way tribunal is to conduct proceedings**

- (1) This section applies to a proceeding.
- (2) The procedure is at the discretion of the tribunal, subject to this Act and the rules of natural justice.
- (3) The proceeding is to be conducted with as little formality and technicality and with as much speed as the requirements of this Act and a proper consideration of the matters before the tribunal permit.
- (4) The tribunal is not bound by the rules of evidence but may inform itself in any way it considers appropriate.
- (5) The tribunal may, if appropriate, conduct the proceeding by means of telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between persons taking part in the proceeding.
- (6) The tribunal may decide all or part of the proceeding from a consideration of the documents filed, without the parties or witnesses appearing in person if—
  - (a) the parties to the proceeding agree; and
  - (b) the tribunal considers it appropriate in all the circumstances.

#### **42 Directions and orders**

- (1) The tribunal may make orders, give directions and do whatever is necessary for the expeditious, just, fair and cost effective resolution of a proceeding.
- (2) The power to give directions under subsection (1) is subject to practice directions under section 13.<sup>6</sup>
- (3) Without limiting subsection (1), the tribunal may at any time—
  - (a) set time limits for the completion of anything to be done in relation to the proceeding; and

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6 Section 13 (Chairperson's role)

(b) require a party to the proceeding to give the tribunal either or both of the following if the tribunal considers it may be relevant to the proceeding—

- (i) a document in the party's possession or control;
- (ii) any other information or evidence.

(4) A party must comply with an order or direction within the time stated in the order or direction unless the party applies to the tribunal for and is granted an extension of time to comply with the order or direction.

(5) The tribunal, on application of a party or on its own initiative, may at any time vary or revoke an order or direction given by it.

(6) The tribunal may not vary or revoke an order or direction given by it if to do so would cause any prejudice or detriment to a party or potential party that can not be remedied by an appropriate order for costs or damages.

#### **43 Documents to which disclosure does not apply**

(1) The duty of disclosure does not apply to the following documents—

- (a) a document in relation to which there is a valid claim to privilege from disclosure;
- (b) a document relevant only to credit;
- (c) an additional copy of a document already disclosed, if it is reasonable to suppose the additional copy contains no change, obliteration or other mark or feature likely to affect the outcome of the proceeding.

(2) A document consisting of a statement or report of an expert is not privileged from disclosure.

(3) In this section—

**“duty of disclosure”** means a requirement under section 42(4) relating to a document mentioned in section 42(3)(b)(i).

#### **44 Extension of time and waiver of compliance**

(1) The tribunal, on the application of any person or on its own initiative, may extend a time limit fixed by or under this or another Act for the start of a proceeding.

(2) The tribunal, on the application of a party or on its own initiative, may for a proceeding—

- (a) extend a time limit fixed by or under this Act, the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000* for the doing of anything; or
- (b) waive compliance with any procedural requirement under this Act.

(3) The tribunal may extend time or waive compliance even if the time or period for compliance has expired.

(4) However, an application for an extension of time to file a defence and any counterclaim under section 30(3)<sup>7</sup> must be made before the 14 day period for filing the defence ends.

(5) The tribunal may not extend time or waive compliance if to do so would cause any prejudice or detriment to a party or potential party that can not be remedied by an appropriate order for costs or damages.

#### **45 Joinder of parties**

(1) For a proceeding the tribunal may order that a person be joined as a party to a proceeding if the tribunal considers that—

- (a) the person ought to be bound by, or have the benefit of, an order of the tribunal in the proceeding; or
- (b) the person's interests are affected by the proceeding; or
- (c) for another reason it is desirable the person be joined as a party.

(2) The tribunal may make an order under subsection (1) on application of any person or on its own initiative.

(3) For a proceeding for a major commercial building dispute a person may not be joined as a party except under section 95.<sup>8</sup>

#### **46 Consolidation of proceedings**

The tribunal may on the application of any person or on its own initiative order that 2 or more proceedings be consolidated if—

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7 Section 30 (Defence and counterclaim)

8 Section 95 (Procedure to decide whether all parties consent)

- (a) the same or substantially the same question is involved in all the proceedings; or
- (b) the decision in 1 proceeding will decide or affect the other proceeding or proceedings.

#### **47 Sequence of hearings**

The tribunal may on the application of any person or on its own initiative order that 2 or more proceedings be heard together or in a particular sequence.

#### **48 Directions**

If the tribunal orders that proceedings be consolidated or heard together or in a specified sequence, the tribunal may give a direction it considers appropriate for the conduct of the proceeding or proceedings.

#### **49 Variation of order**

Before or during the hearing of a consolidated proceeding or of proceedings ordered to be heard together or in a particular sequence, the tribunal may order the proceedings be separated or heard in another sequence.

#### **50 Vexatious proceedings**

If, in the tribunal's opinion, a proceeding has been brought vexatiously or oppressively, the tribunal may—

- (a) summarily dismiss the proceeding; and
- (b) order costs against the party by whom the proceeding was brought to compensate the party against whom it was brought for loss, inconvenience and embarrassment resulting from the proceeding.

#### **51 Conduct of proceeding causing disadvantage**

(1) This section applies if the tribunal considers a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding including by—

- (a) not complying with a direction or order of the tribunal without reasonable excuse; or
- (b) asking for an adjournment as a result of not complying with a direction or order of the tribunal; or
- (c) vexatiously conducting the proceeding; or
- (d) causing an adjournment.

(2) The tribunal may—

- (a) order that the party causing the disadvantage compensate the other party for any costs incurred unnecessarily; or
- (b) if the party causing the disadvantage is the applicant, dismiss the applicant's claim; or
- (c) if the party causing the disadvantage has filed a counterclaim, dismiss the counterclaim.

(3) The tribunal may refuse to continue with the proceeding until an order under subsection (2)(a) is complied with.

## **52 Withdrawal by applicant**

(1) The authority may withdraw an application or part of an application under section 108 or 112<sup>9</sup> without the tribunal's leave.

(2) For other applications, an applicant may withdraw all or part of an application without the tribunal's leave if the applicant has not been served with a defence or counterclaim relating to the application.

(3) After being served with a defence or counterclaim, an applicant may withdraw all or part of an application only with the tribunal's leave.

(4) Also, if there is more than 1 applicant, an applicant may withdraw all or part of an application only with the tribunal's leave.

(5) An applicant may withdraw against 1 or more respondents without withdrawing against the other respondents only with the tribunal's leave.

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<sup>9</sup> Section 108 (Tribunal may conduct disciplinary proceeding) or 112 (Tribunal may conduct public examination)

**53 Withdrawal by respondent**

A respondent may withdraw all or part of a defence or counterclaim only with the tribunal's leave.

**54 Further application after withdrawal restricted**

If an applicant withdraws all or part of an application, the applicant may make a further application relating to the same facts and circumstances only with the tribunal's leave.

**55 Costs order on applicant's withdrawal**

If an applicant withdraws all or part of an application, the tribunal may make an order that the applicant pay all, or part of, the costs of the other parties to the proceeding.

**56 Notice of withdrawal**

(1) A withdrawal for which the tribunal's leave is not required may be effected by filing a notice of withdrawal and serving it as soon as practicable on the other parties.

(2) A withdrawal for which the tribunal's leave is required is effected by the order giving leave and a notice of withdrawal is not required.

***Division 6—Costs generally*****57 Security for costs**

(1) On the application of a party against whom a claim is made or an outcome or order sought in a proceeding, the tribunal may order—

- (a) that another party give security for the costs of the party applying for security within the time stated in the order; and
- (b) that the proceeding as against the party applying for security be stayed until the security is given.

(2) An application under subsection (1) may be made at any time before the proceeding ends.



(3) If security for costs is not given within the time stated in the order, the tribunal may make an order dismissing the proceeding as against the party applying for security.

### **58 Discretionary factors for security for costs**

In deciding whether to make an order under section 57, the tribunal may have regard to any of the following matters—

- (a) the means of the parties to the proceeding;
- (b) the prospects of success or merits of the proceeding;
- (c) the genuineness of the proceeding;
- (d) if the party against whom an order for costs is sought suffers from a lack of means, whether this is attributable to the conduct of the applicant for the order;
- (e) whether an order for security for costs would be oppressive;
- (f) whether an order for security for costs would stifle the proceeding;
- (g) whether delay by a party in starting the proceeding has prejudiced another party;
- (h) the costs of the proceeding;
- (i) anything else the tribunal considers relevant.

### **59 Way security given**

(1) If the tribunal orders a party to give security for costs, the security must be given in the form, at the time, and on the conditions, if any, the tribunal directs.

(2) If the tribunal does not state the form of the security—

- (a) it must be given in a form approved by the director; and
- (b) the form of security approved by the director must be written on the order before it is issued.

(3) A party who gives security for costs must as soon as practicable after giving security serve on the applicant for security written notice of when, and the way in which, the security was given.

## **60 Finalising security**

(1) This section applies if, in a proceeding, security for costs has been given by a party under an order made about security for costs under section 57.

(2) If the tribunal decides the party must pay all or part of the costs of the proceeding, the security may be applied in satisfaction of the costs.

(3) However, the security must be discharged—

- (a) if the tribunal's decision relating to the proceeding does not require the party to pay all or part of the costs of the proceeding; or
- (b) if the tribunal orders the discharge of the security; or
- (c) if the party entitled to the benefit of the security consents to its discharge; or
- (d) in relation to the balance after costs have been satisfied under subsection (2).

## **61 General power of tribunal to award costs**

(1) In a proceeding, the tribunal may award the costs it considers appropriate on—

- (a) the application of a party to the proceeding; or
- (b) its own initiative.

(2) The costs the tribunal may award may be awarded at any stage of the proceeding or after the proceeding has ended.

(3) If the tribunal awards costs during a proceeding, the tribunal may order that the costs not be assessed until the proceedings ends.

(4) In deciding whether to award costs, and the amount of the costs, the tribunal may have regard to the following—

- (a) the outcome of the proceeding;
- (b) the conduct of the parties to the proceeding before and during the proceeding;
- (c) the nature and complexity of the proceeding;
- (d) the relative strengths of the claims made by each of the parties to the proceeding;

- (e) any contravention of the *Queensland Building Services Authority Act 1991*, the *Domestic Building Contracts Act 2000* or any other Act by a party to the proceeding;
- (f) for a proceeding to which the authority is a party, whether the other party to the proceeding was afforded natural justice by the authority;
- (g) anything else the tribunal considers relevant.

(5) A party to a proceeding is not entitled to costs merely because—

- (a) the party was the beneficiary of an order of the tribunal; or
- (b) the party was legally represented at the proceeding.

(6) The power of the tribunal to award costs under this section is in addition to the tribunal's power to award costs under another provision of this or another Act.

## **62 Stay pending payment of costs**

(1) This section applies if a party has been ordered to pay the costs of another party whether under section 61 or otherwise, and the party, before paying the costs, starts another proceeding before the tribunal against the other party.

(2) The tribunal may order a stay of the other proceeding until the costs are paid.

## *Division 7—Representation*

### **63 Purposes of div 7**

The main purpose of this division is to have parties represent themselves and save legal costs unless the interests of justice require otherwise.

### **64 Who represents party at mediation and case appraisal**

Unless the mediator or case appraiser considers it appropriate in the interests of justice to allow a party to be represented by a lawyer or other person, a party must represent himself or herself at mediation or case appraisal.

**65 Who represents party at pre-hearing conference**

Unless the tribunal considers it appropriate in the interests of justice to direct otherwise, a party may be represented by a lawyer or other person at a pre-hearing conference.

**66 Who represents party at other proceedings**

(1) A party to a proceeding, other than a proceeding mentioned in sections 64 and 65, must represent himself or herself.

(2) However, a party is entitled to be represented by—

- (a) a lawyer, if all parties to the proceeding agree; or
- (b) a lawyer or other person if—
  - (i) the proceeding relates to an application under section 116;<sup>10</sup>  
or
  - (ii) the proceeding is a disciplinary proceeding; or
  - (iii) the proceeding is a public examination; or
  - (iv) the tribunal directs that representation by a lawyer or other person is appropriate having regard to all the circumstances including, for example—
    - (A) the amount involved; and
    - (B) the complexity of the legal and factual issues involved; and
    - (C) the ability of the lawyer or other person to help the tribunal and the party represented; and
    - (D) the ability of the party to represent himself or herself.

(3) At a disciplinary proceeding or a public examination a person summonsed to attend may be represented by a lawyer or other person.

**67 Representation for a corporation**

Sections 64 to 66 do not prevent a party that is a corporation from being represented by a person who is not a lawyer.

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<sup>10</sup> Section 116 (Decisions about debts arising from statutory insurance scheme)

***Division 8—Other provisions about proceedings*****68 Tribunal may summons witness**

(1) The tribunal may, on the application of a party to a proceeding or on its own initiative, summons a person to attend before it at the time and place notified in the summons to do either or both of the following—

- (a) appear as a witness and be examined on oath about the matters the subject of the proceeding;
- (b) to produce the documents or things stated in the summons or that belong to a class stated in the summons.

(2) A person required to appear as a witness is entitled to the witness fees—

- (a) prescribed under a regulation; or
- (b) if no witness fees are prescribed—the reasonable witness fees decided by the tribunal.

(3) The witness fees must be paid by the person making the application under subsection (1).

**69 False or misleading statements**

(1) A person appearing as a witness before the tribunal must not state anything the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state the statement was, without specifying which, ‘false or misleading’.

**70 False or misleading documents**

(1) A person appearing as a witness before the tribunal must not produce a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the tribunal, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough for a charge to state the document was, without specifying which, 'false or misleading'.

## **71 Inspection of documents or things**

(1) If a document or thing is produced to the tribunal, the tribunal may—

- (a) inspect the document or thing; and
- (b) copy or photograph the document or thing if it is relevant to the proceeding before the tribunal.

(2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the proceeding.

(3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of it to inspect, copy or photograph the document or thing at a reasonable place and time the tribunal decides.

## **72 Offences by witnesses**

(1) A person summonsed to attend before the tribunal must not fail, without reasonable excuse to—

- (a) attend as required by the summons; or
- (b) continue to attend as required by the tribunal until excused from further attendance.

Maximum penalty—80 penalty units.

(2) A person appearing as a witness before the tribunal must take an oath when required by the tribunal.

Maximum penalty—80 penalty units.

(3) Also, a person appearing as a witness before the tribunal must not fail, without reasonable excuse—

- (a) to answer a question the person is required to answer by the tribunal; or

- (b) to produce a document or thing the person is required to produce under a summons.

Maximum penalty—80 penalty units.

(4) It is a reasonable excuse to refuse to answer a question or produce a document or thing on the ground that the answer or production of the document or thing might tend to incriminate the person.

(5) Despite subsection (1), the tribunal may at any time excuse a person for failing to attend at the time and place notified.

(6) This section is subject to section 73.

### **73 Person must answer certain questions**

(1) This section applies if a person, at a public examination, refuses to answer a question about the person's financial affairs.

(2) If the tribunal requires the person to answer the question, the tribunal must advise the person of the following—

- (a) that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person;
- (b) the effect that making the claim will have on the admissibility of the answer in any proceeding against the person.

(3) The person must answer the question, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

(4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.

(5) Subsection (6) applies if an answer might incriminate the person and the person claims, before giving the answer, that giving the answer might incriminate the person.

(6) The answer is not admissible in any criminal or civil proceeding against the person, other than a proceeding in which the falsity or misleading nature of the answer is relevant.

(7) For subsection (6), the following are not proceedings against the person—

- (a) the public examination of a person;

- (b) a proceeding for the review of a decision of the authority under part 5, division 2.<sup>11</sup>

#### **74 Warrant may be issued if witness does not attend**

(1) If a person summonsed does not attend as required by the summons, the tribunal may—

- (a) issue a warrant directed to all police officers to bring the person at the time, and to the place, stated in the warrant to give evidence at a proceeding before the tribunal; and
- (b) adjourn the hearing to the time and place mentioned in paragraph (a) on terms as to costs the tribunal considers appropriate.

(2) A warrant issued under subsection (1) is sufficient authority for a police officer to execute it according to its terms.

#### **75 Powers of tribunal relating to taking of evidence**

(1) For a proceeding, the tribunal may—

- (a) take evidence on oath; or
- (b) require a person who is to give evidence before the tribunal to take an oath; or
- (c) administer an oath to a person who is to give evidence before the tribunal.

(2) The oath to be taken or made by a person is an oath that the evidence the person will give will be true.

#### **76 Referral of matters for expert report**

(1) The tribunal may refer a matter of a technical nature arising in the course of a proceeding for investigation by an appropriate expert.

(2) The expert must report the results of the investigation in writing to the tribunal and provide the parties with copies of the report.

(3) The tribunal may adopt the findings of the expert in whole or in part.

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<sup>11</sup> Part 5 (Particular jurisdiction of the tribunal), division 2 (Proceedings for review)



(4) The parties to the proceeding are responsible for any costs of an expert, and must pay those costs in the proportions decided by the tribunal.

(5) In doing anything for the purposes of subsection (2), the expert has the same protection and immunity as a member of the tribunal.

## **77 Entry and inspection of property**

(1) The member may, if it is necessary to do so for the purposes of a proceeding before the tribunal—

- (a) for a view, enter and inspect a building or land relevant to the proceeding accompanied by the parties to the proceeding; or
- (b) authorise a person in writing to take the following action and report to the tribunal on the action taken—
  - (i) enter and inspect a building or land relevant to the proceeding;
  - (ii) take photographs, video film or an image of the building or land or anything relevant to the proceeding;
  - (iii) carry out tests approved by the tribunal.

*Examples of 'building or land relevant to the proceeding'—*

A display home mentioned in a contract as the model to be followed by a building contractor if the display home is occupied by a third party.

Land adjoining other land on which is situated building work the subject of a proceeding to better inspect the building work from the adjoining land.

(2) A person who obstructs a member, or a person authorised under subsection (1)(b), in the exercise of a power mentioned in subsection (1) commits an offence.

Maximum penalty—200 penalty units.

## **78 Procedure before entry**

(1) This section applies to entry under section 77.

(2) Before entering a building or land the member or a person authorised to enter must do or make a reasonable attempt to do the following—

- (a) give an occupier or, if there is no occupier, the owner, reasonable notice of the entry;

- (b) on arriving at the building or land, identify himself or herself to a person present who is an occupier of the building or land by producing—
  - (i) for the member, a copy of the member's notice of appointment or other document evidencing the appointment; or
  - (ii) for a person authorised to enter, a copy of the authorisation and evidence that the person is the person authorised;
- (c) give the person present a copy of the things produced under subsection (2)(b);
- (d) tell the person present the member or authorised person is permitted to enter the building or land.

## **79 Contempt of tribunal**

(1) A person is in contempt of the tribunal if the person—

- (a) insults a member or a member of the staff of the central tribunals registry at a proceeding, or in going to or returning from the proceeding; or
- (b) deliberately interrupts a proceeding, or otherwise misbehaves at a proceeding; or
- (c) creates or continues, or joins in creating or continuing, a disturbance in or near a place where a proceeding is being conducted; or
- (d) obstructs or assaults a person attending a proceeding; or
- (e) without lawful excuse, disobeys a lawful order or direction of the tribunal made or given at a proceeding; or
- (f) obstructs a member, or a person authorised under section 77(1), in the exercise of a power under section 77(1); or
- (g) does anything at a proceeding or otherwise that would be contempt of court if the tribunal were a court of record.

(2) The tribunal may order that a person who is in contempt under subsection (1) at a proceeding be excluded from the place where the proceeding is being conducted.

(3) A member of the staff of the central tribunals registry, acting under the tribunal's order, may, using necessary and reasonable help and force, exclude the person from the place.

(4) In this section—

“**member**” includes presiding case manager.

## **80 Punishment of contempt**

(1) Without limiting the tribunal's power to punish for contempt under section 79, a person's contempt of the tribunal may be punished under this section.

(2) The chairperson may certify the contempt in writing to the Supreme Court (the “**court**”).

(3) For subsection (2), it is enough for the chairperson to be satisfied there is evidence of contempt.

(4) The chairperson may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the court to be dealt with according to law.

(5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.

(6) The court must inquire into the alleged contempt.

(7) The court must hear—

- (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and
- (b) any statement given by the person in defence.

(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.

(9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish with necessary changes.

(10) The chairperson's certificate of contempt is evidence of the matters contained in the certificate.

**81 Conduct that is contempt and offence**

If conduct of a person is both contempt of the tribunal and an offence, the person may be proceeded against for the contempt or for the offence, but the person is not liable to be punished twice for the same conduct.

**82 Protection of persons before tribunal**

(1) A person representing a person before the tribunal has the same protection and immunity as a barrister has if appearing for a party in a proceeding in the District Court.

(2) A person summoned to attend or appearing before the tribunal as a witness has the same protection as a witness in a proceeding in the District Court.

*Division 9—Tribunal decisions and enforcement***83 Form of decisions of tribunal**

(1) A decision of the tribunal that finally decides matters the subject of the proceeding—

- (a) must be in writing; and
- (b) must state the decision, and the reasons for the decision; and
- (c) may be published.

(2) To remove doubt, it is declared that this section does not apply to a pre-hearing conference.

**84 When decision takes effect**

A decision of the tribunal takes effect—

- (a) if all parties to a proceeding before the tribunal are present when the decision is given or order is made—when the decision is given or the order is made; or
- (b) if 1 party only is not present when the decision is given or order is made—when the party is served with the decision; or

- (c) if 2 or more parties are not present when the decision is given or order is made—when the decision is served on all of those parties.

## **85 Registration and enforcement of decisions**

(1) A person (the “**registrant**”) may register a decision by the tribunal by filing in the registry of the appropriate court—

- (a) a copy of the decision certified as correct by the director; and
- (b) the registrant’s affidavit deposing to—
  - (i) service of a certified copy of the decision on the party against whom the decision was given; and
  - (ii) noncompliance, or the extent of noncompliance, with the decision by that party.

(2) On registration of the decision in the appropriate court—

- (a) the decision has, for the purposes of enforcement, the same force and effect; and
- (b) proceedings may be taken on the decision; and
- (c) the amount, if any, for which the decision is registered carries interest; and
- (d) the appropriate court has the same control over the enforcement of the decision;

as if the decision had been originally given as a judgment of the appropriate court and entered on the day of registration.

(3) No court fee is payable for filing the decision and affidavit in the appropriate court’s registry.

(4) In this section—

“**appropriate court**” means—

- (a) the Magistrates Court if the tribunal’s decision is within that court’s jurisdictional limit; or
- (b) in any other case—the District Court.

(5) For subsection (2), the appropriate court is taken to have had jurisdiction to make the decision.

## **86 Consequences of failure to comply with tribunal's orders and directions**

(1) The tribunal may, in a proceeding to which a licensee is a party, order that the licensee's licence be suspended or cancelled if the licensee fails to comply with an order or direction of the tribunal within the time allowed by the tribunal.

(2) Before ordering that a licence be suspended or cancelled, the tribunal must give the licensee a reasonable opportunity to show cause why it should not be cancelled or suspended.

(3) Subsection (2) does not apply to an order or direction made in disciplinary proceedings under part 5, division 3.<sup>12</sup>

(4) An order under this section operates, of its own force, to suspend or cancel the licence if the licensee fails to comply with the tribunal's order or direction within the time allowed by the tribunal.

### *Division 10—Further action in relation to a proceeding*

## **87 Correcting mistakes**

(1) The tribunal may correct a decision made by it if the decision contains—

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or
- (d) a defect of form.

(2) The correction may be made—

- (a) on the tribunal's own initiative; or
- (b) on the written application of a party to the proceeding to which the decision relates.

(3) An application under this section—

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<sup>12</sup> Part 5 (Particular jurisdiction of the tribunal), division 3 (Disciplinary proceedings)

- (a) must be made within 14 days after the making of the decision; and
  - (b) must be based on something mentioned in subsection (1)(a) to (d) that is of sufficient significance to have influenced the outcome of the proceeding.
- (4) The tribunal need not conduct a hearing for the application.
- (5) The correction—
- (a) may be made by the member who made the decision, the chairperson or another member; and
  - (b) must be made only on the evidence placed before the tribunal at the hearing of the proceeding in which the decision was made.
- (6) The making of the application under this section does not, of itself, stop the order or decision from taking effect according to its terms.

### **88 Reopening an order if party does not appear**

- (1) A person in relation to whom an order is made may apply to the tribunal for a review of the order if the person did not appear and was not represented at the hearing at which the order was made.
- (2) An application under this section must be made within 14 days after the order is served on the person.
- (3) A person may apply only once in relation to the same order.
- (4) The tribunal may grant the application if satisfied that the applicant had a reasonable excuse for not attending or for not being represented at the hearing.
- (5) On a review under this section, the tribunal may confirm, vary or revoke the order.

### **89 Reopening an order if problems with interpretation or implementation**

- (1) A party to a proceeding may apply to the tribunal to vary an order if the party considers there are problems with interpreting or implementing the order.
- (2) The tribunal may grant the application if satisfied that there are problems with interpreting or implementing the order.

(3) The tribunal may grant an application under subsection (2) only if it has given all parties to the proceeding an opportunity to be heard on the application.

## **90 Application to reopen order must not be made if appeal filed**

An application under sections 88 or 89 must not be made for a proceeding in relation to which an appeal has been filed under section 92.

## **91 Cases stated**

(1) The tribunal may, on the application of a party to a proceeding or on its own initiative, state a case on a question of law arising in the proceeding for the opinion of the District Court.

(2) The District Court may decide a question of law stated under this section as it considers just and make consequential or ancillary orders and directions.

(3) If a question has been stated for the opinion of the District Court, the tribunal must not, in the proceeding—

- (a) make a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a way, or make a decision, that is inconsistent with the District Court's opinion on the question.

## **92 Appeals**

(1) A party to a proceeding before the tribunal may appeal to the District Court against a decision of the tribunal that finally decides matters the subject of the proceeding.

(2) An appeal must be filed within 28 days after the decision takes effect.

(3) An appeal must—

- (a) be accompanied by the tribunal's decision and reasons for decision, if any; and
- (b) refer to the tribunal's decision and reasons for decision, if any, and any other relevant material and state the grounds for the application.



(4) The appeal is by way of rehearing, unaffected by the tribunal's decision, on the material before the tribunal and any further evidence allowed by the District Court.

(5) The tribunal is not a party to the appeal but the party appealing must serve a copy of the appeal and supporting documents on the tribunal within 7 days of filing the appeal in the District Court.

(6) On an appeal, the District Court may do any of the following—

- (a) confirm, annul, vary or reverse the tribunal's decision; or
- (b) remit the case to the tribunal for further hearing or rehearing; or
- (c) make consequential or ancillary orders or directions.

(7) The registrar of the District Court must give the tribunal a copy of the court's judgment and reasons.

## **PART 5—PARTICULAR JURISDICTION OF THE TRIBUNAL**

### *Division 1—Building disputes*

#### **93 Tribunal may decide building dispute**

(1) A person involved in a building dispute may apply to the tribunal to have the tribunal decide the dispute.

(2) Without limiting the tribunal's powers to resolve the dispute, the tribunal may exercise 1 or more of the following powers—

- (a) order the payment of an amount found to be owing by 1 party to another;
- (b) order relief from payment of an amount claimed by 1 party from another;
- (c) award damages, and interest on the damages at the rate, and calculated in the way, prescribed under a regulation;
- (d) order restitution;

- (e) declare any misleading, deceptive or otherwise unjust contractual term to be of no effect, or otherwise vary a contract to avoid injustice;
- (f) avoid a policy of insurance under the statutory insurance scheme;
- (g) order rectification or completion of defective or incomplete building work;
- (h) award costs.

#### **94 When major commercial building dispute may be heard by tribunal**

However, a major commercial building dispute may be decided by the tribunal only if the tribunal is satisfied all parties to the dispute consent to it doing so.

#### **95 Procedure to decide whether all parties consent**

(1) An application to start a proceeding for a major commercial building dispute must be accompanied by the written consent of all parties to the dispute.

(2) The written consent must include an acknowledgment by the consenting party that the consent can not be withdrawn.

(3) The tribunal may, before another step is taken in the proceeding, conduct a pre-hearing conference to decide whether there is another person who should be joined as party to the dispute.

(4) If the tribunal decides that there is another person who should be joined as party to the dispute, the tribunal—

- (a) must give the consenting parties an opportunity to obtain the written consent of the other person; and
- (b) may hear the dispute only if the other person consents.

(5) If the consenting parties obtain the consent of the other person, the tribunal must join the other person as a party to the dispute.

(6) The consent of all parties to the dispute must be obtained before another step is taken in the proceeding.

## **96 Procedure if another party discovered**

(1) This section applies if the tribunal becomes aware that there is another person who should be joined as a party to a major commercial building dispute (other than at a pre-hearing conference under section 95).

(2) The tribunal does not have jurisdiction to decide the dispute.

(3) The tribunal must order that the proceeding be removed to a court under section 117(3).<sup>13</sup>

## **97 Consent may not be withdrawn**

A party that gives written consent to have a major commercial building dispute heard and decided by the tribunal can not withdraw the consent.

## **98 Tribunal may make interim order**

(1) Before finally deciding a building dispute, the tribunal may make 1 or more of the interim orders mentioned in subsections (2) to (4).

(2) The tribunal may make an order requiring a building contractor to rectify or complete defined building work, or building work to be defined by a process identified in the order, that is the subject of the dispute.

(3) The tribunal may make an order requiring a building owner, in relation to the amount claimed to be owing from the building owner to a building contractor, to do 1 or more of the following—

- (a) pay an amount decided by the tribunal into the tribunal's trust account<sup>14</sup> to be held until the tribunal is satisfied that the building contractor has completed the building work;
- (b) provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the building contractor has completed the building work;
- (c) pay an amount decided by the tribunal to the building contractor.

(4) The tribunal may make an order requiring a person, in relation to the amount claimed to be owing from the person to a subcontractor, to do 1 or more of the following—

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<sup>13</sup> Section 117 (Transfer of proceedings between tribunal and the courts)

<sup>14</sup> Section 163 (Trust account)

- (a) pay an amount decided by the tribunal into the tribunal's trust account to be held until the tribunal is satisfied that the subcontractor has completed the building work;
- (b) provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the subcontractor has completed the building work;
- (c) pay an amount decided by the tribunal to the subcontractor.

(5) On being satisfied the building work has been completed the tribunal must order—

- (a) the amount paid into the tribunal's trust account under subsection (3)(a) or (4)(a) be paid to the building contractor or subcontractor; or
- (b) the application of the security in satisfaction of the amount decided by the tribunal under subsection (3)(b) or (4)(b) in favour of the building contractor or subcontractor.

(6) However for subsection (5)(b), the tribunal may order that the security be discharged if an amount equal to the amount of the security is paid to the building contractor or subcontractor.

## **99 Proceeding in tribunal stops action by authority**

(1) If a proceeding about a building dispute is started in or removed from a court to the tribunal—

- (a) the tribunal is to have the management of the dispute; and
- (b) the authority must not act in relation to the dispute except as allowed or required by section 100 or 101.

(2) To remove doubt, it is declared that nothing in this section affects a direction that building work be rectified or completed issued by the authority before the proceeding is started or removed.

## **100 Reports by authority to tribunal**

(1) If asked by the tribunal, the authority must give the tribunal a report about a building dispute that includes—

- (a) details of building work the authority considers is defective or incomplete; and

- (b) an assessment of the time within which the rectification or completion work should be finished; and
- (c) other matters of a technical nature asked for by the tribunal.

(2) A report under subsection (1) must be given within the reasonable time stated by the tribunal in the request.

### **101 Tribunal to decide about rectification or completion work**

(1) This section applies if—

- (a) a proceeding about a building dispute is started in, or removed from a court to, the tribunal; and
- (b) before the proceeding is started or removed, the authority has acted in relation to the building dispute but has not issued a direction that building work be rectified or completed.

(2) The authority may apply to the tribunal for an order that building work be rectified or completed if the authority considers the building work needs to be urgently rectified or completed.

(3) The application must be heard by the tribunal as an expedited hearing.

(4) Whether or not the authority applies under subsection (2), the authority may also apply to the tribunal for a decision about whether it would have been appropriate for the authority to have issued a direction to rectify or complete building work if section 99 had not stopped the authority from acting further in relation to the dispute.

(5) The tribunal must make a decision under subsection (4) if it hears the proceeding mentioned in subsection (1).

### **102 Tribunal may hear dispute while contract still in operation**

The tribunal may make an order to resolve a building dispute even though the contract under which the dispute arose has not been terminated or finalised.

**103 Tribunal may hear dispute regardless of related criminal or disciplinary action**

(1) This section applies if matters arising in a building dispute involve the contravention, or the alleged contravention, by a building contractor of the *Queensland Building Services Authority Act 1991* or another Act.

(2) The tribunal may make an order to resolve the dispute whether or not the building contractor—

- (a) has been charged with, convicted of or sentenced for an offence arising out of the contravention; or
- (b) is the subject of a pending disciplinary proceeding relating to the contravention; or
- (c) may be, or has been, subject to disciplinary action under section 111<sup>15</sup> relating to the contravention.

***Division 2—Proceedings for review*****104 Reviewable decisions**

(1) The tribunal may review the following decisions of the authority made under the *Queensland Building Services Authority Act 1991*—

- (a) a decision to refuse an application for a licence or a permit;
- (b) a decision to impose or vary a condition of a licence;
- (c) a decision to suspend or cancel a licence;
- (d) a decision that there are reasonable grounds for concern that a licensee does not satisfy the relevant financial requirements for a licence;
- (e) a decision to direct or not to direct rectification or completion of building work;
- (f) a decision that building work undertaken at the direction of the authority is or is not of a satisfactory standard;
- (g) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete building work;

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15 Section 111 (Orders for disciplinary action)

*Queensland Building Tribunal Act 2000*

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- (h) a decision to disallow a claim under the statutory insurance scheme wholly or in part;
- (i) a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the statutory insurance scheme;
- (j) a decision not to categorise an individual as a permitted individual for a relevant event;
- (k) a decision under the *Queensland Building Services Authority Act 1991*, section 56AF or 56AG<sup>16</sup> that—
  - (i) a person is an excluded individual or excluded company; or
  - (ii) an individual is still a director or secretary of, or an influential person for, a company.

(2) However, the tribunal may not review the following decisions of the authority made under the *Queensland Building Services Authority Act 1991*—

- (a) a decision to recover an amount under the *Queensland Building Services Authority Act 1991*, section 71;<sup>17</sup>
- (b) a decision to direct rectification or completion of building work by a building contractor and any finding by the authority in arriving at the decision if—
  - (i) 28 days have elapsed from the date the direction to rectify or complete was served on the building contractor and the contractor has not, within that time, applied to the tribunal for a review of the decision; and
  - (ii) the authority has—
    - (A) started a disciplinary proceeding against the building contractor by an application under division 3;<sup>18</sup> or
    - (B) served a notice on the building contractor advising a claim under the statutory insurance scheme has been

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16 *Queensland Building Services Authority Act 1991*, section 56AF (Procedure if licensee is excluded individual) or 56AG (Procedure if licensee is excluded company)

17 *Queensland Building Services Authority Act 1991*, section 71 (Recovery from building contractor etc.)

18 Division 3 (Disciplinary proceedings)

approved in relation to building work stated in the direction;

- (c) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete building work if 28 days have elapsed since the decision was served on the building contractor and the contractor has not, within that time, applied to the tribunal for a review of the decision.

### **105 Application for review**

(1) A person affected by a reviewable decision of the authority may apply to the tribunal for a review of the decision.

(2) The application must be made within 28 days after the applicant receives written notice of the decision.

(3) To remove doubt, it is declared that the application must be served on the authority under section 29(4).<sup>19</sup>

(4) On an application for review of a reviewable decision, the tribunal may confirm, annul, vary or reverse the decision under review and make consequential orders and directions including the awarding of costs.

### **106 Stay of operation of decision**

(1) The tribunal may make an order staying the operation of a decision in relation to which an application for review has been made to the tribunal.

(2) The tribunal may make the order on the application of a party to the review proceeding or on its own initiative.

(3) In making the order, the tribunal—

- (a) may require any undertaking, including an undertaking as to costs or damages, it considers appropriate; and
- (b) may make provision for the lifting of the order if stated conditions are met.

(4) The tribunal may assess costs or damages mentioned in subsection (3)(a).

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<sup>19</sup> Section 29 (Start of proceedings)



**107 Tribunal may try to reach settlement during review**

(1) At any time after an application is made under section 105, the tribunal may try to reach a negotiated settlement between the parties to the review proceeding.

(2) The tribunal may adjourn the review proceeding to allow the parties to try to reach a settlement.

***Division 3—Disciplinary proceedings*****108 Tribunal may conduct disciplinary proceeding**

The tribunal may, on application by the authority, conduct a proceeding to decide whether proper grounds exist for taking disciplinary action against a person under this division.

**109 Proper grounds for disciplinary action against a licensee**

For section 108, proper grounds exist for taking disciplinary action against a licensee if—

- (a) the licensee contravenes a requirement imposed under this Act, the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*; or
- (b) the licensee is convicted of an indictable offence; or
- (c) if a licensee is a corporation—a director or other person who is in a position to control or substantially influence the conduct of the corporation's affairs is not a fit and proper person to exercise that control or influence; or
- (d) the licensee is carrying on business under the licence in partnership with a person who is not a fit and proper person to have an interest in the business; or
- (e) the licensee is bankrupt or insolvent; or
- (f) the licensee has committed an offence involving fraud or dishonesty relating to the business carried on under the licence; or

- (g) the licensee knowingly helps a person to perform building work in contravention of the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*; or
- (h) the licensee contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to building work carried out under the licence; or
- (i) the licensee is negligent or incompetent in carrying out building work under the licence; or
- (j) the licensee fails to comply with a direction of the authority under the *Queensland Building Services Authority Act 1991* to rectify or complete building work; or
- (k) the licensee contravenes a condition of the licence; or
- (l) the licensee owes an amount to the authority and fails to comply with a demand by the authority to pay the amount; or
- (m) the licensee fails to comply with an order of the tribunal.

### **110 Proper grounds for disciplinary action against person not a licensee**

(1) For section 108, proper grounds exist for taking disciplinary action against a person who is not a licensee if the person—

- (a) carries out, or undertakes to carry out, building work for which a licence is required without holding a licence of the appropriate class; or
- (b) has committed an offence involving fraud or dishonesty relating to the performance of building work; or
- (c) contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to the performance of building work; or
- (d) is negligent or incompetent in carrying out building work for which a licence is required; or
- (e) fails to comply with a direction of the authority under the *Queensland Building Services Authority Act 1991* to rectify or complete building work.

(2) In this section—

“**undertakes to carry out**”, building work, means enters into a contract to carry out building work or submits a tender or makes an offer to carry

out building work, unless the contract, submission or offer is conditional on the person obtaining a licence of the appropriate class.

### **111 Orders for disciplinary action**

(1) If the tribunal decides that proper grounds exist for taking disciplinary action against a person, the tribunal may make 1 or more of the orders mentioned in subsections (2) to (4).

(2) The tribunal may make an order imposing a penalty on the person of not more than—

- (a) for an individual—an amount equivalent to 200 penalty units; or
- (b) for a corporation—an amount equivalent to 1 000 penalty units.

(3) The tribunal may, in relation to defective or incomplete building work carried out by the person for a building owner—

- (a) make an order that the person rectify or complete the work; or
- (b) if the person is not appropriately licensed to rectify or complete the work—make an order that the person have the work rectified or completed by another person who is appropriately licensed; or
- (c) make an order that the person pay the building owner an amount sufficient to rectify or complete the work.

(4) If the person is a licensee, the tribunal may make an order—

- (a) reprimanding the licensee; or
- (b) suspending the licence; or
- (c) imposing conditions on the licence; or
- (d) cancelling the licence.

(5) The authority may recover an amount ordered by the tribunal to be imposed as a penalty as a debt due to it in the appropriate court.

(6) In this section—

**“appropriate court”** means—

- (a) the Magistrates Court if the amount ordered by the tribunal’s decision is within that court’s jurisdictional limit; or
- (b) in any other case, the District Court.

***Division 4—Public Examinations*****112 Tribunal may conduct public examination**

The tribunal may, on application by the authority, conduct a public examination—

- (a) that investigates the conduct or competence of a person who has carried out building work or undertaken to carry out building work; or
- (b) that investigates whether a person—
  - (i) meets the financial requirements imposed under the *Queensland Building Services Authority Act 1991* for the licence held by the person; or
  - (ii) has the qualifications and experience required under the *Queensland Building Services Authority Act 1991* for the licence held by the person; or
  - (iii) if the person is the nominated supervisor for a corporation that holds a licence under the *Queensland Building Services Authority Act 1991*—has the qualifications and experience required for the licence held by the corporation; or
  - (iv) is a fit and proper person to hold a licence under the *Queensland Building Services Authority Act 1991*; or
  - (v) if the person exercises control over a corporation that holds a licence under the *Queensland Building Services Authority Act 1991*—is a fit and proper person to exercise control over the corporation; or
  - (vi) has breached a condition imposed on the person's licence.

**113 Procedure before public examination starts**

(1) Before the start of a public examination, the tribunal must be satisfied each person who is the subject of the public examination has received the following in writing—

- (a) the grounds for the public examination;
- (b) if the application is based on a complaint to the authority—the substance of the complaint.

(2) On being satisfied under subsection (1), the tribunal must decide a time and place for the public examination.

(3) If the person is a corporation, for the purposes of the public examination, the tribunal may under section 68<sup>20</sup> summons a director or an executive officer of the corporation.

(4) The authority must serve on each person who is the subject of the public examination written notice stating—

- (a) the time and place for the public examination decided by the tribunal; and
- (b) that oral and written submissions may be made to the public examination.

### *Division 5—Stop orders and suspension orders*

#### **114 Stop orders**

(1) This section applies if the tribunal is satisfied, on application by the authority, that building work is being carried out, or is about to be carried out, in contravention of the *Queensland Building Services Authority Act 1991*.

(2) The tribunal may, by order, prohibit the person who is carrying out, or about to carry out, the building work (the “**prohibited person**”) from starting or continuing the building work.

(3) The tribunal may make an order under this section on application by the authority made without notice to the prohibited person but, in that case, the tribunal must allow the prohibited person a reasonable opportunity to show cause why the order should not be confirmed.

(4) If the tribunal, after considering the prohibited person’s evidence and representations, if any, and any further evidence or representations of the authority, is not satisfied the order should continue in force, the tribunal must rescind the order.

(5) A person must not carry out building work in contravention of an order under this section.

Maximum penalty—500 penalty units.

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20 Section 68 (Tribunal may summons witness)

## **115 Suspension orders**

(1) If the tribunal is satisfied, on application by the authority, that a licence should be suspended, the tribunal may, by order, suspend the licence—

- (a) for the period the tribunal considers just; or
- (b) until the holder of the licence (the “**suspended person**”) complies with a condition imposed on the licence by the authority or tribunal.

(2) The order may direct the suspended person to deliver the licence to the authority and include any other directions the tribunal considers necessary or convenient to give effect to the order.

(3) The tribunal may make an order under this section on application made without notice to the suspended person, but, in that case, the tribunal must subsequently allow the suspended person a reasonable opportunity to show cause why the order should be rescinded.

(4) If the tribunal after considering the suspended person’s evidence and representations, if any, and any further evidence or representations of the authority, is not satisfied the order should continue in force, the tribunal must rescind the order.

(5) The holder of a licence who contravenes a direction under subsection (2) commits an offence.

Maximum penalty—80 penalty units.

### *Division 6—Decisions about debts arising from statutory insurance scheme*

## **116 Decisions about debts arising from statutory insurance scheme**

(1) The authority may recover a debt under the *Queensland Building Services Authority Act 1991*, section 71<sup>21</sup> by application to the tribunal under this section.

(2) The tribunal may exercise 1 or more of the following powers—

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21 *Queensland Building Services Authority Act 1991*, section 71 (Recovery from building contractor etc.)

- (a) order the payment of an amount the tribunal has found to be owing to the authority;
- (b) order the payment of interest on the amount mentioned in paragraph (a);
- (c) order the payment of costs;
- (d) order that amounts mentioned in paragraphs (a), (b) and (c) be paid by instalments or another way directed by the tribunal.

### *Division 7—Transfer of proceedings*

#### **117 Transfer of proceedings between tribunal and the courts**

(1) If a proceeding is brought in a court, and the proceeding could be heard by the tribunal under this Act the court must, on the application of a party, order that the proceeding be removed to the tribunal.

(2) To remove doubt, it is declared that if proceedings relating to a major commercial building dispute are brought in a court, the court may order that the proceeding be removed to the tribunal only if all parties to the dispute apply for the order.

(3) If the tribunal is of the opinion that it does not have jurisdiction to hear all matters in a proceeding before the tribunal, the tribunal may order that all or part of the proceeding be removed to a court.

(4) The tribunal may make an order under subsection (3) even though the proceeding has previously been removed from a court to the tribunal under subsection (1).

(5) However, if the tribunal makes an order under subsection (3), a court must not make an order under subsection (1) relating to the proceeding.

## **PART 6—DISPUTE RESOLUTION PROCEDURES AVAILABLE TO TRIBUNAL**

### *Division 1—General*

#### **118 Tribunal may conduct hearings**

The tribunal may conduct a hearing to decide any matter within its jurisdiction.

#### **119 Hearing of proceedings**

(1) If the tribunal conducts a hearing, it must allow the parties a reasonable opportunity—

- (a) to call or give evidence; and
- (b) to examine or cross-examine witnesses; and
- (c) to make submissions to the tribunal.

(2) However, the tribunal may—

- (a) refuse to allow a party to call evidence or cross-examine about a matter if the tribunal considers there is already sufficient evidence about the matter before the tribunal; and
- (b) decide whether evidence is given orally or in writing and whether it is to be given on oath or to be by affidavit; and
- (c) limit the time for a proceeding and may allocate the time equally between the parties.

(3) If a party fails to appear at a time and place notified by the tribunal, the tribunal may proceed in the party's absence.

(4) This section is subject to section 130.<sup>22</sup>

#### **120 Purpose of other divisions**

The other divisions of this part set out other ways of resolving proceedings.

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<sup>22</sup> Section 130 (Procedure for expedited hearing)



*Division 2—Decision by default***121 Decision by default for debt**

(1) This section applies if an applicant has filed an application under this Act to recover a liquidated amount from a respondent and the respondent has not filed a defence to the application within the period required.

(2) The applicant may file a request for an order in favour of the applicant (a “**decision by default**”) in the approved form for an amount limited to—

- (a) the amount claimed in the application starting the proceeding; and
- (b) the fee paid for the application; and
- (c) legal costs based on a scale prescribed under a regulation; and
- (d) interest on the amount claimed at the rate and calculated in the way prescribed under a regulation.

(3) If the applicant files a request for a decision by default under this section the director or the presiding case manager may give the decision.

(4) A decision by default given under subsection (3) is taken to be a decision of the tribunal.

(5) The applicant must prove service of the application on the respondent before a decision by default may be given under this section.

**122 Setting aside decision by default**

The tribunal may set aside or amend a decision by default under section 121 on terms, including terms about costs and the giving of security, the tribunal considers appropriate.

*Division 3—Mediation***123 Tribunal may appoint mediator**

(1) If the tribunal considers a proceeding relating to a building dispute or a review of the authority’s decision is suitable for mediation, the tribunal may appoint a mediator or mediators to try to achieve a negotiated settlement of the proceeding.

(2) If all the parties to a proceeding request the tribunal to appoint a particular mediator, the tribunal may appoint that mediator.

(3) The powers of the tribunal under subsection (1) or (2) may be exercised by the director or the presiding case manager.

(4) If the director or the presiding case manager exercises the tribunal's power under subsection (3) the power is taken to be exercised by the tribunal.

(5) If there is an additional cost in appointing a mediator under subsection (2) when compared with the cost of a mediator not requested by the parties, the additional cost must be paid by the parties.

(6) The mediator may be a member of the tribunal or another person.

(7) The tribunal may appoint a person as mediator only if the tribunal considers the person has suitable qualifications and experience to be a mediator.

*Example of 'suitable qualifications and experience'—*

Successful completion of a recognised training course in mediation and experience in a business or profession relevant to the proceeding the subject of the mediation.

(8) A mediator appointed under this section has the protection and immunity of a member of the tribunal.

## **124 Method of mediation**

The tribunal may, in appropriate cases, allow a mediator to conduct a mediation by means of telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between persons taking part in the mediation.

## **125 Matters about mediation**

(1) Evidence of anything done or said, or an admission made, at a mediation is admissible in a proceeding before the tribunal or elsewhere only if all parties to the mediation agree.

(2) Despite subsection (1), if a building dispute is not settled at mediation, the mediator must obtain the following from each party and report them to the tribunal—

- (a) the issues each party considers are the issues in dispute; and

(b) the orders each party seeks from the tribunal.

(3) In a hearing before the tribunal, the tribunal is not limited to considering the issues reported under subsection (2).

(4) If a building dispute is, or some of the issues in the dispute are, settled, the mediator must report the terms of the settlement to the tribunal.

(5) The tribunal may make a decision in terms of the settlement, and may make consequential orders or give consequential directions.

(6) If requested by the parties, the tribunal must ensure the terms of the settlement remain confidential and not be included in a register or other record available for inspection under this Act.

(7) In subsection (1)—

“**proceeding**” does not include a proceeding founded on fraud, or about an offence, alleged to be connected with, or to have happened during, the mediation.

### **125A Mediators to maintain secrecy**

(1) A mediator must not, without reasonable excuse, disclose information coming to the mediator’s knowledge during a mediation.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all parties to the mediation; or
- (b) for this Act; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the mediation; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the mediation; or
- (f) under a requirement imposed under an Act.

**126 Mediator precluded from tribunal hearing**

(1) If a mediator is a member of the tribunal, the member must not hear a proceeding before the tribunal about the dispute or review that was the subject of the mediation.

(2) Subsection (1) does not apply to a pre-hearing conference.

**127 Time limit for mediation before expedited hearing**

If the director or the presiding case manager has set a proceeding down for mediation followed on the same day by an expedited hearing the director or the presiding case manager must set a time limit of not more than 2.5 hours for the mediation.

***Division 4—Expedited hearings*****128 Expedited hearing of domestic building disputes**

(1) The tribunal must decide a minor domestic building dispute at an expedited hearing if the dispute has been to mediation but has not been settled.

(2) However, the tribunal may decide it is inappropriate for the dispute to be decided at an expedited hearing if the tribunal considers the dispute is too complex to be properly dealt with at an expedited hearing.

*Example of ‘too complex to be properly dealt with’—*

The dispute involves complex legal and contractual issues for which the tribunal is unaware of any authoritative precedent.

(3) The tribunal may decide a domestic building dispute that is not a minor domestic building dispute at an expedited hearing only if—

- (a) all parties to the proceeding apply to the tribunal for the matter to be dealt with at an expedited hearing; and
- (b) the tribunal considers it appropriate for the dispute to be decided at an expedited hearing.

**129 Certain minor commercial building disputes may be expedited**

(1) The tribunal may conduct an expedited hearing for a minor commercial building dispute between a subcontractor and another person if—

- (a) neither the claim nor any counterclaim exceeds \$10 000; and
- (b) the dispute relates only to a claim for moneys owing by a person to the subcontractor for building work completed by the subcontractor under a written contract; and
- (c) the subcontractor files an application for an expedited hearing, a copy of the contract and an affidavit by the subcontractor stating that—
  - (i) the building work under the contract has been completed by the subcontractor to the standard required under the contract; and
  - (ii) a claim for payment payable under the contract has been given to the other person by the subcontractor; and
  - (iii) the amount claimed by the subcontractor has not been paid by the other person; and
  - (iv) no complaint about the building work under the contract has been made to the subcontractor by the other person.

(2) A hearing under this section may proceed only if the subcontractor has given the other person a copy of the application and all documents filed by the subcontractor at least 5 days before the hearing.

**130 Procedure for expedited hearing**

(1) Before an expedited hearing each party to the hearing must, if directed by the tribunal—

- (a) file statements of witnesses, expert reports and other documents the party intends to rely on; and
- (b) exchange these with the other parties within the time limit set by the tribunal.

(2) At the expedited hearing—

- (a) cross-examination is at the discretion of the tribunal; and

- (b) the parties must, as directed by the tribunal, arrange for the attendance of witnesses, including expert witnesses to clarify or expand on evidence in the documents filed; and
- (c) the tribunal may limit the time for the hearing and allocate the time equally between the parties.

### *Division 5—Summary decision*

#### **131 Summary decision for applicant**

(1) An applicant who starts a proceeding in the tribunal for a matter mentioned in section 30(1)<sup>23</sup> may, at any time after the end of the 14 day period allowed for the filing of a defence, apply to the tribunal under this division for a decision in favour of the applicant (a “**summary decision**”).

(2) The tribunal may give the summary decision for the applicant for all or part of the relief claimed in the application if the tribunal is satisfied—

- (a) the applicant has complied with this division and is entitled to all or part of the relief sought in the application; and
- (b) the respondent has no defence other than in relation to the amount of the claim; and
- (c) there is no need for a hearing by the tribunal of the proceeding or of that part of the proceeding for which the summary decision is sought.

(3) However, if the amount of the claim can not be calculated, because, for example, there is insufficient evidence available to satisfy the tribunal of the amount of the claim, the tribunal may instead—

- (a) order the amount of the claim to be decided in the way the tribunal directs; and
- (b) give leave for the summary decision to be given for the amount decided and costs.

(4) A second or later application under this division may be made with the tribunal’s leave.

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23 Section 30 (Defence and counterclaim)

### **132 Summary decision for respondent**

(1) The respondent against whom a proceeding is started by application in the tribunal may at any time apply to the tribunal under this division for a decision in favour of the respondent (also a “**summary decision**”).

(2) The tribunal may give the summary decision or make any other decision the tribunal considers appropriate if satisfied—

- (a) no reasonable cause of action is disclosed against the respondent; or
- (b) the proceeding is frivolous, vexatious or an abuse of the process of the tribunal; or
- (c) the respondent has a defence to the proceeding.

### **133 Claims not disposed of by summary decision**

The giving of a summary decision under this division that does not dispose of all claims in issue in a proceeding (including a counterclaim) does not prevent the continuation of any part of the proceeding not disposed of by the summary decision.

### **134 Evidence**

(1) In a proceeding under this division, evidence must be given by affidavit made by the party giving the evidence.

(2) Despite subsection (1), on the hearing of an application under this division, the tribunal may, on terms the tribunal considers appropriate, permit further evidence to be given by affidavit or otherwise by or for a party.

(3) The affidavit may contain statements of information and belief if the person making it states the sources of the information and the reasons for the belief.

(4) A party applying for a summary decision under this division must swear in support of the application that in the party’s belief the party against whom the summary decision is sought has no defence to the relief sought in the application.

(5) If a party to an application under this division intends to rely on a document, the document must be identified in the affidavit.

(6) A person who makes an affidavit to be read in an application under this division may not be cross-examined without the leave of the tribunal.

(7) An affidavit giving evidence in defence of a party's claim must identify the parts of the claim for which the evidence is claimed to be a defence.

### **135 Service**

Subject to section 134(2), a party applying for a summary decision against another party must serve the other party with the application and a copy of each affidavit and any exhibits mentioned in the affidavit at least 4 business days before the date for hearing shown on the application.

### **136 Examination of parties and witnesses**

The tribunal may order any of the following to attend the tribunal to be examined on oath or to produce to the tribunal all relevant documents and records—

- (a) a party applying for a summary decision;
- (b) a party defending the application for a summary decision;
- (c) a person who made an affidavit for a party;
- (d) a witness for a party;
- (e) for an incorporated party, an officer of the corporation.

### **137 Directions**

(1) This section applies if—

- (a) the tribunal dismisses an application for a summary decision; or
- (b) a summary decision does not dispose of all claims in a proceeding.

(2) The tribunal may give directions or impose conditions about the future conduct of the proceeding.

### **138 Costs**

(1) This section applies if it appears to the tribunal that a party who applied for a summary decision was, or ought reasonably to have been,



aware that another party relied on a point that would entitle the other party to have the application dismissed.

(2) The tribunal may dismiss the application and order costs to be paid within a time specified by the tribunal.

(3) Subsection (2) does not limit the tribunal's powers relating to costs.

### **139 Stay of enforcement**

(1) The tribunal may order a stay of the enforcement of a summary decision given under this division for the time and on the terms the tribunal considers appropriate.

(2) If a summary decision has been registered in a court under section 85,<sup>24</sup> a stay of that decision has no effect until it is filed in the court.

### **140 Setting aside summary decision**

The tribunal may set aside or vary a summary decision given against a party who did not appear on the hearing of the application for the decision.

## *Division 6—Case appraisals*

### **141 Referral to case appraiser**

(1) The tribunal may refer a proceeding to a person (the “**case appraiser**”) to decide all issues in dispute between the parties.

(2) The tribunal may act under subsection (1) only if all parties to the proceeding apply to the tribunal to have the proceeding referred to a case appraiser.

(3) If all the parties to a proceeding request the tribunal to appoint a particular case appraiser, the tribunal may appoint that case appraiser.

(4) If there is an additional cost in appointing a case appraiser under subsection (3) when compared with the cost of a case appraiser not requested by the parties, the additional cost must be paid by the parties.

(5) The case appraiser may be a member of the tribunal or another person.

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24 Section 85 (Registration and enforcement of decisions)

(6) The tribunal may appoint a person as case appraiser only if the tribunal considers the person has suitable qualifications and experience to be a case appraiser.

### **142 Jurisdiction of case appraiser**

(1) The case appraiser for the proceeding referred has the power of the tribunal to decide the issues in dispute but may only give a decision that could have been given in the proceeding if it had been decided by the tribunal.

(2) Subsection (1) is subject to section 150.<sup>25</sup>

### **143 Procedure for case appraisals**

The case appraiser for a proceeding—

- (a) must consider all documents filed and served on the parties to the proceeding; and
- (b) unless the case appraiser considers it necessary to clarify or expand on evidence in the documents being considered, must conduct the case appraisal—
  - (i) in the absence of the parties; and
  - (ii) without oral evidence from witnesses; and
- (c) if the case appraiser allows parties to be present, must not allow cross-examination unless the case appraiser considers it necessary to clarify or expand on evidence in the documents being considered.

### **144 Case appraiser may seek information**

(1) A case appraiser may ask anyone for information and may obtain, and act on, information obtained from anyone on any aspect of the proceeding.

(2) However, if obtaining the information involves extra cost, the case appraiser must first obtain—

- (a) the parties' agreement to pay the extra cost; or

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<sup>25</sup> Section 150 (Dissatisfied party may elect to go to hearing of tribunal)

(b) the tribunal's leave.

(3) If the tribunal gives leave, the tribunal must also—

(a) order the parties to pay the extra cost; and

(b) state to whom and by when the payment must be made.

(4) The case appraiser must disclose the substance of the information to the parties.

### **145 Case appraisal may be recorded**

(1) A case appraiser may have the case appraisal recorded if the case appraiser considers it appropriate, in the special circumstances of the case.

(2) If the case appraisal is to be recorded, the case appraiser must decide the extent to which, and the way in which, the recording may be done.

### **146 Case appraiser's decision**

(1) A case appraiser's decision must be in writing, but the case appraiser need not give reasons for the decision.

(2) However, a case appraiser may, at any stage of a case appraisal decline to proceed further with the appraisal.

*Example for subsection (2)—*

The dispute proves to be unsuitable for case appraisal.

(3) A copy of the decision must be given to each party.

### **147 Case appraiser's decision on costs in the dispute**

(1) A case appraiser has the same power to award costs in the dispute as the tribunal would have had if the tribunal had heard and decided the dispute.

(2) A case appraiser's decision must include a decision on costs in the dispute.

### **148 Case appraiser's decision final unless election made**

A case appraiser's decision about a dispute is final, unless an election to have the dispute heard by the tribunal is made under section 150.

**149 Case appraiser to file report and decision**

(1) As soon as practicable after a case appraisal has finished, the case appraiser must file—

- (a) a report about the case appraisal; and
- (b) the case appraiser's decision, if any; and
- (c) if the case appraisal was recorded, a copy of the record.

(2) If the case appraiser makes a decision about the dispute or any issue in the dispute, the case appraiser must—

- (a) place the written decision in a sealed container, for example, an envelope; and
- (b) mark the container with a distinguishing number; and
- (c) endorse the container 'Not to be opened without an order of the tribunal'; and
- (d) file the container.

(3) The container may be opened only if the tribunal orders it to be opened.

(4) No fee is payable for filing anything under this section.

**150 Dissatisfied party may elect to go to hearing of tribunal**

(1) A party who is dissatisfied with a case appraiser's decision about a dispute may elect to have the dispute heard by the tribunal.

(2) To elect to have a dispute heard by the tribunal, the dissatisfied party must file an election within 14 days after the party receives a copy of the decision.

(3) If an election is filed as mentioned in subsection (1)—

- (a) the case appraiser's decision ceases to have effect except for section 151; and
- (b) the dispute must be decided by the tribunal as if it had never been referred to the case appraiser.

(4) To remove doubt, it is declared that anything said or done during the case appraisal is inadmissible in the hearing of the dispute by the tribunal.

**151 Case appraiser's decision may affect costs**

(1) If the tribunal's decision in the dispute is not more favourable overall to a party filing an election than the case appraiser's decision in the dispute was to the party, the costs of the proceeding including the case appraisal must be awarded against the party.

(2) If all parties to a dispute elect to have the dispute heard by the tribunal, the case appraiser's decision has no effect on the awarding of costs.

***Division 7—Pre-hearing conferences*****152 Pre-hearing conferences**

(1) The tribunal may require the parties to a proceeding to attend 1 or more pre-hearing conferences before the tribunal before the proceeding is heard by the tribunal.

(2) At a pre-hearing conference the tribunal may do any of the following—

- (a) identify and clarify the issues in dispute in the proceeding;
- (b) promote a settlement of the proceeding;
- (c) identify the questions of fact and law to be decided by the tribunal;
- (d) if the proceeding is not settled, give directions about the conduct of the proceeding;
- (e) make the orders and give the directions the tribunal considers appropriate to manage the proceeding or resolve the dispute the subject of the proceeding.

*Examples for subsection (2)(e)—*

The tribunal may order a party to pay an amount into the tribunal's trust account pending settlement of, or a decision in relation to, the dispute.

(3) Written notice of a pre-hearing conference must be given to each party by the director.

(4) Unless the tribunal otherwise directs, a pre-hearing conference must be held in private.

(5) The procedure for a pre-hearing conference is at the discretion of the tribunal.

### **153 Who is required to attend pre-hearing conferences**

The tribunal may require a party to attend a pre-hearing conference personally or by a representative who has authority to settle the proceeding on behalf of the party.

### **154 Evidence from pre-hearing conferences inadmissible**

Evidence of anything said or done in the course of a pre-hearing conference is inadmissible in any hearing before the tribunal in the proceeding, except—

- (a) if all parties agree to the admission of the evidence; or
- (b) evidence of directions given at a pre-hearing conference or the reasons for the directions; or
- (c) evidence of anything said or done relevant to—
  - (i) a proceeding for an offence in relation to the giving of false or misleading information; or
  - (ii) a proceeding under section 79;<sup>26</sup> or
  - (iii) a proceeding relating to an order made under section 156(b)(i).

### **155 When member may hear proceeding after presiding at a pre-hearing conference**

(1) A member who presides at a pre-hearing conference for a proceeding that attempts to promote a settlement of the proceeding—

- (a) may disqualify himself or herself from constituting the tribunal that hears the proceeding; and
- (b) must not constitute the tribunal that hears the proceeding if a party to the proceeding objects to the member hearing the proceeding.

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26 Section 79 (Contempt of tribunal)

(2) At the end of a pre-hearing conference that attempts to promote a settlement of the proceeding the presiding member must advise the parties of their rights under subsection (1)(b).

(3) An objection under subsection (1)(b) must be made within 48 hours of receiving the advice mentioned in subsection (2) or before the start of the hearing of the proceeding, whichever is the shorter period.

### **156 Failure of a party to attend a pre-hearing conference**

If a party does not attend a pre-hearing conference—

- (a) the conference may proceed at the appointed time in the party's absence; and
- (b) if all the parties present agree, the tribunal may—
  - (i) decide the proceeding adversely to the absent party and make appropriate orders; or
  - (ii) direct that the absent party be struck out of the proceeding.

## ***Division 8—Settlement Offers***

### **157 Making settlement offers**

(1) A party to a proceeding may offer to settle the proceeding in so far as it relates to another party.

(2) The offer must be made by signed writing served on the party to whom the offer relates.

(3) A party may make more than one offer.

(4) If an offer provides for the payment of an amount by a party to another person, the offer must state when the amount is to be paid and to whom.

(5) Payment under subsection (4) may be into the tribunal's trust account<sup>27</sup> to be disbursed in accordance with the terms of the settlement.

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27 Section 163 (Trust account)

**158 Effect of offer**

(1) An offer to settle under this division is taken to be an offer made without prejudice.

(2) The tribunal must not be told of the offer until after it has made its decision on the matters in dispute.

**159 Accepting settlement offers**

(1) An offer to settle must remain open until immediately before the tribunal delivers its decision, or until the expiry of a period stated in the offer, whichever is the shorter period.

(2) If a period is stated, that period must be at least 14 days from the date of service of the offer.

(3) A party can only accept an offer by serving the party who made the offer with a signed notice of acceptance of the offer.

(4) A party may accept an offer even though it has made a counteroffer.

**160 Consequences if accepted offer is not complied with**

(1) This section applies if an offer is accepted, but the party who made the offer does not comply with its terms.

(2) The tribunal, at the request of a party who accepted the offer, may—

- (a) make an order giving effect to the terms of the offer; or
- (b) if the party making the offer was the applicant—
  - (i) dismiss the proceeding; or
  - (ii) if a party who accepted the offer made a counterclaim before the offer was made, make an order awarding the party any or all of the things asked for in the counterclaim; or
- (c) if a party who accepted the offer is the applicant, make an order awarding the applicant any or all of the things asked for in the application.



**161 Tribunal must order party to pay costs if certain offers to settle rejected**

(1) This section applies if—

- (a) a party to a proceeding serves another party to the proceeding with an offer in writing to settle the matters in dispute between the parties; and
- (b) the other party does not accept the offer within the time the offer is open; and
- (c) the offer complies with this division; and
- (d) in the opinion of the tribunal, the decision of the tribunal on the matters in dispute is not more favourable to the other party than the offer.

(2) The tribunal must award the party who made the offer all reasonable costs incurred by that party in conducting the proceeding after the offer was made.

(3) If a proceeding involves more than 2 parties, this section applies only if the acceptance of the offer would have resulted in the settlement of the matters in dispute between all the parties.

(4) In deciding whether a decision is or is not more favourable to a party than an offer, the tribunal must—

- (a) take into account any costs it would have awarded on the date the offer was served; and
- (b) disregard any interest or costs it awarded relating to any period after the date the offer was served.

**PART 7—MISCELLANEOUS****162 Finance and staffing of tribunal**

The tribunal is part of the department for the *Financial Administration and Audit Act 1977*.

**163 Trust account**

- (1) The tribunal must maintain a trust account to receive and hold—
- (a) amounts paid to the trust account under sections 98 and 157;<sup>28</sup> and
  - (b) amounts ordered by the tribunal to be paid to the trust account for a proceeding.
- (2) The tribunal must pay amounts from the trust account—
- (a) for amounts paid to the trust account under sections 98 and 157, in accordance with those sections; and
  - (b) for amounts ordered by the tribunal to be paid to the trust account for a proceeding, as ordered by the tribunal.
- (3) Interest on the trust account is to be applied to the cost of keeping the account with any balance relating to interest as at 30 June each year to be paid to the authority.

**164 Annual report on operation of tribunal**

- (1) As soon as practicable after each financial year, but not later than 30 September, the chairperson must give the Minister a report containing—
- (a) a review of the operation of the tribunal during the preceding financial year; and
  - (b) proposals for improving the operation of, and forecasts of the workload of, the tribunal in the present financial year.
- (2) The department's annual report for a financial year must include a report on the operation of the tribunal and the central tribunals registry during the financial year.

**165 Proceedings for offences**

A prosecution for an offence against this Act is by way of summary proceedings under the *Justices Act 1886*.

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28 Sections 98 (Tribunal may make interim order) and 157 (Making settlement offers)

**166 Limitation on time for starting summary proceedings**

A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.

**167 Penalties to be paid to authority**

All penalties recovered as a result of proceedings for offences against this Act brought by the authority must be ordered to be paid to the authority.

**168 Contracting out prohibited**

(1) A contract or agreement is void to the extent to which it—

- (a) is contrary to this Act; or
- (b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.

(2) Subsection (1) does not apply to an agreement that a building dispute be referred to arbitration if the agreement is entered into after the dispute arises.

(3) Nothing in this section prevents the parties to a contract or agreement from including provisions in the contract or agreement that impose greater or more onerous obligations on a person than are imposed under this Act.

(4) This section applies to contracts or agreements entered into before or after the commencement of this Act.

**169 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **170 Judicial Review excluded for minor domestic building disputes**

(1) The exercise by the tribunal of its powers in relation to a proceeding for a minor domestic building dispute is not subject to the *Judicial Review Act 1991*.

(2) Subsection (1) does not apply if—

- (a) the tribunal had or has no jurisdiction under the Act to hear and decide the proceeding; or
- (b) a breach of the rules of natural justice happened in relation to a party to the proceeding.

### **171 Proof of signature unnecessary**

A signature purporting to be the signature of the director, the presiding case manager or a member of the tribunal is evidence of the signature it purports to be.

### **172 Evidentiary aids**

(1) A certificate signed by the director certifying anything about the contents of the register is evidence of the thing stated.

(2) A certificate by the director stating that a stated document is a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act is evidence of the matter.

### **173 Protection from liability**

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) a member of the staff of the registry, other than the presiding case manager; or
- (b) a person authorised under section 77<sup>29</sup> by the tribunal.

### **174 Forms**

The chairperson may approve forms for use under this Act.

### **175 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may set fees payable under this Act.

(3) A regulation may impose a penalty of not more than 40 penalty units for a contravention of a provision of a regulation.

### **176 Rules**

(1) The Governor in Council may make rules about—

- (a) the practice and procedure in the tribunal; and
- (b) the conduct of the business of the tribunal.

(2) A rule made under subsection (1) is subordinate legislation.

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29 Section 77 (Entry and inspection of property)

## **PART 8—TRANSITIONAL PROVISIONS FOR ACT No. 10 of 2000**

### *Division 1—Definitions*

#### **177 Definitions for pt 8**

In this part—

“**commencement**” means the commencement of this section.<sup>30</sup>

“**former Act**” means the *Queensland Building Services Authority Act 1991* as in force from time to time before the commencement.

“**former member**” means a member of the former tribunal.

“**former tribunal**” means the Queensland Building Tribunal under the former Act.

### *Division 2—Transitional matters*

#### **178 Proceedings started before commencement**

(1) A proceeding under the former Act started in a court or the former tribunal before the commencement must continue under the former Act as if this Act had not commenced and, for that purpose, the tribunal under this Act has the jurisdiction of the former tribunal.

(2) To remove doubt, it is declared that a proceeding may be removed under section 97<sup>31</sup> of the former Act and if removed continues under the former Act.

(3) The following proceedings may be heard and decided under the former Act by the tribunal as if it were the former tribunal—

- (a) a proceeding started under the former Act before the commencement; and

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30 Section 177 commenced 1 July 2000 (2000 SL No. 157).

31 *Queensland Building Services Authority Act 1991*, section 97 (Transfer of proceedings between tribunal and the courts)

- (b) a proceeding removed to the tribunal under section 97 of the former Act.

### **179 Former member may continue to hear proceeding**

(1) A former member hearing a proceeding or doing anything else in relation to a proceeding under the former Act at the commencement may continue to hear the proceeding or do the thing after the commencement under the former Act.

(2) For subsection (1), the former member is taken to constitute the tribunal.

(3) For hearing a proceeding or doing anything else under the former Act a former member has—

- (a) for a former member not appointed as a member under this Act, the member's entitlements under the former Act; or
- (b) for a former member appointed as member under this Act, the member's entitlements under this Act.

### **180 Proceedings that must continue in a court**

(1) This section applies to a proceeding started in a court before the commencement for which the tribunal has jurisdiction but the former tribunal did not.

(2) The court must continue to hear the proceeding under the former Act.

(3) The proceeding must not be removed to the tribunal.

### **181 Proceedings about matters arising before commencement to be dealt with under this Act**

(1) A proceeding for a matter arising before the commencement for which the tribunal has jurisdiction under this Act may be started in the tribunal after the commencement.

(2) Subsection (1) applies even if the former tribunal would not have had jurisdiction under the former Act.

(3) However, this section does not apply to a matter for which a proceeding is started before the commencement in a court or in the former tribunal.

(4) A matter for which a proceeding is started before the commencement in a court or in the former tribunal must not be restarted under this Act.

### **182 Records of former tribunal**

All records of the former tribunal are taken to be records of the tribunal.

## **PART 9—TRANSITIONAL PROVISIONS FOR TRIBUNALS PROVISIONS AMENDMENT ACT 2002**

### **183 Registrar of tribunal**

The person holding office as the registrar of the tribunal immediately before the commencement of section 47 of the *Tribunals Provisions Amendment Act 2002*<sup>32</sup> is taken, on the commencement,<sup>33</sup> to be the director, central tribunals registry.

### **184 Staff of tribunal**

A person who, immediately before the commencement of section 47 of the *Tribunals Provisions Amendment Act 2002*, is a member of the staff of the tribunal is taken, on the commencement, to be a member of the staff of the central tribunals registry.

### **185 Tribunal continues to have jurisdiction to deal with matters that presiding case manager may deal with**

(1) This section applies if, immediately after the commencement of section 47 of the *Tribunals Provisions Amendment Act 2002*, the presiding case manager may or must deal with a matter under a central tribunal Act that was started before the commencement.

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32 *Tribunals Provisions Amendment Act 2002*, section 47 (Replacement of pt 3 (Registrar and other staff))

33 *Tribunals Provisions Amendment Act 2002* commenced 6 December 2002 (2002 SL No. 325).



(2) The central tribunal may continue to deal with all aspects of the matter, to the extent of the jurisdiction it possessed immediately before the commencement, after the commencement.

(3) Subsection (2) does not prevent the presiding case manager from dealing with the matter under arrangements approved by the chairperson of the relevant central tribunal.

## SCHEDULE

### DICTIONARY

section 6

**“affected by bankruptcy action”**, in relation to an individual, means the individual, in any jurisdiction—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

**“applicant”** see section 29.

**“approved form”** means a form approved by the chairperson under section 174.

**“authority”** means the Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*.

**“building”** includes any fixed structure.

**“building contractor”** means a person who carries on a business that consists of or includes carrying out building work, and includes a subcontractor who carries out building work for a building contractor.

**“building dispute”** means—

- (a) a domestic building dispute; or
- (b) a minor commercial building dispute; or
- (c) a major commercial building dispute if the parties to the dispute consent to the dispute being heard by the tribunal under section 95.

**“building owner”** means a person for whom building work is to be, is being or has been carried out, but does not include a building contractor for whom building work is carried out by a subcontractor.

**“building work”** see section 7.

## SCHEDULE (continued)

**“chairperson”** means the chairperson of the tribunal.

**“central tribunal”** means—

- (a) the Liquor Appeals Tribunal; or
- (b) the Property Agents and Motor Dealers Tribunal; or
- (c) the Queensland Building Tribunal; or
- (d) the Racing Appeals Authority; or
- (e) the Retirement Villages Tribunal.

**“central tribunal Act”** means—

- (a) the *Liquor Act 1992*; or
- (b) the *Property Agents and Motor Dealers Act 2000*; or
- (c) the *Racing and Betting Act 1980*; or
- (d) the *Retirement Villages Act 1999*; or
- (e) this Act.

**“commercial building dispute”** means—

- (a) a claim or dispute arising between a building owner and a building contractor relating to the performance of commercial building work or a contract for the performance of commercial building work; or
- (b) a claim or dispute arising between 2 or more building contractors relating to the performance of commercial building work or a contract for the performance of commercial building work; or
- (c) a claim or dispute in negligence, nuisance or trespass related to the performance of commercial building work other than a claim for personal injuries; or
- (d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of commercial building work or a contract for the performance of commercial building work—
  - (i) an architect;
  - (ii) an engineer;
  - (iii) a surveyor;

## SCHEDULE (continued)

- (iv) a quantity surveyor;
- (v) an electrician or an electrical contractor;
- (vi) a supplier or manufacturer of materials used in the building work.

**“commercial building work”** means building work other than domestic building work.

**“contract”** means a contract for carrying out building work.

**“decision”** includes an order or direction.

**“decision by default”**, for part 6, division 2, see section 121.

**“defective”**, in relation to building work, includes faulty or unsatisfactory.

**“director”** means the director, central tribunals registry.

**“disciplinary proceeding”** means a proceeding under section 108.

**“domestic building contract”** see *Domestic Building Contracts Act 2000*, section 7.

**“domestic building dispute”** means—

- (a) a claim or dispute arising between a building owner and a building contractor relating to the performance of domestic building work or a contract for the performance of domestic building work; or
- (b) a claim or dispute arising between 2 or more building contractors relating to the performance of domestic building work or a contract for the performance of domestic building work; or
- (c) a claim or dispute in negligence, nuisance or trespass related to the performance of domestic building work other than a claim for personal injuries; or
- (d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of domestic building work or a contract for the performance of domestic building work—
  - (i) an architect;
  - (ii) an engineer;
  - (iii) a surveyor;

## SCHEDULE (continued)

- (iv) a quantity surveyor;
- (v) an electrician or an electrical contractor;
- (vi) a supplier or manufacturer of materials used in the building work.

**“domestic building work”** has the meaning given by the *Domestic Building Contracts Act 2000*, except that for applying section 8(8) of that Act, the definition “excluded building work” in that Act is taken not to mean anything mentioned in paragraph (b), (c) or (d) of the definition.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“expedited hearing”** means an expedited hearing conducted under part 6, division 4.

**“file”** means file in the tribunal.

**“licence”** means a licence under the *Queensland Building Services Authority Act 1991*.

**“licensee”** means a licensee under the *Queensland Building Services Authority Act 1991*.

**“Liquor Appeals Tribunal”** means the Liquor Appeals Tribunal under the *Liquor Act 1992*, section 14.

**“major commercial building dispute”** means a commercial building dispute where either the claim or the counterclaim exceeds \$50 000.

**“member”** means a member of the tribunal.

**“minor commercial building dispute”** means a commercial building dispute where neither the claim nor the counterclaim exceeds \$50 000.

**“minor domestic building dispute”** means a domestic building dispute where neither the claim nor the counterclaim exceeds \$10 000.

**“obstructs”** includes attempt to obstruct.

**“party”** means a party to a proceeding before the tribunal, including—

- (a) the applicant; and

## SCHEDULE (continued)

- (b) the respondent; and
- (c) a person joined as a party under section 45.

**“proceeding”** means a proceeding—

- (a) started by application to the tribunal; or
- (b) removed to the tribunal by order of a court under section 117.

**“Property Agents and Motor Dealers Tribunal”** means the Property Agents and Motor Dealers Tribunal established under the *Property Agents and Motor Dealers Act 2000*, section 448.

**“public examination”** means a public examination by the tribunal under part 5, division 4.

**“Racing Appeals Authority”** means the Racing Appeals Authority established under the *Racing and Betting Act 1980*, section 115B.

**“registry”** means the central tribunals registry.

**“respondent”** see section 29.

**“Retirement Villages Tribunal”** means a tribunal appointed under the *Retirement Villages Act 1999*, section 172.

**“reviewable decision”** means a decision of the authority that is reviewable by the tribunal under section 104.

**“statutory insurance scheme”** means the statutory insurance scheme under the *Queensland Building Services Authority Act 1991*.

**“subcontractor”** means—

- (a) a building contractor that carries out building work for another building contractor; or
- (b) a building contractor that carries out building work for another person under a construction management trade contract under the *Queensland Building Services Authority Act 1991*, section 67B.

**“summary decision”**, for part 6, division 5, see section 131(1).

**“tribunal”** means the Queensland Building Tribunal established under section 9.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 December 2002. Future amendments of the Queensland Building Tribunal Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to Act No. 24 of 2000	1 July 2000	7 July 2000
1A	to Act No. 24 of 2000	1 January 2001	19 January 2001
1B	to Act No. 13 of 2002	24 April 2002	8 May 2002

## 5 List of legislation

### **Queensland Building Tribunal Act 2000 No. 10**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

ss 45(3), 94–97, 117(2), 129, sch 2 def “building dispute” paras (b) and (c) commenced 1 January 2001 (2000 SL No. 157)

remaining provisions commenced 1 July 2000 (2000 SL No. 157)

amending legislation—

### **Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 12**

date of assent 27 June 2000

commenced on date of assent

### **Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 124 sch**

date of assent 24 April 2002

commenced on date of assent

### **Tribunals Provisions Amendment Act 2002 No. 51 pts 1, 4, s 101 sch**

date of assent 24 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 6 December 2002 (2002 SL No. 325)

### **Racing Act 2002 No. 58 ss 1–2(1), 398(1) sch 2 pt 1**

date of assent 14 November 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(1))

## 6 List of annotations

### **Objects of Act**

s 4 amd 2002 No. 51 s 44



**Definitions**

**s 6** amd 2002 No. 51 s 45

**Tribunal's seal**

**s 10** amd 2002 No. 51 s 101 sch

**Advertising for nominations for appointment**

**s 10A** ins 2002 No. 51 s 46

**Appointment of chairperson and membership of tribunal**

**s 11** amd 2002 No. 51 s 47

**Chairperson's role**

**s 13** sub 2002 No. 51 s 48

**Chairperson and director to work cooperatively**

**s 13A** ins 2002 No. 51 s 48

**Member's role**

**s 13B** ins 2002 No. 51 s 48

**Delegation of powers by chairperson**

**s 14** sub 2002 No. 51 s 49

**Termination of appointment of a member**

**s 17** sub 2002 No. 51 s 50

**PART 3—CENTRAL TRIBUNALS REGISTRY, DIRECTOR AND OTHER STAFF**

**pt hdg** sub 2002 No. 51 s 51

**Director, central tribunals registry and registry**

**s 20** sub 2002 No. 51 s 51

**Director's functions and powers for central tribunals**

**s 21** amd 2000 No. 24 s 44  
sub 2002 No. 51 s 51

**Keeping and disclosure of records and information**

**s 22** sub 2002 No. 51 s 51

**Particular powers of director for this Act**

**s 23** sub 2002 No. 51 s 51

**Engagement of consultants**

**s 24** sub 2002 No. 51 s 51

**Delegation by director**

**s 25** sub 2002 No. 51 s 51

**Employment provisions for director and staff of registry**

**s 26** sub 2002 No. 51 s 51

**Appointment of acting director**

**s 26A** ins 2002 No. 51 s 51

**PART 3A—PRESIDING CASE MANAGER**

**pt 3A (ss 26B–26I)** ins 2002 No. 51 s 51

**Constitution of tribunal**

s 27            amd 2002 No. 51 s 52

**Directions and orders**

s 42            amd 2002 No. 51 s 101 sch

**Way security given**

s 59            amd 2002 No. 51 s 101 sch

**Stay pending payment of costs**

s 62            amd 2002 No. 51 s 101 sch

**Registration and enforcement of decisions**

s 85            amd 2002 No. 51 s 101 sch

**Contempt of tribunal**

s 79            amd 2002 No. 13 s 124 sch; 2002 No. 51 s 53

**Tribunal may decide building dispute**

s 93            amd 2002 No. 51 s 54

**Stay of operation of decision**

s 106           amd 2002 No. 51 s 55

**Proper grounds for disciplinary action against person not a licensee**

s 110           amd 2002 No. 51 s 56

**Procedure before public examination starts**

s 113           amd 2002 No. 51 s 57

**Decision by default for debt**

s 121           amd 2002 No. 51 s 101 sch

**Tribunal may appoint mediator**

s 123           amd 2002 No. 51 s 101 sch

**Matters about mediation**

s 125           amd 2002 No. 51 s 58

**Mediators to maintain secrecy**

s 125A        ins 2002 No. 51 s 59

**Time limit for mediation before expedited hearing**

s 127           amd 2002 No. 51 s 101 sch

**Summary decision for applicant**

s 131           amd 2002 No. 51 s 60

**Pre-hearing conferences**

s 152           amd 2002 No. 51 s 101 sch

**Finance and staffing of tribunal**

s 162           amd 2002 No. 51 s 61

**Annual report on operation of tribunal**

s 164           sub 2002 No. 51 s 62

**Proof of signature unnecessary**

s 171      amd 2002 No. 51 s 63

**Evidentiary aids**

s 172      amd 2002 No. 51 s 101 sch

**Protection from liability**

s 173      amd 2002 No. 51 s 64

**PART 8—TRANSITIONAL PROVISIONS FOR ACT No. 10 of 2000**

pt hdg      sub 2002 No. 51 s 65

**PART 9—TRANSITIONAL PROVISIONS FOR TRIBUNALS PROVISIONS  
AMENDMENT ACT 2002**pt hdg      prev pt hdg om R1 (see RA s 40)  
pres pt hdg ins 2002 No. 51 s 66**Registrar of tribunal**s 183      prev s 183 om R1 (see RA s 40)  
pres s 183 ins 2002 No. 51 s 66**Staff of tribunal**

s 184      ins 2002 No. 51 s 66

**Tribunal continues to have jurisdiction to deal with matters that  
presiding case manager may deal with**

s 185      ins 2002 No. 51 s 66

**SCHEDULE—DICTIONARY**

(prev sch 2) renum 2002 No. 51 s 67(3)

def “**affected by bankruptcy action**” ins 2002 No. 51 s 67(2)def “**central tribunal**” ins 2002 No. 51 s 67(2)amd 2002 No. 58 s 398(1) sch 2 pt 1def “**central tribunal Act**” ins 2002 No. 51 s 67(2)amd 2002 No. 58 s 398(1) sch 2 pt 1def “**director**” ins 2002 No. 51 s 67(2)def “**Liquor Appeals Tribunal**” ins 2002 No. 51 s 67(2)def “**Property Agents and Motor Dealers Tribunal**” ins 2002 No. 51 s 67(2)def “**Racing Appeals Authority**” ins 2002 No. 51 s 67(2)amd 2002 No. 58 s 398(1) sch 2 pt 1def “**registrar**” om 2002 No. 51 s 67(1)def “**registry**” ins 2002 No. 51 s 67(2)def “**Retirement Villages Tribunal**” ins 2002 No. 51 s 67(2)**SCHEDULE 1—CONSEQUENTIAL AND OTHER AMENDMENTS OF  
QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991**

om R1 (see RA s 40)

## **7 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Racing Act 2002 No. 58 s 398(1) sch 2 pt 1 reads as follows—**

### **QUEENSLAND BUILDING TRIBUNAL ACT 2000**

#### **1 Schedule 2, definition “central tribunal”, paragraph (d), ‘Authority’—**

*omit, insert—*

‘Tribunal’.

#### **2 Schedule 2, definition “central tribunal Act”, paragraph (c), ‘Racing and Betting Act 1980’—**

*omit, insert—*

‘Racing Act 2002’.

#### **3 Schedule 2, definition “Racing Appeals Authority”—**

*omit, insert—*

‘**“Racing Appeals Tribunal”** means the Racing Appeals Tribunal established under the *Racing Act 2002*, section 150.’.